

THE
MOHAKA KIAHURIRI
REPORT

THE
MOHAKA KI AHURIRI
REPORT

WAI 201

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

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JOHN TUREI

1919 – 2003

*Te tai ra te tai ra
E pari ana ki hea
E pari ana ki te kauheke
Kaumatua
He tipua*

*E te Pou Matua, Te Ahikaiata
e Hone*

*Neke atu i te tau to wehenga atu i a matou
Anei ra te kaupapa i timatahia e koe i roto i nga tau kua mahue ake nei
Anei ra kua oti*

*I wahia ai nga korero a te iwi i Tangoio
I whakakapingia i te Taiwhenua o Te Whanganui a Orotu
He ara nui, kake ake ki nga hiwi o Tatarakina ki Maungaharuru tae noa ki te akau i Tangitu
Awhio atu hoki i nga wai rere o Mohaka me Tutakuri
E ki ana he pukenga wai, he pukenga tangata
Kati e Ta, e te rangatira anei ra matou e raungaite nei
E moe ra i to moenga roa
Koutou te hunga kua okioki
Koutou te hunga kua wahangu
Otira koutou te hunga kua kite i te kororiatanga o te Karaiti
Ka huri*

Respected elder
Te Ahikaiata, Hone
It is now more than a year since you left us
Finally, here is the task that you started in the years that have passed by
It is finally completed
The people opened their case at Tangoio
It was concluded at Te Taiwhenua o Te Whanganui a Orotu
It was a major undertaking, reaching above to the ridges of Tataraakina to Maungaharuru and
extending to the shoreline at Tangitu
It encompassed the flowing rivers of Mohaka and Tutaekuri
It is said where there is a confluence of waters there is a confluence of people
Sir, the respected one, we remain bereft of your presence
Sleep the everlasting sleep
With those who also rest
With those who are also silent
With those who have experienced the glory of Christ
Turn away

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ABBREVIATIONS

AJHR	<i>Appendix to the Journal of the House of Representatives</i>
app	appendix
ATL	Alexander Turnbull Library
BPP	<i>British Parliamentary Papers: Colonies New Zealand</i> (17 vols, Shannon: Irish University Press, 1968–69)
c	circa
CA	Court of Appeal
ch	chapter
DNZB	<i>The Dictionary of New Zealand Biography</i> (5 vols, Wellington: Department of Internal Affairs, 1990–2000)
doc	document
ed	edition, editor
fig	figure
fol	folio
HCNZ	Housing Corporation of New Zealand
inc	incorporated
JHR	<i>Journal of the House of Representatives</i>
ltd	limited
MA	Maori Affairs file series
MOW	Ministry of Works
MS	manuscript
n	note
NA	National Archives
ND	Native Department file series
NZBC	New Zealand Broadcasting Corporation
NZED	New Zealand Electricity Department
NZLR	<i>New Zealand Law Reports</i>
NZPCC	<i>New Zealand Privy Council Cases</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
OTS	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
pl	plate
RDB	<i>Raupatu Document Bank</i> (139 vols, Wellington: Waitangi Tribunal, 1990)
ROI	record of inquiry
s, ss	section, sections
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 reproduced in the appendix.

ACKNOWLEDGEMENTS

The Mohaka ki Ahuriri Tribunal would like to thank a number of staff who assisted us both during the hearing of the claims and in the writing of this report. They included Turei Thompson and Peter Barton (claims administration), Dean Cowie, Georgina Roberts, and Richard Moorsom (research and claims facilitation), Paul Hamer (report writing), Miranda Johnson (report-writing assistance and reference checking), Max Oulton (mapping), and Dominic Hurley (editing and production).

The Honourable Parekura Horomia
Minister of Māori Affairs
Parliament Buildings
WELLINGTON



The Waitangi Tribunal
110 Featherston Street
WELLINGTON

11 May 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 tonono a ngā uri o ngā hapū o te rohe mai i Mohaka ki te rahi ki Ahuriri ki te tonga. No muri tata mai i whakatakotoria ano hoki etahi atu iwi o ratou ake tonono i mua i te aroaro o te Taraipiunara.

We present to you our report on the 20 claims grouped and heard together as the Mohaka ki Ahuriri district inquiry. The claims were brought on behalf of a number of hapū and whānau within an area from the Tutaekuri River to the south, Hawke Bay to the east, the Waiau River to the north, and the mountain ranges or the old Hawke's Bay provincial boundary to the west.

The claims relate to Māori land in two broad ways:

- ▶ first, they relate to land loss through pre-1865 Crown purchase, the operation from 1865 of the Native Land Court, the 1867 confiscation and later Crown purchasing (mainly conducted from 1910 to 1930); and
- ▶ secondly, they relate to the barriers to the use and enjoyment of lands retained in Māori ownership, including title disruption, the lack of development opportunities, the fragmentation and multiple ownership of tiny parcels, and the lack of access.

More particularly, amongst the claims there were several key matters we had to resolve. These included:

- ▶ The status of the first land transactions with the Crown in the district in 1851, which the claimants asserted to be akin to 'treaties'.

- ▶ Whether a supposed 'rebellion' justified the military engagements in 1866 and the confiscation in 1867.
- ▶ The propriety of the Crown's handling of both the 'return' of certain lands after the confiscation and the title disputes which followed for over 80 years.
- ▶ The point at which the Crown should have stopped purchasing Māori land and put its effort into helping develop the remaining Māori land base; and
- ▶ Whether there is a link between poverty and landlessness.

We have made findings on all these and other matters at the ends of the relevant chapters.

Overall, we have identified serious breaches of the principles of the Treaty of Waitangi by the Crown in the loss of Māori land in our inquiry district. We have also found that the Crown acted in clear breach of the Treaty in its treatment of the remaining Māori land base. We have also made the point that by far the bulk of that surviving base (some 125,000 acres out of a total of roughly 800,000) remains in Māori ownership principally because it was viewed by the Crown as too rugged and unproductive to bother purchasing.

We have recommended that the Crown and the claimants negotiate settlements of the claims. We have accordingly made some suggestions as to the appropriate groups for the Crown to deal with. Finally, we note that Crown counsel made a number of concessions in our inquiry of failings by the Crown to live up to the standards envisaged in the Treaty. We trust that this conciliatory approach is carried forward by the Crown in the settlement negotiations.

Before we were able to complete this report, the Tribunal lost its respected kaumātua and long-standing member Sir John Turei. Sir John made an invaluable contribution to this Tribunal during its many hearings, and we are truly grateful for his insight and wisdom on the issues involving tikanga Māori. We deeply regret that he passed away before our task was complete.

Heoi anō, nāku na



W W Isaac

Deputy Chief Judge

EXECUTIVE SUMMARY

INTRODUCTION

The Mohaka ki Ahuriri inquiry was the Waitangi Tribunal's first district casebook inquiry. In other words, it was the first time a group of claims within a particular region were grouped together for hearing, with all essential claimant evidence being assembled into a casebook of reports before the hearings commenced. We heard the claims over approximately three years from November 1996 to February 2000 and have been formulating our report since then. This report is the first to be produced under the casebook system. It also marks the conclusion of the Mohaka ki Ahuriri inquiry after our earlier *Napier Hospital and Health Services Report* of 2001.

We report here on 20 claims in Hawke's Bay concerning lands approximately bounded by the Tutaekuri River to the south, Hawke Bay to the east, the Waiau River to the north, and (mainly) the mountain ranges or the old Hawke's Bay provincial boundary to the west. The claimants are predominantly hapu of Ngati Kahungunu, although some identify more or equally with Ngati Tuwharetoa or have links to Tuhoe. The inquiry name derives from Ahuriri, the Maori name for the area around Napier, and Mohaka, both a locality in the north of the district and the river that flows from the Kaimanawa Range to the sea and bounds numerous land blocks in our inquiry. The claims fell into three approximate geographical subdivisions:

- ▶ To the north is the traditional tribal territory of Ngati Pahauwera, which comprises a number of blocks. This was the subject of the Ngati Pahauwera comprehensive claim (Wai 119), as well as a whanau claim (Wai 731) and a cross-claim by Ngai Tane (Wai 436).
- ▶ In the centre is the Mohaka-Waikare confiscation district. This was the subject of a pan-hapu claim covering the entire confiscation district (Wai 299), a hapu claim with respect to two specific blocks (Wai 216), and a significant number of whanau claims.
- ▶ To the south is the Ahuriri block, which was purchased by the Crown in 1851. This was also the subject of a pan-hapu claim (Wai 400). To the immediate south of the Ahuriri block (but in part also overlapping it) was a hapu claim to land at Waiohiki (Wai 168).

Despite this apparently convenient segmentation, we are not in a position to report fully on all of the historical grievances of the groups that appeared before us. This was inevitable, since under tikanga Maori, tribal and hapu areas of interest overlapped, and it was impossible to create inquiry boundaries that did not bisect the interests of one group or another. By this, we particularly refer to the hapu that filed a claim relating to the large Ahuriri transaction, which forms the southern boundary of our district. That claim needs to be considered against a context of subsequent land losses by the same hapu in the Heretaunga district to the

EXECUTIVE SUMMARY

immediate south. However, in the case of Ngati Pahauwera, to the north, we have reported fully on their claims, and we have also reported on the key historical grievances of the inland Ngati Hineuru (whose interests nevertheless cross into other Tribunal inquiry districts).

The inquiry district comprises some 800,000 acres, and Maori today retain approximately 125,000 acres. Yet, they have lost all but the mountainous hinterland that Crown purchase official Donald McLean rated ‘rugged and unproductive’ and ‘of very little value’. Of the better land in our inquiry district, close to the settlement of Napier (which was established in 1851), they retain very little indeed. In short, we have identified serious breaches of Treaty principles by the Crown in the alienation of land in Mohaka ki Ahuriri from Maori customary ownership. Those principles most regularly breached include the duty of active protection, the duty to act reasonably and in good faith, the principle of reciprocity, the duty of consultation, the principle of options, the Maori right to development, the principle of equity, and the principle of equal treatment. These principles and their relevance to the claims we inquired into are detailed in chapter 2.

In general, all the claims in this inquiry focused upon land loss, and the major issues that we considered related to the following:

- ▶ pre-1865 Crown purchases under the Crown’s pre-emptive right;
- ▶ land alienations to the Crown and private purchasers after the introduction of the Native Land Court in 1865;
- ▶ the military engagements in 1866, the Crown’s confiscation of land in 1867, and the ‘return’ of the majority of the confiscated blocks in 1870;
- ▶ problems besetting the remaining Maori land base from the late nineteenth century: title disputes, lack of development opportunities, and renewed and intensive Crown land purchasing; and
- ▶ the twentieth-century impact of land loss: environmental and socioeconomic issues.

We proceed now to summarise the key events and our findings on them under these heads. We stress, however, that the findings summaries given here should not be treated as a substitute for the full exposition of findings found at the end of each chapter.

PRE-1865 CROWN PURCHASES

Only four Hawke’s Bay rangatira signed the Treaty of Waitangi, and during the 1840s Maori of the district had practically no interaction with the Crown. The purchasing of Hawke’s Bay land became an object of Crown policy during the latter 1840s, however, because of circumstances in the Wairarapa – the lack of available land in Wellington had seen settlers venture over the dividing range to informally lease runs from Maori for their flocks. This worked against the Crown’s object of buying Maori land cheaply and on-selling it to settlers at a profit to finance the development of the colony. Squatting also defied the monopoly right to treat for

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Maori land guaranteed the Crown under the Treaty. Crown officials attempted to threaten or entice Wairarapa Maori to sell, but since the rentals the chiefs received from the squatters were more generous, they refused to do so. Buying land in Hawke's Bay, therefore, was seen by the Crown as vital both to prevent the spread of the squatting system northward as well as to break it in the Wairarapa by providing alternative and more secure runs for the squatters.

Hawke's Bay Maori, for their part, were equally keen to sell land to the Crown in order to acquire the anticipated benefits of Pakeha settlement. In 1851, therefore, Donald McLean managed to acquire three large tracts for the Crown at Waipukurau (south of our district), Ahuriri, and Mohaka. These transactions were, if not treaties in their own right, certainly major compacts between the Crown and the Maori vendors. This was especially so because they represented the first significant political engagements by Hawke's Bay Maori with the Crown, with hundreds attending hui and signing the deeds, and because the Crown gave assurances to Ahuriri Maori, in particular, of the collateral benefits of selling. McLean reported that he had assured the vendors that the town established at Napier would include public reservations for a market place, a hospital, and the like, and Governor George Grey later recalled that he had instructed that it be impressed upon Maori that 'money was not really the true payment at all'.

In respect of the Ahuriri purchase, which was sealed with the signing of the deed on 17 November 1851, the Ahuriri claimants argued that McLean's promises made the transaction akin to a treaty, and they dubbed it the 'Treaty of Ahuriri'. They maintained that, if the promises of collateral advantages were not fulfilled, this treaty would be breached and the Maori vendors would have the right to repudiate the transaction. They similarly argued that the transaction was an example of the traditional practice of *tukuwhenua*, with Ahuriri Maori retaining rights in the land to the extent that, if the benefits of the *tuku* did not continue to flow to them, they could reclaim the land from the Crown. The Crown opposed these arguments yet found some common ground with the claimants by agreeing that the transaction was a 'stepping stone' for Maori into the modern world and no ordinary 'arm's length' agreement. For our part, we have found that:

- ▶ Maori had legitimate expectations of collateral advantages yet had accepted that the land was going from them permanently. They put their faith in the Crown's assurances and gambled on a positive future.
- ▶ The Crown could not guarantee Ahuriri Maori prosperity, but the spirit of this compact is a yardstick (alongside the Treaty of Waitangi itself) by which to measure later Crown actions towards them.

Unfortunately, the placement of our inquiry boundary has meant that a full analysis of later Crown actions towards Ahuriri Maori has been beyond us. What we have been able to be categorical about, however, are the matters raised by the claimants concerning the negotiation and terms of the Ahuriri transaction, and in these we have found a number of inadequacies that reflect poorly on the Crown and seem to have fallen short of the standards

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McLean had previously set in the Wanganui and Rangitikei transactions. Thus, with respect to the Ahuriri transaction, we have found that the Crown breached the principles of the Treaty in the following ways:

- ▶ The Crown acted in bad faith in its approach to the purchase negotiations by determining to pay no more than the lowest amount Maori would accept for the land.
- ▶ McLean went further than this and merely named a low price from which he would not budge.
- ▶ McLean pressured Maori into parting with certain lands they clearly did not wish to sell.
- ▶ The Crown reserved an inadequate amount of land from the transaction for Maori use and failed to protect Maori in their ownership of this remnant.
- ▶ Certain hapu holding rights in the block either were not adequately consulted about the purchase or, in the case of Ngati Hineuru, were simply presented with the purchase as a fait accompli.

In a deed signed on 5 December 1851, the Mohaka block to the north was also purchased. We believe that Mohaka was a similar political compact to Ahuriri, although we have noted that, since there was no prospect of a town at Mohaka, the Crown's assurances of collateral advantages were less pronounced. We have nevertheless found that:

- ▶ The Crown's future conduct towards Ngati Pahauwera can be judged by the spirit of this compact (as well as by the Treaty's guarantees), given Ngati Pahauwera's enthusiasm to make land available for settlement and the Crown's insistence that advantages would flow to them. Also, as Crown counsel conceded, the Crown carried obligations to Ngati Pahauwera regardless of how the transaction is viewed.

The terms of the Mohaka transaction were also subject to similar claims to those made by the Ahuriri claimants. We have found that:

- ▶ The Mohaka purchase price was low and there was no opportunity for Maori to negotiate over the price. Again, McLean took advantage of the sellers' desire for Pakeha settlement to force them into accepting a low sum.
- ▶ As with Ahuriri, there was a similar paucity of reserves. The lack of reserves on the block later disadvantaged Ngati Pahauwera when, after clustering at the mouth of the Mohaka River for security, they needed room to expand.
- ▶ The one small reserve that was set aside was purchased by the Crown from a small number of chiefs when a settler disputed its use with local Maori. It seems that the sellers were probably not even those who were involved in the dispute. Crown counsel conceded that the Crown's behaviour in this matter fell short of the standards envisaged in the Treaty.

The Mohaka transaction is an example of the long-standing nature of many Maori grievances. In a series of petitions in 1891, 1898, 1899, 1925, and 1946, Maori appealed to Parliament about the low purchase price, the non-participation of certain right-holders in the transaction, and the lack of provision of promised reserves. The filing of the Wai 119 claim by Ngati

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Pahauwera in 1990 can be seen as a continuation of 100 years of protest. While there were some inaccuracies in the earlier petitions, such history of protest is common and belies the arguments of those who perceive recently lodged claims as a modern 'grievance industry'.

After these 1851 transactions, Crown officials, including McLean, conducted a series of essentially clandestine land purchases with certain key chiefs such as Tareha and Te Hapuku. The unpopularity of these dealings, and the tendency of Te Hapuku to try to sell lands to which he had dubious claims, led to conflict amongst Ngati Kahungunu at Pakiaka south of Napier in 1857 and caused a general deceleration in the pace of land selling. This occurred at the same time as feeling against land selling was increasing in other parts of the colony, culminating in the establishment of the Kingitanga in 1858. The Crown continued to buy land up to the early 1860s, but it did so at a lesser rate, picking up blocks in our inquiry district north of Napier such as Arapaoanui and Moeangiangi and making advance payments on others.

The wars of the 1860s at first had a limited impact on Hawke's Bay, but by 1863 schisms between 'loyal' and Kingite Maori were burgeoning in the north of the district. Seeking to create a buffer zone between the pro-Government Ngati Kahungunu and those of Tuhoe and Tairawhiti who had sided with the King, McLean negotiated the purchase of several blocks around Wairoa and Mahia in 1864 and 1865. Amongst these was the Waihua block, the sale of which was undoubtedly designed to confirm Ngati Pahauwera's loyalty to the Crown. The claimants argued that this loyalty – which was further exemplified by Ngati Pahauwera's participation in the pursuit of Te Kooti after his escape from the Chatham Islands in 1868 – was not reciprocated. They pointed, for example, to the lack of reserves in the Waihua block as well as the Crown's wrongful inclusion of 1152 acres in the purchase due to an inadequate survey (a matter which, when brought to the Crown's attention by Ngati Pahauwera in the 1880s, was not redressed). They also claimed that the Crown had left their villages undefended while their men were in the field against Te Kooti, an action which allowed Te Kooti to raid Mohaka in search of ammunition and kill 60 people.

With respect to the Waihua transaction, therefore, we have found that:

- ▶ The transaction was more than a simple transfer of land, being designed to demonstrate Ngati Pahauwera's loyalty to the Crown in a period of instability.
- ▶ The Crown's failure to make amends for the wrongful acquisition of 1152 acres in the transaction was inexcusable, and steps can and should now be taken by the Crown to rectify the matter.
- ▶ The Crown's survey of the Waihua block also significantly underestimated the block's acreage at the same time as McLean was assuring the vendors that the sum the Crown would pay would reflect the size the block was found to be upon proper survey. The purchase price may thus have been too low.
- ▶ The Crown should have taken care to reserve areas out of the block for Ngati Pahauwera use.

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On the related matter of Te Kooti's attack, we have found that:

- ▶ The Crown took inadequate precautions to safeguard the Ngati Pahauwera community at Mohaka from attack, and its provision to the devastated community after the raid was grudging.

We should add that Crown counsel made some concessions with respect to the 1152 acres and the raid on Mohaka. Furthermore, like the Mohaka purchase, the Waihua transaction was the subject of petitions in 1899, 1920, 1940, and 1945. The Wai 119 claim of 1990 thus merely continued in this vein.

THE OPERATION OF THE NATIVE LAND COURT

In 1865, the Native Land Court system first came into operation in Hawke's Bay and ushered in a revolution in Maori land tenure. The legislation, which ended Crown pre-emption, provided for no more than 10 owners to be placed on the title to blocks, but it did not require those individuals to act as trustees for the wider body of right-holders in the land. Instead, the owners had full powers of alienation. Such owners were often ensnared in debt by unscrupulous Pakeha, or had made prior arrangements to sell and applied for an investigation of ownership by the court in order to get into the title and transfer the land. The system was of course open to numerous abuses, and many Maori were left disinherited. We have discussed three examples of this in particular, at Petane, Te Pahou, and Waitanoa, but the 10-owner issue did not have as significant an impact in our inquiry district as it did in the Heretaunga area to the south. This was for two reasons. First, the passage of Ngati Pahauwera lands through the court in 1868 was carefully controlled by the leading chief, Paora Rerepu, and occurred under the 1867 amendment to the Native Lands Act 1865. Thus, all the individuals or hapu with interests in the land were recorded on the back of the titles (in addition to the 10 named owners), and most of the lands were leased for 21 years only. The listing of hapu in this way was not provided for in the legislation, but the broader class of right-holders was none the less noted, even if they had no direct rights of ownership. Secondly, the entire district between the Ahuriri and Mohaka transactions was confiscated in 1867 and taken beyond the operation of the court.

In sum, we have found that:

- ▶ the native land legislation in general imposed a revolution in Maori land tenure that seriously destabilised customary Maori society;
- ▶ section 23 of the Native Lands Act 1865, which provided for awards of title to 10 or fewer owners, was in particular violation of Maori rights under the Treaty; and
- ▶ some of the worst effects of the legislation were ameliorated by the 1867 amendment Act, but this still made no provision for the form of tribal title sought by Ngati Pahauwera.

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MILITARY ENGAGEMENTS, CONFISCATION, AND THE 'RETURN OF LAND'

The confiscation is the key issue in our inquiry district. Its origins go back, perhaps, to the Crown's apparent willingness in the Ahuriri transaction in 1851 and subsequently to deal only with a coterie of coastal Ngati Kahungunu chiefs (led by Tareha) over land matters, including land clearly within the territory of Ngati Hineuru. Further, as war spread through the North Island in the 1860s, followers of Te Ua Haumene's Pai Marire faith multiplied. They included Tawhiao, the Maori King, and many individuals within Ngati Hineuru. In the climate of the day (and particularly after the murder by Pai Marire adherents of the missionary Carl Sylvius Völkner at Opotiki), Ngati Hineuru's persistent sense of grievance about their treatment on land issues was all too easily construed as rebellious and warlike behaviour. Baseless rumours began to fly that an attack on coastal Ngati Kahungunu and the Pakeha town of Napier was imminent. Some, such as the run-holder George Whitmore, who had been losing stock to sheep stealing, and several coastal chiefs, favoured a pre-emptive attack on the Pai Marire community, which was based in Ngati Hineuru territory. But, when the main body of Pai Marire followers moved down from the hills to the coast in September 1866, they did so at the invitation of McLean, who requested that they meet with him to resolve their differences.

What followed was an unnecessary descent into bloodshed. The Pai Marire party remained at Petane for some time before moving to the kainga at Omarunui, at the invitation of its chief, Paroa Kaiwhata, whose people evacuated to Tareha's Pa Whakairo. A series of messages were exchanged between the Pai Marire prophet, Panapa, and McLean, who would not meet face-to-face and seems not to have understood what Panapa was trying to tell him. In the meantime, the Ngati Kahungunu chiefs were itching for a fight. Rather than restrain them, McLean used their help to surround Omarunui with an overwhelming force in the early hours of 12 October 1866 and demand Panapa's surrender at dawn. When it was not forthcoming, he ordered the attack. In this one-sided contest against an unfortified position, the outcome was inevitable: over 20 of the Pai Marire followers were killed, a similar number were wounded, over 70 were taken prisoner (of these, the largest proportion – but still fewer than half – were Ngati Hineuru), and only four people escaped. The prisoners were eventually transported to the Chathams. The attack was followed up with a punitive raid on Ngati Hineuru settlements by a Government force led by Whitmore that included 200 Ngati Kahungunu.

At the same time as the occupants of Omarunui were attacked, a 25-strong group under the leadership of the Ngati Hineuru chief Te Rangihiroa was ambushed near Petane by Major Fraser as they made their way to the coast. Presumably, they had responded to McLean's insistence that Te Rangihiroa needed to be present at Omarunui so that McLean could be certain that the intentions of the Pai Marire party were peaceful. As at Omarunui, those surrounded at Petane were called upon to surrender. When they refused, they were attacked, and 12 were killed, including Te Rangihiroa. Later, based largely on 'confessions' that the Reverend Samuel Williams extracted from the prisoners taken at Omarunui, the two attacks were claimed to

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have nipped in the bud a two-pronged attack on the town of Napier. The Omarunui fight was justified to the British Government in this way, and thus the rationale for confiscation was created.

The claimants argued that no state of ‘rebellion’ existed which could have merited either the attacks at Omarunui and Petane or the confiscation of the Mohaka–Waikare district. The Crown countered that the Pai Marire parties constituted a real threat to the peace and security of the district and the Crown was reasonable in its response. We have found that:

- ▶ There was much more that the Crown could have done to keep the peace, and there was no excuse for the Crown joining with one group of Maori to attack another that had displayed no hostile intent. Neither did the existence of rumours constitute a reasonable foundation for taking such military action.
- ▶ There was insufficient inquiry made for the Governor to be ‘satisfied’ – as required by the New Zealand Settlements Act 1863, under which the confiscation was made – that a group of Maori had been in ‘rebellion’. Certainly, the lands of many who were not ‘rebels’ in any sense were swept up in the confiscation.
- ▶ For our part, we do not believe that any ‘rebellion’ could be said to have taken place.
- ▶ The New Zealand Settlements Act also required that confiscated land be used as sites for military settlement and that a compensation court sit to consider the claims of ‘loyal’ Maori whose lands were taken. Neither of these requirements ever came to pass. We thus find it difficult to see on what basis the Crown kept a number of blocks out of the confiscation, other than one or two previous downpayments.

Eventually, in 1870, the lands not retained by the Crown were ‘returned’ to Maori ownership under an agreement made with Tareha and the other leading coastal chiefs. The prime beneficiary of this arrangement was Tareha himself, who gained sole title to the large Kaiwaka block and was named as an owner in seven other blocks. In Ngati Hineuru territory, the Tataraka block was mainly awarded to Ngati Hineuru, but the large Tarawera block was predominantly awarded to their coastal rivals, Ngati Kahutapere (including Tareha). Ngati Hineuru seem to have been deprived of further lands at this time by the passage of the Pakaututu block through the Native Land Court in 1869. It should not have passed the court since it was included in the confiscation, but no doubt the Crown allowed it to proceed to title investigation because it was being claimed by Tareha and his allies. Ngati Hineuru were probably unaware of the court sitting in Napier. In any case, they were seen at the time as unsundered rebels and would not have been in any position to appear to protect their interests.

We have thus found that:

- ▶ The Crown’s ‘return’ of land was in breach of Treaty principles in that it was neither returned in large part to the customary right-holders nor returned in total under customary Maori title.

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- ▶ The Crown failed to honour its promises that it would bear the cost of surveying the returned blocks and that the blocks would be made inalienable.
- ▶ The Crown colluded with its Ngati Kahungunu allies in the passage of the Pakaututu block through the Native Land Court.

In these and other events we have just narrated, two figures loom above all others: Donald McLean and Tareha Te Moananui. McLean was the leading Government official in Hawke's Bay: purchase agent, provincial superintendent, run-holder, and, later, member of Parliament and Native Minister. His role was paramount in the purchase and confiscation of Maori land and in the fight at Omarunui. Tareha was the leading Hawke's Bay chief of the same period – he was a land-seller in 1851 and, on a number of occasions after that, a Government ally, a regular recipient of Native Land Court awards of title, an eager participant on the Government's side at Omarunui and in the campaign against Te Kooti, the major beneficiary (other than the Crown itself) of the Crown's division of the confiscated lands, and a fellow member of Parliament. These two men were establishment figures of enormous influence who left their mark emphatically upon the history of Hawke's Bay. The alliance between the two is a good example of the Crown aligning with certain influential chiefs to achieve its objectives, and – conversely – of Maori siding with the Crown to further their own ends. Those who habitually seem to have suffered as a consequence of this alliance – in the Ahuriri transaction, the engagements at Omarunui and Petane and the subsequent punitive expedition, the confiscation, the Native Land Court's award of title to Pakaututu, and the 'return' of confiscated land in 1870 – were Ngati Hineuru. It is also instructive to note that Tareha's direct descendants amongst Ngati Parau today question whether there has really been much benefit to them from this alliance, as we relate in chapter 15. They see themselves in no better position than any other Maori in Hawke's Bay.

Those most disadvantaged by the return of the confiscated blocks in 1870 pressed for title investigations so that the true customary right-holders could be identified. This struggle was particularly fought out over Kaiwaka after Tareha's death in 1880. Rather than bequeath the land to those with customary rights, to whom he had been paying some of the rental income, Tareha left the block in his will to his immediate family, who were not so minded to share the rentals. A legal battle ensued which went as far as the Privy Council, with the Tareha family's argument that no trust was intended when Tareha was inserted as the sole owner of the block prevailing. Eventually, the block was either sold to the Crown (who opened it for selection by Pakeha farmers rather than used it to satisfy the claims of those with customary rights) or had passed to the Pakeha husband of the late Airini Donnelly (Tareha's grand-niece and one of his heirs). We have found that:

- ▶ In its confiscation of Kaiwaka and its total alienation of the block from those with customary rights, as well as in its failure to provide redress, the Crown was guilty of serious breaches of the principles of the Treaty.

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PROBLEMS BESETTING REMAINING MAORI LANDOWNERS: DEVELOPMENT, CROWN PURCHASING, AND TITLE DISRUPTION

After 1870, the bulk of the returned Mohaka–Waikare blocks were leased by their Maori owners. Ngati Pahauwera did likewise with the lands they put through the Native Land Court in 1868, but they sold their more rugged interior blocks (amounting to over 70,000 acres), which passed through the court in the 1870s and early 1880s. Around 1890, the first of the 21-year leases over the returned and Ngati Pahauwera blocks were nearing termination. Many of the leases over the previously confiscated blocks were simply extended, but Ngati Pahauwera took the opportunity to resume occupation of their remaining land – comprising approximately 60,000 acres – and try to farm it themselves. Disputes over title occasioned by the manner in which that title had been awarded in 1868, however, coupled with the death of Paora Rerepu and the loss of his unifying influence, led to a protracted series of costly and divisive reinvestigations of title. It was not until 1910 that all these disputes were resolved and Ngati Pahauwera were able to face the future. Crown counsel argued that the disagreements stemmed from a rejection of tribal title and a desire to acquire individual holdings. We have found, however, that:

- ▶ The disputes affecting the Ngati Pahauwera blocks were the inevitable result of the existence of an imposed and foreign system of land tenure and a compressed land base.

In 1907, Robert Stout and Apirana Ngata recommended to the Government that Ngati Pahauwera lands be retained in Maori ownership and that Government assistance be provided to develop them. Indeed, after the leases expired in 1890 (and even before, since lessees tended to allow their properties to run down towards the end of the lease periods) the blocks had deteriorated to the extent that parts were overrun by rabbits and blackberry. Ngati Pahauwera simply had little or no access to capital for land development. State-funded development assistance was available to farmers with individual freehold titles from 1894 on, but few Maori fell into this category.

We have found that:

- ▶ The effective denial of development assistance to Maori landowners from 1894, when it was available to individual (normally Pakeha) landowners, to 1930, when Ngata's schemes began, represents a failure to treat Maori equitably, as required by article 3 of the Treaty.

Maori landowners of the seaward Mohaka–Waikare blocks were also, at this time, attempting to find ways of developing and farming their own land. Rather than heed Stout and Ngata's advice, however, the Crown embarked on a vigorous land-buying programme from 1910 in both the seaward returned blocks and the lands retained by Ngati Pahauwera. It is not altogether clear what the Government's motivation was, other than to acquire land along the route of the proposed Napier to Gisborne railway line or to provide lands for the settlement of soldiers returning from the First World War. Certainly, there was some pressure from the local Pakeha farming community at Wairoa for the Crown to acquire Maori land at Mohaka,

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because they saw that as the best means of dealing with the infestation of weeds and pests. The Crown's purchasing at Mohaka also gained a momentum of its own when the Crown decided to consolidate its scattered and partial interests in the northern (and less blackberry-plagued) portion of the Mohaka block (with the Crown buying more and more land to improve its position before the exchanges took place). Overall, however, we have found that:

- ▶ In large part, the Crown bought up so much Maori land in this period because of an entrenched mindset that saw Maori as having the potential to be little more than rural labourers or bare subsistence farmers. This belief dictated that their lands be acquired and farmed by Pakeha.

Between about 1910 and 1930, therefore, the Crown (and some private buyers) acquired well over half of Ngati Pahauwera's remaining lands, while the Crown alone all but obliterated Maori land holdings in the nine seaward returned blocks (excluding Kaiwaka). We have found that:

- ▶ This was not simply a case of 'willing buyer, willing seller', because some of the Crown purchase methods were simply coercive.

For example, when the Crown acquired an interest in a particular block, under section 363 of the Native Land Act 1909 it would usually annually prohibit alienations (including leases) to anyone other than itself. The block's owners were not even able to lease the land to one of their own number and were effectively starved of income. Sales became inevitable. Furthermore, the legislation of the day allowed a Crown purchase to proceed despite the absence of the majority of shareholders at a meeting of owners called to consider the Crown's offer. If those at the meeting who supported the offer to sell held a greater share in the block than those present who opposed, the sale was confirmed. In fact, the only quorum requirement under the legislation was for five owners or their representatives to be present. Thus, an offer to purchase could theoretically be accepted with no actual owners present at all.

Crown counsel conceded that there came a time when the Crown should have ceased its purchasing activity and instead fostered the viability of rural Maori communities and the development of the remaining Maori land. We have found that:

- ▶ The point at which Crown purchasing should have ceased was certainly, in the case of the lands at Mohaka, the publication of the Stout–Ngata report in 1907 at the very latest. We see no reason why the returned seaward blocks should have been any different.

Moreover, those returned blocks were theoretically subject to a promise in the 1870 agreement that they would be made inalienable. The Crown obviously did not consider itself bound by this.

In 1930 – 36 years after the State advances legislation first provided for development assistance to individual landowners – the Crown, under Ngata as Native Minister, at last instigated a programme for the development of the remaining Maori land holdings. In the seaward Mohaka–Waikare blocks, there was insufficient Maori land remaining to warrant a development scheme, and the development of the mountainous inland blocks does not seem

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to have been contemplated, but three schemes were established at Mohaka. With respect to these schemes, we have found that:

- ▶ The Mohaka schemes were genuine if belated attempts to assist Maori to make use of their lands, but in practice they were poorly administered. The intensive farming or marginal hill country was unsustainable, and unit holders could not overcome the development debt with which they were burdened. It is little wonder that the schemes eventually failed.

In the meantime, the leases over the inland returned blocks, Tarawera and Tatarakaia, had expired in 1916. By this time, too, Ngati Hineuru leader Hape Nikora had twice petitioned Parliament seeking the overturn of the existing titles to the blocks and an investigation of customary rights. Ngati Hineuru had been living on 500 acres at Te Haroto that the Government had retained out of the confiscation for Ngati Tuwharetoa chief Paora Hapi, who had fought with the Crown against Te Kooti. Hapi's people had not taken up residence on the land, however, and Ngati Hineuru had a well-established village there by 1900. They eventually received title to the land in 1911. At the same time as Nikora was petitioning Parliament, others were also calling for a new investigation of the title. They included the Ngati Kahutapere owners of the Tarawera block, who only wanted the court to ascertain their relative interests. After further petitions were received, the matter was eventually considered in 1920 by Judge Gilfedder of the Native Land Court, whose error-ridden judgment named only four individuals who he concluded had been wrongly omitted from the Tarawera and Tatarakaia titles. Most importantly, however, Gilfedder also made the error of stating that Tarawera and Tatarakaia had not been part of the Mohaka–Waikare confiscation. Thus, in 1924, when Hape Nikora petitioned Parliament once again, Gilfedder's error paved the way for legislation overturning the 1870 lists and providing for a court investigation of ownership on the basis of customary law – the very thing denied the customary right-holders of Kaiwaka.

Chief Judge Robert Jones first considered the Tarawera block in 1925, and he concluded that Ngati Kahutapere had no rightful claim to the land. Despite this, he still awarded them a third of the block, since they had by then been in the title for 55 years. Subsequent Ngati Kahutapere protests led to some adjustments being made in 1929, but the net effect remained the same: the Ngati Kahutapere interests in the block were severely reduced and the Ngati Hineuru share was greatly increased. In 1923, before this all occurred, some absentee Ngati Kahutapere owners (in particular, the Tareha family) had sold some 9500 acres of Tarawera to the Crown. The Crown gave no consideration to using this land to compensate owners displaced by the revised titles. In 1927, Jones also severely reduced the Ngati Kahutapere share of Tatarakaia.

Further petitions from those whose shares had been disrupted or altered in the 1920s led to a new inquiry into Tarawera in 1939, this time headed by Judges Browne and Carr. Browne and Carr were critical of the Legislature for reopening the issue of the block's title, and they recommended that the final 1929 partitions be cancelled. Their proposed solution was for the

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Crown-purchased land in the Tarawera block to be given to the descendants of the original grantees who had not already sold, with the balance of the block to go to those found by the court in 1925 and 1929 to be entitled. The Government probably saw no reason why its own land should be used in settling the matter, however, and the recommendations were not implemented. The matter was next considered by a royal commission in 1951, which recommended that the pre-1924 owners be fully reinstated and that those about to be ousted be offered monetary compensation or be allowed to remain on reduced holdings if they had been in physical occupation of the land. (The latter course applied to very few, since Ngati Hineuru had been living not on the Tarawera block but at Te Haroto.) Legislation was thus passed in 1952 directing the Native Land Court to prepare new ownership lists, and this was done that year under Judge Whitehead.

At no point in this long-running saga was the Crown prepared to use its own land to resolve the matter. We have found that:

- ▶ In 1924, the Crown ignored the basic maxim that two wrongs do not make a right by allowing more than 50 years of occupation and use on the basis of Crown-granted titles to be overturned. When Judges Browne and Carr recommended a new solution that used available Crown land, their report was shelved. Finally, the Crown allowed a further wrong to be perpetrated by accepting the recommendations of the royal commission in 1951, which saw those temporarily returned to the titles ousted themselves.

Crown counsel conceded that the issue of entitlements to Tarawera and Tatarakaia was ‘poorly handled’ by the Crown and represented a failure ‘to satisfy the Treaty’s promise of order’. It also fundamentally disrupted and unsettled the Ngati Hineuru community at Te Haroto. We should note that there was similar wrangling over the ownership of Te Matai, an inland block neighbouring Pakaututu that was partially included in the confiscation. Te Matai passed through the Native Land Court in 1879, but disputes over its status and ownership were not resolved until 1952. Crown counsel conceded that this tenurial uncertainty reflected ‘badly on the Crown’. When the block’s title was finally resolved, its use by its owners remained most difficult, however, since it had no legal access to it. This matter has still not been resolved. We have found that:

- ▶ The Crown should facilitate satisfactory access to Te Matai for the block’s owners as soon as possible.

TWENTIETH-CENTURY ENVIRONMENTAL AND SOCIOECONOMIC ISSUES

We conclude our report with two chapters on the general environmental and socioeconomic impacts on Maori across Mohaka ki Ahuriri. We have found, for example, that:

- ▶ The Crown was tardy to take action to ameliorate the damaging environmental effects of the slash and burn methods of the European pastoralists. A result of this erosion

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for Maori was the eutrophication of their prized Lake Tutira and the destruction of its eel fishery, and the pollution of coastal reefs at Tangoio and other places. The Maori community at Tangoio was devastated by a 1938 flood, an event that doubtless gave some impetus to the Crown's belated introduction of water and soil conservation legislation in 1941.

In socioeconomic terms, we have considered the issue of a link between poverty and landlessness, given the poor health, housing, and general welfare of Maori in our inquiry district in the twentieth century (and still today, in many places). As noted above, we have found that:

- ▶ A mindset prevailed that saw Maori eking out only a subsistence rural lifestyle, supplemented by employment as wage labourers. To that extent, the Crown made no concerted effort to ensure that Maori were left with sufficient land to participate in pastoral farming alongside Pakeha, for example, and it provided development assistance for their remaining lands some 30 years later than it should have. Where Maori holdings diminished so much that even subsistence agriculture became difficult, there was certainly a link between poverty and landlessness.
- ▶ Furthermore, where Maori retained areas of land, it was usually infertile and mountainous, was blighted by disputes over title, or was practically unusable, given the multiple ownership of scattered fragments.

In sum, Mohaka ki Ahuriri Maori simply never had the opportunities to derive full benefit from the developing Hawke's Bay economy.

SPECIFIC CLAIMS

We have also examined several specific claims. These include the loss of various lands out of the Waiohiki reserve near Napier and the construction in the 1970s of a high-voltage power line across the Tarawera and Tataraka blocks. We have found that:

- ▶ The Crown failed to protect the Waiohiki reserve from alienation, as had been requested by its owners.
- ▶ The Crown failed to consult with or adequately compensate the owners of the lands burdened with the transmission line. Now that these rugged lands finally have value for growing pine trees, the protection strip beneath the lines represents a significant lost economic opportunity.

We also found substance to several whanau claims concerning Tarawera and Tataraka lands and to one claim concerning lands at Mohaka, but we consider that these should be seen as case studies for the wider class of claimants and should not be redressed in their own right. In addition, we found that a claim concerning public works acquisitions in the Tarawera township had already been settled by the Crown in 1995 and that a claim by a group

EXECUTIVE SUMMARY

called Ngai Tane that they have separate historical identity and grievances from Ngati Pahauwera was not well founded.

CLAIM SETTLEMENT

Finally, we have made some recommendations about the settlement of the claims. We have recommended that the Crown and claimants negotiate, and we have put forward some suggestions as to how the Crown might identify the 'large natural groups' (as per its settlement policy) in our inquiry to conclude settlements with. We have identified Ngati Pahauwera as deserving of separate consideration, along with either Ngati Hineuru alone or all confiscation claimants together. We have suggested that the Ahuriri hapu also settle independently of the other groups in our inquiry, although we have noted that common sense requires that such a settlement be on the basis of their claims in the Heretaunga district as well. As we conclude, we note the Crown's several admissions of breaches of the principles of the Treaty, and trust that a similar spirit of reconciliation will characterise the negotiations.

PART I

INTRODUCTION

In the three chapters comprising this introduction, we set the scene for the Mohaka ki Ahuriri inquiry. In chapter 1, we identify the area covered by this inquiry and outline the various claims and claimant groups. In chapter 2, we review the principles of the Treaty of Waitangi that are relevant to the inquiry. In chapter 3, we introduce the land of Mohaka ki Ahuriri and the people who occupied it in the mid-nineteenth century.

CHAPTER 1

THE CLAIMS AND THE INQUIRY

1.1 INTRODUCTION

There are 20 claims within the area that we have identified as the Mohaka ki Ahuriri inquiry district (map 1). They comprise roughly three groups, with some overlap between them. In the north are the Ngati Pahauwera claims, Wai 119, Wai 731, and a cross-claim by Ngai Tane, Wai 436. The central area comprises the Mohaka–Waikare confiscation district and includes the umbrella raupatu claim Wai 299 and more than 10 other claims relating to specific blocks within this area. The southern area comprises the Wai 400 claim on behalf of Nga Hapu o Ahuriri concerning the Ahuriri purchase, and the Waiohiki claim, Wai 168, on the south-eastern boundary.

In this chapter, we outline previous Tribunal inquiries in Hawke’s Bay, the development of the Mohaka ki Ahuriri inquiry, the determination of the inquiry district boundary, the claims, and the claimant groups.

1.2 PREVIOUS TRIBUNAL INQUIRIES IN HAWKE’S BAY

In 1991, it was envisaged that the same Tribunal panel would inquire into all the Wairoa ki Wairarapa claims, which were grouped under Wai 201, the umbrella claim of WH Christie and others concerning all Ngati Kahungunu land. In May 1991, by direction of the Tribunal chairperson, William (Bill) Wilson was appointed as the presiding officer of the Tribunal to inquire into the 20 claims then grouped under Wai 201.¹

In November 1991, the Mohaka River aspect of the Ngati Pahauwera Wai 119 claim was granted urgency following an application of the claimants.² In 1992, the Tribunal – comprising Bill Wilson, Georgina Te Heuheu, Bishop Manuhua Bennett, Mary Boyd, and Dr Ngapare Hopa – heard that claim over three sittings, held variously in Wellington, Mohaka, and Napier, and it released its *Mohaka River Report* at the end of that year. Then, in 1993, urgency was also granted to hear the Wai 55 claim to Te Whanganui-a-Orotu, or the Napier inner

1. Paper 2.41

2. Paper 2.53

harbour, owing to possible land sales in the claim area. The claim was heard over the course of six hearings in Omahu, Napier, and Wellington in 1993 and 1994, by the same Tribunal panel.³ The Tribunal's *Te Whanganui-a-Orotu Report* was published in 1995. With the parties unable to reach a settlement, the Tribunal held a remedies hearing in Napier in 1996 and subsequently issued the *Te Whanganui-a-Orotu Report on Remedies* in 1998. In 2001, the Tribunal had been considering sitting a further time in response to the ongoing failure of the parties to negotiate a settlement and the claimants' request for a binding order for the compulsory return of former State-owned enterprise land. The sad passing of Bishop Manuhuia Bennett in December 2001, however, left the Tribunal temporarily inquorate until enabling legislation was passed allowing for the appointment of a replacement member.⁴

While the two previous Tribunal inquiries in Hawke's Bay were fully independent of our own inquiry, they are important antecedents for it. Those inquiries dealt with claims to bodies of water adjacent to the Crown's 1851 land purchases at Mohaka and Ahuriri. The Mohaka ki Ahuriri Tribunal inquiry has addressed grievances relating to the lands themselves. Both the earlier inquiries and our own have had to examine closely the terms and understandings of those transactions, albeit from different angles. To some extent, therefore, the two previous inquiries laid much of the groundwork for our own, and this is reflected in the way in which the evidence produced for them provided much of the material for the casebook for the Mohaka ki Ahuriri inquiry.

1.3 THE MOHAKA KI AHURIRI DISTRICT INQUIRY

By mid-1995, the Wai 299 claim concerning the Mohaka–Waikare confiscation, under which the return of the Esk Forest was sought, was ready to proceed to hearing. However, in July 1995 the Tribunal's chairperson indicated that there was a difficulty in the claim proceeding 'without also considering or hearing other claimants in the district'. It appeared, he said, 'that the total claims of a district should be heard, and relief considered, before any binding recommendation is made in respect of a forest'. Because of the location of the Esk Forest in seven severances not wholly confined to the Mohaka–Waikare block, the chairperson indicated his preference for the contemporaneous hearing of claims such as Wai 400 (the Ahuriri block claim) and Wai 119 (the Ngati Pahauwera lands claim) alongside Wai 299. He also directed that Wai 168, the Waiohiki claim, be included in the inquiry because it appeared to adjoin and overlap the Ahuriri block.⁵

3. With the exception that John Ingram replaced Ngapare Hopa.

4. See the Treaty of Waitangi Amendment Act 2003, s.4. John Clarke was appointed by the Tribunal's acting chairperson on 9 December 2003.

5. Paper 2.123, p.2

1.3.1 The 'casebook' method and regional inquiries

The issue of this last direction only slightly preceded the advent of the Tribunal's 'casebook' inquiry method, which was introduced in 1996 to establish a more efficient procedure for bringing claims onto the Tribunal's hearing programme. A key aspect of the casebook method was the regional grouping of claims for inquiry and this, as we have noted, had been anticipated for the Mohaka ki Ahuriri claims. The regional grouping was intended to ensure compliance with the rules of natural justice, as well as lead to greater efficiency and economy by grouping for concurrent inquiry all the claims that related to the Crown assets of a particular geographic district. The Mohaka ki Ahuriri inquiry was the first Tribunal inquiry held under the casebook method.

According to a practice note describing the method appended to the Tribunal's 1998 *Business Strategy*, the casebook itself was intended to contain 'all the research reports which are to be presented to the Tribunal during the course of an inquiry into a claim or a group of claims' (with the exception of the evidence that the Crown presented in response to that put forward by the claimants). By way of further explanation, the note stated :

The casebook method aims to avoid the situation which has sometimes occurred whereby the Tribunal had commenced its inquiry into claims when in fact they have only been partly ready for hearing and further research has been required. Where this has occurred, the hearing process has been interrupted and delayed until the further research has been completed. Such delays, which at times have been substantial, have increased the costs of hearings for all parties involved. The casebook method is aimed, therefore, at improving the efficiency of the claims process by ensuring that all claims are adequately researched in advance of the commencement of hearings.⁶

1.3.2 The lead-up to the first hearing

The membership of the Mohaka ki Ahuriri Tribunal was formally constituted in a direction from the chairperson issued on 23 July 1996.⁷ The members appointed were Judge Wilson Isaac (presiding), John Clarke, Roger Maaka, Professor Keith Sorrenson, Dame Professor Evelyn Stokes, and John Turei. At that time, 15 claims were included within the inquiry, nine of which had already been proposed for aggregation by the chairperson the previous year. In August and September 1996, Professor Sorrenson, a historian, assessed the provisional casebook for the inquiry. Some of the reports therein were regional overviews, some had been written for the previous Mohaka River and Te Whanganui-a-Orotu inquiries (as noted

6. Waitangi Tribunal Business Unit, *Waitangi Tribunal Business Strategy* (Wellington: Waitangi Tribunal Business Unit, 1998), p 54

7. Paper 2.158

above) and some had been prepared specifically for the Mohaka ki Ahuriri claims. Professor Sorrenson was asked to decide whether what had been compiled was 'sufficient and adequate' for hearings to commence. On 10 September 1996, he certified his belief that 'the reports address the principal issues, and are of sufficient quality to enable the Tribunal to proceed to hear the Mohaka ki Ahuriri claims. I make this statement in the knowledge that not all of the evidence to be presented to the Tribunal, has yet been completed.'⁸ On 12 September, the presiding officer directed that the first volumes of the casebook be duly distributed to the Tribunal members, the Crown Law Office, and counsel for the (by now) 18 claims in the inquiry.⁹

The Tribunal's ground for choosing to proceed with the inquiry at that stage was that a large amount of research had already been filed, including a substantial amount of material derived from previous Tribunal inquiries in Hawke's Bay. We knew that further evidence was required, but we were reluctant to postpone the hearing of those groups ready to proceed, and we expected that the additional research could be completed while the hearings progressed. In hindsight, it was a difficult task to assess the casebook at a time when new claims were still being filed and added to the inquiry, and new research issues were still being identified. Nor was there a requirement at the time for statements of claim to be fully particularised. It is probably fair to say that the nine-volume casebook approved in September 1996, which contained more than 40 research reports, ended up constituting not much more than half of the documentary record for the inquiry, particularly after the Napier Hospital claim (Wai 692) was added in 1998.¹⁰ We note, however, that the Tribunal's more recent refinements to the casebook method, generally known as the 'new approach' or the 'Gisborne model', have led to greater certainty as to the sufficiency of the research at the commencement of hearings.¹¹

On 23 September 1996, the first judicial conference for the inquiry was held in Napier. It was attended by Judge Isaac, Professor Sorrenson, Tribunal staff, Crown and claimant counsel, and a number of claimants. The first two hearing dates were set and the programme for the remainder of the inquiry was discussed; at the time, there seemed good reason to be confident that all the claimant evidence would be heard before the middle of 1997.

1.3.3 The hearings

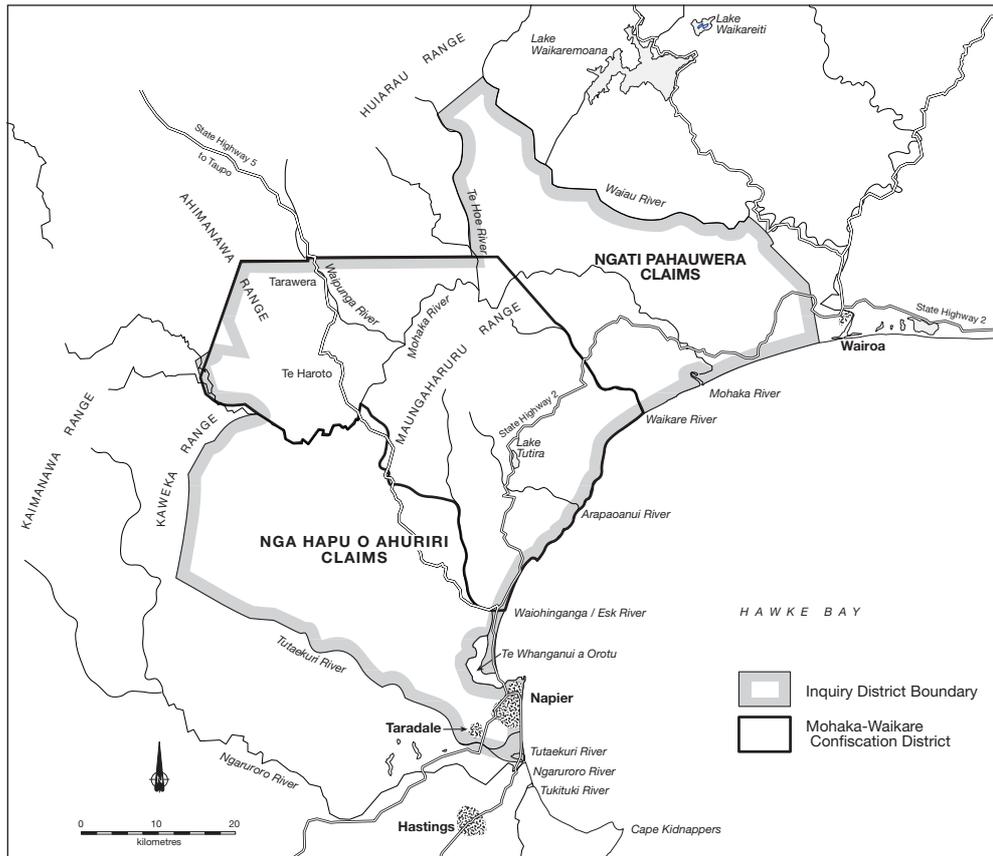
The inquiry commenced in mid-November 1996 at Tangoio Marae with the opening week of the hearing of the Wai 299 Mohaka-Waikare confiscation claim. The second week of evidence in support of Wai 299 was presented at Te Haroto Marae in late January 1997. The

8. Keith Sorrenson, 10 September 1996, Waitangi Tribunal file Wai 201/0, vol 10

9. Paper 2.164

10. The hospital claim probably accounted for half of the additional material placed on the record.

11. For example, statements of claim must be fully particularised before hearings commence, and a cut-off date for the inclusion of new claims also follows shortly on from the approval of the casebook.



Map 1: Mohaka ki Ahuriri claims inquiry area

Wai 119 Ngati Pahauwera lands claim was scheduled for April but then postponed till later in the year for budgetary reasons. However, owing to the unavailability of counsel, it did not take place until November 1997. The Wai 168 Waiohiki claim was heard in June 1997, and the Wai 400 Ahuriri claim in October (with a further two days in November to allow more time for the Crown to prepare its cross-examination). Thus, within a year, and not significantly behind schedule, the substantive case contained in the casebook had been heard, leaving the few remaining claimant groups and the Crown to complete the presentation of their evidence.

The hearing of claimant evidence was not completed until June 1999. There are several reasons for this, the most obvious of which is our decision to include the Napier Hospital services claim (Wai 692) in the regional inquiry in November 1998 after its registration earlier that year.¹² Other than that, however, we should stress that a further nine claims (including Wai 692) were included in the inquiry after July 1996. These were all filed after the issue of the first volumes of the casebook, and all required additional research.¹³ Most significantly,

12. Paper 2.303

13. Although this made a total of 24 claims, we report here on only 20, because three were withdrawn (Wai 430, Wai 488, and Wai 491) and one was reported on separately (Wai 692).

we decided in mid-1997 that additional and detailed historical evidence was required on matters raised in both the Tarawera–Tataraakina whanau statements of claim, which were filed between May and November 1996, and the hearing of the Wai 299 claim in January 1997.¹⁴ We also note that amendments to the statements of claim for Wai 168, 216, 299, and 638 were filed after those claims had been heard and that these raised new issues that in turn had to be researched and heard.

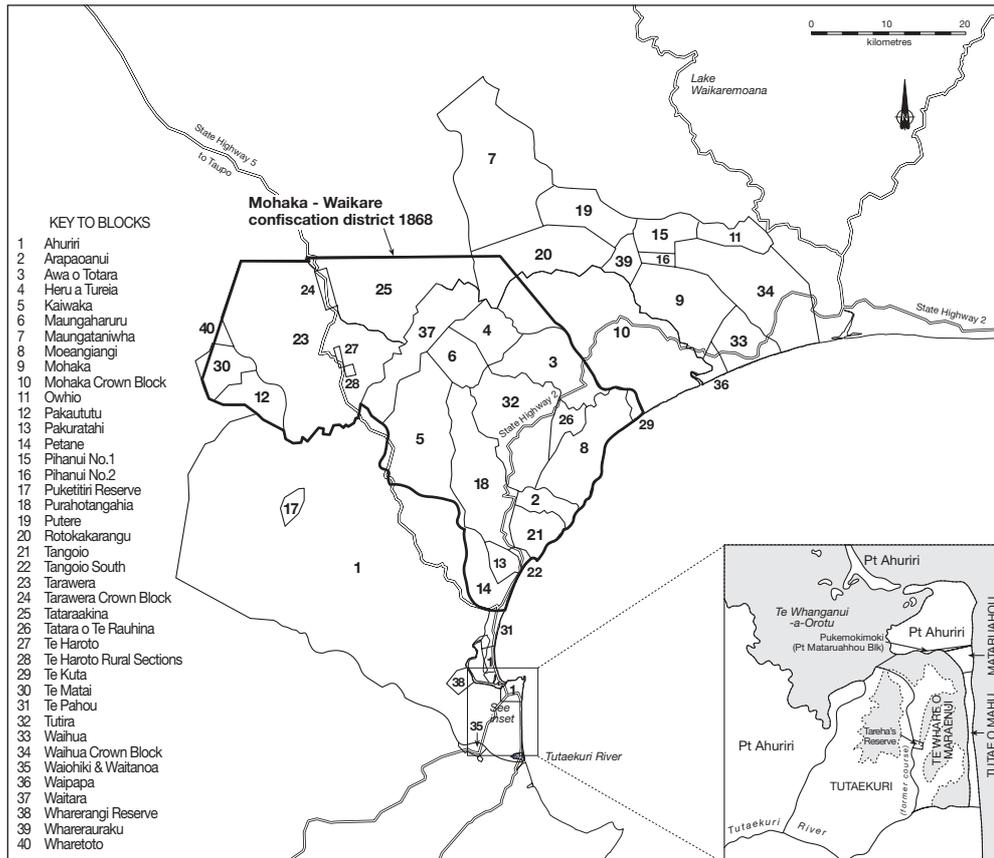
In greater detail, the progress of the hearings after 1997 was as follows. In April 1998, we returned to Te Haroto and heard further evidence over four days on the twentieth-century title disruption at Te Haroto, Tarawera, and Tataraakina. In July 1998, we heard evidence over two days at Waipahihi Marae in Taupo on the Te Matai and Pakaututu blocks. Then, in November 1998, we held a ‘wrap-up’ hearing of claimant evidence in Napier. The first half of this week dealt with the Wai 436 Ngai Tane claim and Ngati Pahauwera’s opposition to it, while the second half covered the evidence for Wai 731 (the Kupa whanau claim), Wai 318 (Mereana Amor’s claim), and Wai 732 (the Petane block claim). It also covered those aspects of the Wai 168, 216, and 299 claims that were not previously addressed during their hearing.

In May 1999, a one-day sitting was held in Napier, mainly to hear further evidence commissioned on the Mohaka–Waikare confiscation. Then, in June 1999, the claimants’ evidence in the hospital claim was also heard in Napier. A particular reason for delay here (since the hospital claim had been included in the inquiry the previous November) was that the Wai 692 claim researcher had had trouble completing her report owing to problems gaining access to documents and to officials for interviews. In any event, the June fixture marked the completion of the presentation of claimant evidence, some 2½ years after the hearings had begun. Then, over six days in July and August 1999, we heard the Crown’s evidence in response to all the claims in the inquiry. The Crown devoted almost half of this hearing to the hospital case. In November 1999, we heard closing submissions from the Crown and the claimants in Napier over a further six days, and then, finally, we heard claimant submissions in reply to the Crown’s closing submissions in Napier on 31 January and 1 February 2000.

1.4 THE INQUIRY BOUNDARY

The Mohaka ki Ahuriri district inquiry boundary was defined by the extent of the claims included in the inquiry district. Initially, having no active neighbouring inquiries, we were reluctant to set any definitive boundaries until we had heard all claimant evidence and the Crown’s response to it. In answer to a request from Crown counsel for a definition of the external boundary, the presiding officer issued a direction on 27 May 1999 (shortly before the close

14. See commission 3.29



Map 2: Mohaka ki Ahuriri claims – index map of blocks in inquiry area

of claimant evidence) stating that, at that time, it was ‘not appropriate to define with absolute certainty the claim boundaries of this inquiry district’.¹⁵ Now that the hearings have been completed, and the report finalised, we can be categorical about the lands covered in our report. They are those blocks depicted in map 2. What we have not covered, however, are the apparent interests in those lands of any claimant groups who did not appear before us (such as those of Wairoa and Waikaremoana hapu in the northern-most blocks). Those interests can be covered by future Tribunal inquiries. The same can be said of the lands outside our inquiry district that were claimed by groups we heard within it (such as the other lands to the south of the Ahuriri block claimed by Nga Hapu o Ahuriri, or the territory inland of Putere claimed by the Wai 436 claimants).

Another area of imprecision exists with the inquiry boundary to the south-east, beyond the limits of the Ahuriri block. There are several discrete areas specifically the subject of the Wai 168 claim within the entire Ngati Parau traditional territory, which extends to the south nearly as far as the Ngaruroro River. Since the Ngati Parau claimants had the option of raising

15. Paper 2.345, p2

any concerns within the wider area, we consider their claim have to been fully heard.¹⁶ But we do not believe that this view should preclude other hapu with interests in the wider Ngati Parau takiwa as far south as the Ngaruroro River from prosecuting any claims to them in any subsequent Tribunal inquiry dealing with the lands in the Heretaunga district.

1.5 THE CLAIMS AND THE CLAIMANTS

The claimants could be grouped roughly into three areas, with some overlap between them, within our inquiry district: Ngati Pahauwera in the north, the Mohaka–Waikare confiscation district claimants in the centre, and Nga Hapu o Ahuriri in the south.

1.5.1 The north: Ngati Pahauwera

First, to the north, was the comprehensive historical claim of Ngati Pahauwera, Wai 119, which covered all lands in the Ngati Pahauwera takiwa north and east of the Mohaka–Waikare confiscation district (namely two pre-1865 Crown purchase blocks and 10 post-1865 Native Land Court blocks). The Mohaka River aspect of this claim (as far inland as the Te Hoe junction) has already been reported on, in the *Mohaka River Report* of 1992. The Wai 731 Kupa whanau claim had been viewed as a case study within the broader Wai 119 claim. The Wai 436 claim of Ngai Tane was a cross-claim stemming from an internal mandate dispute within Ngati Pahauwera. As noted already, our inquiry did not include the area Ngai Tane claimed as their traditional rohe stretching to the north of the blocks claimed by Ngati Pahauwera. Another claim relating to Mohaka lands, Wai 430 (concerning, specifically, the effects of the consolidation scheme on an area within the Mohaka block known as the Rawhiti block), was incorporated into Wai 119 after the death of the Wai 430 claimant. Wai 451, a 1994 claim by Wi Huata concerning the Crown's failure to effect a settlement of the Mohaka River claim, did not form part of our inquiry. It was rejected for hearing by direction of the Tribunal's deputy chairperson in January 1995 for a number of reasons, including Mr Huata's non-inclusion in the Ngati Pahauwera representative ('section 30') committee, which had been legally mandated to pursue the river claim.¹⁷

1.5.2 The centre: Mohaka–Waikare

The central 'third' of our inquiry area was the Mohaka–Waikare confiscation district, which lay roughly between the Ahuriri block to the south, the sea in Hawke Bay to the south-east,

16. We note that the claim was further amended on 1 September 2003 to include a specific claim to Pania Reef off the coast of Napier. This amendment followed the release of Crown policy statements with respect to the ownership of the foreshore and seabed: Wai 168 R01, claim 1.1(g).

17. Paper 2.116, p 1

the Mohaka block to the north-east, and the 39th parallel or provincial boundary to the north.¹⁸ It can more or less be divided into two parts itself; namely, the blocks inland of the Maungaharuru Range that have largely remained in Maori ownership and those seaward of the range, in which comparatively little Maori-owned land remains.

A variety of claimant groups and kin groups converged in the confiscated district. An ‘umbrella’ claim concerning the raupatu exists in the form of Wai 299, the claim committee for which, the Maungaharuru Tangitu Society Incorporated, represents Ngai Tataara, Ngati Kurumokihi, Ngati Tu, Ngati Hineuru, and Ngati Pahauwera. These groups are closely related to each other, but Ngati Hineuru, in particular, strongly affiliate not only to Ngati Kahungunu but also to inland peoples such as Ngati Tuwharetoa and Tuhoe. What needs to be stressed is that Wai 299 is a pan-hapu, issue-based claim rather than a comprehensive tribal claim like Wai 119. As such, it is important to note that Ngati Pahauwera, for example, have interests within the confiscated district in addition to those described in the first of our ‘thirds’. Similarly, groups such as Ngati Tu have their own additional interests to the south of the confiscated lands in the Ahuriri block. The overlap between the Wai 299 claim and the claim of Ngati Pahauwera was a matter requiring careful management during the course of the inquiry. Once or twice, disputes arose over the extent to which Ngati Pahauwera had interests in the confiscated district, or whether the Wai 299 claim was really made out on their behalf, but such matters were always resolved satisfactorily. As an example, we note the joint memorandum of counsel and claimants in Wai 119 and 299 of 6 November 1998, which stressed the mandate of the Wai 299 committee to prosecute the claim and simultaneously acknowledged Ngati Pahauwera’s interests in the district.¹⁹

Perhaps more complicated was the relationship between Wai 299 and the proliferation of whanau claims in the confiscated district. These latter claims were Wai 191 (concerning Tarawera C9 and other lands), Wai 318 (Tarawera 1J and 10C4AC and Tatarakina 12), Wai 598 (Tatarakina 7 and 11), Wai 599 (Tarawera 7), Wai 600 (Tarawera 1F), Wai 601 (Tatarakina 2 and 5), Wai 602 (Tatarakina 6), Wai 608 (Tatarakina 8), Wai 627 (Tatarakina lands), Wai 638 (the entire Tatarakina block), and Wai 639 (the Tarawera township). We will refer to these claims for the sake of convenience as ‘Wai 638 et al’, partly because Wai 638 was an umbrella claim itself for Wai 598, Wai 601, Wai 608, and Wai 627. This tag could also apply to two other withdrawn claims: Wai 488 (Tatarakina c), which was withdrawn in December 1996, and Wai 640 (Tarawera 10B), which was withdrawn in mid-1998. Two other claims to mention are Wai 147 (Tarawera 5A) and Wai 491 (Tatarakina c), which were settled by agreement in 1995. The filing of so many of these claims in 1996 (those numbered Wai 598 to Wai 640) was perhaps a reaction to the preoccupation in the initial research with the raupatu and other events of the nineteenth century. This was somewhat at the expense of detailed focus

18. While the spelling of the name of the province has been standardised as Hawke’s Bay, the bay itself is correctly known as Hawke Bay.

19. Paper 2.297

on the fate of lands retained by Maori into the twentieth century, particularly the Tarawera and Tatarakina blocks, and the several disruptions to title in those blocks. Tensions arose between Wai 299 and Wai 638 et al in 1998, when the latter seemed to stray into the territory of the 'bigger picture' of the events at Omarunui and the confiscation. In reality, however, the story of the twentieth-century title disruption had its roots in the earlier events, and the provision of this overall context was helpful to us. Moreover, it is wrong to assume that the Wai 299 statement of claim or the Wai 299 historical evidence was silent on the events of the twentieth century. In any event, both Wai 299 and the Wai 638 et al group agreed that settlement should be at the hapu rather than whanau level.²⁰ The evidence for Wai 638 et al made an important contribution in showing the scope of the grievances to which the Crown was then required to respond.

Several other blocks were also the subject of separate claims. Wai 216 was a claim concerning the Te Matai and Pakaututu blocks made on behalf of Ngati Hineuru, Ngati Kahutapere, and Ngati Tutemohuta. These lands were included in the raupatu but were not confiscated, and were allowed to proceed for title investigation through the Native Land Court. Wai 732 concerned the Petane block, and one aspect of Wai 299 concerned the Petane block and the adjacent Te Pahou block. Both of these blocks passed through the Native Land Court just prior to the raupatu, but only Petane appears to have been included in the raupatu boundaries. The claims on the two blocks concerned alienations within them arising from the awarding of title to owners during the '10 owner' period from 1865 to 1873.

1.5.3 The south: Ahuriri

The southern 'third' of the inquiry district comprised the Ahuriri block, which was purchased by the Crown in 1851. This transaction was the subject of the Wai 400 claim, which was originally brought by Hoani Hohepa for Ngati Mahu and Ngati Hinepare but was later broadened to be made on behalf of 'Nga Hapu o Ahuriri'. While the last amended statement of claim did not give the names of the Wai 400 claimant hapu, we understood them also to include Ngati Tu, Ngati Matepu, Ngati Hineuru, Ngati Parau, Ngai Tawhao, and Ngai Te Ruruku.²¹ The interests of those hapu were certainly not restricted to the Ahuriri block, and to that extent Wai 400 was similar to Wai 299 in being a pan-hapu claim focused on the history of a particular area of land.

The other claim in this southern area was Wai 168, the claim of Ngati Parau. On one level, since the claimants defined their claim area according to their traditional boundaries, it overlapped to an extent with Wai 400. But Ngati Parau were also claimants in Wai 400 and their Wai 168 claim was targeted at specific matters and discrete areas rather than at all lands within their rohe. Only one of those discrete areas was within the boundaries of the Ahuriri block;

20. Oral statement of Wai 638 claimant counsel, Te Haroto Marae, 17 April 1998

21. See doc 011, p 3

namely, the Otatara Pa historic reserve. There are also claims to specific areas within the Tutae-kuri, Papakura, and Waiohiki blocks. The Wai 168 claimants also laid claim to that section of the Tutae-kuri River contained within their traditional rohe, but it remains unclear whether they asserted ownership to the old channel, which ran to Te Whanganui-a-Orotu, or to the new, diverted channel, which ran directly to the coast.

This southern area was of course also the location of Te Whanganui-a-Orotu, which was subject to the Wai 55 claim. There were various potential areas of overlap between Wai 55 and claims such as Wai 400, Wai 168, and – with respect to Te Pahou – Wai 299. The Wai 55 Tribunal, however, in its 1998 *Te Whanganui-a-Orotu Report on Remedies*, was deliberate in assessing these potential areas of overlap and in arriving at the conclusion that ‘no other claims to Te-Whanganui-a-Orotu exist’.²² We endorse this analysis and agree, for example, that former islands in the harbour that were part of the Te Pahou block, such as Te Roro o Kuri, are not subject to overlap from other claims. Reference to Te Roro o Kuri in Wai 400 was removed by amendment in 1996, and the fourth amended statement of claim for Wai 299 referred to Te Pahou but made no specific mention of Te Roro o Kuri.²³ A particularised statement of claim for Wai 168 filed in November 1996 explicitly excluded Te Whanganui-a-Orotu from the claimants’ request for relief.²⁴ The concerted effort on the part of the claimants to avoid overlap should come as no surprise, however, for the Te Whanganui-a-Orotu claimants are essentially the same as those involved in Wai 400, Wai 299, and Wai 168. According to the Wai 55 statement of claim, they are Ngati Parau, Ngati Hinepare, Ngati Tu, Ngati Matepu, Ngati Mahu, Ngai Tawhao, and Ngai Te Ruruku.²⁵

1.6 THE NAPIER HOSPITAL AND HEALTH SERVICES CLAIM AND REPORT

One claim in our inquiry district that we have omitted to mention in the foregoing summary is of course Wai 692, the Napier Hospital and health services claim. The writing of the *Napier Hospital and Health Services Report* preoccupied us after the end of the hearings in February 2000 until its release in mid-2001. It is not necessary to reiterate the contents of that report here, but we do note the overlap of focus between the Wai 692 and Wai 400 claims on the Ahuriri transaction and the alleged promises of collateral benefits made at the time by purchase officials. On that matter, we need only make the point that the Wai 692 claim was concerned with a very specific matter involving the Crown’s promise to build a hospital – and, by extension, the Crown’s obligations in the ongoing provision of health care – and it has been possible for us to write the two reports without undue repetition. The two reports, therefore,

22. Waitangi Tribunal, *Te Whanganui-a-Orotu Report on Remedies* (Wellington: Legislation Direct, 1998), p 8

23. Claim 1.23(c); claim 1.22(e), p 6

24. Claim 1.9(c), p 3

25. Claim 1.2(e), p 2

while written by the same panel, can be read in relative isolation and do not rely on each other for context.

1.7 THE CONTENTS OF THIS REPORT

In ordering the contents of this report, we had a number of choices. We could have addressed each claim in the inquiry in turn, but that would have been manifestly uneconomical and repetitive. We could have related the colonial experience for various kin groups in turn, but the shared experiences of many of the hapu rendered this a similarly unsatisfactory prospect. Finally, we could have related historical events chronologically for the entire district, and then assessed the merits of the claims at the end of the report. However, we were not writing a history of Hawke's Bay and, in order to report properly on the claims before us, we realised that we would have to produce a series of sub-regional narratives, while including generic and district-wide chapters where at all possible. At the end of every relevant section of narrative, therefore, we have summarised the arguments of both the claimants for that district and the Crown, and then made our own comments and findings.

The report comprises seven parts. Part I is an introductory section and includes this chapter and chapters 2 and 3. Chapter 2 sets out the Treaty principles which apply to our consideration of the claims before us. Chapter 3 provides an account of the physical and human history of the district before 1850. Part I sets the scene for the rest of the report.

Part II shifts slightly back in time and begins with an account in chapter 4 of developing Crown land purchase policy in the 1840s, particularly as it applied to Hawke's Bay. It then leads into a discussion of Donald McLean's arrival in the district and his acquisition for the Crown of the Ahuriri block in 1851. At this point, a district-wide chronology becomes impossible, because in chapter 5 we trace the aftermath of the Ahuriri transaction, including the eventual alienation of the reserves and the history of subsequent protest, rather than move straight to our account of McLean's negotiation of the Mohaka transaction, which followed Ahuriri. We complete this part of the report in chapter 6 with a review of Crown and private land transactions around the town of Napier and in the Mohaka–Waikare district before its confiscation in 1867.

Part III of our report deals with the Mohaka–Waikare confiscation district, first relating the engagements at Omarunui and Petane in October 1866 in chapter 7, and then the 1867 confiscation in chapter 8. In chapters 9 and 10, we narrate the consequences of the raupatu for both the seaward and the inland blocks of the confiscated district. In chapter 10, we carry matters forward well into the twentieth century in order to relate the history of title disruption in Tarawera and Tatarakina, which disruption was the source of many of the whanau claims to specific blocks.

Part IV of the report deals with the northern third of our inquiry, covering all of Ngati Pahauwera's historical claims (except for any issues relating to the confiscation). It traverses the period from the 1850s to the present-day, and includes the Mohaka and Waihua Crown purchases (ch 11) the Native Land Court's operations (ch 12), and twentieth-century land transactions, including consolidation and land development schemes (ch 13). In chapter 14, the claim made by Ngai Tane is addressed.

Part V contains our consideration of certain specific claims: Ngati Parau at Waiohiki in chapter 15 and public works on Tarawera and Tatarakaakina blocks in chapters 16 and 17. Part VI has a generic and district-wide focus, and deals with environmental impacts in chapter 18 and social and economic issues in the twentieth century in chapter 19.

Finally, in part VII, we close with our concluding comments, summary of findings, and recommendations.

CHAPTER 2

TREATY PRINCIPLES

2.1 INTRODUCTION

Under the provisions of the Treaty of Waitangi Act 1975, this Tribunal is required to consider and report on claims by Maori that they have been prejudiced by any act or omission by the Crown since 1840 that is contrary to the principles of the Treaty of Waitangi. If the Tribunal finds that the claimants have been so prejudiced, it is to make recommendations to remove the prejudice and to prevent its recurrence.

In this chapter, we discuss the Treaty principles that are relevant to the claims before us. Most of the claims in the Mohaka ki Ahuriri district inquiry relate in one way or another to Maori land. They concern:

- ▶ The Crown's purchases of land before and after the wars of the 1860s;
- ▶ the Crown's confiscation of the Mohaka–Waikare district by proclamation in 1867;
- ▶ the Crown's role in facilitating private purchases of Maori land after the abolition of pre-emption and the introduction of the Native Lands Acts from 1862;
- ▶ the Crown's failure to set aside and retain sufficient reserves for Maori; and
- ▶ the Crown's failure to provide necessary assistance to Maori to enable them to develop their remaining land.

In considering these issues, we have had the benefit of previous discussions of the principles of the Treaty by the Tribunal and the courts, though we have had to adapt these to the particular circumstances of Maori and their lands within our inquiry district.

2.2 TREATY INTERPRETATION

In interpreting the Treaty of Waitangi, we need to remember that there are two texts, not one: an English text and a Maori text. The Maori text was composed by the Reverend Henry Williams and is not an exact translation of the English text – it differs in several important respects.¹ It was probably for this reason that section 5 of the Treaty of Waitangi Act 1975 gave the Tribunal exclusive authority in claims before it to 'determine the meaning and effect

1. See Bruce Biggs, 'Humpty-Dumpty and the Treaty of Waitangi', in *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, IH Kawharu, ed (Auckland: Oxford University Press, 1989), pp 300–312

of the Treaty as embodied in those two texts, and to decide issues raised by the differences between them'. Giving the Maori text equal status with the English text was an important milestone, since previously the Legislature and the courts had regarded the English text as the official text and had neglected the Maori text. In fact, nearly all of the 530 or so Maori signatories signed the Maori text. It was that text and how it was explained to them at the time that those signatories understood. As the Orakei Tribunal pointed out, there are well-established rules in international law for the interpretation of bilingual treaties. That Tribunal quoted Lord McNair's advice (from *The Law of Treaties*) that a tribunal charged with applying or interpreting a treaty should give effect to 'the expressed intention of the parties . . . as expressed in the words used by them in the light of the surrounding circumstances' (emphasis in original). McNair warned against an over-reliance on 'the plain terms of a treaty' and stressed the need to bear in mind the overall aim and purpose of the treaty. In relation to bilingual treaties, he said that neither text was superior to the other but that it was permissible to interpret one by reference to the other.² However, the Orakei Tribunal considered that, in the case of the Treaty of Waitangi, where there were considerable differences between the two texts, 'considerable weight should be given to the Maori text because it was assented to by virtually all the Maori signatories'. This approach was described as 'consistent with the *contra proferentem* rule that, in the event of ambiguity, a provision should be construed against the party which drafted or proposed that provision'. This was derived from the 1899 United States Supreme Court decision *Meehan v Jones*, which, in describing United States treaties with Native Americans, said that such treaties should be construed 'in the sense in which they would naturally be understood by the Indians'.³ The relevance of that decision to Maori and the Treaty of Waitangi is evident.

The differences in the two texts of the Treaty of Waitangi probably explain why our Legislature, in passing the Treaty of Waitangi Act, chose to require the Tribunal to consider claims of breaches of the Treaty's principles rather than its specific provisions. In doing so, we can now call on a wealth of interpretive comment from previous Tribunal reports as well as from important judgments in the courts. We cannot ignore the provisions since they are a starting point for the delineation of the principles. As Justice Somers put it in the *Lands* case in the Court of Appeal in 1987, 'a breach of a Treaty provision . . . must be a breach of the principles of the Treaty'.⁴ That statement was quoted by the Tribunal in its *Muriwhenua Land Report*, which went on to say: '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.'⁵ A similar approach was taken by the Privy Council in *New Zealand Maori Council v Attorney-General* in 1994:

2. Lord McNair, *The Law of Treaties* (Oxford: Clarendon, 1961), pp 365, 366, 380, 432–433 (quoted in Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: Brooker and Friend Ltd, 1987), p 180)

3. *Jones v Meehan* 175 US 1; 20 S Ct 1; 44 L Ed 49 (1899) (quoted in *Report on the Orakei Claim*, p 181)

4. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 693 (CA)

5. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 386

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. (Bearing in mind the period of time which has elapsed since the date of the Treaty and the very different circumstances to which it now applies, it is not surprising that the Acts do not refer to the terms of the Treaty.) With the passage of time, the ‘principles’ which underlie the Treaty have become much more important than its precise terms.⁶

We bore these views in mind as we in turn explored the principles most relevant to the claims before us.

2.3 TREATY PROVISIONS AND PRINCIPLES ON LAND

We begin by quoting the land guarantee in article 2 of the English text of the Treaty:

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests 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; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them on her behalf.

The guarantees expressed in the article are plain and comprehensive: Maori were guaranteed the ‘full exclusive and undisturbed possession of their Lands . . . Forests Fisheries and other properties’ for so long as they wished to retain them. These guarantees were no accident. When instructing the Lieutenant-Governor and British consul to New Zealand, Captain William Hobson, to negotiate a treaty with Maori, the Secretary of State for the Colonies, Lord Normanby, had said that the ‘title [Maori have] to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognized by the British Government’. Normanby also instructed Hobson to obtain land ‘by fair and equal contracts with the natives’.⁷ But the Treaty guarantees so alarmed spokesmen for the New Zealand Company that they began a systematic campaign to denigrate the Treaty; for example, Lord Somes described it as a ‘praiseworthy device for amusing and pacifying savages’.⁸ Then, when that

6. *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, 517 (PC)

7. Normanby to Hobson, 14 August 1839, BPP, vol 3, pp 85, 87 (quoted in *Report on the Orakei Claim*, p183)

8. Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830-1847* (Auckland: Auckland University Press, 1977), p184

campaign failed, they sought to whittle down the guarantee to such land as Maori occupied and cultivated, with the rest being regarded as ‘waste land’ of the Crown. That latter concept was espoused by Earl Grey, the Secretary of State for the Colonies, who instructed Governor Grey in 1846 to apply it in New Zealand. However, Grey took advice from various Pakeha experts in Maori custom, such as Bishop Selwyn and the chief justice, Sir William Martin, and he accepted that all land in New Zealand would have to be purchased.⁹ Thereafter, with the exception of confiscation (which we discuss below), it was assumed that all Maori land would have to be bought, though no protection as to a minimum price was considered.

The second part of article 2, which gave the Crown a right of pre-emption to purchase such land as Maori wished to sell at agreed prices, was also controversial. The colonists resented being unable to purchase land directly from Maori, as some of them had done before 1840. Some Maori, particularly in the north, were also frustrated at their inability to sell land freely.¹⁰ The pre-emptive right was waived (with certain restrictions) by Governor FitzRoy in 1844, restored by Grey in 1846, and waived again under the Native Lands Act 1862.¹¹ The preamble of that Act said that the Act was designed to ‘promote the peaceful settlement of the Colony and the advancement and civilization of the Natives’, while also providing for a waiver of pre-emption. That waiver was a direct violation of the Treaty, as had been FitzRoy’s waiver. Taking our cue from Justice Somers (see sec 2.2), we say that any ‘breach of a Treaty provision’ such as the pre-emptive clause of article 2, ‘must be a breach of the principles of the Treaty’. This is not to say that the Treaty could never be altered; merely that any alteration or amendment needed to have the consent of both parties (ie, the Crown and an assembly of Maori as fully representative of Maori generally as the original signatories had been). The Crown had no right to amend the Treaty unilaterally. Although European proponents of the abolition of pre-emption said in 1844 and 1862 (when waivers were implemented) that Maori wanted the freedom to sell their land privately to the highest bidder, Maori were not fully consulted on either occasion.¹² They were unrepresented in the Parliament of 1862 that passed the Native Lands Act. Even when four Maori seats were allowed in the House of Representatives from 1867, Maori were a tiny minority in that House and were invariably out-voted on legislation dealing with their land.

9. Martin brought Governor Grey’s attention to the belief that ‘a nation sustaining its civilization by law is not at liberty to disregard even the unwritten customary law of a less civilised people’: Martin to Grey, 20 October 1848, BPP, vol 6, pp 54–55. In his commentary on Earl Grey’s instructions, Martin expressed concern that, if the instructions were followed, ‘the old national principle of Colonization by fair purchase shall . . . be abandoned, and, in its stead, the new principle of Colonization by seizure shall be adopted’: William Martin, *England at the New Zealanders: Remarks Upon a Despatch from the Right Hon Earl Grey to Governor Grey Dated 23 December 1846* (Auckland: College Press, 1847), p 43.

10. Rose Daamen, *The Crown’s Right of Pre-Emption and Fitzroy’s Waiver Purchases*, Waitangi Tribunal Rangahaua Whanui series (working paper: first release), August 1998, p 63

11. For discussions of these waivers and legislation, see Daamen, pp 63–85, 151–153; and David Williams, ‘Te Kooti Tango Whenua’: *The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), pp 64–69.

12. Although Daamen notes that Fitzroy held meetings with Ngati Whatua and Waikato chiefs about the 1844 proclamation, this was hardly representative of all Maori signatories to the Treaty: Daamen, p 63.

As we have said, we must consider both texts of the Treaty when assessing the merits of Maori claims. The Maori text of article 2 is as follows:

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

In different ways, this rendering of article 2 both reduces and enlarges the English version. Under the promise of possession, it omits forests and fisheries but adds villages or habitations (kainga). ‘Tino rangatiratanga’, which is used for ‘full exclusive and undisturbed possession’ in the English text, literally means ‘full chieftainship’, and was to be exercised over land and other properties. That, in Maori understanding, amounted to more than possession or ownership and included full authority over land and other properties. Moreover, ‘taonga’, which was used for ‘other properties’ in the English text, includes more than mere physical objects and has been interpreted to mean all things, tangible and intangible, which are valuable to Maori.¹³ Language, for instance, would be an intangible thing of value.

Tino rangatiratanga has been interpreted very widely and has been taken by various authorities to include independent chiefly rule, as some sort of local government, or even self-rule. So far as Treaty jurisprudence is concerned, tino rangatiratanga has been regarded as an important qualification of kawanatanga (governance), which was ceded to the British Crown in article 1 of the Treaty. The authority of the Crown was formerly regarded as a sovereignty that was one and indivisible, but several Tribunal reports have concluded that tino rangatiratanga needs to be respected in any exercise of Crown sovereignty in relation to Maori. As the *Report on the Orakei Claim* put it, the kawanatanga mentioned in the Maori text was ‘on its face less than the supreme sovereignty of the English text and does not carry . . . the unfettered authority of Parliament or the principles of common law administered by the Queen’s Judges in the Queen’s name’.¹⁴ The Ngai Tahu Tribunal took a similar approach. It 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.’ The Ngai Tahu Tribunal quoted from Claudia Orange’s study *The Treaty of Waitangi* that the fear Maori had that ‘the mana of the land might pass from them if they signed the treaty was eased by the treaty’s guarantee of rangatiratanga’.¹⁵

13. See, for example, Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim* (Wellington: Government Printer, 1986), p 20; Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report* (Wellington: GP Publications, 1999), p 9

14. *Report on the Orakei Claim*, p 189

15. Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen and Unwin, 1987), p 58 (quoted in Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd), vol 2, pp 236–237). In quoting this statement, we note that some disagreement exists amongst scholars as to whether ‘mana’ attaches to land or to people, but we need not comment further on that debate here.

Since in the Maori text chiefs were guaranteed their ‘tino rangatiratanga’ over their lands, and in the English text they were guaranteed the ‘full exclusive and undisturbed possession of their Lands’, it follows that the Crown could not unilaterally take that land, by confiscation or compulsion, or alienate it by other means (other than through the exercise of Crown pre-emption), or alter the tenure, without the willing assent of the chiefs. Indeed, the Crown had no licence under the Treaty to do anything with Maori land without the approval of Maori unless exceptional circumstances prevailed. As we shall note from time to time below, the Crown did all manner of things without the agreement of Maori and sometimes in the face of their bitter dissent. For a long time, this was done on the assumption that the Crown’s and Parliament’s sovereignty was unfettered and unrestrained by a treaty that was not cognisable in international law and inoperative in domestic law. The Treaty of Waitangi Act 1975 profoundly altered that situation.

Although the other parts of the Treaty made no direct reference to land, there were several statements that indirectly reinforced the land guarantee of article 2. The preamble noted that Queen Victoria regarded ‘with Her Royal Favour the Native Chiefs and Tribes of New Zealand and [was] anxious to protect their just Rights and Property’. Article 3 extended to Maori the Queen’s ‘royal protection’ and the rights and privileges of British subjects.

So far in this section we have been mainly concerned with the provisions of the Treaty. We now need to return to the relationship between the provisions and the principles, bearing in mind the quotation above from the Privy Council judgment of 1994 in *New Zealand Maori Council v Attorney-General* that the principles ‘are the underlying mutual obligations and responsibilities which the Treaty places on the parties’. The following three key Treaty principles express ‘mutual obligations and responsibilities’ and need to be considered in relation to the land claims before this Tribunal:

- ▶ The Crown’s exercise of *kawanatanga* (‘sovereignty’ in the English text) has to be constrained by respect for Maori *rangatiratanga*. As we noted above, this requirement has been spelled out by several previous Tribunals and is generally referred to as the principle of reciprocity. It need not be elaborated on here. We stress, however, that the Crown could not act unilaterally and had a responsibility to consult Maori on matters affecting them, especially in relation to land and other resources (hence, another principle we refer to in the report, the duty of consultation, which we have described in detail in our *Napier Hospital and Health Services Report*¹⁶). We discuss below how the Crown has to respect Maori *rangatiratanga* in relation to land. *Rangatiratanga* must also be respected if the next principle is to be honoured.
- ▶ The Crown’s relationship with Maori, which derived from the Treaty, ‘signified’, in the words of the president of the Court of Appeal in the *Lands* case, a ‘partnership between

16. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 66–74

the races'. He added that the partners needed to act towards one another 'with the utmost good faith which is the characteristic obligation of partnership'. He also pointed out 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.¹⁷

Other judges in the *Lands* case made similar comments. We thus refer in the report to both the principle of partnership and the duty to act reasonably and in good faith.¹⁸

With such weight of judicial opinion behind it, the principle of partnership was soon being applied to measure each and every act of omission or commission by the Crown. It has become evident that partnership can have many ramifications, according to particular circumstances, but through it all the parties had always to act towards each other in good faith. That in turn meant that the two parties needed to consult on matters of mutual concern and, except on questions of national interest, agree. In other words, the Crown could not act unilaterally on matters that concerned its Maori partner (as per the duty of consultation).

In the *Te Whanau o Waipareira Report*, the Tribunal described the partnership of the Treaty as resembling a 'marriage contract': the success of the 'vows' depends on the parties' commitment to 'work through problems in a spirit of goodwill, trust, and generosity'.¹⁹ That has been the case on frequent occasions when the Crown and Maori have paused and talked their way through an issue in a spirit of mutual respect. There were occasions when this was done in our inquiry district from the earliest periods of contact, but unfortunately those occasions were all too rare.

- ▶ While the Treaty paved the way for colonisation, by permitting the Crown to purchase land that Maori were willing to sell, it also imposed on the Crown an obligation. And, as the president of the Court of Appeal put it, that obligation was 'not merely passive' to protect the Maori people 'in the use of their lands and waters to the fullest extent possible'.²⁰ This fiduciary obligation, as it is sometimes called, was more fully elaborated on in Normanby's instructions to Hobson on his departure to negotiate a treaty with Maori. Colonisation was to be tempered with justice to, and protection of, Maori. We thus refer in the report to the duty of active protection.

Although, as we have said, the Treaty imposed mutual obligations and responsibilities on both of the parties, we are required by our principal Act, the Treaty of Waitangi Act 1975, to examine the performance of only one of those parties – namely, the Crown. We are required

17. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 664 (CA)

18. In the *Napier Hospital and Health Services Report*, we referred to the latter as the 'duty of good faith conduct': p 66.

19. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: GP Publications, 1998), p 222

20. *Ibid*

to examine claims by Maori that acts or omissions of the Crown since 1840 have breached the principles of the Treaty of Waitangi. There are such claims before us in this district inquiry.

Most of these claims relate to the Crown's alleged failure to protect the rights of the claimants, and their ancestors, to land within the district. Such rights were covered by the principles listed above and can be categorised as follows.

2.3.1 The right to property

As we have indicated, the right to property in land was clearly spelled out in both texts of the Treaty. It included specific rights of ownership, undisturbed possession, and management of land and the exercising of those rights according to Maori custom. This did not necessarily interfere with the canons of English law, including the common law rule that radical title to land in British colonies, as in the United Kingdom, lay with the Crown. Maori customary rights were a burden on that Crown title. The doctrine of Crown pre-emption had a two-fold purpose in New Zealand. It was used in the Treaty to give the Crown a monopoly on the purchasing of land from Maori. It was also used, as it had been in North America, to control the issuing of titles to colonists on the assumption that all titles derived from the Crown. That doctrine was asserted in Gipps's proclamation of 14 January 1840, which prohibited future private purchases of land from Maori and promised an inquiry into previous purchases and was in turn reiterated by Hobson both on his arrival in New Zealand and before he began to negotiate the Treaty of Waitangi.²¹ Pre-1840 purchasers whose claims were upheld by land claims commissioners were to receive Crown grants.

Although it was proper to grant titles in fee simple to British colonists, it was not necessary in terms of the Treaty to grant such titles to Maori, though it could be said that they were entitled to this right as British subjects under article 3 of the Treaty. Indeed, this was argued and attempted under the Native Lands Acts from 1862.²² That approach, which was based on the notion of an indivisible sovereignty and a single system of tenure, was not necessarily the only approach required by the Treaty. Nor was it required by British colonial law, since plural legal systems, with native customary law operating alongside English law, were or had been common in most British colonies, such as in North America before the revolution and in Britain's tropical African and Asian colonies. But to satisfy their incessant appetite for Maori land, British colonists in New Zealand were determined to assimilate Maori and their customary law as quickly and as thoroughly as possible into the English legal system. They were intent on destroying communal tenure, often described as 'the communism in land', in favour of individual titles, and their excuse was that Maori had demonstrated a will and a capacity for 'civilisation' that was unusual in a native people.²³

21. Sir George Gipps, 'Proclamation', 14 January 1840, BPP, vol 3, p 39

22. See, for example, Gillies, 26 August 1862, NZPD, 1862, pp 633-634

23. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), p 148

Several Tribunals have recently considered these issues. For instance, the Tribunal's *Muriwhenua Land Report* of 1997 said that 'Maori never consented to the substitution of an alternative tenure system or the diminution of the laws of their ancestors'.²⁴ Later, that report elaborated on the issue as part of what it called the 'principle of recognition', whereby the Crown and Maori were required to recognise their respective spheres of authority. This principle did not apply only to customary preferences in the administration of Maori affairs or the management of natural resources; it applied also to their system of land tenure. Maori custom and law were to be respected.²⁵ Those views were substantially expanded upon in the Tribunal's Chatham Islands report, *Rekohu*, published early in 2001. That report said that a 'primary motive' of the Native Lands Acts from 1862 was 'the settler interest in the ready purchase of Maori land', and, at the same time, the legislation sought to reshape Maori society by the destruction of 'communism'. But that tenure reform was 'clearly contrary to the principles (and terms) of the Treaty of Waitangi' in that the promise to Maori of the 'full exclusive and undisturbed possession of their Lands' included the right to retain their own land in accordance with their preferred system. Their land tenure could not be changed without their consent, and this was not obtained prior to the introduction of the Native Lands Acts of 1862 and 1865.²⁶ These comments are clearly relevant to our discussions below on the application of the Native Lands Act 1865 to Maori land in our inquiry district and the individualisation of tenure of confiscated land returned to Maori. As we did in our *Napier Hospital and Health Services Report*, we refer to this principle of recognition not in terms of 'recognition' but as the principle of options. There, we explained that the principle assured Maori 'of the right to choose their social and cultural path'.²⁷

2.3.2 The right to protection

The right to protection is clearly spelled out in the provisions of the Treaty, as indicated in our quotations above from the preamble and article 3. It can also be regarded as a principle that enlarges those terms in ways elaborated on in Normanby's instructions to Hobson. Those instructions, much quoted by previous Tribunal reports (and which we quote more fully below), told Hobson that he was not to purchase 'any Territory the retention of which by [Maori] would be essential or highly conducive, to their own comfort, safety or subsistence'.²⁸ The right to protection was, as we noted in the quotation from the president of the Court of Appeal, not merely a passive duty (hence, the 'duty of active protection'). The president's statement drew on similar comments in three previous Tribunal reports, *Report on the Motunui*

24. *Muriwhenua Land Report*, p 206

25. *Ibid*, pp 390–391

26. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington, Legislation Direct 2001), pp 182–184

27. *Napier Hospital and Health Services Report*, p 65

28. Normanby to Hobson, 14 August 1839, BPP, vol 3, p 87 (quoted in *Report on the Orakei Claim*, p 183)

– *Waitara Claim*, *Report on the Manukau Claim*, and *Report on the Te Reo Maori Claim*, which, he added, were ‘undoubtedly well-founded’.²⁹ The Crown’s duty to protect has been frequently reiterated in subsequent Tribunal reports and needs no further emphasis. However, we stress that in our inquiry it applies particularly to the Crown’s involvement in various forms of acquisition of Maori land and in the need to set aside and safeguard reserves.

No matter how the land was acquired, the Crown also had a responsibility to ensure that Maori retained a sufficient endowment for their existing and future needs.³⁰ The question of what might constitute a ‘sufficient endowment’ has always been difficult to answer. As the Ngai Tahu Tribunal put it, there was no one answer and any particular answer depended on demographic and economic factors, such as the nature of food supplies and production, as well as when the land was alienated. In that case, it was necessary to reserve sufficient good land for the existing and future needs of Ngai Tahu so that:

they would, as Lord Normanby contemplated, later enjoy the added value accruing from British settlement. Sufficient land would need to be left with Ngai Tahu to enable them to engage on an equal basis with European settlers in pastoral and other farming activities.³¹

What was said about Ngai Tahu’s needs is especially relevant to the claims before us, since Hawke’s Bay, like the eastern South Island, was used by colonists for extensive pastoralism. Ngati Kahungunu, like Ngai Tahu, could, with Crown assistance, have expected to participate in that. It was envisaged that both Maori and Pakeha would benefit from colonisation, and this was in the mind of leading Hawke’s Bay chiefs when they engaged in early land transactions.

2.3.3 The right to mutual benefit

Ever since they first made contact with Europeans, Maori evinced a keen desire to grasp the new technological and economic opportunities that came with the settlers. Maori traded enthusiastically for iron implements, adopted new crops and domestic animals, and sought all kinds of manufactured items. Some of the new hardware, such as armaments, had detrimental effects, but by 1840 many Maori realised that they could not shut out Europeans and their goods. This was clearly demonstrated by the speeches of such chiefs as Tamati Waka Nene at the Waitangi signing of the Treaty. After 1840, Maori continued to welcome European colonists and were prepared to trade some of their land to encourage them to settle in their areas. As we shall see, this desire was exploited by Crown agents such as Donald McLean in persuading Maori to sell large blocks of land cheaply in Hawke’s Bay.

29. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 664 (CA) (quoted in *Report on the Orakei Claim*, p191)

30. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim*, 2nd ed (Wellington: Government Printing Office, 1989), pp 36–37, per Chief Judge Durie (quoted in *Report on the Orakei Claim*, p193)

31. *The Ngai Tahu Report 1991*, vol 2, p 239

Previous Tribunals have laid considerable stress on the need for Maori and Pakeha to gain mutual benefits from the Treaty. As long ago as 1983, the *Report on the Motunui–Waitara Claim* said that the Treaty was intended not ‘to fossilise the status quo, but to provide a direction for future growth and development’.³² The *Report on the Muriwhenua Fishing* of 1988 expanded on what it called the ‘principle of mutual benefit’:

Both parties expected to gain from the Treaty, the Maori from new technologies and markets, non-Maori from the acquisition of settlement rights and both from the cession of sovereignty to a supervisory state power. For Maori, access to new markets and technologies necessarily assumes a sharing with the settlers who provide them, and for non-Maori, a sharing in resources requires that Maori development be not constrained but perhaps even assisted where it can be.³³

It is generally agreed that Maori have a development right for those of their properties that were specified in the Treaty, such as land, forests, and fisheries.³⁴ It has also been argued by some Tribunals that this right extends to other properties not specified in the Treaty and not known in 1840.³⁵

The development right inherent in the Treaty needs to be kept steadily in mind as we proceed with our report. Before the 1930s, Crown officials commonly assumed that it was sufficient to reserve land for Maori subsistence, and Maori could earn supplementary income from labouring for Pakeha settlers or the Government. We will return to this when we consider claims that, as a result, Maori were left impoverished in rural districts until the coming of full-time urban employment after the Second World War. What we can say here is that Maori hoped for, and were indeed promised, more than a subsistence lifestyle from the coming of European colonists and the Treaty of Waitangi. In our view, their right to development, combined with the Crown’s fiduciary obligations, entitled them to participate fully in the developing colonial society and economy. The chiefs who welcomed McLean with offers of land for colonists in 1851 clearly expected no less. Thus, in making findings in the report, we refer to the principle of mutual benefit and the Maori right to development.

Related to these principles is the obligation upon the Crown arising from article 3 to ensure that Maori enjoyed all the benefits, rights, and privileges that the Crown bestowed on its subjects of British origin. This principle of equity, which we have discussed in our *Napier Hospital and Health Services Report*, applies to Maori exercising rights as individual citizens

32. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 52

33. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), pp 194–195

34. See also Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report 1992* (Wellington: Brooker and Friend Ltd, 1992), ch 10; Waitangi Tribunal, *Te Ika Whenua Rivers Report* (Wellington: GP Publications, 1998), p 120

35. Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* (Wellington: Brooker and Friend Ltd, 1990), pp 4, 42–43; Waitangi Tribunal, *Radio Spectrum Management and Development Interim Report* (Wellington: Waitangi Tribunal, 1999), p 6

rather than as members of groups exercising rangatiratanga.³⁶ It is a principle that must be borne in mind when assessing both the tangible (rather than theoretical) assistance made available to Maori to develop their land and the adequacy of the Crown's attempts to ameliorate the negative socioeconomic impacts of land loss and other aspects of colonisation.

2.3.4 The right of management of property

As we noted above in discussing the Maori version of article 2 of the Treaty, tino rangatiratanga over land and other properties provided for more than mere possession of those properties and included full chiefly control and management. We noted also that the kawanatanga or governance afforded the Crown by article 1 had to be tempered by the respect for chiefly rangatiratanga promised in article 2 (the principle of reciprocity). Precisely how the two responsibilities were to be balanced needed to be determined by the circumstances of a particular issue and to be guided by other Treaty principles, including partnership, as we noted above. There, we noted the president of the Court of Appeal's statement that each partner had to act towards the other 'with the utmost good faith which is the characteristic obligation of partnership'. That statement, first quoted in the *Report on the Orakei Claim*, has been quoted many times in subsequent Tribunal reports. But we come back to the requirement for the Crown to exercise its kawanatanga with due respect for tino rangatiratanga. Though in the last resort there were matters in which the Crown could exercise its kawanatanga alone, in matters directly or indirectly affecting Maori it was obliged always to consult them as its Treaty partner and, unless there were exceptional circumstances concerning the national interest, gain their assent.³⁷ Admittedly, in many such matters it was not always clear which Maori had to be consulted, though the Crown needed to consult as widely as possible to find mandated representatives (hence, again, the duty of consultation). Though the Treaty was signed by representatives of the Crown and Maori chiefs, and thus seemed to allow the Crown to deal with chiefs alone, any such dealings both defied and destroyed the complex arrangements and responsibilities that chiefs had to others in their hapu or whanau. Chiefs were merely representatives of their community and had no greater personal rights to land than other individuals.

The ramifications of the Crown's obligation to respect tino rangatiratanga in all its dealings with Maori over land are wide-ranging. In Crown purchases, it was necessary to negotiate in the full light of day at public hui, and to obtain the assent of all with rights in the land. As we have noted, the Crown could not properly deal with chiefs alone for land. Nor could the Crown favour some chiefs at the expense of others, especially those who might be opposed to

36. *Napier Hospital and Health Services Report*, pp 61–64

37. As discussed in Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), p 285, and Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995), p 11.

selling land or might too easily be dubbed ‘rebels’.³⁸ (We refer to this notion several times in part III of this report as the principle of equal treatment.) Nor again could the Crown encourage those of non-chiefly status to sell their land, though the individualisation regime promoted by the Native Lands Acts did this very thing. The Crown needed to work with Maori right-holders on the establishment of reserves, and it had to respect their wishes over the preservation of wahi tapu and their access to mahinga kai and rongoa. It needed to assist them in the commercial development of their remaining land while also respecting their right to the management of that land. The Crown’s duty of kawanatanga also required it to use its authority in a responsible and reasonable way to protect New Zealand’s land and resources. We refer to this in chapter 18, where we note that the Crown carried a simultaneous duty to protect the right of Maori to exercise their rangatiratanga over prized resources. These two duties could occasionally be in some conflict (where native species had become endangered, for example). Above all, constant consultation was needed between the Treaty partners, even though the responsible exercise of kawanatanga might ultimately require the Crown to make the final decision.

2.3.5 The right to compensation

Where the Crown has acted in breach of the principles of the Treaty and Maori have suffered prejudice as a result, we consider that the Crown has a clear duty to put matters to right. We refer to this principle – the principle of redress – later in the report when considering those instances where the Crown knew that it had acted improperly and should have taken appropriate steps at the time to provide proper compensation. One essential facet of the principle of redress is that, in seeking to make amends for its actions, the Crown is required at all times not to create further grievances. The Tribunal in the *Report on the Waiheke Island Claim* said that ‘It is out of keeping with the spirit of the Treaty that it should be seen to resolve an unfair situation for one party while creating another for another’.³⁹ We endorse that statement and bear it in mind in assessing Crown actions in our inquiry district.

With the Treaty to guide us, we now proceed with our investigation.

38. In its *Maori Development Corporation Report*, the Tribunal asserted that the Crown has a duty to ‘act fairly and impartially towards Maori’. The Treaty guaranteed that the Crown ‘would not, by its actions allow one iwi an unfair advantage over another’: Waitangi Tribunal, *Maori Development Corporation Report* (Wellington: Brooker’s Ltd, 1993), pp 31–32.

39. *Report on the Waiheke Island Claim*, p 47

CHAPTER 3

THE LAND AND ITS PEOPLE TO 1850

3.1 INTRODUCTION

This chapter provides a brief introduction to the land in Hawke's Bay and the hapu who occupied it in the mid-nineteenth century. By that time, a few Pakeha settlers, mainly whalers and traders, were scattered along that part of the coast. There were also a couple of Church Missionary Society families: William Colenso's at Te Awapuni and James Hamlin's at Wairoa. The Crown's involvement in Hawke's Bay effectively began in 1850 with the arrival of Donald McLean on an expedition to acquire land for Pakeha settlement. McLean's Crown purchase activities will be outlined in chapter 4. This chapter will set the scene, and provide an overview of the processes, both natural and human-induced, which had been operating in the landscape of central Hawke's Bay.

The Hawke's Bay region has a distinctive geological history, nearly half of its forest cover was destroyed several hundred years before 1840, and, in the years since 1840, the predominant type of land management associated with extensive sheep farming has contributed to erosion and river control problems that are still being addressed. In his study of Tutira lands, Herbert Guthrie-Smith documented many of the landscape changes that occurred because of sheep farming.¹ Guthrie-Smith's book is an important source of such information, because his farm was probably typical of many other undocumented sheep stations. We discuss the issue of post-1840 soil erosion more fully in chapter 18, but the question of who destroyed the original forest cover is considered in this chapter because Maori are often blamed for environmental damage (see sec 3.2.2). Maori perceptions of the physical environment and the resources it provided differed from those of the Pakeha settlers, and this issue is reviewed in general terms here. Specific claims relating to particular hapu and particular areas or resources will be considered in more detail in later chapters.

1. Herbert Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th ed (Wellington: AH and AW Reed, 1969)

3.2 THE PHYSICAL ENVIRONMENT

There are three major landform zones in the Mohaka ki Ahuriri claim area of Hawke's Bay. Inland to the west are the deeply dissected, mostly forest-covered ranges, which rise over 1500 metres and form the backbone of the North Island from Huiarau in the north to Ruahine in the south. These ranges provide a high-rainfall catchment area for the Mohaka, Tutaekuri, Ngaruroro, and Tukituki Rivers. The central zone is made up of ridges and valleys, broken and faulted and tending north-east to south-west, which is drained by the Mohaka River and its tributaries and several smaller streams originating in the Maungaharuru Range. The coastal zone in the east consists of hills rising little over 500 metres with a rugged, cliffed coastline, broken only by several rivers flowing into Hawke Bay: the Waihua, Mohaka, Waikare, Arapaoanui, and Waiohinga (or Esk). In the south, the coastal hills give way to plains of more recent sediments in Te Whanganui-a-Orotu and the outcropping hills of Mataruahou (Scinde Island).

South of Napier, the Heretaunga Plains have been built up by sediments carried down from the inland ranges by the Tutaekuri, Ngaruroro, and Tukituki river systems. Even before the uplift in the 1931 Napier earthquake, Te Whanganui-a-Orotu was a shallow lagoon. The Tutaekuri River flowed into the southern end through a considerable area of swamps and lagoons that extended south to the Ngaruroro River mouth. Both the Ngaruroro and the Tutaekuri Rivers have changed their courses several times. The Tutaekuri Wai Mate Stream, for example, as its name implies, is one of the former courses of the Tutaekuri. River control works in the twentieth century have redirected these two rivers to a stopbanked outlet at Waitangi, and most of the former wetlands of the former Tutaekuri Estuary have been reclaimed and incorporated into the Napier and Taradale urban areas.

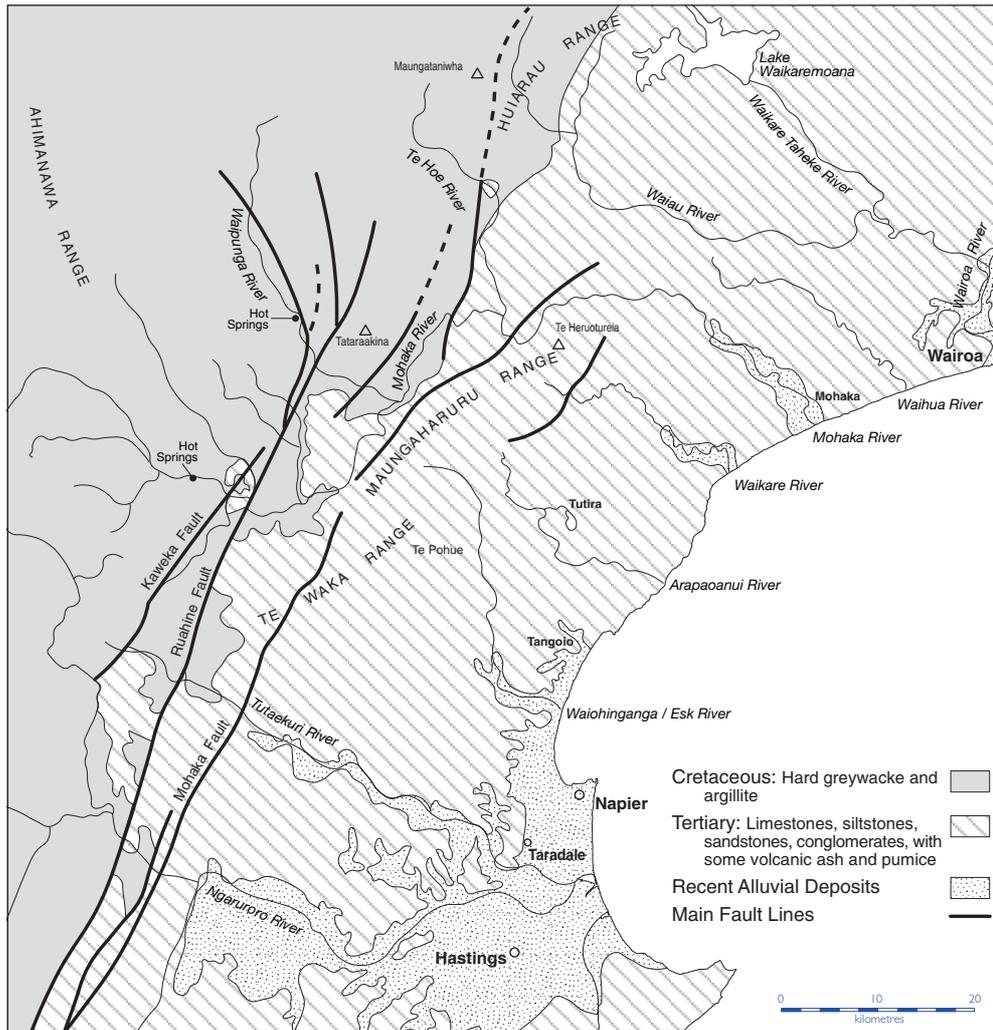
Flooding in the lower reaches of the Tutaekuri, Ngaruroro, and Tukituki Rivers was a regular occurrence: Colenso recorded major floods at his mission station at Te Awapuni in July 1845, June 1847, May 1850, August 1852, and March 1853. He also described the impact of another flood at Te Awapuni in October 1847, after days of rain and a north-easterly gale:

The sea awfully roaring and lashing over the high bank in front of the house; the bank itself being two or three feet higher than the ground on which the house stands, and only 150 yards from it . . . Towards evening our raised pathways through the garden and paddock began to disappear.²

By 8 pm, the water level had risen to cover the floor of the verandah, kitchen, and store room:

The wind now subsided, and the rain ceased, but the furious sea effectually damming up the only open and narrow mouth of the three rivers . . . caused the waters rushing from the

2. A G Bagnall and G C Petersen, *William Colenso, Printer, Missionary, Botanist, Explorer, Politician: His Life and Journeys* (Wellington: AH and AW Reed, 1948), p 260



Map 3: Hawke's Bay geology

hill country to be returned again over the low lands with frightful velocity . . . At 7pm my Maori teacher Renata came across the plains from his little village (Pokonao) in a canoe, stating that his place which is much higher than this of ours was totally under water and the river Ngaruroro coming over its banks in that direction at a fearful rate. The few Maoris who happened to be there, women and children, fled to their patakas . . . for refuge, while the men with a large number of others from all the villages around had proceeded to the sea beach to try to cut the dam through.³

By 10pm, flood waters were rushing through Colenso's house. At about 3 the next morning, news was brought by a messenger in a canoe that the dam (a shingle bank) had been cut through. By daylight, the flood waters had begun to recede, leaving a layer of silt in the house

3. Ibid

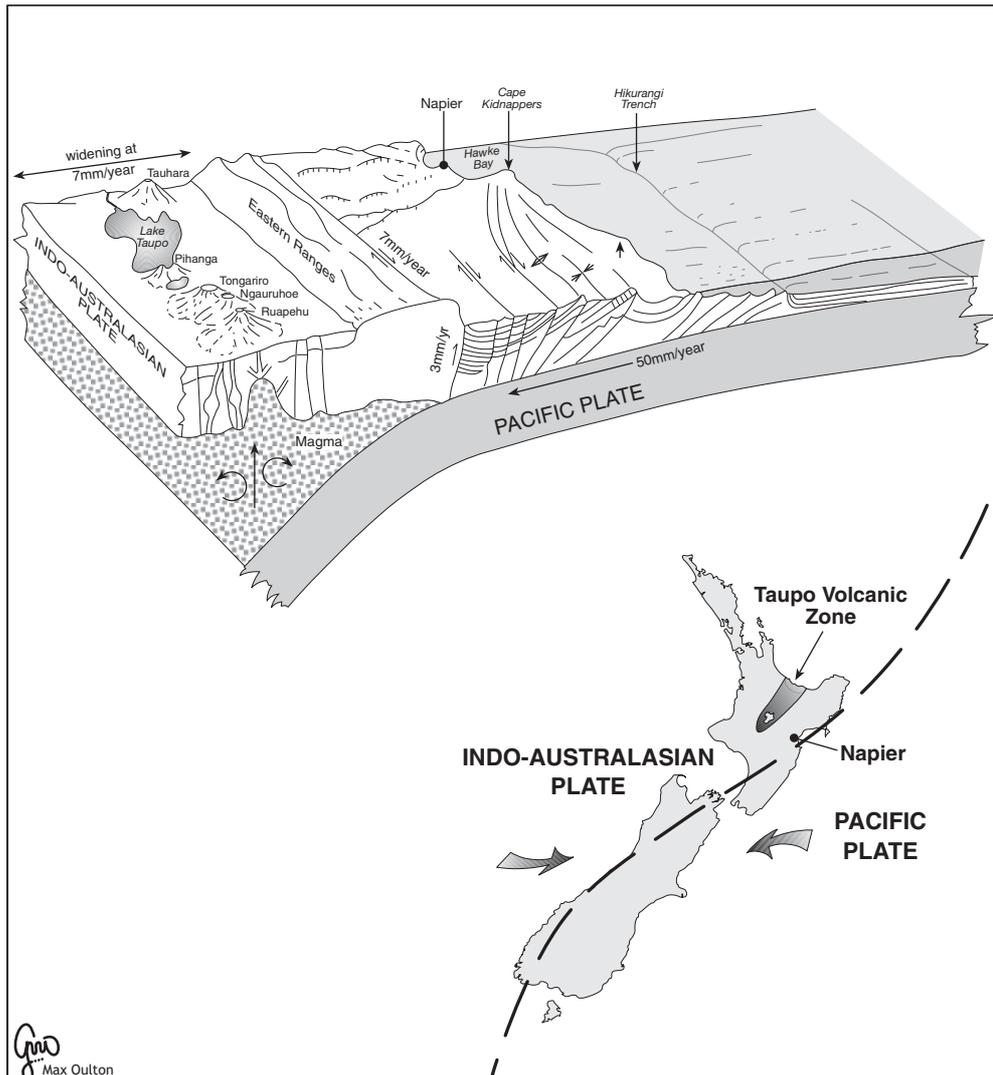
some 15 centimetres thick. Several local chiefs came to commiserate as the Colensos began cleaning up. One of them, Tareha, commented, ‘No one ever lived here on this spot before you; it has been only the dwelling place of the eel.’⁴ We discuss the effects of subsequent floods in chapter 18.

The rocks of Mohaka ki Ahuriri are all sedimentary, deposited under the sea since about 200 million years ago (map 3). The oldest are the Cretaceous greywackes and argillites, which now form the inland ranges. A period of mountain building about 100 million years ago compressed these sediments, folding, hardening, and contorting them. On top of these hardened sediments on the seabed were deposited layers of limestones, siltstones, sandstones, and conglomerates, along with some ash and pumice deposits from volcanic eruptions in the Taupo region. Over a long period, some two to eight million years ago, these Tertiary deposits and the older greywackes and argillites were subjected to another period of mountain building known as the Kaikoura Orogeny, which uplifted the Cretaceous and Tertiary layers and formed the inland ranges. The layers were folded and faulted as uplift occurred, and on the highest parts the Tertiary layers, which were relatively soft, eroded away. The central zone has a characteristic series of ridges with steep western sides and gentler eastern grades – a dip and scarp slope landscape that reveals the underlying geologic structure of tilted sediment layers. Eastwards, toward the coast, the hills represent the remaining Tertiary layers. Many fast-flowing rivers carried sediments to the lower valleys and out to sea forming the recent alluvial deposits – the gravel, sands, and muds of the lower river valleys and the plains around Napier and Hastings – in a process that continues today.

The Hawke’s Bay region has been and still is subject to periodic earthquakes, located as it is on the contact zone between two large pieces of the earth’s crust, the Pacific and Indo-Australasian tectonic plates (map 4). The Pacific plate is pushing westward under the Indo-Australasian plate, and this continues the slow uplifting of the eastern ranges of the North Island and the geothermal activity of the Taupo volcanic zone to the west. A few hot springs are associated with fault lines at Tarawera and Puketitiri, and along the upper Mohaka River. This tectonic pressure has contributed both to the numerous north-east to south-west trending faults that have broken up the hill country and to the characteristic dip and scarp slopes of the central ridges and valleys. The earthquake risk is high, and traces of former earthquakes can be seen in fissures and ridges, numerous small faults, tilted strata, and landslide debris throughout the area’s hill country.

Earthquakes were well known to Hawke’s Bay Maori and were usually ascribed to Ruaumoko, the youngest child of Ranginui, the Sky Father, and Papatuanuku, the Earth Mother. (Ruaumoko had remained enfolded within the arms of his mother when his parents were separated by Tane.) Sometimes, localised earth movements were ascribed to a taniwha.

4. Bagnall and Petersen, p 261



Map 4: Plate tectonics and volcanism in the eastern North Island

According to AG Bagnall and GC Petersen, when Colenso visited Hawke's Bay in December 1843, he noted that the landscape north of Cape Kidnappers was 'rent with earthquake fissures' and that local Maori had recorded 'eight successive shocks' in a recent series of earthquakes.⁵ On a journey to Tarawera in April 1846, Colenso said of the landscape between Te Pohue and the Waiohinga River that 'the earthquake rents in the steep hills were larger and more numerous' than he had seen before. He also recorded 'severe' earthquakes in late May 1850 (followed by a flood the following week) and two 'severe shocks' on 30 July 1851.⁶

5. Ibid, p 165

6. Ibid, pp 235, 300, 308

3.2.1 The Napier earthquake

On 3 February 1931, Hawke's Bay was shaken by a major earthquake, with an epicentre about 15 kilometres north of Napier (map 5). The initial shock (of a magnitude of 7.8 on the Richter scale) was followed over the next few weeks by 596 aftershocks. Over the next few months, there were 50 aftershocks in April, 44 in May, 42 in June, and thereafter reducing from 28 in July, to between 21 and 23 per month from August through November.⁷

A measure of the 'felt intensity' of an earthquake is the modified Mercalli scale, which is illustrated in map 5. At level VIII on this 12-point scale, damage may not be great in structures designed to withstand earthquakes but will be considerable in ordinary substantial structures (and may include partial collapse). Poorly built structures will collapse, chimneys, columns, monuments, and walls will fall down, heavy furniture will be overturned and small amounts of sand and mud will be ejected from vents in the earth. At level IX, even specially designed structures will be damaged, substantial buildings will be shaken from foundations and collapse, cracking of the ground may be conspicuous, and underground pipes and cables will be broken. At level X, well-built wooden structures will be destroyed, as well as all masonry and frame structures, the ground will be badly cracked, and railway lines bent. There will be considerable landsliding from cliffs, river banks, and hill slopes, and large amounts of sand and mud will be ejected from fissures in the earth. At level XI, the destruction will be even greater, and at level XII it will be total.

A major result of the earthquake in 1931 was the uplift of a substantial area from about the mouth of the Ngaruroro River in the south to north of the Waihua River. This land was roughly an elongated, tilted dome centered on a line running north-east to south-west through Napier with elevation of over two metres from about Tangoio to north of Arapaoanui and 2.7 metres (its greatest elevation) at Moeangiangi. There were massive landslides from cliffs right along the coast from Moeangiangi to north of Mohaka as well as numerous slides, fissures, cracks, and pressure ridges on the hills inland. In contrast, the land around Hastings subsided about one metre.

The large lagoon of Te Whanganui-a-Orotu was raised about 1.8 metres on the seaward side and a little over one metre on the western shore, leaving considerable areas above water. Much of the area still covered by water was very shallow, and within a few years reclamation further reduced the lagoon to little more than a broad estuary.⁸ The Tutaekuri River, which had flowed into the swamps and lagoon at the southern end of Te Whanganui-a-Orotu, was now unable to maintain its flow. Its surplus water drifted southwards, and the increased flood hazard accelerated efforts by the Hawke's Bay Rivers Board to complete stopbanks and other river works, which culminated in the Tutaekuri being diverted to a shared mouth with the

7. CE Adams, MAF Barnett, and RC Hayes, 'Seismological Report of the Hawke's Bay Earthquake, 3rd February 1931', *Report of the Hawke's Bay Earthquake*, DSIR Bulletin 43 (Wellington: Government Printer, 1933), pp 102-104

8. See Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995* (Wellington: GP Publications, 1995), ch 7

Ngaruroro River. These changes are outlined more fully in our discussion of the Wai 168 claim in chapter 15.

There was major destruction throughout the region from Wairoa to Waipukurau, but Napier and Hastings were particularly badly affected. In Napier, the earthquake was followed by destructive fires, which could not be extinguished because the water supply systems had been destroyed. The known death toll was 256 people: 161 of these were in Napier, 93 in Hastings, and two in Wairoa. The effects of the Napier earthquake and the Government's efforts to deal with it were graphically described in a letter from Sir Apirana Ngata, the Minister of Native Affairs, to his friend Peter Buck on 6 February 1931:

You will not get much from me this mail as the earthquake which has destroyed the business portions of Napier and Hastings, on top of all our financial troubles, is occupying all our time . . .

Te Aute [College] has been partially destroyed, the roofs of the two wings have caved in and the tower of the central building where the Hall is . . . Hukarere [College] we are informed is standing up and probably little damaged. The reinforced concrete buildings stood up well throughout the affected area, but the brick edifices crumbled at the first shock, an upthrust of great violence. The Cathedral is wrecked and between 'quake and consequent fires the business part of the town [Napier] from the Masonic [Hotel] to Clive Square, from opposite the Caledonian Hotel to the old Post Office is blotted out. With water mains, sewers and lighting all disorganised we have had to order the evacuation of the town – the exodus commencing last night. People will be billeted all over the North Island. The injured numbering over a thousand have been removed to hospitals from Waipukurau to Wellington . . .

Though 15 railway bridges were damaged they have been repaired sufficiently to enable relief trains to run the first night after the 'quake to Waipukurau, the next to Pakipaki and tonight to Napier itself. North of Napier the long Westshore bridge lost a span and the road to Wairoa [was] messed up so that it will be weeks before there is a land connection to Gisborne. Wairoa was partly damaged. . . .

The fair Hawkes Bay province as a business proposition is ruined. The loss in buildings and stock in trade will run into £3,000,000 for only part of which insurance companies are legally liable. The area was already badly hit by a drought on top of the worst slump in forty years. It is a matter for consideration whether Napier should be re-established as a business centre. The port – bad enough before – had shoaled at the Spit. There will always be a nervousness and a lack of confidence in the physical stability of the town.⁹

Early in March 1931, Ngata was able to reach Wairoa, travelling via Ruatahuna and Waikaremoana, and described for his friend what he saw in a letter dated 8 March:

9. Sir Apirana Ngata, *Na to Hoa Aroha: From Your Dear Friend – The Correspondence between Sir Apirana Ngata and Sir Peter Buck, 1925–1950*, ed MPK Sorrenson, 3 vols (Auckland: Auckland University Press, 1986–88), vol 2, pp109–110



Fig 1: View of part of the town of Napier after the 1931 earthquake. Photograph by Sydney Smith. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (SC Smith collection G-48343-½).

The Wairoa Freezing Works and Bridge are gone. A big slip carried away the road southwards out of Wairoa. North of Mohaka the deviation has gone completely, and the road into the pa has been shaken to pieces. Cars are running over a patched surface, which the first heavy rain will convert into a Kaiinanga [a mush of whitebait]. We did not go further south, but were told that the gorges at Waikari and Matahorua have fallen in forcing traffic on to the railway bridges. The road over the Devil's Elbow south of Tutira was also badly shaken. Wherever there is papa [soft mudstone rock] there will be a mess when the heavy rains come, as whole hill sides will slip away.

You are quite right in your remark that nature herself is taking a hand to make bad things worse. . . .

I took speedy measures to assist our people in Hawke's Bay and Wairoa. A Major Power who had been acting for the Red Cross in Hastings was put on the Relief Committee there to look after Maori interests throughout Hawkes Bay, and associated with him is a Maori Committee. Things are running smoothly and satisfactorily. . . .

At Wairoa Turi Carroll is a Committee of one for Maori relief with sufficient funds at his command. The funds for Maori relief in Hawke's Bay and Wairoa have been provided partly from the Central Earthquake Relief Fund (now topping £210,000) and partly from moneys called up from the Maori Land Boards &c. Our people all over New Zealand are sending

3.2.2

in potatoes. Really the Hawke's Bay Maoris are doing better than before the earthquake, although presently they will have a job to recondition damaged houses and chimneys.¹⁰

For Maori and Pakeha in Hawke's Bay, the earthquake was a traumatic event and came at a time of national economic depression, when funds to restore the widespread destruction of buildings and infrastructure were limited.

3.2.2 Who destroyed the forest?

It was not only earthquakes that changed the Hawke's Bay landscape, which was once clothed in forest. By 1840, the bush had been replaced in many areas by grassland and bracken fern, although isolated patches remained on some ridges, particularly on the eastern side of the Te Waka and Maungaharuru Ranges and along streams and rivers. Inland, the higher ranges remained forested (map 6), but Guthrie-Smith found plenty of evidence of the past burning of these forests in the charcoal and other burnt remains on the Tutira block.¹¹ Traditionally, many scientists have attributed the destruction of the forest to Maori, through fires lit either deliberately or accidentally (and Maori tradition does refer to the 'fires of Tamatea'). Radio-carbon dates suggest a considerable amount of burning in forests, not only in Hawke's Bay but also in other regions such as the Wairarapa, Canterbury, and Otago, over a period from about AD1280 to AD1400. Studies of pollen preserved in the sediments of Lake Tutira indicate that the forest cover was destroyed about 700 years ago and that an open landscape of grass, fern, and patches of bush has prevailed since.

Recently, there has been considerable scientific debate over whether the forest was destroyed by climatic change or human interference. In his study of Hawke's Bay forests, Dr Pat Grant analysed the existing scientific data on past climates and field work on river sediments, ash showers, soils containing old charcoal remains, and 'pit and mound' landscapes created by the windthrow of large trees. Between about AD1100 and AD1300, the climate was much warmer than it is now and the forests became tinder dry in the warm westerly winds that then prevailed:

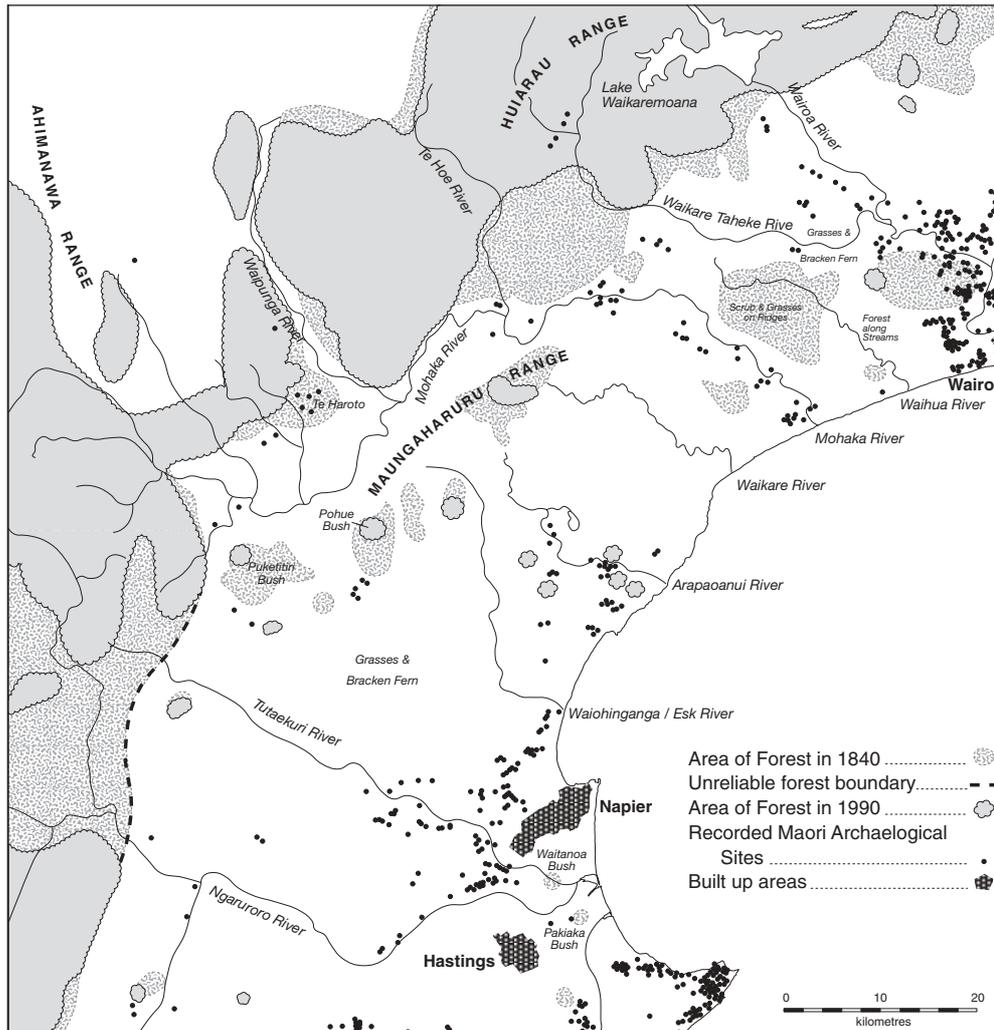
Certainly at some time around 1280AD the forests were windthrown by exceptionally violent gales which may have lasted for several weeks, or longer. Some time later the windthrown forests were burnt and then, maybe much later still, they were subject to intense sedimentation.¹²

Grant's interpretation differs from Guthrie-Smith's view that the hummocks created by windthrow on Tutira denoted 'a forest overblown when dead, not green, in the first place

10. Ngata, pp 117–118

11. Guthrie-Smith, pp 59–60

12. Patrick Grant, *Hawke's Bay Forests of Yesterday: A Description and Interpretation* (Havelock North: Patrick J Grant, 1996), p 181



Map 6: Forests and archaeological sites

destroyed by fire, then uprooted by the prevailing winds'.¹³ Grant observed that it was not only Hawke's Bay that was affected because similar field evidence could be found as far away as Taranaki to the west:

And because the westerlies are the prevailing winds it is almost certain that the fires started on the western side of the mountain ranges, traversed the ranges, and then spread to the east. For this to happen the forests must have become tinder dry everywhere, generating very suitable conditions for lightning strikes to occur. In my view there is no way in which the early Polynesians of Hawke's Bay could have started the fires which obviously commenced in the west of the North Island and subsequently destroyed the windthrown

13. Guthrie-Smith, p 61

‘forests of yesterday’ about 1280AD. The burning of the forests of Hawke’s Bay was only a part of a major and widespread national conflagration around 1280AD.¹⁴

When they are interpreted as a folk memory of great conflagrations in the late thirteenth and fourteenth centuries, it is not surprising that the Maori traditions surrounding the fires of Tamatea are so widespread throughout the country. There were also warm, stormy periods in the sixteenth century and the late eighteenth century, when windthrow and lightning strikes combined to destroy the remaining forests and prevent regeneration. Similar conditions prevailed in the ‘Fire Storm Summer’ of December 1885 and January 1886, when, after several weeks of drought, large areas of bush felled by settlers provided the kindling for numerous extensive fires in many parts of New Zealand, including at Seventy Mile Bush in Hawke’s Bay.¹⁵

Maori particularly valued the patches of bush that remained in gullies and on river banks and ridges, especially those on the upper eastern slopes of the Maungaharuru and Te Waka Ranges. Grant compared the distribution of recorded Maori archaeological sites in Hawke’s Bay with the forest areas in 1840 and noted that the great majority of the sites were outside the forests: ‘Maori revered the forest, and at the same time it is suggested that the Maori burnt the forests to make way for bracken fern which was a staple diet before the potato was widely cultivated. What can we believe?’¹⁶

Grant referred to evidence showing that Maori valued the forest as a source of birds for food, timber for building and fires, and numerous plants for food, for fibre, and for medicinal purposes. It was no coincidence that, in early land transactions, rangatira reserved patches of forests and wetlands for their own use and continued to practise a ‘conservation ethic’ to ensure a continuing supply of valued resources. While accidental fires could and probably did occur, ‘such damage was contrary to their basic ethic of conserving the food resources’. Grant concluded:

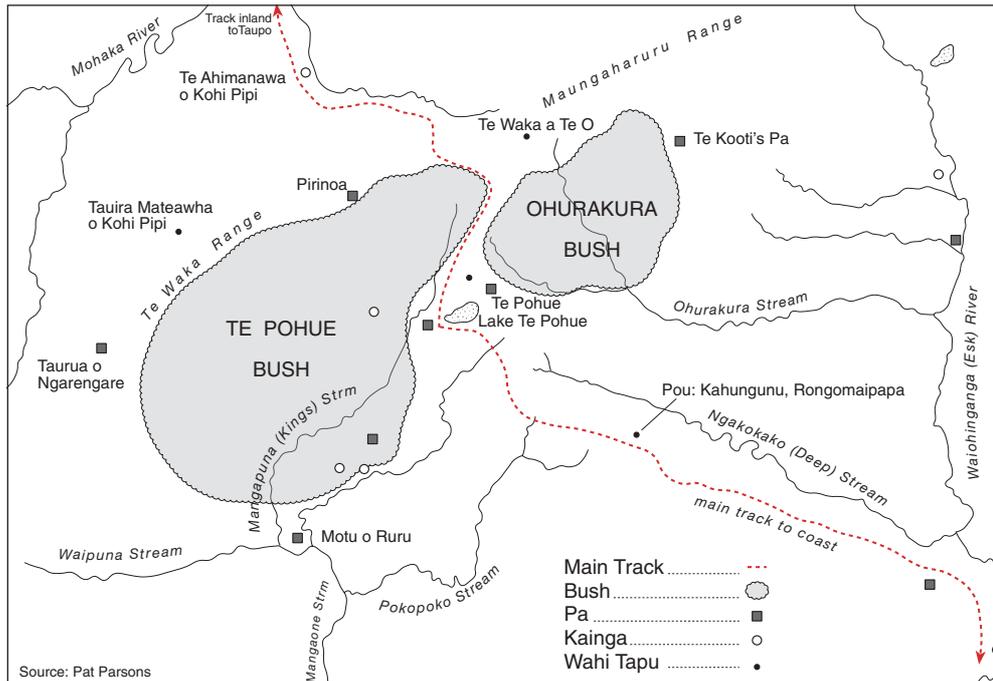
The evidence that I have collated refutes the attitude that the Maori were the ‘prime initiating force’ in the apparent degradation of the New Zealand environment. The climate was the ‘prime initiating force’; the Maori were simply involved in the struggle for survival in difficult conditions. They must have suffered greatly from natural catastrophes (gales, rainstorms, floods, erosion and sedimentation, droughts and frost), and from the damage that these did to the native vegetation and fauna.¹⁷

14. Grant, p183

15. Rollo Arnold, *New Zealand’s Burning: The Settlers’ World in the Mid 1880s*, (Wellington: Victoria University Press, 1994), ch 3

16. Grant, p 222

17. Ibid, p 224



Map 7: Maori occupation, Te Pohue district. Compiled from the evidence of Patrick Parsons.

3.3 THE MAORI LANDSCAPE

*Ka pa a Tangitu, ka huaki a Maungaharuru,
Ka pa a Maungaharuru, ka huaki a Tangitu.*

*When Tangitu is closed, Maungaharuru opens,
When Maungaharuru closes, Tangitu opens.¹⁸*

The above whakatauki is well known in Hawke's Bay and was referred to by several witnesses in their statements to the Tribunal describing the range of environments valued by Maori in the region.¹⁹ The foreshore reefs and deep-sea fishing areas provided a range of seafood, while food crops were grown on sheltered alluvial flats, with kainga nearby and pa on hilltops or promontories. On the coastal hills and ridges inland, there were fern grounds. In swamps, streams, lagoons, and lakes, there were raupo and flax, eels and kakahi (freshwater shellfish), and abundant wildfowl. The remnant patches of bush were particularly valued, as Grant observed, for timber, food, medicinal plants, and birds.

18. Translation by Guthrie-Smith, p 67. Tangitu was a deep-sea fishing-ground off Tangoio; Maungaharuru, a mountain range prolific in bird life.

19. See, for example, document 137, p 6, and document 148, p 6. Bevan Taylor translated the whakatauki as 'When the kaimoana at Tangitu are at their leanest, the season is closed. However, the season for bird hunting and the collecting of pikopiko, eels and manu at Maungaharuru is at its best': doc 148, p 6.

The importance of the bush areas is demonstrated by the cluster of pa and kainga around Te Pohue and Ohurakura Bush (see map 7).²⁰ Some of the kainga were bird-snaring camps, but there is evidence of long-term occupation in the several pa around the margins of the bush, and in the kainga and wahi tapu at Lake Te Pohue, which were on the main track inland to the Taupo district. Many of the region's place names commemorate ancestors and past events, and are further evidence of long occupation. One such place name is Te Rere o Maruiwi, which was given to the Pokopoko Ravine after Maruiwi people plunged to their deaths there many generations ago while being pursued over Titiokura by Ngati Tuwharetoa and Ngati Apa.

Each hapu had rights in both coastal and inland bush and scrub environments, and its society and economy was based on access to this range of resources. A system of overlapping and interlocking usufructuary rights governed whanau and hapu relationships with these environments and with particular valued resources. Map 8, which is based on Guthrie-Smith's study of Tutira, shows the approximate range of one hapu, Ngati Kurumokihi (formerly, Ngai Tataru), and illustrates the importance to Maori of being able to live in and use a range of environments. Seasonal movements of the hapu between Maungaharuru and the coast emphasised the significance of the Lake Tutira area:

The Ngai-Tataru during winter, and whilst planting of crops was in progress, dwelt chiefly about the estuaries of the local rivers. The climate of Tutira was rather too cold and wet, the land usually too poor for the cultivation on a great scale of such exotics as the taro . . . the hue . . . and the kumara . . . On the other hand the flax . . . growing about its swamps was celebrated for strength, the shallows of the lake were paved with mussel-beds – kakahi . . . the flavour of its eels was unsurpassed. They were speared in the lakes, they were caught in enormous numbers in eel-weirs – *patuna* – or in *whare tuna* built along the edges of streams. In the forests of the interior [Maungaharuru Range], pigeon . . . tui . . . and kaka . . . abounded; they were captured by means of decoy birds, or snared by natives ambushed beneath selected trees.

Tutira and the adjoining lands were a sort of connecting link between the seaside villages and the ranges of the interior. The Ngai-Tataru during peace dwelt about the coastal estuaries and the lake. During war they sheltered in the forests and fastnesses of the hinterland. The glory of the *hapu* was in their continued occupation of so famous a lake, in their possession of so unfailing a food supply of the most highly prized kind.²¹

The intensity of Maori occupation around Lake Tutira is revealed in the map of Maori place names compiled by Guthrie-Smith, who also sketched what three of the pa around the lake probably looked like when occupied (map 9; fig 2). He wrote:

20. Document J15, p 37; Patrick Parsons, *In the Shadow of Te Waka: The History of the Te Pohue District* (Napier: Te Pohue History Committee, 1997), pp 222–229

21. Guthrie-Smith, pp 67–68

Oporae, a minute peninsula on the eastern edge of Tutira Lake, also shows signs of fortification. On three sides water was its natural defence, on the fourth a bank and fosse – *maioro* – had been cut, which, though partially filled in, is still many feet in depth. On the edges of the level summit cavities remain, out of which have been burned or pulled up, or from which have decayed, the huge posts of the main defence. Entrance across the moat was by bridge; no sign of that remains, but the narrow gap in the embankment where stood the ancient gateway is still distinct. The natural declivities also of the little peninsula have been straightened into perpendiculars. Within these defences stood on levelled ground, in close proximity to one another, the reed-thatched huts. There are faint indications still of canoe traffic on the adjacent shore.

Te Rewa, the terminal point of the spur which nearly divides Tutira from Waikopiro Lake, was another and larger fortified peninsula. Its natural defences on one side were impenetrable marsh, on two sides water, northwards Tutira, southwards Waikopiro; its fourth approach was guarded by a bank and fosse similar in principle to that of Oporae, but of greater width. Moat and embankment are now alike obliterated; they have been trodden flat by hundreds of thousands of sheep that pass yearly to and from the wool-shed.

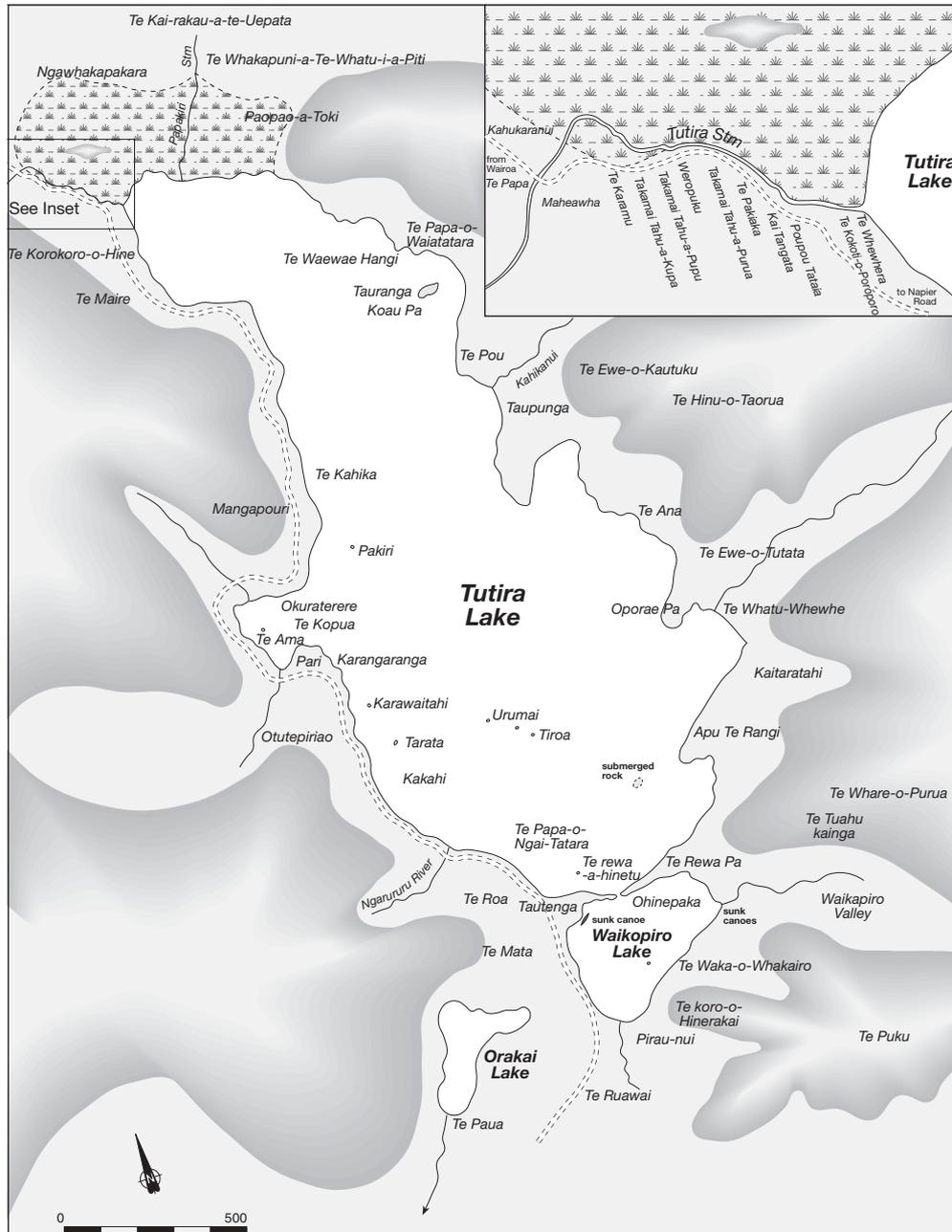
The pits of the ancient stockade posts are likewise worn away; only the earthen floors of former *whare* remain preserved by the matted growth of an alien grass – *Poa pratensis* [Kentucky bluegrass].

Tauranga-koau, the island off the east shore of Tutira Lake, was in the beginning of mere bare reef – as its name signifies, ‘a perching place for cormorants’. This natural point of vantage was built up and consolidated by soil shipped from the mainland. As late as ’82 [1882], though hardly an upright remained in position, quantities of timber not yet utterly rotten lay in shallow water or on the island itself. Many of the prone posts or *take* of the palisading were still ornamented with the curious top or head supposed to be commemorative of ancestors, and dear to Maori fort-builders. Beneath the water there were visible not only the lines of holes sunk for the main defence, but, preserved by water, even remains of the smaller innermost stakes of the breast-work – *kiritangata*. Water was, of course, the principal natural defence of this *pa*, which could only be reached by canoes, by rafts, and by swimming.

Other peninsulas have also been occupied, but of their defences little now remains saving natural declivities made more precipitous, beds of broken *kakahi* shell, collections of splintered stone used in the ovens, and as elsewhere levelled earthen floors.²²

The *pa* on Tauranga-Koau was the site of an attack by Te Urewera, who besieged the *pa* on rafts (*mokihi*), and from this incident Ngai Tātara became known as Ngati Kurumokihi (those attacked by rafts).

22. Guthrie-Smith, pp 70–72



Map 9: Tutira place names. Source: Herbert Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th ed (Wellington: AH and AW Reed, 1969).

The flax swamps at the north end of the lake were a particularly valued resource. The Papanui Stream drained into the swamp and ‘used to lose itself in morass and peat-bog’. It terminated in ‘a string of deep blind holes, the surface water percolating through the swamp in drought as through a sponge or evenly overflowing it in flood’.²³ The lake’s outlet, the Tutira

23. Ibid, p90

Stream, also ran through this swamp from Whakarongotuna and, as this name suggests, was an important source of tuna (eels). Along a meandering course between the lake and the ancient ford at Maheawha, where the stream is now crossed by the main highway, Guthrie-Smith recorded 16 pa tuna (eel weirs). He also noted the presence of a wharetuna (a more elaborate house-like structure) at Maheawha itself (map 9). The latter was ‘a permanent trap that required no watching, no baiting, and no lifting, and must have proved particularly serviceable.’²⁴

Though elsewhere in our inquiry district we lack the level of detail that Guthrie-Smith provided on the use of resources by Maori around Tutira, we can be sure that the land, rivers, lakes, and sea were similarly utilised in those places.

3.4 NGATI KAHUNGUNU

According to radiocarbon dates from archaeological sites, Maori have occupied the Hawke’s Bay region since about the early tenth century.²⁵ The many pa on hillsides and promontories provide evidence of long occupation, although the initial settlements were not as elaborately fortified as pa such as Otatara, which was constructed by Turauwha at some point before the sixteenth century. Tribal traditions and whakapapa also indicate a long history of occupation in this region. The building of pa may represent the expansion of the descendants of Kahungunu into the region in the sixteenth century. The ancient tribes included Ngati Hotu, Ngati Mahu, Whatumamoa, and, later, Whatonga and his people from the Kurahaupo waka, which made a landfall on Mahia Peninsula. This latter group became known as Rangitane, the name of a grandson of Whatonga. Another tribe was Ngai Tara, the descendants of Tara, a son of Whatonga. Other ancient peoples were descendants of Awanuiarangi (Ngati Awa), Kupe, Toi, Te Porangahau, and others. These peoples were the original tangata whenua.²⁶

Kahungunu was the son of Tamatea of the Takitimu waka. He finally settled at Maungakahia Pa on the Mahia Peninsula after a life as a ‘wanderer’, but his children and grandchildren were, in their day, ‘settled as the ruling families of several different settlements around Turanga [Gisborne]’.²⁷ After a deadly squabble amongst factions of the extended family, however, Taraia, a great-grandson of Kahungunu, led his people in the early sixteenth century south into Ahuriri, the coastal lowlands and lagoons around Napier. Whatumamoa and Ngati Awa already occupied the Ahuriri area south to Waiohiki on the Tutaekuri River,

24. Guthrie-Smith, p 94

25. Aileen Fox, ‘Hawke’s Bay’, in *The First Thousand Years*, ed Nigel Prickett (Palmerston North: Dunmore Press Ltd, 1982), p 79

26. See doc J12, p 2; Matthew Wright, *Hawke’s Bay: The History of a Province* (Palmerston North: Dunmore Press Ltd 1994), pp 13–14

27. Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 133–134

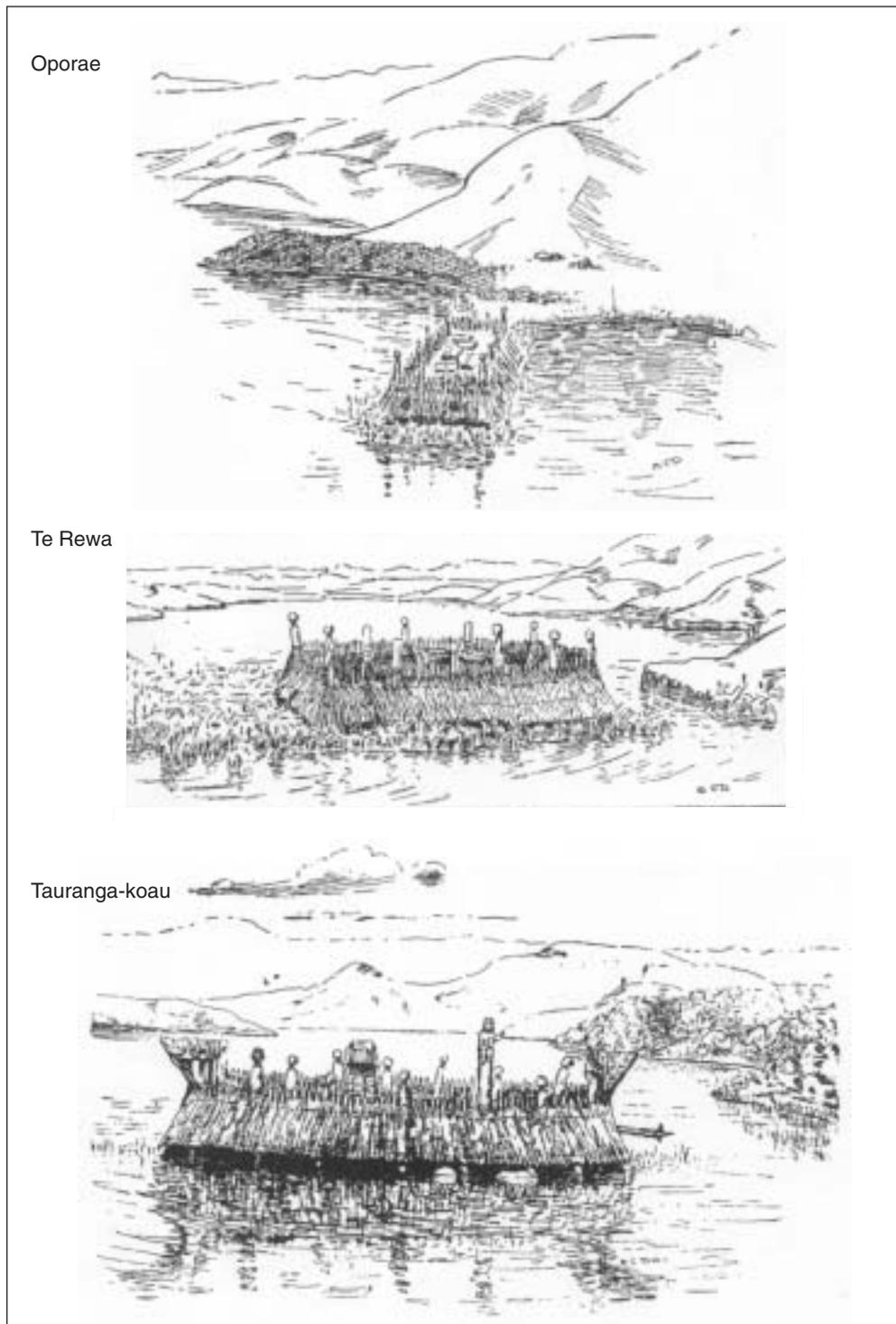


Fig 2: Pa at Lake Tutira. Source: Herbert Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th ed (Wellington: AH and AW Reed, 1969).

while Rangitane inhabited the plains of Heretaunga southward. The descendants of Kahungunu took some pa in battle, including Otatara, which was taken by Taraia on his second attempt. Taraia also continued his campaign southward against Rangitane.²⁸

However, the invaders' occupation was not entirely a matter of conquest (raupatu). Diplomacy was also involved. Alliances were cemented by marriages between the migrants and the original tangata whenua. The dual heritage of Ngati Kahungunu today is expressed in the saying: 'The land is Turauwha's but the mana is Taraia's.' Taraia, for example, married Hinepare of the tangata whenua, and from this union the modern hapu Ngati Hinepare trace their descent. A deliberate policy of intermarriage gave the migrants a secure foothold in Hawke's Bay, which in turn gave to the descendants of the migrants rights to the land through direct descent from its earliest occupants.²⁹

By the mid-eighteenth century, Maori society in Hawke's Bay comprised a number of independent and autonomous communities with rights to the resources in the physical environment they occupied. Angela Ballara, the pre-eminent Pakeha scholar of Ngati Kahungunu history (on whose studies we rely for much of the following discussion), argues that, by this time the descendants of Kahungunu – other than at Ahuriri and Wairoa – had little occasion to call themselves 'Ngati Kahungunu'.³⁰ Those at Heretaunga, for example, identified first and foremost as Ngati Te Whatuiapiti, a group of descendants of the pre-Kahungunu tangata whenua who had 'intermarried with Ngati Kahungunu but retained a separate identity'.³¹ The term 'Ngati Kahungunu', at that time, applied to a much more limited group than has often been imagined. Ballara suggests that it could be restricted to the group that fought Te Whatuiapiti four generations after the arrival of Kahungunu's descendants in Hawke's Bay.³²

However, towards the latter part of the eighteenth century a new kind of pan-tribalism began to emerge. At first, it was triggered by Ngai Te Upokoiri vying with Ngati Te Whatuiapiti and Ngati Kahungunu for control of Ahuriri and Heretaunga, which struggle resulted in an alliance between the latter two kin groups. Ngai Te Upokoiri, for their part, were a 'powerful major hapu' based at inland Patea, the area around the upper reaches of the Rangitikei River, with kin connections to their Heretaunga rivals as well as Ngati Tuwharetoa.³³ They had in fact already spent most of the eighteenth century feuding with Ngati Te Whatuiapiti. Now, at the end of the century, both they and Ngati Te Whatuiapiti and Ngati Kahungunu turned to their allies outside of the district for support, and soon Hawke's Bay was invaded from the East Coast, Tauranga, Hauraki, and Waikato. This process continued during the musket wars that followed.³⁴

28. Wright, pp 15–18

29. Document 11(1), pp 36–38

30. Ballara, *Iwi*, p 139

31. *Ibid*

32. *Ibid*, p 116

33. *Ibid*, p 168

34. *Ibid*, pp 237–238

The musket warfare had a devastating effect on Hawke's Bay Maori, who had first become acquainted with guns when Captain James Cook fired on a waka off Cape Kidnappers in 1769. The first major engagement occurred about 1820, when a taua led by Te Heuheu III and, according to JG Wilson, including Ngati Tuwharetoa, Ngati Raukawa, and Waikato groups, attacked two islands, Parapara and Te Iho o te Rei, in Te Whanganui-a-Orotu. Because of the numbers killed in the fight on Te Iho o te Rei, one hapu still carries the name Ngati Matepu, or 'death by the gun'.³⁵

In 1822, a large group of well-armed Ngati Raukawa and Ngati Tuwharetoa attacked the pa Te Roto a Tara. Although the invaders were defeated, Te Pareihe of Ngati Te Whatuiapiti, fearing further attack, led his people into exile on the Mahia Peninsula. Te Wera Hauraki of Nga Puhi had settled at Nukutaurua and, well-armed with muskets himself, offered them protection. Here, they later withstood a siege by Ngati Tuwharetoa at a pa called Kaiuku (so named because the defenders were forced to eat clay to survive).

The people of Ahuriri held their ground until 1824, when the pa at Te Pakake was attacked by invaders from the Waikato. Indeed, so disastrous was the defeat at Te Pakake that the most important Hawke's Bay chiefs – including Takamoana, Tareahi, Paora Kaiwhata (who was then only a child), Te Hapuku, Tiakitai, and Kurupo Te Moananui – were all captured in battle.³⁶ After their release by Te Wherowhero some 18 months later, they mostly joined Te Pareihe in exile at Nukutaurua. According to Ballara, Tiakitai was the 'only major chief who had not abandoned Heretaunga and fled to Nukutaurua'.³⁷ Kaiwhata and his father, Tareahi, returned to their ancestral lands around Oingo Lake, near present-day Fernhill, and thus also 'kept their fires of occupation alight on the land'.³⁸ Te Hapuku, junior in those days to Te Pareihe within Ngati Te Whatuiapiti, also resided, for eight years, with Tiakitai at Te Pakake after the Waikato invaders were driven out before eventually retreating to live in exile at Mahia himself.³⁹ By and large, however, Hawke's Bay lay virtually abandoned for most of the 1820s and 1830s. Migrant groups such as Rangitane and Ngati Raukawa would occasionally attempt to settle the district but were routinely driven out by those sheltering at Mahia.

While in exile at Nukutaurua, and as a result of the combined efforts to drive out invading groups, the overarching tribal identity known as 'Ngati Kahungunu' was reinforced, building on the early pan-tribalism that had grown from the alliance of the Heretaunga groups against Ngai Te Upokoiri. As Ballara put it in her 1998 work *Iwi*:

35. James Wilson and others, *History of Hawke's Bay* (Dunedin: AH and AW Reed, 1939), pp 93–94. According to Patrick Parsons, Ngati Matepu had previously been known as Ngati Hineterangi: doc 118, p 73.

36. See DNZB, vol 1, pp 418, 431, 443, 538. Angela Ballara writes in her essay on Tiakitai that Tareha was captured (p 538), but in his book on the musket wars, Ron Crosby relates that Tareha 'arrived from Mahia by canoe just after the fall of the pa. As he saw the pa being sacked he was able to turn his canoe and escape back to Mahia, taking the dreaded news of the fall of Te Pakeke [sic] to Ngati Kahungunu there.' See Crosby, *The Musket Wars: A History of Inter-Iwi Conflict, 1806–45* (Auckland: Reed, 1999), p 146.

37. Angela Ballara, 'Tiakitai', DNZB, vol 1, p 539

38. Patrick Parsons, 'Paora Kaiwhata', DNZB, vol 2, p 252

39. Angela Ballara, 'Te Hapuku', DNZB, vol 1, p 443

Adversity had forced the people of Hawke's Bay and Wairarapa to unite militarily and politically against common enemies; looking back along their collective whakapapa they had identified Kahungunu as the identifying link common to all of them, and had identified who was in-group and who was out.⁴⁰

Even the erstwhile Ngai Te Upokoiri adversaries, who had themselves taken refuge from the fighting in the Manawatu, were invited back to Hawke's Bay and allowed to settle at Omahu, given their strong kinship ties to Ngati Te Whatuiapiti. Ballara noted that their 'absorption into Ngati Kahungunu as one of its allies began from this move'.⁴¹

Ballara's seminal 1991 doctoral thesis explored the origins of Ngati Kahungunu as a modern political unit. While her later book *Iwi* and her evidence produced for this inquiry drew from it, the thesis itself deserves particular mention at this point. In it, Ballara rejected the common 'myth' that Ngati Kahungunu existed as a tribal entity only a few generations after the arrival of the Takitimu waka. Instead, she attempted to demonstrate how the musket warfare and the repulse of the invaders from Hawke's Bay and the Wairarapa had led to an offensive and defensive alliance dominated by chiefs regarded as 'Ngati Kahungunu' by their enemies. Having 'combined to expel the various enemies from their territories, completing this work by the expulsion of the Taranaki settlers in Wairarapa in 1835', these chiefs then 'made and guaranteed the peace treaties which helped define their territory, and invited home, protected and re-settled under their mana the various hapu of the region [such as Ngai Te Upokoiri] who had fought with the enemy groups'.⁴²

'Ngati Kahungunu' thus began filtering back from Mahia to Ahuriri-Heretaunga in the 1830s, although it is clear that their return from exile was not complete until the 1840s. Patrick Parsons estimated, for example, that virtually the entire population of the Hawke's Bay province was living in exile at the time of the signing of the Treaty of Waitangi.⁴³ Upon their return, Te Pareihe settled in the Awapuni area near Clive, Kurupo Te Moananui at Te Awanga to the south, and Te Hapuku at Whakatu. Tareha settled at Awatoto, although by the mid-1850s he had moved to Pa Whakairo at Waiohiki.⁴⁴ As mentioned, Ngai Te Upokoiri settled at Omahu under their leader, Renata Kawepo.

This was, however, by no means the end point in the story of the development of Ngati Kahungunu as a distinct and coherent political entity. By the 1840s, the alliance began to dissipate and old patterns of hapu independence emerged. As Ballara noted, this was unsurprising given the sheer size of the district and the poor state of communications. Perhaps the main schism, however, developed between, on the one hand, the neighbouring Te Hapuku (who had taken the mantle of leadership of Ngati Te Whatuiapiti upon Te Pareihe's death in 1844) and, on the other, Te Moananui, Tareha, and others of Ngati Kahungunu. We discuss these

40. Ballara, *Iwi*, pp 242–243

41. *Ibid*, p 243

42. Angela Ballara, 'The Origins of Ngati Kahungunu', PhD thesis, Victoria University of Wellington, 1991, p 501

43. Document J18, p 196

44. Document J13, pp 13–14

matters in later chapters, but suffice it for us to note here that this division, which was caused by land sales, boiled over in the 1857 conflict at Te Pakiaka. There, the Ngati Kahungunu chiefs defeated Te Hapuku and drove Ngati Te Whatuiapiti inland. According to Ballara:

The irony was that the political union created by these chiefs for the purposes of this war survived, expanded and was increasingly institutionalised through runanga, tribal committees and later councils; it helped the development of Ngati Kahungunu from an ancient but diffuse category of dispersed social groups towards a political and corporate entity.⁴⁵

From the late 1850s, then, the 'Ngati Kahungunu' chiefs who controlled tribal affairs 'on behalf of a self-conscious entity' were Te Moananui (until his death in 1861), Tareha, Karaitiana Takamoana, Renata Kawepo, Paora Kaiwhata, and, further north towards Mohaka and Wairoa, Paora Rerepu, Pitihera Kopu, and Ihaka Whaanga. As Ballara noted, this process was simultaneously 'helped by the European bureaucracy who had, from the first, preferred to assume they were dealing with one tribe'.⁴⁶

3.5 TANGATA WHENUA OF MOHAKA KI AHURIRI

Within our inquiry district itself, there were doubtless many hapu groups in existence in 1840. Over time, however, and for a variety of reasons, many names have fallen out of use. Causes for this include population decline, the social dislocation in the second half of the nineteenth century occasioned by land loss and warfare, changes in Maori social patterns relating to residence and employment, and the pervasive influence of Pakeha perceptions of 'tribes'. Ballara has written about the phenomenon under the heading 'Disappearing Hapu; Growing Tribes'.⁴⁷ It is simply not possible, therefore, to be specific at this remove about all the various kin groups in existence in the mid-nineteenth century in our inquiry district.⁴⁸ There are a number of names that occur regularly in our report, however, and our purpose here is to give them some kind of introduction.⁴⁹

45. Ballara, *Iwi*, p 84

46. Ballara, 'The Origins of Ngati Kahungunu', p 502

47. See Ballara, *Iwi*, ch 16, pp 250–259

48. For example, we do not attempt to explain what has become of Ngai Te Aonui. This name appears to have previously been applied to the Maori of the Moeangiangi area (see, for instance, Guthrie-Smith, figure facing page 66). We make an exception to this at section 8.5, however, where we do attempt to explain who Ngati Kahutapere – another name no longer in currency – were and are.

49. In offering this introduction, however, we make no claim at all to be definitive. Nor do we believe that it would be possible to be so. For example, only five hapu are named as claimants in the Wai 299 Mohaka–Waikare confiscation claim, but others would appear – on the claimants' own evidence – to have interests in the claim area. The evidence of Heitia Hiha (also a Wai 299 claimant) in the Te Whanganui-a-Orotu claim was that Ngai Te Ruruku and Ngai Tawhao are hapu of Tangoio Marae: doc D21, p 10. But neither are among the Wai 299 claimant hapu, and Ngai Te Ruruku are in fact a named claimant hapu in the Wai 400 Ahuriri block claim. Similarly, the Wai 299 claim encompasses Petane but the Wai 400 claim does not, yet Ngati Matepu – the tangata whenua of Petane Marae – are claimants in Wai 400 but not Wai 299.

In the northern part of our inquiry district, in the Waikare, Waihua, and lower Mohaka River valleys, is the grouping known as Ngati Pahauwera. As we relate at the start of part IV of this report, Ngati Pahauwera is a federation of hapu that came to be known by the name of one of its component hapu by dint of the mana of that hapu's leading chief. The names of 21 of these constituent hapu are recorded in section 12.2 of this report, and at section 14.2 we relate the statements on the subject given by Ngati Pahauwera witnesses to the Mohaka River Tribunal. Today, Ngati Pahauwera have three marae along the lower Mohaka River (see map 50).

To the south, along the coast from Waikare towards the Waiohinganga River, are the hapu Ngati Tu, Ngai Te Ruruku, Ngai Tawhao, and Ngati Kurumokihi, the latter being previously known as Ngai Tatara. These groups are the hau kainga at the marae at Tangoio.⁵⁰ Inland, beyond the Maungaharuru Range, are Ngati Hineuru, whose base today is Te Haroto Marae. Their principal kainga was at Tarawera, on the main route over the ranges to the Taupo district, where they had important links with Ngati Tuwharetoa. They also maintained their connections with the coastal hapu of Hawke's Bay. Unsurprisingly, given their location on such an important communications route, Ngati Hineuru also affiliate with Tuhoe to the north. Located near the mouth of the Waiohinganga River at Petane are Ngati Matepu, one of a number of hapu united in their claims over both Te Whanganui-a-Orotu and the Ahuriri block. Other such hapu include Ngati Parau (who were based at Waiohiki Marae) and Ngati Mahu and Ngati Hinepare (who were based at Wharerangi and Moteo, the latter place being just to the south of our inquiry district).

3.6 PAKEHA SETTLERS

The first recorded Maori encounter with Pakeha in Hawke's Bay was in 1769 when Cook was sailing off the Mahia Peninsula. Several waka greeted his ship, the *Endeavour*, and goods were traded. In another incident off Te Matau a Maui, the son of Tupaea, Cook's Tahitian interpreter, was abducted by local Maori amid some confusion over trading transactions. Shots were fired at the waka, at least two Maori were killed, and the young Tahitian escaped to swim back to the *Endeavour*. Cook named the place Cape Kidnappers. He also named the bay Hawke Bay, after Sir Edward Hawke, the First Lord of the Admiralty, but he did not land there. On his second visit in 1773 in the *Resolution*, Cook again made contact with the people at Te Matau a Maui and gave them pigs, chickens, nails, yams, wheat, and vegetable seeds. Over the next two or three decades, other ships passed through these waters, including English and American whalers, and no doubt there were other trading transactions.

By the 1820s, Maori had become aware of a range of new goods – in particular, the musket – as well as new plants and animals. By the 1830s, pigs and potatoes were well established in

50. See doc D21, p 10



Map 10: Hawke's Bay Pakeha settlement, 1835-1850

the Maori economy, metal tools were in use, and the people had experienced the ravages of musket warfare. Traders based in the Bay of Islands such as Joel Polack, visited Hawke's Bay periodically as did JW Harris, who was based at Turanganui a Kiwa (Gisborne). From the mid-1830s, a number of shore whaling stations were established, initially around the Mahia Peninsula, but, by the late 1840s, at various places along the coast (map 10). The Austrian naturalist FWC Sturm settled as a trader at Nuhaka in 1839 and later began running sheep and cattle. In the same year, William Rhodes established a trading station at Waipureku (near the township of Clive), but it was destroyed in 1841. William Burton traded for a time at 'Burton's Gully' on Mataruahou from 1841. Alexander Alexander, who was, after Colenso, Napier's second permanent European inhabitant, established a trading station at Onepoto on Mataruahou in 1846. Over the next few years, Alexander established further trading posts at Ngamoerangi, at Waikare (which was managed by W Thompson), and at Waipureku (the latter in partnership with Burton). In partnership with Anketell, who had arrived in 1849 or

1850, Alexander also ran a bacon processing plant on the eastern spit of Mataruahou. By 1850, he had also begun farming sheep on land across Te Whanganui-a-Orotu at Te Poraiti and had married a local woman named Harata who was living at Wharerangi. That same year, brothers-in-law James McKain and William Villers established a trading station and boarding house on the western spit, and soon after Villers began trading at Onepoto.

By 1850, there were Pakeha settlers scattered all the way along the Hawke's Bay coast. In March 1851, Donald McLean reported that there were 140 Europeans from many nations employed on 26 boats engaged in shore-based sperm whaling, and industry in which many Maori were also employed in whaling stations from Mahia to Waimarama.⁵¹ Port Ahuriri was also a stopping place for ocean-going whalers seeking supplies of fresh water, pork, and potatoes, as well as trading vessels from Sydney or Hobart. Although some of the Pakeha settlers were families (eg, the Villers and McKains), almost all were single males. Many had Maori wives and stayed in the district in other occupations when the whaling declined, and their names are perpetuated by many Maori descendants.

Most of these Pakeha settlers were welcomed by Maori; they were incorporated into a local kainga with their Maori wives, and their children were identified as Maori. The settlers remained on sufferance of the chief and were the means by which Maori accessed new technologies and crops such as wheat, barley, and other vegetables, which they were growing in the 1840s. Many were poor and illiterate, and there are few records of their activities, so it is difficult to estimate the extent of interaction between Maori and Pakeha before 1850.⁵² However, not only were new items of trade imported, but Pakeha also brought new diseases such as influenza, measles, pneumonia, whooping cough, tuberculosis, and typhoid, along with venereal diseases, all of which had devastating consequences for Maori.⁵³

3.7 THE TREATY OF WAITANGI IN HAWKE'S BAY

The Treaty of Waitangi was brought to Hawke's Bay Maori on 24 May 1840, when the *Herald*, carrying Major Thomas Bunbury and Edward Williams of the Church Missionary Society, anchored off the coast opposite the mouth of the Tukituki River. The society's missionary at Turanganui a Kiwa, William Williams, had been charged with collecting signatures from East Cape southward but had given up his plans to travel to Ahuriri. Because Te Hapuku had signed the Declaration of Independence in 1835, his assent to the Treaty was seen as necessary. Te Hapuku was initially reluctant to sign, but was persuaded to, along with two other chiefs,

51. Document J10, p 10; doc J12, p 15

52. Document J12 pp 13–17; doc J10, pp 8–12

53. For a discussion of the impact of exotic diseases on the Hawke's Bay Maori population, see Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 78–81.

Mahikai and Waikato. According to Bunbury, he had explained to Te Hapuku that Queen Victoria would be placed over all the chiefs:

not for an evil purpose as they supposed but to enable her to enforce the execution of justice and good government equally amongst her subjects. Her authority having been already proclaimed over New Zealand, with the consent of the greatest number of influential chiefs, he [Te Hapuku] would find that the tribes must no longer go to war with each other, but subject their differences to arbitration; strangers and foreigners must no longer be plundered and oppressed by natives or their chiefs, nor them injured or insulted by white men. It was not the object of Her Majesty's Government to lower the chiefs in the estimation of their tribes.⁵⁴

There was no large hui with other Ahuriri chiefs and no further explanation of the significance of the Treaty, which was largely a non-event in Hawke's Bay. As researcher Vincent O'Malley commented: 'Yet for all Bunbury's bluster about British authority being a fait accompli, the signing of the Treaty did little in the short term to alter the existing state of affairs in Hawke's Bay.'⁵⁵

3.8 CHRISTIAN MISSIONS

The Church Missionary Society began to spread its influence into Hawke's Bay in the late 1830s. In 1834, William Williams visited the East Coast, taking back with him a number of local people who had been captured by Nga Puhi during raids in the 1820s. In 1840, Williams returned to establish a mission station at Turanganui a Kiwa. In October that year, he arrived by sea at Ahuriri and found a small settlement of about 50 people. At a Sunday morning service, about 100 people attended from around the district. Williams also noted that a few could read, although there were not many books (these were obtained from Kapiti and Rotorua as well as Turanganui a Kiwa). He crossed Te Whanganui-a-Orotu by canoe and reached a 'good sized pa' whose inhabitants were 'absent at their cultivations'. He then continued up the river to another village, where he found 'a small chapel about 20 feet × 14, the first we have met with'. There, people had been 'maintaining the form at least of worship'. Williams also noted that a severe form of whooping cough was prevalent in the village. The total village population was about 100 people, but many were 'away hunting'.⁵⁶

On his return journey to Turanganui a Kiwa, Williams visited several other villages along the Hawke's Bay coast, including Waikare, Mohaka, Wairoa, and Nuhaka. Christianity had

54. Document 110, p 32

55. Ibid, p 33. See the discussion about the 'Treaty of Ahuriri' at section 5.9.1.

56. Francis Porter, ed, *The Turanga Journals, 1840-1850: Letters and Journals of William and Jane Williams, Missionaries to Poverty Bay* (Wellington: Victoria University Press, 1974), pp 126-127

already been taken to the region by 'Native teachers' educated by the Church Missionary Society long before Pakeha missionaries had arrived there. In October 1842, Bishop Selwyn travelled to Ahuriri, where he found 'a very numerous Christian community, though they have been only once visited by a missionary. The chapel is a substantial building, capable of holding 400 persons.'⁵⁷

Bishop Pompallier visited Hawke's Bay in the 1840s too, and in October 1840 Williams recorded local debate about the merits of the 'Pikopo' teachings of the Roman Catholic Church versus the Anglican Church Missionary Society's version of Christianity.

In December 1843, William Colenso negotiated with local chiefs and reached agreement on a site for his mission house on about 10 acres of swampy ground at Waitangi, near the kainga of Te Awapuni, on the coast south of Napier.⁵⁸ In 1844, as well as Colenso's, another society mission station was established in Hawke's Bay – that of James Hamlin at Wairoa – and, in January 1851 a Roman Catholic mission, led by the Marist missionary Father Jean Lampila, was established at Pakowhai. Of these missions, Colenso's was probably the most influential. About 20 'Native teachers' worked there.

In the kainga of Te Awapuni, to the north of the mission site, a chapel had already been built. Te Awapuni became the base for the Colenso family and the society's mission work. Colenso made many long journeys to kainga in his parish which extended from Hawke's Bay to the Wairarapa. His early converts among Ngati Te Whatuiapiti of Heretaunga were Takamoana, who took the name Karaitiana or Christian, and his half-brother Tomoana, who took the name Henare. However, Colenso failed to convert the major Ahuriri chiefs until 1848, when Kurupo Te Moananui and Tareha were baptised, although this may have been a means of dissociating themselves from Te Hapuku.

3.9 RANGATIRA AND RANGATIRATANGA IN HAWKE'S BAY

In 1844, Colenso identified the principal chiefs of Ahuriri–Heretaunga as Te Hapuku, Kurupo Te Moananui, Tareha, Tiakitai, and Puhara. Among the second-ranking chiefs were Te Waka Kawatini and the younger Takamoana, whose kainga was at Te Awapuni. Angela Ballara and Gary Scott, in reviewing the papers of William Colenso and Donald McLean, suggested that in 1850 there were 'at least four chiefs of paramount status, independent and equal': Tareha, Te Moananui, Te Hapuku, and Puhara.⁵⁹ Kurupo Te Moananui was recognised by Ngati Hawea and other related hapu in the Te Awanga–Cape Kidnappers area. Tareha was the principal chief of several Ngati Kahungunu hapu of Ahuriri and, upon Kurupo's death in 1861, he took

57. G A Selwyn, *Annals of the Diocese of New Zealand* (London: Society for Promoting Christian Knowledge, 1847), p 44

58. Bagnall and Petersen, p165. The chiefs named in the deed for the land included Tareha, Te Waka Kawatini, Takamoana, Puhara, and Te Ota, while Te Hapuku accompanied Colenso in pacing out the boundaries.

59. Document 11(1), p 32

the latter's name and became known as Tareha Te Moananui. Within the many hapu of Ngati Te Whatuiapiti, Te Hapuku was paramount in inland Heretaunga, and Puhara, whose wife Hineipaketia was a female ariki in her own right, was recognised by another group of Ngati Te Whatuiapiti. Tiakitai of Ngati Kurukuru and associated hapu of the Waimarama area had been influential, but he had drowned in 1847. His successor, Tuahu, did not assert the same influence and was later over shadowed by Te Teira Tiakitai, the eldest son of Tiakitai.

To the north of the Ahuriri hapu, in the Tutira–Tangoio area, the principal chief was Te Teira Te Paea, who was generally associated with Ngati Tu and Ngati Kurumokihi. At Mohaka, Paora Rerepu was paramount among Ngati Pahauwera. Inland, west of Maungaharuru, Ngati Hineuru's leader was Te Rangihiroa. In the Wairoa–Nuhaka–Mahia area, there were three significant chiefs – Te Koari, Te Apatu, and Te Whaanga – who were recognised among various combinations of hapu of Ngati Kahungunu ki Wairoa, Ngati Kurupakiaka, and Ngati Rakaipaka.

The first Pakeha settlers in Hawke's Bay occupied land under agreements made with local chiefs. These agreements allowed use rights, a form of lease for which payments were made. One effect of the Treaty was to invalidate any such pre-Treaty transactions pending their investigation by the Crown. From the time of the Treaty's signing, therefore, valid land titles could be derived only from the Queen. In Hawke's Bay, there were five 'old land claims' requiring investigation by the Land Claims Commission. Four of these were associated with whaling stations at Mahia, which is outside our inquiry district, and all were investigated by Commissioner Francis Dillon Bell in the 1850s. The fifth claim was a fantastic one: Captain William Rhodes alleged that for £150 he had purchased (in partnership with a Sydney firm of merchants) a 30-mile wide strip running along the entire Hawke's Bay coast from Wairoa to Cape Turnagain – a total of 1.4 million acres. As it happened, Rhodes's deed had only five signatures on it, including those of Tareha, Tiakitai, and Takamoana. After the commission's investigation in 1852, Rhodes was awarded 2560 acres, the maximum area the commissioners could recommend, although it is unclear whether he took this up.⁶⁰

In Hawke's Bay in 1850, the local chiefs still controlled their own affairs, and within their territories Pakeha settlers had to maintain good relations with them. According to Ballara and Scott, no one chief was 'paramount' over the others:

The high chiefs termed 'paramount' did not, collectively, form any kind of Ngati Kahungunu hierarchical political structure. It is a term chosen to reflect their high rank and the authority conferred by their perceived mana within certain limited communities of Hawke's Bay. Whatever their status after the Treaty of Waitangi, before it these chiefs were the autonomous rulers of independent tribal (ie descent-and-kin-based) communities.⁶¹

60. Document J10, pp 19–22

61. Document 11(1), p 35

While each chief retained his individual freedom of action, any concerted action was achieved by consensus and alliance between equals. The communities that each chief ruled over contained a collection of closely related hapu living in contiguous territory. Within the hapu, each family and group exercised a complex set of rights based on ancestry and occupation.

The arrival of Donald McLean in 1850 was a turning point in Maori–Pakeha relations in Hawke’s Bay. Before outlining his land purchasing activities in chapter 4, we examine the development of the Crown’s purchasing policy and set it against the movement of European pastoralists and their sheep into the Wairarapa and southern Hawke’s Bay.

PART II

LAND ALIENATION, 1840–69

There are three chapters in this part of our report. In chapter 4, we provide the background to the first Crown purchases of Hawke's Bay lands – the Waipukurau, Ahuriri, and Mohaka blocks – by Donald McLean in 1851. We do not discuss Waipukurau in detail because it is outside the inquiry area, but it is part of the context of the expansion of pastoral holdings out of Wairarapa into Hawke's Bay in the late 1840s and 1850s.

In chapter 5, we focus on the Ahuriri transaction, which is the subject of the Wai 400 claim. We do not review in this part the purchase of the Mohaka block in 1851, or other transactions in the Mohaka district, which are major issues in the claims of Ngati Pahauwera (Wai 119). As we noted in chapter 1, a strictly chronologically structured report is not appropriate when dealing with distinct histories of different kin groups, as well as separate Treaty claims. For that reason, our discussion of the Mohaka block purchase has been held over to chapter 11, where it is considered with other Wai 119 claims in part IV.

In chapter 6, we review Crown and private purchases of lands between the Mohaka and Ahuriri blocks up to 1869. Crown purchases in the years following the Ahuriri transaction were often clandestine and provoked both growing resistance to further land sales and feuding between chiefs. The latter eventually broke out into armed conflict in 1857. After 1865, land transactions involved the operation of the Native Land Court, in contrast with the Crown's direct purchasing under the pre-emption provision in article 2 of the Treaty. The operation of the court in Hawke's Bay was interrupted by the fighting at Omarunui and Petane in 1866 and by the Crown's subsequent confiscation of the Mohaka–Waikare lands between the Ahuriri and Mohaka blocks purchased by McLean in 1851. These matters are reviewed in part III, and the passage of Ngati Pahauwera lands at Mohaka through the Native Land Court is dealt with in part IV.

CHAPTER 4

CROWN LAND ACQUISITION IN HAWKE'S BAY, 1840–51

4.1 INTRODUCTION

In this chapter, we discuss the background and acquisition of Maori land in Hawke's Bay by the Crown under the pre-emptive clause of the Treaty of Waitangi from 1840 to 1851, when Donald McLean acquired large tracts of land at Waipukurau, Ahuriri, and Mohaka. The Crown's land acquisitions have to be seen against a background of expanding occupation of territory by Pakeha pastoralists, which began in the Wairarapa in 1844 and spread into southern Hawke's Bay by 1849 and the remainder of the province by the 1860s. The pastoralists drove their sheep and cattle onto the natural tussock that covered much of the Wairarapa and Hawke's Bay and arranged 'grass money' leases with local Maori. These leases may have been valid arrangements in Maori custom, but they were illegal under English law since they infringed the legal theory, enshrined in the pre-emptive clause of the Treaty, that only the Crown could acquire land from Maori and grant title to private individuals. Although Governor FitzRoy temporarily relaxed pre-emption in 1844, Governor Grey restored it by his Native Land Purchase Ordinance of 1846, which prohibited settlers from purchasing or leasing Maori land. However, the ordinance was largely a dead letter as far as the Wairarapa and Hawke's Bay pastoralists were concerned. They continued with their relentless occupation of Maori land, pushing ever northwards as increases in their herds and flocks compelled them to find new pastures. Grey responded by trying to buy land for the Crown ahead of the spread of the pastoralists, as we shall see with the Ahuriri and Mohaka purchases of 1851.

It is tempting to treat these developments as a conflict between the Crown and the pastoralists. But in fact there was more cooperation than conflict, since both sides had the common aim of acquiring Maori land for colonisation as cheaply and as expeditiously as possible. There was little difference between the prices the pastoralists paid Maori for their 'grass money' leases and what they paid the Crown for occupation licences on Crown land under the wasteland legislation. With the latter, if the Crown put their land up for auction, the pastoralists could forestall rival bidders by purchasing the freehold of some or all of their runs. Under the Australian Waste Lands Act 1842 (which applied to New Zealand), this cost them £1 an acre, though the price for pastoral land was reduced to five shillings an acre by Grey's 1853 land regulations. As we detail below, this opened the way for a rash of purchases.

Despite this valuable concession, most of the pastoralists were not satisfied and they looked to an alternative method of getting Maori land even more cheaply: namely, by direct purchase, which was finally allowed in 1862, when the Native Lands Act of that year abolished Crown pre-emption. Then, when that Act was replaced by the Native Lands Act 1865, the pastoralists were able to convert previously illegal 'grass money' leases into leasehold or freehold titles under the Native Land Court system. In this chapter, we look in more detail at the different phases of Crown and private purchasing policy and practice, and we conclude the chapter with an account of Donald McLean's negotiations that led to the Crown's 1851 purchase of the Waipukurau, Ahuriri, and Mohaka blocks.

4.2 THE DEVELOPMENT OF CROWN POLICY ON THE ACQUISITION OF MAORI LAND

Before the Crown's acquisition of sovereignty in New Zealand in 1840, two contrasting views existed in Britain on the extent of Maori land interests and the necessity for their extinguishment. On the one hand, the view of the Aborigines Protection Society, the Church Missionary Society, and the influential 1837 House of Commons Committee on Aborigines in British Settlements was that Maori held a valid property right to all land to which they laid claim. Captain (later, Governor) Robert FitzRoy, who had visited New Zealand, told an 1838 House of Lords select committee that Maori owned every acre of land in New Zealand.¹ However, others expressed the belief that Maori could lay claim only to land they occupied or cultivated, and that the remainder should be considered 'waste lands'.

That the former school of thought prevailed in Colonial Office circles is evident in the instructions Lord Normanby gave Hobson on 14 August 1839, before Hobson set sail for New Zealand to secure from Maori a cession of sovereignty. Normanby believed that New Zealand should not be allowed to become 'yet another disastrous theatre of interracial conflict'. He directed that the rights of the indigenous people were to be safeguarded by the Crown exercising a pre-emptive right to purchase land and that a protectorate be established to scrutinise the Crown's acquisitions of land. Hobson was also directed to prevent Maori from being the unwitting authors of injuries to themselves by not purchasing any land that might be essential to their ongoing welfare.²

But, as was discussed in chapter 2, at the same time that Normanby was instructing Hobson to enter into 'fair and equal contracts', he was also expressing the view that land should be purchased as cheaply as possible and then onsold to settlers at a good profit in order to fund the colony's expansion. He reasoned that only a small initial expenditure would therefore be required to establish the colony and that the resale of land would make it self-financing, with the Crown able to take advantage of its monopoly position in the land market. Nor did

1. Document J10, p 34

2. Document 11, pp 8-19



Fig 3: Donald McLean, circa 1870s. Photographer unknown. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (G-5166-½).

Normanby see this as disadvantaging Maori; rather, he believed that much Maori land was of little value and that it would become useful only in the hands of the settlers. In turn, Maori would benefit from the establishment of an industrious settler population amongst them.³

Prior to the signing of the Treaty at Waitangi, Hobson had reassured the chiefs that the Crown's pre-emptive right over land purchases would protect their interests. But, as the Tribunal has noted in its *Report on the Orakei Claim*, the idea that pre-emption would be employed to finance colonisation was not communicated to the chiefs, and thus they received only half the story. As the Tribunal put it, had they been apprised of the Colonial Office's thinking, the likelihood of them agreeing to the pre-emptive provisions of article 2 of the Treaty 'would have been remote'.⁴ To further illustrate a certain economy with the truth, when collecting signatures in other parts of New Zealand, Hobson's emissary Major Bunbury informed Maori that pre-emption was designed to prevent them from selling too much land for too little. By contrast, he stated, the Queen could be relied upon to pay a 'juster valuation'.⁵ But it soon became apparent that Maori were much more likely to receive higher payments from private transactions, such as leases, than from Crown purchases.⁶

3. Document 110, pp 37–39

4. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: Brooker and Friend Ltd, 1987), p 201

5. Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830–1847* (Auckland: Auckland University Press, 1977), p 199

6. *Ibid*, p 205

This state of affairs was rendered even less in the favour of Maori by hardening imperial attitudes to Maori claims to ‘waste lands’. In July 1840, Governor Gipps of New South Wales observed that ‘uncivilised inhabitants of any country have but a qualified dominion over it, or a right of occupancy only.’⁷ Lord John Russell (Normanby’s successor as Secretary of State for the Colonies from 1839 to 1841) likewise expressed the view that imperial policy toward New Zealand accorded with the theories of Emmerich de Vattel – namely, that European countries had a right to assume the ownership of lands in the New World not settled or cultivated by indigenous inhabitants. This unsympathetic view of Maori claims to all land in New Zealand was given further impetus by the New Zealand Company’s vociferous complaints over the recognition of Maori land rights. When Commissioner William Spain questioned the validity of some of the company’s land transactions, it reacted by dismissing the Treaty and denying that Maori had a right to anything more than ‘a few patches of potato-ground, and rude dwelling-places’.⁸

Bolstered by the Wairau incident in 1843, where a number of settlers were killed, in 1844 the New Zealand Company succeeded in having a parliamentary select committee investigate its case. Under Lord Howick, the committee condemned the Treaty and found that the acknowledgement of Maori rights over New Zealand’s ‘wild lands’ had been ‘an error’.⁹ Russell’s successor as Secretary of State for the Colonies from 1841, Lord Stanley, resisted these attacks and maintained that Maori law and custom would continue to be respected, but in 1845 Stanley was himself succeeded by Lord Howick, who was elevated to the title of Earl Grey. As Ballara and Scott have put it, by 1846 ‘the philanthropy of 1837–1840 was at an end’.¹⁰ In 1845, Earl Grey told Governor George Grey that he did not believe that Maori owned the whole of New Zealand in 1840, and he argued that, when British sovereignty was declared, all areas not actually occupied by Maori should have been considered the property of the Crown. Earl Grey realised that the then-current state of affairs was impracticable to overturn, but he nevertheless informed Governor Grey that such a concept of waste lands should be ‘the foundation of the policy which, so far as in your power, you are to pursue’.¹¹

Governor Grey was all too aware that it would be impossible for the Crown in New Zealand simply to confiscate all land it regarded as ‘waste’ (a lesson he had learned from the unexpected difficulties in the Northern War), so in 1848 he instead proposed an alternative solution to Earl Grey. The governor told the secretary that, though there was land throughout New Zealand to which no Maori had valid claims, he was keeping land purchases so far ahead of the needs of settlement that the Maori vendors had not become aware of the potential

7. Sir George Gipps, on the Second Reading of the Bill for Appointing Commissioners to Inquire into Claims to Grants of Land in New Zealand, 9 July 1840, BPP, vol 3, p 185

8. Adams, p 183

9. ‘Report from the Select Committee on New Zealand’, 29 July 1844, BPP, vol 2, p 13

10. Document 11, pp 22–23

11. Document 110, pp 46–47

value of their lands. In this way, he was able to secure large tracts 'for a trifling consideration'.¹² In effect, therefore, by 1848 the Crown had finally settled on a policy whereby it reluctantly recognised the necessity of extinguishing Maori land claims by purchasing land throughout the whole of the country – but it would use its pre-emptive monopoly to ensure that in so doing it paid little more than a pittance.

In reality, however, Maori were already aware of the monetary value that Pakeha placed upon land, and they strongly objected to pre-emption, despite the Governor's insistence that it afforded them protection. Bowing to settler and Maori pressure in 1844, Governor FitzRoy had waived pre-emption and instead introduced a tax on land purchases. But the Colonial Office had frowned on this experiment, with Lord Stanley pointing out to FitzRoy that the whole point of pre-emption had been to keep land prices low and fund the colony through the resale of land to settlers. Now, Stanley observed, Maori would make 'exorbitant demands for their land'.¹³

When George Grey succeeded FitzRoy as governor in 1845, he wasted little time in restoring full pre-emption under his Native Land Purchase Ordinance 1846, which provided for heavy fines for those engaging in private land sales. Grey also abolished the office of the protectorate, putting the responsibility for protecting Maori interests in the hands of those officials effecting the purchases. He then set about purchasing land in the manner he later described to Earl Grey, making substantial acquisitions in Wellington, Wanganui, Taranaki, and Wairau – both to ease tensions in those places and to provide land for disgruntled settlers – and in the rest of the South Island, where he bought 34.5 million acres for a derisory £14,750 and provided a paucity of reserves.¹⁴

Thus, when the Crown came to consider purchasing land in Hawke's Bay, it was this policy which informed its approach. The man to whom the Crown turned to effect the acquisition of Hawke's Bay land was Donald McLean. A Scottish Highlander, McLean had arrived in New Zealand in 1840 and worked on a schooner and for a trader in the Auckland area before he was appointed a sub-protector in the office of the Protector of Aborigines in 1844. During his period around Auckland, he had gained a good knowledge of Maori language and protocol, for which he earned the respect of some Maori and which helped his attempts to mediate among Maori and between Maori and settlers. As the *Whanganui River Report* explains, it also 'stood him in good stead in negotiating land purchases' when, in 1848, he began to work for Governor Grey in such negotiations. In 1853, he was appointed the chief land purchase commissioner, and in 1856 Governor Gore Browne appointed him Native Secretary as well. McLean believed that Maori would 'rapidly adopt European ideas and institutions', and he encouraged the individualisation of Maori land tenure.¹⁵ However, not all of his purchasing

12. Document 11, p 23

13. Ibid, p 21

14. See Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 3, p 821; Alan Ward, *A Show of Justice* (Auckland: Auckland University Press, 1973), p 88

15. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), pp 130–131

tactics were transparent (by then, he had become involved in his own personal land acquisitions), and as Professor Alan Ward notes, some of the advice he tendered – such as that to Browne about the Waitara purchase in Taranaki – ‘brought disaster’.¹⁶ To explain how McLean found himself in Hawke’s Bay in 1850 it is first necessary to trace the development of the Crown’s interest in buying land there and in the Wairarapa through the second half of the 1840s. The pattern of Maori settlement in Hawke’s Bay in 1850 is shown in map 11.

4.3 CROWN INVOLVEMENT IN MAORI LAND IN WAIRARAPA AND HAWKE’S BAY

By the beginning of 1844, many Wellington settlers had become disgruntled with the lack of available land upon which to graze their flocks and herds, and had begun moving over the Rimutaka Range to the open grasslands beyond. There, they found Maori willing to lease runs to them, and by April 1845 there were already 12 stations and 40 or 50 Europeans in the Wairarapa. By 1849, there were 19 stations with over 100,000 acres being used for sheep and cattle runs, from which Maori received £800 per annum in rents. Although these runs were illegal under the Native Land Purchase Ordinance 1846, the terms of which had been broadened to encompass leases, the move northward into Hawke’s Bay was inexorable. In 1849, one JH Northwood secured a lease over some 50,000 acres from Te Hapuku and drove 3000 merino ewes up the coast to establish Hawke’s Bay’s first sheep station.¹⁷ Native Secretary Henry Tacy Kemp noted in 1849 that ‘the prevailing disposition of the natives on the coast is not to sell but to lease, and the squatting system seems to be fast extending’.¹⁸

In the meantime, the New Zealand Company had become interested in purchasing land in the Wairarapa, particularly in response to the settler pressure in Wellington. In 1846, William Wakefield, the principal agent of the company in New Zealand, asked Governor Grey for assistance in making such a purchase, and in 1847 Francis Dillon Bell was appointed to negotiate on the company’s behalf. However, Bell, who was accompanied by George Clarke junior, reported ‘violent and decided’ opposition from Maori to the idea of selling.¹⁹ This was largely because Maori were receiving such considerable sums on an annual basis from leasing land that they had no interest in selling it, even when warned that leasing was illegal. Grey wrote to the Wairarapa chiefs on 20 March 1847 threatening them that he would have the squatters removed if Maori would not sell. However, in the absence of any stronger action (such as prosecutions under the 1846 ordinance), the leasehold system continued regardless. Grey was simply reluctant to take any action against the squatters and, as we have noted, there was more

16. Alan Ward, ‘Donald McLean’, DNZB, vol 1, pp 255–258

17. Document 110, pp 59–61

18. *Ibid*, p 62

19. *Ibid*, p 67



Map 11: Hawke's Bay Maori settlement, circa 1850

cooperation than conflict between the Crown and the squatters in the acquisition of Maori land. We elaborate on this state of affairs as follows.

In his covering dispatch to the Secretary of State for the Colonies on the Native Land Purchase Ordinance 1846, Grey described its object as being 'to prevent irregular squatting throughout the country'. He added:

The Government do not propose, unless under some extraordinary circumstances, to attempt to dispossess any persons already in possession of depasturing or timber stations; but on the contrary, to secure to them all such advantages as it may be found expedient from the circumstances of this country to attach to a right arising from pre-occupancy. In the same manner, Government will afford every proper facility for the acquisition of new

stations; and it will at the same time take care, that equitable agreements are entered into with the true native owners.²⁰

It was evident that Grey did not intend to let his ordinance get in the way of pastoral interests, then or in the future. One of the squatters, Charles Clifford, said that Grey had given him the impression from a recent conversation that he was 'most favourable' towards them:

We are to hold runs by paying a fair annual rent or tax on the Stock to the Native owners and are to be secured in possession by the Government until such time as any person might wish to buy part of our runs at £1 an acre, when such part is to be put up to auction . . . All the details of the measure are most excellent. Justice is to be done to the natives – to us – and systematic colonisation in no ways interfered with.²¹

Rather than prosecute the squatters for occupying Maori land under the ordinance, Grey, and later his able lieutenant Donald McLean, merely used the threat of prosecution to impress upon Maori their need to sell land to the Crown. Thus, Grey wrote to Wairarapa Maori in March 1847:

My friends,

I have been told that you will not make any arrangement with the Government for the sale of your lands, although sufficient portions would be reserved for yourselves and your children for use. My friends, this is not right. Ample reserves shall be retained for you if you will sell your lands; but if you will not conclude such an arrangement, then I shall desire the Europeans to depart from your land, and shall put an end to the arrangements at present existing between you and them.²²

If the European squatters were sent away, their Maori landlords would lose their substantial rental income.

The income that Wairarapa Maori received from their 'grass money' leases encouraged them to demand that the Crown pay a higher price for their land. When McLean was sent to the Wairarapa in 1849 to renew negotiations to purchase land, he was told to use 'great discretion' in prosecuting squatters under the 1846 ordinance, since it was not the Government's intention to 'inflict greater injury upon any of the Squatters than may arise from the necessity for removing any obstacles . . . to a satisfactory adjustment of this difficult question'.²³ As O'Malley observed, the:

20. Grey to Gladstone, 27 November 1846 (as quoted in doc w2, p 26)

21. A G Bagnall, *Wairarapa: An Historical Excursion* (Masterton: Hedley's Bookshop Ltd, 1976), p 83

22. Grey to Wairarapa chiefs, enclosed in M Richmond to F D Bell, 20 March 1847 (as quoted in doc j10, p 69)

23. Domett to McLean, 29 September 1849 (doc j10, p 98)

desire not to offend the squatters through a rigorous enforcement of the provisions of the Ordinance contrasts markedly with the threatening manner in which it was used against Wairarapa Maori with a view to coercing them into selling their lands to the Government.²⁴

In the meantime, the New Zealand Company was not deterred by the ongoing determination of Maori to lease and not to sell. The company came to an agreement with the imperial government in 1848 under which the latter would purchase extensive districts in the Wairarapa and Hawke's Bay and on-sell portions to the company and its off-shoot, the Canterbury Association. FD Bell and HT Kemp were then instructed by the Colonial Secretary, Alfred Domett, to 'acquire the Wairarapa and Hawke's Bay Country'. It was hoped both that the squatters could be induced to move northward into Hawke's Bay and to take up runs on the newly purchased land there and that Wairarapa Maori would be induced to sell by the prospect of the immediate establishment of a large Church of England settlement (as well as by a payment of £5000 with £25 annuities to four 'principal Chiefs').²⁵ To that end, Colenso was approached in November 1848 by both Domett and Grey and asked to persuade the Hawke's Bay chiefs to sell. That, he refused to do, informing a meeting of chiefs at Puhara's village at Pakowhai on 22 December 1848 that they should never part with the whole of their land, but that, if they did part with some, they should keep their reserved land in one block, with good natural boundaries between themselves and the settlers.²⁶

As it happened, the New Zealand Company began to look more favourably toward Port Cooper (Lyttelton Harbour) in the South Island for its Canterbury settlement, given the existence there of a good harbour. Bell and Kemp persisted with their attempts to purchase land in the Wairarapa, but Bell conceded that the promise of the Canterbury settlement had been the only real inducement to get Wairarapa Maori 'to give up a large annual *rent* . . . for a comparatively moderate *purchase money*' (emphasis in original). Despite this, Bell encouraged the Wairarapa chiefs to sell by telling them that leasing yielded them but 'Paltry rents', whereas selling would gain them 'a good payment'. Such unscrupulous methods were insufficient to convince the chiefs, who responded in January 1849 by offering to sell one million acres for £16,000 (knowing that the Government's offer of £4000 was the equivalent of only four or five years' rental).²⁷

With this response, the Government's plans to purchase land in the Wairarapa were effectively shelved. The Crown switched its purchase operations to Hawke's Bay, aiming to get in before the arrival of squatters encouraged Maori there to demand high prices for their land. In April 1849, Hawke's Bay Maori dispatched two letters offering land for sale. One was from Tareha on behalf of 'the Principal talking Men'. It was translated as saying:

24. Document 110, pp 75–76

25. Ibid, pp 70–75

26. Document 11, pp 52–53; doc 110, pp 77–80

27. Document 110, pp 84–89

Our land we have consented to sell to the white people. . . . and do not throw overboard this our Letter because this seems to be what pleases you viz The consenting on our part for the selling of the land – Friend Gov Grey approve of this our request for White People for this our land and let them be Men of high principle or Gentlemen no people of the lower order – let them be good people – let them be the Colony of Missionaries [the Canterbury settlers] who [we] have heard . . . are coming out.²⁸

Thus, the Government had several additional reasons for preferring to acquire Ahuriri land. Not only would it undermine squatting in the Wairarapa, but some Ahuriri Maori were already willing to sell. Furthermore, Ahuriri had an attractive harbour and grasslands, the Maori villages and cultivations were mainly coastal, and the inland areas were perceived as unoccupied (map 11). There was no sizeable squatter population paying high rentals, as there was in the Wairarapa, and pastoralists could be offered secure title for their runs.

In September 1849, it was decided to send McLean to Hawke's Bay to purchase land. Several complications delayed his arrival until December 1850, but in the meantime the Hawke's Bay chiefs became quite excited about the prospect of a land sale and the influx of a settler population. Perhaps inevitably, the chiefs began to quarrel over land rights, and Te Hapuku seriously fell out with Tareha and Kurupo Te Moananui. By the time of McLean's arrival in 1850, when Te Hapuku called a great meeting at Waipukurau to greet him, the other principal chiefs were barely on speaking terms with him. Indeed, Colenso had to talk Te Moananui into attending.²⁹

It was into this environment that McLean stepped. Until that time, Hawke's Bay Maori had had comparatively little contact with European settlers, and next to no contact with Crown officials. Some, such as Te Hapuku and Renata Kawepo, had visited the Bay of Islands, and some of the chiefs had visited Wellington as early as 1840, but, for the most part, Ngati Kahungunu had been isolated from the development of the young colony and were about to enter a new world .

4.4 MCLEAN'S NEGOTIATIONS IN HAWKE'S BAY

Before he set out on his journey from Wellington to Hawke's Bay late in 1850, McLean was made aware of various Maori offers to sell land to the Crown. He wrote in his diary on 6 August 1849 that a man named Kerr had told him that Hawke's Bay Maori wished to sell their land and that this would not present a problem, since 'the natives in possession are the original and undisputed claimants of their districts'. The next day, McLean added that Te

28. Document J12, p 21. The letter was written on behalf of Karaitiana Takamoana, Kurupo Te Moananui, Puhara, Paora Torotoro, Te Whakaunua, Wiremu Wanga, and Hona Te Hopera.

29. Document 11, pp 54–56

Hapuku was one who had made such an offer, which augured well, since he was the 'original and undisturbed and undisputed possessor of his territory'.³⁰

However, despite McLean's confidence in the 'undisputed' claims of the various parties, the growing desire of Hawke's Bay chiefs to offer land to the Government led to burgeoning boundary disputes. In 1849, Colenso observed that these tensions were 'now everywhere (even in this far-off district) of constant occurrence', and that most arose 'from the desire of the Government to obtain their Lands, some few being inclined to sell, and the majority not to do so'.³¹ Much of the animosity was between Te Hapuku on the one hand, and Tareha and Te Moananui on the other. McLean's imminent arrival in Hawke's Bay exacerbated the tensions, and Colenso made constant reference in his diary at the time to a great agitation amongst the chiefs.³²

McLean reached southern Hawke's Bay via the Manawatu Gorge on 10 December 1850. The route of his Hawke's Bay journey over several months is shown in map 12. To help counter any potential resistance amongst Hawke's Bay Maori to land selling, he had with him a group of Ngai Te Upokoiri, whom he had schooled to argue 'admirably & conclusively in favour of having English settlers among them permanently'. They had, McLean explained, 'had several lectures from me that fortified them against all arguments the natives could adduce'. He also determined to 'take proceedings' against squatters, including one, HF Tiffen, who had just arrived with a flock of sheep, 'or else land purchasing is at [an] end'.³³

In the circumstances, the Government was less inclined to be tolerant of those squatting in Hawke's Bay, and it threatened proceedings under the Native Land Purchase Ordinance 1846. McLean told Tiffen that his lease of a run from the chiefs entailed 'various evils, besides operating against purchases of land by the government'. McLean stressed that Tiffen's lease was a 'violation' of the ordinance, which he was instructed to carry into effect. He instructed Tiffen to remove his sheep from the Ahuriri plains and added:

I have distinctly and publicly given notice to the Chiefs, that the Government will not sanction the leasing of land from the Natives in this District; therefore that they must consider your lease cancelled, as no flockholders can be permitted to run their sheep here until the Government arrangements for the purchase of land are completed.³⁴

Tiffen could safely ignore McLean's injunction in the knowledge that, as O'Malley put it, 'he and the other recent arrivals to Hawke's Bay could simply apply for depasturing licenses from the Crown once it had had formally acquired title to the lands'. McLean's object had been:

30. Document 11(1), pp 13–14

31. Colenso, journal, 10 May 1849 (as quoted in doc 11(1), p 54)

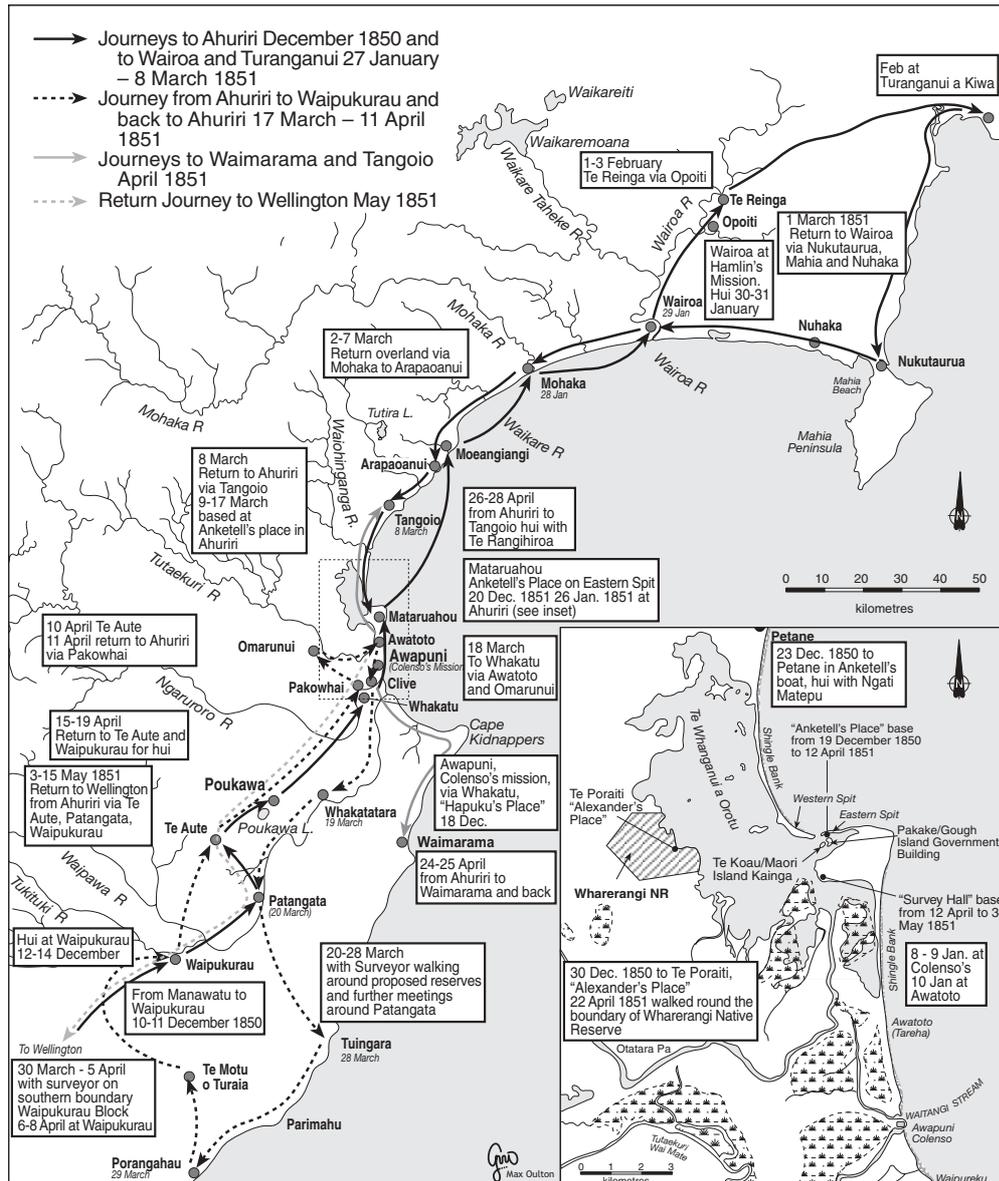
32. Document 110, p 111

33. Ibid, pp 112–113

34. McLean to Tiffen, 16 December 1850 (as quoted in doc 110, p 116)

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4.4



Map 12: Donald McLean's first journey, December 1850 – May 1851

to demonstrate to Ngati Kahungunu that the settlers would not be allowed to stay . . . unless they [Ngati Kahungunu] agreed to sell their lands to the Crown . . . McLean had no real desire (and had been instructed not to) cause any undue hardship for runholders, provided they did not present an obstacle to the Government's planned acquisition of the area.³⁵

35. Ibid, p117

4.4.1 The first Waipukurau meeting

To coincide with McLean's arrival, Te Hapuku took the initiative and organised a great hui to greet him at Waipukurau in December 1850. Initially, Te Moananui and Tareha were determined not to attend because of their differences with their rival, but eventually they relented. Three hundred Maori assembled at Waipukurau on 13 December 1850 for a private hui, and the following day they met with McLean. Although the principal object of the meeting was to discuss the transfer of Waipukurau to the Crown, Te Moananui also told McLean of his own desire for English immigrants to settle in the area, while Tareha offered words of encouragement to McLean: 'Come come come! This is now your land, from end to end. Tomorrow you shall see another end of the land – Ahuriri. Both Heretaonga [Waipukurau] and Ahuriri from end to end shall be yours.'³⁶

Such sentiments were echoed by Te Waka Kawatini, who said 'To-day you talk here[;] tomorrow you will see your other land at Ahuriri'.³⁷ By 16 December, McLean had begun negotiating with Te Hapuku for Waipukurau and had made arrangements for a general meeting of Maori at Ahuriri to discuss the sale of land there.

McLean's experiences at Waipukurau had convinced him that Te Hapuku was the paramount Hawke's Bay chief and the principal man for him to work with. Before departing for Ahuriri, Te Hapuku expressed his opposition to the sale of land there, but McLean remained hopeful that 'notwithstanding his great influence in some respects the several claimants are likely to carry the day against him'.³⁸ In fact, Te Hapuku did not oppose the Ahuriri transaction per se; he simply wanted to sell his own territory first. En route to Ahuriri, McLean visited Colenso at Waitangi, and the missionary pointed out to him that Te Hapuku was not the only important chief in the area. Indeed, Tareha was the man he would have to conciliate to secure Ahuriri.³⁹

4.4.2 The first Ahuriri meeting

On 20 December 1850, McLean attended a large meeting of some 400 to 500 Maori gathered on Mataruahou near the entrance to Te Whanganui-a-Orotu. Various speakers expressed their support for the transfer of the land: Paora Torotoro said 'come to your land[;] this is your land[;] we give it to you', while Tareha added 'Welcome welcome to your land[;] the water is ours[;] the land you see before you is yours'. When the proposal to sell was put to the assembled crowd by Te Morehu, 'they all replied "ae"'.⁴⁰ The following day, McLean filed his first official report to Domett, the Colonial Secretary, on his activities in Hawke's Bay.

36. McLean, journal (typescript), 14 December 1850, (as quoted in doc 110, pp 114–115)

37. Ibid, p 115

38. McLean, diary, 16 December 1850, (as quoted in doc 11(1), p 14)

39. Ibid, 18 December 1850 (pp 14–15)

40. McLean, journal (typescript), 20 December 1850 (as quoted in doc 110, p 118)

THE MOHAKA KI AHURIRI REPORT

4.4.2



Fig 4: Te Hapuku, circa 1870–78.
Photograph by Samuel Carnell.
Reproduced courtesy of Alexander
Turnbull Library, Wellington, New Zealand
(S Carnell collection, G-22221-¼).

He reported on the meeting just completed, along with his dealings at Waipukurau, and he said that the leasing of land from Maori in the district had been ‘entirely prohibited’ and that, while the chiefs had initially opposed the Native Land Purchase Ordinance, they had eventually agreed to abide by it. McLean requested that two surveyors (including his fellow Highland Scot, Robert Park) be sent to Hawke’s Bay to ‘mark off the Native reserves and cut the external boundaries, where there is no river or other natural feature to mark them’. With reference to both Ahuriri and Waipukurau, he stressed that:

the utmost expedition should be used to acquire this splendid district, which is peculiarly adapted for sheep grazing, and which would be readily taken up by the Wairarapa settlers, whose flocks are increasing so rapidly that they must shortly have an outlet for them.⁴¹

Two days later, McLean recorded in his diary that some Ahuriri Maori had requested him to accompany them over the block so that they could ‘point out some of their reserves demands which are rather on the increase’. Yet, despite the initial stage of the negotiations (there was no deed at that point, for example) and lack of a survey to finalise any boundaries whatsoever, McLean’s response was quite unsympathetic: ‘I will give them their tether to see

41. McLean to Colonial Secretary, 21 December 1850, AJHR, 1862, C-1, p 307 (doc J10, pp 119–120)

how far they will go[,] then I shall bring them to reason afterwards and hold them exactly to what they agreed to have at the public meeting.⁴²

On 28 December, McLean wrote once again to the Colonial Secretary and expanded on his reasons for wanting two surveyors. He reiterated his view that an expeditious purchase of Hawke's Bay land would be the means to entice squatters away from the Wairarapa and thus break down the system of leasing there. He added that it was vital first to begin survey work of Ahuriri, where, 'in the neighbourhood of the Ahuriri harbour, . . . settlers are most likely to form their earliest establishment'. Yet, this would provoke the intense jealousy of Te Hapuku, Tareha's rival, and thus a simultaneous survey of both Ahuriri and Waipukurau was necessary to resolve the difficulty. In the same letter, McLean went on to say that he could not convey an idea of what payment the Government should make for the land until the survey was complete (although he did feel that the proximity of the Wairarapa had given some Maori 'extravagant' ideas). However, he stressed that 'The acquisition of the Ahuriri country will of itself be of great importance, from possessing the safest, and I may say, only harbour on this side of the island, between Wellington and Tauranga [*sic*] on the North East Coast.' McLean observed that the interior block boundary was a sensitive one since it bordered on 'the Taupo country'. He would, he assured the Colonial Secretary, shortly contact 'the Taupo claimants' and meet them at that boundary, 'to prevent their raising fresh claims or future difficulties'.⁴³ While Ballara and Scott could find no record of such a meeting taking place, we note that McLean did write to Te Heuheu on 6 January 1851 informing the chief of his purchase activity, 'in case of opposition from him in the future'.⁴⁴

In any event, the Colonial Secretary replied on 11 January 1851 informing McLean that the Governor 'fully approved' of his proceedings and confirming that Park and another surveyor would be made available.⁴⁵ Lieutenant-Governor Eyre forwarded McLean's reports to Grey and commented that McLean's steps appeared to be 'most judicious' and that, if successful, would enable the Government to 'deal with the difficulties' in the Wairarapa by providing 'a locality to which the Wairarapa Settlers could remove their stock'.⁴⁶

42. McLean, journal (typescript), 23 December 1850 (as quoted in doc J10, pp120–121)

43. McLean to Colonial Secretary, 28 December 1850, AJHR, c-1, 1862, p 308 (doc 11(1), pp 16–17). In this letter, McLean's reference to the 'Ahuriri country' should not be taken as a direct reference to the Ahuriri block itself, although it undoubtedly included some if not all of that land. 'Ahuriri' often referred to a much wider area and was sometimes the equivalent of our current usage of 'Hawke's Bay'. For example, in his 21 December 1852 letter to the Colonial Secretary, McLean wrote that 'there is every probability that the central Ahuriri plains about the Waipukurau . . . will eventually become the site of a flourishing little English settlement': AJHR, 1862, c-1, p 307. In his correspondence and journal entries, McLean often referred to the general 'district' and did not distinguish between the respective blocks he was purchasing.

44. Document 11(1), p 17; McLean, journal (typescript), 6 January 1851 (as cited in doc J10, p 125). It seems that Te Heuheu replied to this letter. Colenso also recorded in his journal in February that a Taupo chief had come to Ahuriri to discuss the 'interior boundary' of the land to be sold: Colenso, journal, 13 February 1851 (as cited in doc J10, p 125).

45. Domett to McLean, 11 January 1851 (as cited in doc J10, p 123)

46. Eyre to Governor-in-Chief, 20 January 1851, (as cited in doc J10, pp 123–124)

4.4.3 Negotiations in Ahuriri and Mohaka

In the meantime, in early January 1851, McLean lobbied Takamoana and Tareha to agree to sell him the land around Te Whanganui-a-Orotu, including the island Mataruahou. McLean felt that the acquisition of this land was absolutely crucial to the future European settlement of the district. To this end, he gave One One, the elderly father of Tareha, some gifts. With an eye on other opportunities, he also entered into discussions at this time with other Maori to buy land between Porangahau and Castlepoint. Ahuriri Maori, for their part, waited impatiently for the arrival of the surveyors. On 13 January, McLean noted a 'great anxiety being manifested by all the tribes, and sub-tribes, to sell their several districts of land, extending North and South from this place'.⁴⁷

On 16 January, McLean held further discussions with Tareha concerning Mataruahou, which, although the chief had not yet agreed to sell, McLean believed he would 'soon do so'. Te Hapuku came to see him also and by contrast McLean was able to record that he was:

acting precisely as I have directed him; that is, he goes about negotiating, and arranging with his tribe, for the sale of more land; and to-day he tells me that he has obtained a very large, splendid district, including the best grazing land, at Heretaunga; so that great progress is being made in the negotiation for acquiring the whole of this country.⁴⁸

McLean was thus apparently interested in buying a considerable quantity of land in Hawke's Bay. It would certainly be fair to say that the retention by Maori of a significant patrimony was not uppermost in his mind. He told the Colonial Secretary on 23 January that some of the most desirable parts of the Ahuriri block were the lands around the harbour and some 'belts of timber' (Puketitiri) that local Maori wished to retain. These, he argued, the Crown should endeavour to purchase, 'even at a higher price than is usually paid for waste lands'. Moreover, he wrote in the same letter:

To prevent the expense of further negotiations, and obviate the difficulty of hereafter acquiring land when its value is enhanced by the location of English settlers, I shall act until further orders under the impression that it is the desire of the Government to acquire, consistently with a due regard to the interests of the Natives, as great an extent of land, especially between this and the Wairarapa, as it is possible for me to purchase.

He also wrote (and again here his reference appears to be to both Waipukurau and Ahuriri): 'From the desire by several parties . . . to obtain sheep runs for which this country is peculiarly adapted, I have reason to expect that in a few years a considerable revenue may be realized from the Ahuriri.'⁴⁹

47. McLean, journal (typescript), 1–13 January 1851 (as cited in doc J10, pp 124–126)

48. Ibid, 16 January 1851 (p 126)

49. McLean to Colonial Secretary, 23 January 1851, AJHR, 1862, c-1, p 309 (as cited in doc J10, pp 126–128)

On 27 January, McLean departed for Mohaka to discuss the purchasing of land there with Paora Rerepu. He carried on to Turanga and, while there, learned of the surveyors' arrival at Ahuriri. He returned south, stopping for further negotiations in Mohaka and Waikare. (The discussions concerning the Crown acquisition of the Mohaka block in 1851 are outlined in chapter 11.) McLean returned to Ahuriri on 8 March 1851, en route having apparently gained an extension to the Ahuriri block of several thousand acres towards the upper Mohaka River. At that point, Park commenced work on the Ahuriri survey, and McLean and the second surveyor, Pelichet, headed south to survey Waipukurau.⁵⁰ On their way, McLean had another 'long korero' with Tareha about selling Mataruahou, and he also attempted to disabuse the chief of his ideas about what had been paid for land in Taranaki.⁵¹

On 14 April, McLean informed the Colonial Secretary that, barring native reserves, both surveys were complete.⁵² On the very same day, the Colonial Secretary wrote to him informing him once more that the Governor was 'entirely satisfied' with his course of action and asking him to 'ascertain as soon as practicable, the lowest price which the Natives will take for their land' and to report on this by the beginning of May.⁵³

4.4.4 The second Waipukurau meeting

McLean held a 'grand meeting to discuss the price of te Hapuku's block' (Waipukurau) at Te Aute on 17 and 18 April 1851. Those assembled asked for a sum of as much as £20,000, which McLean rejected (believing they had 'concerted well together'). He offered £3000. One chief named Wiremu, however, pointed out that small spots leased to whalers already brought them 'hundreds of pounds'. Te Hapuku said that he thought the English were 'stingy & hard'. He told McLean:

I once offered to help you in getting the Wairarapa and in purchasing more land in the district, but I was wrong and I now feel sorry that I have done so. I quite feel and mihi with the people of Wairarapa they get a thousand [pounds] every year for their land and I am only offered £3000 altogether for mine, it will not satisfy my tribe.⁵⁴

McLean argued that the land would acquire real value only through the placement of industrious English settlers upon it. Maori knew, however, that they could continue to lease land to runholders for good sums, and McLean – conscious of this – emphasised that leasing would no longer be tolerated.

McLean reported to the Colonial Secretary on 9 July 1851 that, although he had strenuously made the point that leasing would not continue, he had at the same time argued that an end to

50. Document J10, pp 128–129

51. McLean, journal, 17 March 1851 (as quoted in doc J10, p 129)

52. McLean to Colonial Secretary, 14 April 1851 (as cited in doc J10, p 130)

53. Domett to McLean, 14 April 1851, AJHR, 1862, C-1, p 311 (doc J10, pp 130–131)

54. McLean, journal, 17–18 April 1851 (as quoted in doc J10, pp 131–133)

leasing would be a small price for Maori to pay for the benefits they would derive from selling. A sale would, he had told them, 'be the means of gradually introducing a numerous English population, who would diffuse wealth and prosperity among them'. Furthermore, their reserves would be safeguarded and, even if the Government onsold the land at a much higher rate, the net benefit was undoubtedly theirs. Te Hapuku and his followers eventually dropped their demand to £4800 – 'a sum which they earnestly expect to receive' – and McLean felt that this should be granted in order

to ensure the co-operation of Te Hapuku in purchasing the country from Hawke's Bay to Wairarapa, as he certainly appears to be not only the cleverest, but the most influential and powerful Chief in that part of the island, whose co-operation will be found of great value and importance to the Government.

McLean also noted at this time that Wairarapa settlers were already planning to move into Hawke's Bay and take up land in the Government's new purchases, which he felt was proof of his success in breaking down illegal leasing in the Wairarapa. McLean also revealed a philosophical as well as a pragmatic objection to the leasing – he said it was 'a system so injurious to the welfare of the community at large' and 'in every way repugnant to the independent feelings of an Englishman'. McLean felt that Maori were not improved by leasing and that it made them 'idle and dissolute'.⁵⁵

4.4.5 The second Ahuriri meeting

On 19 April 1851, McLean returned to Ahuriri and, accompanied by Maori, walked around the boundaries of the Wharerangi reserve. He understood that Ahuriri Maori were congregating for a meeting to discuss a price for the block. However, on 23 April he learnt that a 'Taupo party' were on their way to Ahuriri to dispute Tareha's right to sell an inland portion of the block west of Titiokura. By 25 April, this 100-strong Ngati Hineuru group led by Te Rangihiroa had reached Tangoio, and Ahuriri Maori were busily 'mustered with arms' to oppose them. McLean intervened by telling the Hineuru party to return 'to their country & not to interfere . . . with land if it was not their own property', and he reproved the Ahuriri Maori for resorting to arms. Nevertheless, he invited Te Rangihiroa and his people to state their claims, and it seems that they had the opportunity to do so two days later. On 30 April, McLean also had a 'long talk' about the boundaries with a Taupo chief named Poihipi.⁵⁶

On 30 April, Maori began gathering at Awapuni for a large meeting to discuss the price to be paid for the Ahuriri block. McLean arrived on 1 May and the following day Park and Pelichet arrived with a sketch map of the blocks for sale, after which the meeting began.

55. McLean to Colonial Secretary, 9 July 1851, AJHR, 1862, C-1, pp 311–312 (doc J10, pp 132–133)

56. McLean, journal, 23, 25, 28, 30 April 1851 (as quoted in doc J10, pp 135–136)

Several Maori began by asking that the land around the entrance to the harbour (the Spit and Mataruahou) be reserved and that £4500 be paid for the rest. McLean responded that the land that they offered was 'very poor' and the price 'enormous', and that they were 'foolish' to make such demands. He reiterated his requirement that the harbour lands be included. This tactic worked, for Tareha presently stood and offered the whole of the block, including the Spit and Mataruahou, for £4000. Having gained this important concession, however, McLean was nevertheless in no mood to be generous:

I felt although my instructions restrict me from fixing the terms of payment that with a fickle people like these natives liable to sudden changes and influences that it was best to name a sum at once and I replied to Tariha by telling him that Mr Park had reported the block to me that they had gone round as very hilly broken & poor free of wood and available land which he would not value at more than £500 – that they had now certainly agreed to sell more valuable spots therefore as I was anxious to be off in the morning I would name £1500 as a good and ample price for their land.

Thereupon, the assembled Maori:

almost left the ground evidently disgusted with the smallness of the amount[;] others endeavoured to keep them together[;] the Chiefs felt very much downfallen and a breaking up of the negotiations was threatened. Mr Park was reflected on for undervaluing their land and they were all in a sad state for some time I told them coolly that my power for granting prices for land were limited that I could and would not exceed what I mentioned, and if they were displeased I could not do more than leave them to think over the matter that as yet they had not sold the most valuable part of their land and that the price was considering future advantages a really handsome one.⁵⁷

Various historians took the same view of this. Tony Walzl described McLean's attitude as 'take it or leave it'.⁵⁸ Ward et al thought his approach was based on a 'deliberate disparagement of the quality of the land'.⁵⁹ O'Malley considered it little short of an 'ultimatum', and Ballara and Scott felt that McLean took advantage of the position of chiefs such as Tareha for whom cultural imperatives necessitated that they accept the offer and thereby emulate their rival Te Hapuku in his settled transaction.⁶⁰ Unsurprisingly, McLean's offer was accepted:

I was getting [up] after some disputing with the natives to leave the tent when the chiefs stopped me and after some deliberation among themselves they agreed to close the bargain

57. Ibid, 30 April, 1, 2 May 1851 (pp 137–138)

58. Document F9, p 19

59. Alan Ward, Grant Phillipson, Michael Harman, Helen Walter, 'Historical Report on the Ngati Kahungunu Rohe', Crown-Congress Joint Working Party, June 1993, p 131

60. Document J10, p 139; doc 11(1), p 20

and I suggested that a disputed portion of the interior should be left out of the block which has been accordingly done, and a question which will contribute greatly to the welfare of the Island has been satisfactorily settled and a good prospect for extinguishing Wairarapa and other claims is fairly opened up.⁶¹

The purchase price of £1500 was indeed a bargain, equating to a little over a penny an acre for the block's 265,000 acres. Regardless of the respective qualities of the two blocks, it seems clear that Ahuriri was treated differently from Waipukurau. McLean evidently saw the need to offer Te Hapuku special treatment in order to secure his services in acquiring other lands. McLean may also have felt that £4800 was more than he wanted to pay for Waipukurau and thus he determined to take a firm line on the amount paid for Ahuriri. In this, he exceeded his brief from the Governor, which was merely to ascertain the lowest price that local Maori would take for their land and then to report back. Instead, he forced a low price upon them and closed the deal.

4.5 MCLEAN'S TRANSACTIONS ARE COMPLETED

Having 'settled all the business with the natives' on 2 May 1851, McLean left Awapuni for Wellington the following morning. Park stayed on to complete his survey work, and on 7 June he sent McLean the following report on Ahuriri:

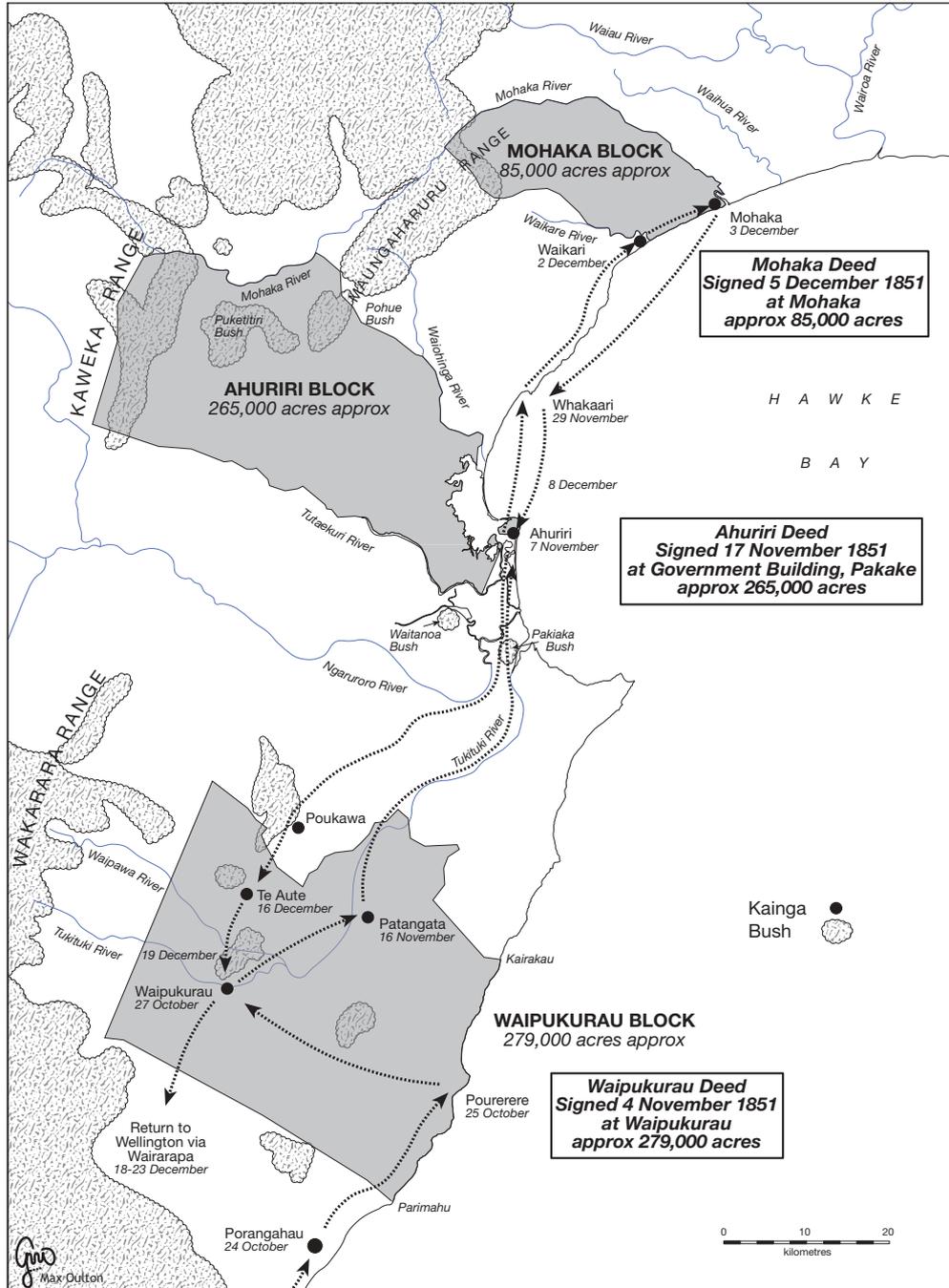
This block is very much broken by hills and streams and is principally covered with fern, but wherever the fern has been burned off, or along the footpaths, the grass springs up abundantly, and it only requires sheep and cattle to make it a rich pastoral country; there is little or no wood towards the sea, but inland there are some fine groves of excellent timber.

Park went on to say that the most valuable part of the block was the harbour and that he could not imagine a finer site for a settlement than this district.⁶² McLean's highly negative assessment of the block during the negotiations contrasted with this later report from Park, which accentuated the positive.

On 25 July 1851, Park informed McLean that Ahuriri Maori had been complaining to him about the low price to be paid for the block. He wrote, 'I think however that you might safely give them £500 more making £2,000 altogether as having seen more of the land I think it

61. McLean, journal, 2 May 1851 (as quoted in doc J10, p 139)

62. Park to McLean, 7 June 1851, AJHR, 1862, C-1, p 314. Once again, it would seem that the 'district' referred to by Park was both the general area of Hawke's Bay encompassed by the Ahuriri and Waipukurau blocks and the 'Ahuriri plain' in between. For the debate on whether Park and McLean considered the transaction included the harbour itself, see Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995* (Wellington: Brooker's Ltd, 1995), pp 44-45.



Map 13: Donald McLean's second journey, October-December 1851

is worth that'. Sensing its potential value, in the same letter Park even inquired about purchasing 50 acres at the southern end of the harbour himself once the transaction had been completed.⁶³ In a further letter in September, he asked McLean to secure a 'decided bargain' for him.⁶⁴

McLean thereafter suggested to the Colonial Secretary that Park be instructed to lay out a town and suburban allotments.⁶⁵ After confirmation from the Executive Council that this work should commence immediately, Park was notified accordingly on 22 September 1851.⁶⁶ In November, Park proposed laying out a town on the North Spit, with more town lots on Mataruahou and suburban lots around the harbour.⁶⁷ Plans for a township were thus well advanced not only before McLean had paid the first instalment for the land but even before the deed for the block had been signed.

In the meantime, the Colonial Secretary informed McLean that his proposed first instalments for each of the Waipukurau, Ahuriri, and Mohaka blocks had all been approved (map 13). He added:

It is unnecessary to give you any further instructions, than that you will be good enough to proceed with as little delay as possible to Ahuriri, distribute the abovenamed sum to the Natives to whom it is due, and as soon thereafter as practicable, enter into negotiations for the purchase of the districts intervening between and lying at the back of the blocks of land already bought. Your former representations on the subject lead to the expectation that you will be able to effect these purchases at a less cost, comparatively, to Government than in the last Instances.⁶⁸

McLean departed for Hawke's Bay at the end of September 1851 carrying £3000 in gold sovereigns. En route through the Wairarapa, he made a point of displaying the money to the chiefs there as well as telling both Maori and squatters to relinquish their leases. His tactics seem to have had the desired effect, for by the end of December 1851 he was able to report that he had preliminary negotiations to buy more land in both Hawke's Bay and the Wairarapa.⁶⁹

By 27 October, McLean and his party, which included the Wellington Te Atiawa chief Wi Tako, arrived at Waipukurau. By 3 November, those interested in the Waipukurau block had all assembled and McLean wrote out the deed of sale, which transferred approximately 279,000 acres to the Crown. The next morning, the deed was signed by 377 Maori. Apparently, since the Governor had agreed to the price they had named, an extra block was at

63. Park to McLean, 25 July 1851 (as quoted in doc J10, pp 142–143). This presumably included the locality in Napier known as Park Island.

64. Park to McLean, 6 September 1851 (as quoted in doc J10, p 143)

65. McLean to Colonial Secretary, 16 September 1851 (as quoted in doc J10, p 144)

66. Domett to Park, 22 September 1851 (as cited in doc J10 p 144)

67. Park to Colonial Secretary, 5 November 1851 (as quoted in doc J10, p 145)

68. Domett to McLean, 29 September 1851 (as quoted in doc J10, 146)

69. Bagnall, pp 92–95; McLean to Colonial Secretary, 29 December 1851, AJHR, 1862, c-1, p 316 (cited in doc J10, pp 147–148)

this point offered to McLean. McLean deemed it not 'prudent to urge the point, leaving it more to their generosity'. This offer may, however, have been a result of McLean 'telling' Te Hapuku on 29 October that the chief should give 'an additional tract' since the Governor had 'so handsomely agreed to give him the price he asked for his land'. In any event, the following day McLean distributed the money. After dealing with the claims of certain chiefs (which presumably totalled some £80), he paid the balance of the £1800 in £9 downpayments to each of 191 hapu. He also paid two Wairarapa chiefs £100 in order to satisfy their claims to Waipukurau, and then paid 'considerable sums' to various chiefs of Ngai Te Upokoiri, perhaps as payment for their earlier assistance in his preliminary negotiations with Hawke's Bay Maori.⁷⁰ As noted previously, we do not discuss the Waipukurau purchase in detail in this report since it is well to the south of the Mohaka ki Ahuriri inquiry area.

McLean moved on to Ahuriri and, on 17 November 1851, the deed transferring the Ahuriri block – which covered approximately 265,000 acres – to the Crown was signed. The details of this transaction are reviewed in the next chapter. On 5 December 1851, McLean completed his third major transaction in Hawke's Bay: the transfer of approximately 85,000 acres in the Mohaka block to the Crown. We review the Mohaka purchase in chapter 11.

4.6 EPILOGUE

McLean's purpose in purchasing large tracts of Hawke's Bay land was to curb the uncontrolled expansion of pastoral holdings on lands leased from Maori. Reflecting on his tactics in an address to the New Munster Executive Council in May 1852, McLean said:

When I first visited Hawkes Bay the Natives were fully debating the advantages of leasing their land as compared with the absolute sale of it, and I found it necessary to convince and assure them that no leasing should for the future be sanctioned [and] that a law which I translated, and explained to them [the Native Land Purchase Ordinance 1846] had been passed to stop such proceedings and that the only legitimate means by which they could realise revenue from their waste lands would be by disposing of them to the Crown . . . steps [were] taken to prevent parties from entering into any arrangements excepting through the Agency of the Government for the occupation of land at Hawkes Bay and this opportune interference while several flock-owners were preparing to go there has entirely prevented the Wairarapa system of squatting from extending so far and it has also been instrumental in securing to the Crown a property of upwards of 600,000 acres in that valuable and fertile district.⁷¹

70. McLean, journal, 27, 29 October, 3, 4, 5 November 1851 (as quoted in doc J10, pp 148–150). Dean Cowie notes that the extra payments meant there was no money to pay a tribe that had missed out on the original distribution, but that McLean assured Te Hapuku that they could be paid out of the next instalment: see doc J12, p 33.

71. Executive Council, minutes, 6 May 1852 (as quoted in doc J10, p 168)

THE MOHAKA KI AHURIRI REPORT

4.6

Having reduced the rental income of Wairarapa Maori by facilitating several squatters to move to Hawke's Bay, McLean was then able to threaten them that he would apply the 1846 ordinance to the remainder of the squatters. This persuaded them to start selling land to the Crown, and within 12 months McLean had purchased 1.5 million acres, nearly half of the Wairarapa.⁷²

72. Document J10, p170

CHAPTER 5

THE AHURIRI TRANSACTION

5.1 INTRODUCTION

In this chapter, the focus is on the grievances set out in the Wai 400 claim made on behalf of various hapu of Ngati Kahungunu, loosely described as Nga Hapu o Ahuriri. In the first part of the chapter, we continue the narrative of Donald McLean's purchase of 265,000 acres in the Ahuriri block in 1851, review subsequent Maori protests, including that of Ngati Hineuru, and outline the fate of the 'reserves' within the Ahuriri block. In the rest of the chapter, we review claimant and Crown submissions and discuss the various issues raised in the Wai 400 claim.

5.2 THE SIGNING OF THE AHURIRI DEED

On 7 November 1851, McLean arrived at Ahuriri to find Maori slowly gathering for the deed signing. He understood that they were happy with the £1000 first instalment they were to receive, but he heard from Colenso that they had doubts about selling the whole of Mataruahou and were interested in retaining some reserves on the island. Colenso had also suggested to them that they might have a clause inserted in the deed giving their vessels free rights to enter and leave the harbour.¹ McLean met with Tareha and Te Moananui on 12 November to discuss the issue. Apparently, they were talking about 'relinquishing their reserves or what they wished to be reserved on the Mataruahou Island'. To McLean's surprise, 'they were very reasonable much more so than during my former visit', which attitude he attributed to the 'good advice' that they had received from Wi Tako, who had accompanied him on his journey.²

The next day – 13 November – McLean heard complaints from the Tangoio people, who felt that they should receive the whole of the purchase price of £1500. He informed them that he could not 'alter the engagements with them' and wrote two days later that 'the Tangoio people . . . are a very troublesome lot to deal with more so than any of the rest'. He conceded, however, that 'their discontent has probably arisen from not having been consulted in the sale during its first stages'.³

1. McLean, journal, 11 November 1851 (as quoted in doc J10, p 151)

2. Ibid, 12 November 1851 (p 151)

3. Ibid, 13, 15 November 1851 (p 152)

On 14 November, McLean recorded:

The draft of the Ahuriri deed [was] submitted to the natives who agreed to all the conditions. I had some difficulty in getting them to assent to a reserve of 500 acres at Puketitiri as they wanted several thousand acres. After some long talking and very proper enquiries and arguments advanced I got through the several clauses of the deed and had a busy day with the natives since the morning at the survey office.⁴

Finally, on 17 November, the deed was signed. McLean wrote that 'the natives appeared in excellent spirits excepting the Tangoio people who are a discontented set'. Their chief, 'Te Hokomo', wanted a tenth share of the £1000 downpayment all for himself, and in the end Te Moananui let him have this by relinquishing his own £100 share. McLean made a speech telling the assembled Maori that, because they were 'on the decline', the sale would be 'the means . . . of uniting them with a stronger power that would under the mild dispensations of our laws befriend and protect them'. After the deed was signed, McLean handed over £150 to the Tangoio Maori, £150 to One One, and seven £100 lots to 'the heads of tribes'.⁵ The following day, McLean noted that the 'natives are busy distributing their money' and observed that 'the storekeeper will do well'.⁶

It seems that McLean made a translation of the deed into English on 18 November and forwarded it to the Colonial Secretary the next day. This translation rendered into English what McLean felt had been transacted in Maori. There is some doubt as to whether the extant translation is in fact McLean's or a later one made by a translator in the Native Department named William Baker in the early 1860s. O'Malley argued that, in the absence of conclusive proof that it was Baker's translation, it should be assumed to be McLean's.⁷ In 1948, while considering a Maori petition concerning Te Whanganui-a-Orotu, a judge of the Maori Land Court criticised the translation as 'incorrect and very untrustworthy'.⁸ The plan of the Ahuriri block has been redrawn in map 14.

The deed was signed by Tareha and 299 others. Nine witnesses also signed, including the surveyors, Park and Pelichet, and Wi Tako. The deed's preamble stated that it contained 'the full consent of us the chiefs and all the people of Ngatikahungunu at this meeting assembled whose names are hereunto subscribed on behalf of ourselves our relations and all our descendants who shall be born after us'. The deed described the two-stage payment process and

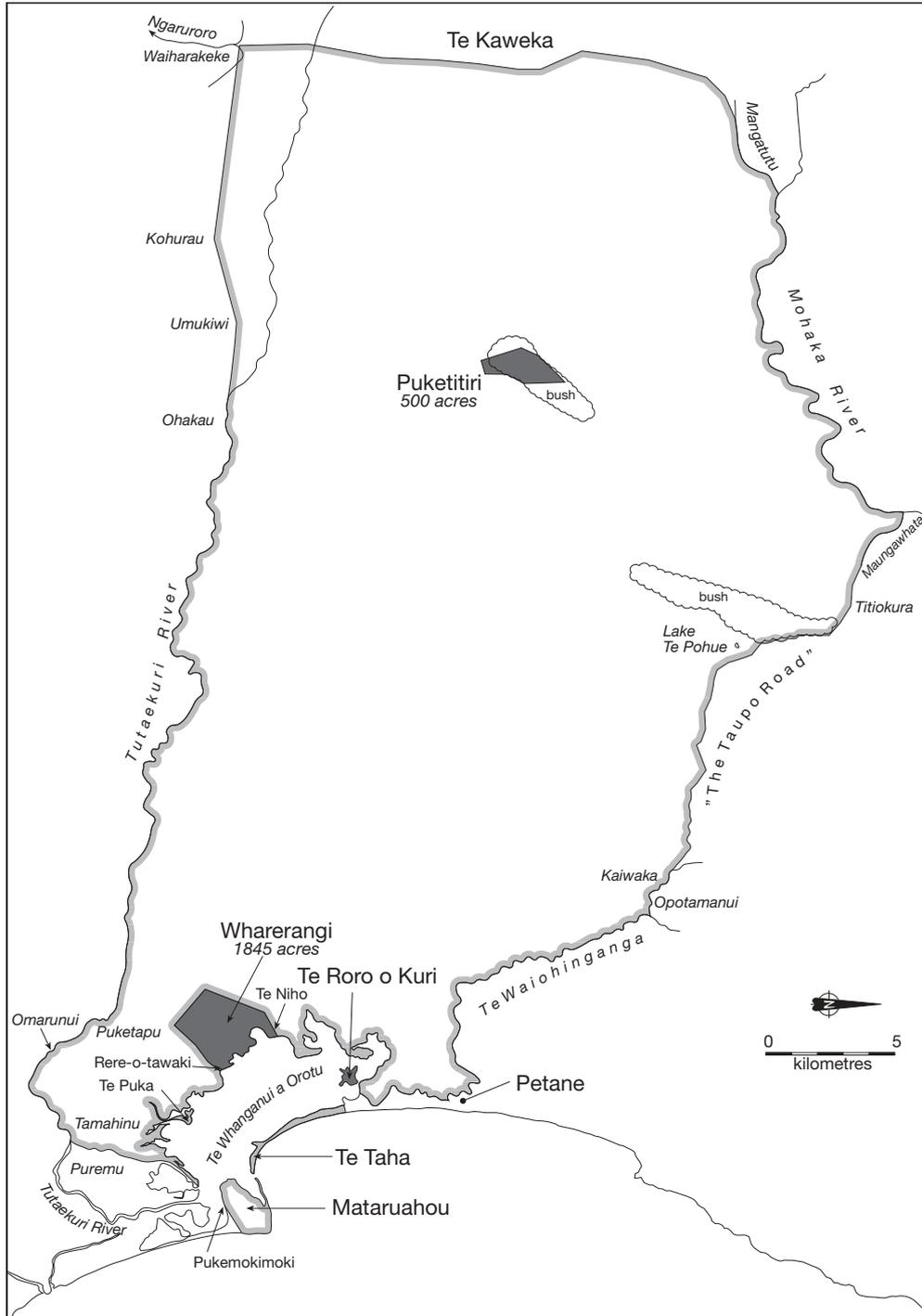
4. McLean, journal, 14 November 1851 (as quoted in doc J10, p 152)

5. Ibid, 17 November 1851 (p 153)

6. Ibid, 18 November 1851 (p 154)

7. Document J10, pp 155-156

8. 'Report and Recommendation on Petition No 240 of 1932, of Hori Tupaea and Four Others, Praying for Relief in Connection with Whanganui-O-Rotu (or Napier Inner Harbour) and their Right of Property Therein', 23 June 1948, AJHR, 1948, G-6A, p 15 (as quoted in doc J10, p 156)



Map 14: Plan of Ahuriri purchase, 17 November 1851

outlined the block's boundaries. It was noted that the Spit and Mataruahou were included, save for Pukemokimoki (an area of five acres) and 'the small piece of land where the children and family of Tariha are buried for as long as the land remains unoccupied by Europeans'.⁹ This temporary provision – described by O'Malley as 'curious to say the least' and by Ballara and Scott as 'particularly odd' – is presumably a reference to Te Pakake, the scene of the 1824 battle with Waikato.¹⁰ The three principal reserves specified were Te Roro o Kuri (an island in Te Whanganui-a-Orotu of some 70 acres), Wharerangi (1845 acres), and 500 acres at Puketitiri, with a 'right to snare birds throughout the whole of the forest of Puketitiri'. The reserves altogether totalled less than one per cent of the purchase area, with the deed also stating that roads could be laid through them.

The deed also stated that Maori would have an equal right with Pakeha to fish and take shellfish and 'other productions of the sea', and that Maori would have areas of the town set aside as canoe landing places. In due course, half an acre was reserved on the Western Spit for this purpose. In the deed, the inland boundary of the block ran along the top of the Kaweka Range, whereas in his report to McLean of 7 June Park described it as running along the eastern base of the mountains. Ballara and Scott noted that there was no specific record of an agreement to shift this boundary. In any event, McLean had not met with Ngati Tuwharetoa or Ngati Hineuru representatives since April. Another feature of the deed was a note following the description of the boundaries that said that, within those limits, 'we will not permit any Native to molest the Europeans'.¹¹

On 29 December 1851, McLean officially reported to the Colonial Secretary on his three Hawke's Bay purchases. With respect to Ahuriri, he commented:

Tareha and other Chiefs at Ahuriri were anxious to have several portions of valuable land reserved for them on both sides of the Harbour, especially on Mataruahau Island, which they had always considerable reluctance in transferring, from a fear that they might be eventually deprived of the right of fishing, collecting pipis and other shell-fish which abound in

9. H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printers, 1878), vol 2, pp 488–492

10. Document J10, p 158; doc 11(1), p 26. Te Pakake was an island inside the Ahuriri Heads. Neighbouring Pakake Island was Te Koau, on which there may have been a temporary pa, mainly used for fishing excursions: doc A12, p 125. However, there is great confusion among various sources concerning which island is which and between the Maori and English names of the two islands. According to Patrick Parsons, Pakake Island should not be confused with Te Koau or with Gough Island, to the north-east: doc D4, p 14. A map in the *Te Whanganui-a-Orotu Report 1995* supports this description: Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995* (Wellington: Brooker's Ltd, 1995), fig 15. However, Mills identifies Pakake Island as Gough Island and has Te Koau, or Maori Island, in the southern position, the opposite to Parsons' information: Ian Mills, *What's In a Name? A History of the Streets of Napier* (Napier: Thinker Publications, 1999), p 87. In Alfred Domett's 1854 plan, only one island is shown, a situation which may have resulted from an accumulation of silt joining the two islands (on his plan of the island, the two names, Gough and Maori, appear). We have depicted both islands in map 15, since this is what the historical records usually show. For the sake of clarity in this report, and given the impossibility of absolute certainty, we will refer to the area reserved as Pakake and depict it as the north-eastern of the two islands.

11. This summation of the contents of the deed is taken from document J10, pp 157–160, and document 11(1), pp 24–26.

the Bay; these rights, so necessary for their subsistence, I assured them they could always freely exercise in common with the Europeans, and in order that they should be fully satisfied on this point a clause has been inserted in the deed to that effect.

With reference, however, to the reservations for fishing villages and other purposes, I objected to all of them excepting one pa, in the occupation of Tareha, where some of his relatives are buried, and which he is to retain until such time as the Government may hereafter require the spot for public improvements, such as deepening or reclaiming some portions of the harbour.

In lieu, however, of these reservations so much demanded by the Natives, and which would materially interfere with the laying off a Town, I proposed to Tareha that he, as the principal Chief, on relinquishing all claims to such spots, should have a town section granted to him in any place he might select on the North Spit of the Harbour, which he has agreed to accept, and I hope that His Excellency will approve of this arrangement; I also informed the Chiefs that His Excellency had instructed public reservations to be made, which would most probably include a site for a church, hospital, market-ground, and landing place for their canoes, and that every facility would be afforded them of re-purchasing land from the Government.

With respect to all three Hawke's Bay transactions, McLean wrote in the same report:

The various questions of boundaries, Native reserves, price of land, and other details, had been so frequently fully discussed, and all other arrangements and conditions inserted in the deeds of sale were easily understood, and their importance as binding treaties fully comprehended, and readily subscribed to by the great majority of the claimants, whose conduct at the several meetings was marked with the utmost regularity and propriety.

I need not allude to the various advantages of these purchases further than to state that they secure to the Government and the colonists a permanent interest in the most valuable and extensive grazing and agricultural districts in the North island of New Zealand; the best – indeed I may say the only comparatively safe harbour from the Port of Wellington to the 37th degree of latitude on the North-east Coast of the Island; the best position for forming a new township, from having, in contra-distinction to the other settlements, a large extent of back country to support it . . .¹²

The arrangements for Tareha's personal town section, which was provided as compensation for a lack of reserves 'so much demanded by the Natives' around the harbour, were made with the chief quite independently of the rest of the owners. O'Malley felt that this was 'hardly in accordance' with McLean's duty to scrupulously fulfil the terms of the Treaty of Waitangi, while Ballara and Scott described it as a 'bribe'.¹³

12. McLean to Colonial Secretary, 29 December 1851, AJHR, 1862, C-1, p 316 (doc J10, p 167)

13. Document J10, p 161; doc 11(1), p 30

5.3 COLLATERAL ADVANTAGES

As can be seen, McLean informed the chiefs that land would most probably be set aside for a hospital and other public facilities. In other words, some mention was made of the collateral advantages that would likely flow to Ahuriri Maori as a result of their selling of land to the Crown for Pakeha settlement. Specifically on this subject, and shortly before our hearing of the Ahuriri claim, O'Malley submitted a brief supplementary report to his main report on the Ahuriri transaction. In this supplement, he emphasised his view that for Ahuriri Maori the transaction 'was about something much more than land and its ownership'. Rather, McLean's 'frequent' remarks that money was not the real payment and that Maori would prosper from the introduction of an industrious settler population meant that the transaction was 'all about partnership and a genuinely bi-cultural future in which both peoples, Maori and Pakeha, would prosper together on the land'. O'Malley argued that this was the 'real treaty' for Ahuriri Maori. It was, he said, the 'Treaty of Ahuriri'.¹⁴

We return to the respective arguments for and against this interpretation in our discussion of the legal submissions at section 5.9.1. But it is worthwhile noting here that there appears to have been a general Crown policy at the time to stress, during the course of purchase negotiations, the benefits that would flow to Maori from the selling of their land. For example, Walter Mantell, a Crown purchase agent in transactions with Ngai Tahu in the late 1840s and early 1850s, wrote privately in 1855 that:

Now in making purchases from the natives I ever represented to them that though the money payment might be small, their chief recompense would lie in the kindness of the Govt towards them, the erection & maintenance of schools & hospitals for their benefit & so on – you know it all.¹⁵

The status of Mantell's promises was subsequently the subject of investigation by the Colonial Office in London. In 1856, Mantell clarified that in offering such enticements he had been acting under instruction, rather than at his own initiative:

Lieutenant-Governor Eyre . . . impressed upon me the propriety of placing before the Natives the prospect of the great future advantages which the cession of their lands would bring them in schools, hospitals and the paternal care of Her Majesty's government, and, as I have before said, I found these promises of great use in my endeavours to break down their strong and most justifiable opposition to my first commission, and in facilitating the acquisition of my later purchases, adding to the Crown lands an area nearly as large as England.¹⁶

14. Document 02, pp 2, 5

15. Mantell to Symonds, 21 August 1855, MS papers 32, (McLean) folder 446, ATL (quoted in Waitangi Tribunal, *Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 3, p 951)

16. Mantell to under-secretary, 31 July 1856, *A Compendium of Official Documents Relative to Native Affairs in the South Island*, comp Alexander Mackay, 2 vols (Wellington: Government Printer, 1872–73), vol 2, p 84 (quoted in *Ngai Tahu Report 1991*, vol 3, p 952)

Governor Gore Brown confirmed to the Colonial Secretary in 1857 that he was:

satisfied that from the date of the Treaty of Waitangi, promises of schools, hospitals, roads, constant solicitude for their welfare and general protection on the part of the Imperial government have been held out to the Natives to induce them to part with their land.¹⁷

In 1879, the Smith–Nairn commission was appointed to investigate whether any of the promises made in the Ngai Tahu transactions remained outstanding. The commissioners put it to Sir George Grey that Mantell had made various promises and had been instructed to emphasise to Maori that money was not to be the principal payment for their land. Grey replied that he had no doubt that this was true, because ‘*those were the instructions I always gave. They were the instructions I gave in the old Hawkes Bay purchase[s], and I explained that the payment made to them in money was not really the true payment at all.*’ (Emphasis added.)¹⁸

Very similar inducements were made by Bell and Kemp to Waiararapa Maori in 1848. Kemp wrote in December of that year that ‘the assurance given by us to the natives of the speedy settlement of an English colony upon the land proposed to be sold’ was:

the real inducement for their yielding up the land, and not so much on account of the price to be paid in money, as in consideration of the great benefits they would at once derive by the selection of the Wairarapa as a site for an inland town, and the consequent influx of trade, which would prove to them more than an equivalent for what they are now willing to relinquish.¹⁹

Ahuriri Maori, for their part, were clearly interested in what might be called the collateral advantages of selling. Impatient with the pace of proceedings, Tareha and the other leading chiefs wrote to Grey in May 1851:

do not delay and hesitate to send some Pakeha for our properties as this was the basis of our agreement in accordance with our lands . . . Give us a Pakeha for our village (settlement) so that the payments met will be great . . . Our purpose is to have a town in our district in Ahuriri that you arrange this the Town and our village – be quick!²⁰

As mentioned, we outline and comment on the submissions made on the Crown’s promises and the ‘Treaty of Ahuriri’ thesis at section 5.9.1.

17. Browne to Labouchere, 9 February 1857 (quoted in *Ngai Tahu Report 1991*, vol 3, p 953)

18. Sir George Grey, evidence to Smith–Nairn commission, 1879 (doc 02, p 12)

19. Kemp to Colonial Secretary, 4 December 1848 (as quoted in doc 110, p 86)

20. Tareha and others to Governor, 2 May 1851 (doc 02, p 7). This translation of the original letter was done for the Crown Law Office by Maaka Jones.

5.4 THE NATIVE AFFAIRS COMMITTEE INQUIRY 1875

Were it not for an 1875 parliamentary inquiry into the Ahuriri transaction, our record of the events would exist solely in the form of McLean's writings. However, 24 years after the deed was signed, the Native Affairs Committee inquired into a petition of Henare Tomoana and 28 others concerning the status of islands in Te Whanganui-a-Orotu. Various individuals spoke before the committee and gave their version of the events surrounding the 1851 transaction. They included Karaitiana Takamoana, Wi Tako, and McLean himself, who by then was the Native Minister.

Tomoana informed the committee that the owners had originally been told by McLean that they could have a total of 100 acres at Puketitiri. When they had asked how much that was, McLean had referred them to Wi Tako, who had told them that it was as big as Te Whanganui-a-Orotu. Thus, they agreed to take the 100 acres. By 1875, however, Tomoana was of the view that the lagoon in fact occupied 3000 acres (in reality, it was some 7000 acres). McLean said it was likely that he had indeed referred the matter to Wi Tako to explain, and while Wi Tako agreed that he may have done so, he could not remember what he had said. Takamoana supported Tomoana, and told the committee that Maori had been under the impression that both the harbour and the islands were reserved to them. Wi Tako agreed that, before the deed was signed, a request had been made to exclude various islands from the sale.

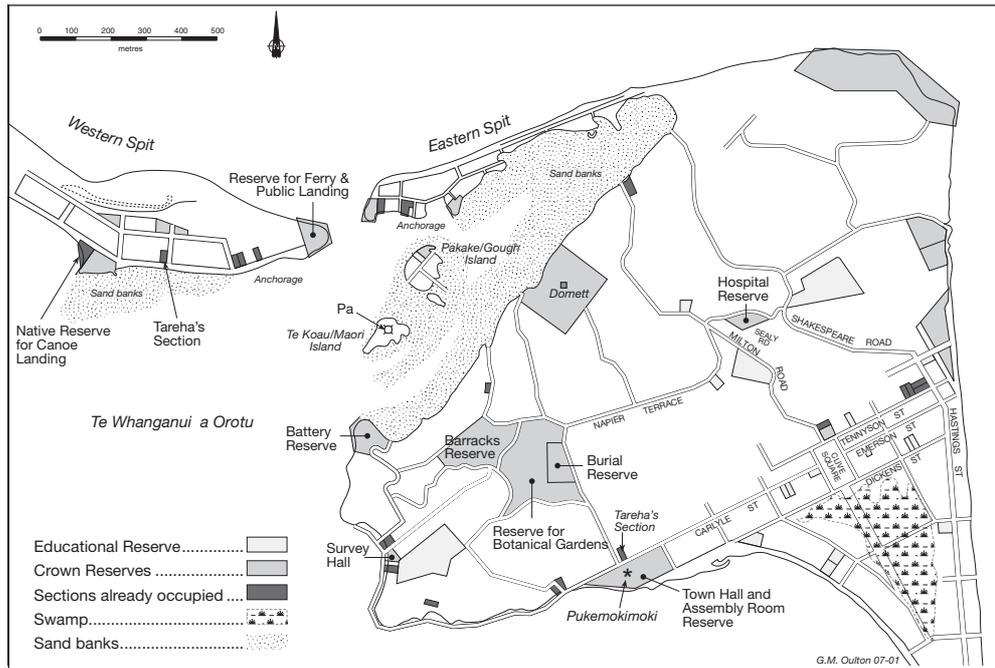
McLean stated that he had read the deed aloud three times before it was signed. He was questioned about his statement to the chiefs (as reported to the Colonial Secretary on 29 December 1851) that within the proposed town the Governor intended to set aside public reservations for various purposes (including the building of a hospital). McLean denied that this statement had constituted a specific promise. The only matter of specific reference to local Maori had been the canoe landing place, which had duly been reserved. McLean also defended the exclusive dealings he had with Tareha when rejecting the demands for harbour-side fishing reserves. Apparently with reference to Te Pakake, McLean ventured the view that Tareha's interest in the land was such that it was effectively his own personal property, and he claimed that this was a view shared by other Maori. Takamoana disputed this, however, saying that the land belonged to all the tribe and that he had lived there himself.²¹

The committee concluded that 'all engagements entered into under the Deed of Sale have been fulfilled'.²² O'Malley pointed out that, at the very least, the evidence given to this committee brought into question McLean's statement that the details of the 1851 Hawke's Bay purchases had been 'frequently and fully discussed' and that 'all other arrangements and conditions inserted in the deeds of sale [had been] easily understood'.²³ Although there had

21. Evidence of Henare Tomoana, Donald McLean, Wi Tako, and Karaitiana Takamoana, various dates in August and September 1875 (as cited in doc 110, pp 162–166)

22. 'Report of the Select Committee of Native Affairs on Petition 55' (as quoted in doc 110, pp 166–167)

23. McLean to Colonial Secretary, 29 December 1851, AJHR, 1862, C-1, p 316 (doc 110, p 167)



Map 15: Plan of the town of Napier, 1855

been a large hui and a public signing of the Ahuriri deed by 300 people, there is some doubt as to whether the Maori signatories fully understood all the deed's terms, particularly those relating to reserves.

5.5 RESERVES IN THE AHURIRI BLOCK

There were three reserves specified in the Ahuriri deed: Te Roro o Kuri, Wharerangi, and Puketititiri. There were also references to a canoe landing place, Pukemokimoki, and a reserve for Tareha, all within the proposed town called Napier. We review these, beginning with the reserves in the Napier town plan, and note that, of all these reserves, only small portions of Wharerangi remain in Maori ownership today.

5.5.1 Reserves in the town of Napier

Initially, comparatively few settlers arrived in Ahuriri. Colenso later recalled that by 1852 only 50 Europeans lived at Port Ahuriri.²⁴ On 12 July 1852, Paora Totoro wrote to the Governor asking, 'please let us know when we can expect some Pakeha settlers for our lands. We have

24. William Colenso, 'A Few Brief Notes and Remarks Concerning the Early Christian Church at Ahuriri (Napier): In a Letter to the Editor of the *Daily Telegraph*' (Napier: *Daily Telegraph*, 1889), p 8 (doc J10, p 173)

been waiting patiently but none have arrived.²⁵ However, after 1855 the population increased more rapidly. By September 1858, about 1200 Europeans occupied Napier and the surrounding area.²⁶

Several reserves referred to in the deed can be identified in the 1855 plan of the town of Napier (map 15). As part of the recital of the boundaries of the Ahuriri block to be transferred to the Crown, the deed stated: 'Pukemokimoki being the only portion of Mataruahou reserved for ourselves, together with the small piece of land where the children and family of Tareha are buried during such time as it remains unoccupied by the Europeans'.²⁷ Pukemokimoki was a small isolated hill located on the southern shore of Mataruahou. It was significant for local Maori as a source of mokimoki (*Phymatodes scandens*), a much-prized plant used for scenting oil. However, Pukemokimoki was never actually reserved for Maori; it remained Crown land and formed part of the 'Town Hall and Assembly Room Reserve' in the 1855 town plan. In 1872, Pukemokimoki was excavated for the railway line, and the fill was used to reclaim the swampy hollows nearby.²⁸ It is now a level site, with roads, railway lines, and buildings on it.

The Ahuriri deed also provided for equal rights for Maori 'to the fish cockles muscles [*sic*] and other productions of the sea' and stated that their canoes would be 'permitted to land at such portions of the town as shall be set apart by the Governor of New Zealand'. The only such landing reserve identified on the 1855 plan is on the southern shore of the Western Spit, fronting onto Te Whanganui-a-Orotu. However, the town of Napier was eventually formed on the other side of the harbour entrance, and that reserve has since become part of the public reserve between State Highway 2 and the Napier inner harbour, although it retained its status as a 'Native reserve' until the 1920s.²⁹

In his negotiations over the location of reserves in the town of Napier, McLean seems to have been dealing only with Tareha. In his 29 December 1851 report to the Colonial Secretary quoted above, McLean commented that he had objected to all requests for 'reservations for fishing villages and other purposes' except for one relating to the burial place granted to Tareha, 'which he is to retain until such time as the Government may hereafter require the spot for public improvements, such as deepening or reclaiming some portions of the harbour'. McLean was probably referring to Pakake Island (see fn 11). In 1871, Charles Heaphy, the commissioner of native reserves, recommended that Te Koau be placed in trust as an inalienable reserve for Tareha (though he may have been referring to Pakake).³⁰ In any event,

25. Paora Torotoro to Governor, 12 July 1852 (as quoted in doc M2), p 67

26. Document J10, p 173

27. Turton, vol 2, p 491

28. J G Wilson and others, *History of the Hawke's Bay* (Dunedin and Wellington: AH and AW Reed, 1939), p 418 (cited in doc 11(10), p 9)

29. Document J10, pp 201-203

30. Charles Heaphy, 'Report from the Commissioner of Native Reserves', 31 July 1871, AJHR, 1871, F-4, p 61

no reserve was made, and along with the surrounding reclaimed mudflats, the island has been incorporated into the urban area of Napier.

In his December 1851 report, McLean indicated that he would not set aside any reserves that would 'interfere' with the laying out of the town: 'I proposed to Tareha that he, as the principal Chief, on relinquishing all claims to such spots, should have a town section granted to him in any place he might select on the North Spit of the Harbour.' (The 'North Spit' would be the 'Western Spit' in map 15.) A town section was granted to Tareha in Westshore on the corner of Tareha Street and Meeanee Quay (now part of State Highway 2). In 1855, two town sections in Carlyle Street, across the road from Pukemokimoki, were also granted to Tareha in consequence of a further land transaction (see sec 6.2), but he sold them for a total of £50 in the 1860s. The Tareha Street section seems to have remained a reserve, albeit with disputed status, until it was sold in about 1970.³¹

5.5.2 Te Roro o Kuri

Te Roro o Kuri, a 70-acre island in Te Whanganui-a-Orotu, passed through the Native Land Court in 1866 as part of the Te Pahou block, which was awarded to 10 owners. The block was sold in 1870 to a Thomas Richardson, who apparently paid the money directly to RD Maney, a storekeeper. (According to complaints before the 1873 Hawke's Bay Native Lands Alienation Commission, all the 'principal vendors' had accounts with Maney.³²) The transactions on the Te Pahou block are reviewed in chapter 6.

5.5.3 Kaiarero

Kaiarero was a small, unsurveyed parcel of land on the right bank of the Waiohinganga (Esk) River. In 1873, Te Waka Kawatini, Paora Torotoro, and Paora Kaiwhata told the Hawke's Bay Native Lands Alienation Commission that McLean had agreed to set it aside at the time of the Ahuriri transaction. Commissioners Christopher Richmond and Maning thought that the claim sounded 'most improbable', but Commissioner Wiremu Hikairo thought that there was an element of truth to it, although some payments had been made for the land. An entry in McLean's journal in 1858 recorded that he paid Te Waka Kawatini £9 and Morehu £2 for their interests in Kaiarero. O'Malley argued that this was effective recognition of the Maori claim to the land but that the payments, which were made to only two people, could not have been seen as having extinguished all Maori interests in it.³³

31. Mills, pp 75–76

32. Document J10, pp 191–192

33. Ibid, pp 196–199

5.5.4 Wharerangi

The Wharerangi reserve (1845 acres) was located on the western shore of Te Whanganui-a-Orotu and, according to the Ahuriri deed, was ‘a lasting possession’ for local Maori. The history of the reserve (as well as that of Puketitiri) was researched by Tribunal staff member Georgina Roberts, who suggested that this was ‘a protection clause’ and a ‘guarantee’ that the land would remain in Maori use and occupation. ‘The clause also conferred an obligation on both the Crown, and each generation of iwi, as signatories to the deed, to ensure that the land remained as a reserve.’³⁴ One of the witnesses to the Ahuriri deed was Alexander Alexander, who lived on the Wharerangi block at Te Poraiti. His Maori wife, Harata, was connected to the local hapu Ngati Hinepare and Ngati Mahu. As we have related in chapter 3, Alexander had arrived in Hawke’s Bay in the mid-1840s and set up a number of trading posts. By 1850, he was farming sheep and goats on lands around Te Poraiti under an informal leasing arrangement with Ngati Hinepare.

Informal leases continued through the 1850s and 1860s. In 1867, the Native Land Court investigated the title to Wharerangi, and the whole block was awarded to four people: Te Waka Kawatini, Paora Totoro, Pera Ngarangione, and Hamahona Tarewai. Except by consent of the Governor, the land was made inalienable by sale, by lease of more than 21 years, or by mortgage. In 1867, the owners granted Messrs Gully and Morecroft a formal lease for 21 years at £260 per annum. By 1869, this lease had been transferred to Messrs Kinross and Burnett, to whom all four owners were substantially in debt. Te Waka Kawatini had tried to sell his interests in Wharerangi and other Heretaunga blocks, but a series of court cases ensued, and there were various convoluted deals involving debts and accusations of supplying rum to Maori lessors. A new lease to Kinross and Burnett was negotiated, the annual rent being reduced to £100 to pay off some of the debt. In 1870, Kinross transferred his interests in the lease to Burnett.³⁵

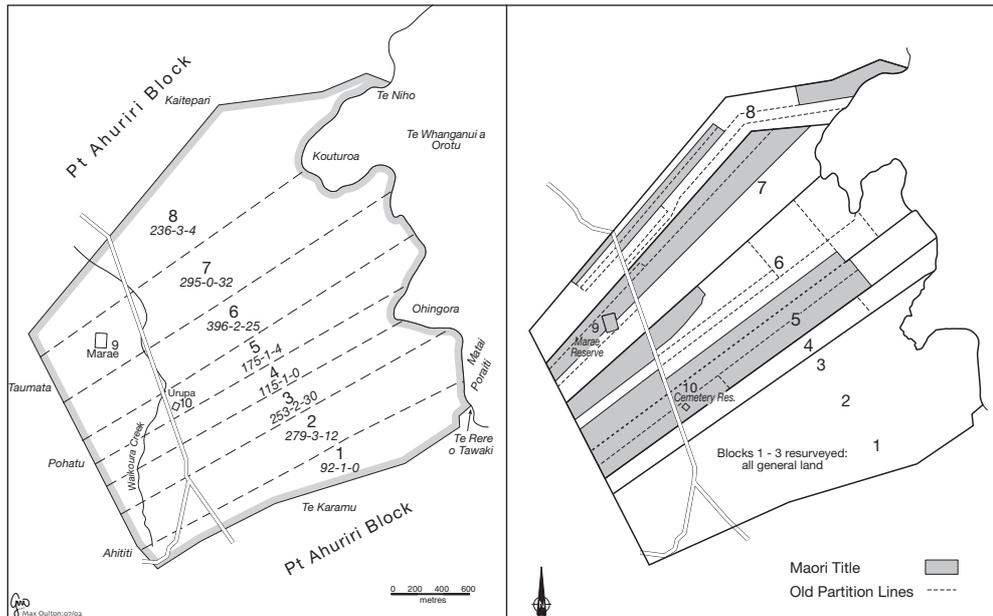
Meanwhile, a number of Maori families remained on the land, but they received little benefit from the leasing arrangements. Four complaints about transactions on Wharerangi were heard by the Hawke’s Bay Native Land Alienation Commission in 1873. Two were from Totoro and Te Waka Kawatini, who both complained about not receiving rents from Kinross and Burnett, but neither complaint was favourably received by the commissioners. The other two complaints were about the behaviour of the four grantees. Turuhira Te Heitoroa complained that Wharerangi had been reserved for all but that the Native Land Court had granted it to only four owners, who had ‘mortgaged’ the land ‘without considering the other claimants’. Paora Kaiwhata also complained that the original agreement, as set out in the Ahuriri deed, had not been fulfilled by vesting the land in only four owners, instead of all Maori who had rights in it.

34. Document M1, p 6

35. *Ibid*, pp 10–12

THE AHURIRI TRANSACTION

5-5-4



Map 16: Wharerangi reserve; left, sketch plan, 1913; right, Maori land, circa 2000

Richmond doubted the legality of the leases transacted by the four owners, but he concluded that the law had ‘allowed the grantees to anticipate the whole produce of the reserve for a long term of years . . . and thus to deprive a considerable part of the living generation of owners of all further chance to benefit therefrom’. Even if they did not have a legal grievance, the complainants had a ‘just political grievance’. (We review, in the next and later chapters, the problems created by the provision in the Native Lands Act 1865 that allowed only 10 or fewer owners to be put in a title by the Native Land Court.) Richmond also commented more generally about the debts of the grantees and the value of reserves for Maori:

Granting that the debt may be regarded as tribal to some extent, still it appears to us that the native people naturally and justly look to their reserves as securing to them an inalienable provision, and that this just and natural expectation has, in the present case, if the transactions in question be legal, been disappointed.³⁶

We have no evidence whether the goods supplied by Kinross and Burnett were shared to the extent that the individual debts of the four owners could be regarded as ‘tribal’. The Wharerangi title was vested in four owners only, and any other right-holders under Maori custom were denied any legal rights. However, Alexander remained at Te Poraiti until his death in 1873, the lease to Burnett stayed in force, and Maori families continued to live on the Wharerangi block.

36. C W Richmond, ‘Report on Case No IV’, 31 July 1873, AJHR, 1873, G-7, pp13–14 (doc M1, p14; see also doc J10, pp194–196; doc 11(1), pp36–37)

In 1882, Torotoro complained to Chief Judge Francis Dart Fenton of the Native Land Court that Burnett had paid no rent. The arrangement had been that the debts of the four owners should be paid by reduction of the annual rent, first to £100, and then to nothing, until the debts were paid off. The full amount of debt is not available, but in 1869, when the rent was reduced to £100, the total debt was £486. In 1870, a new lease to Kinross and Burnett allowed for the non-payment of rent until the debt, which had increased dramatically to £795 10s 3d (plus 10 per cent interest), was paid. It is not known what other debts were incurred by 1882, but no action seems to have been taken through the Native Land Court.³⁷

In 1884, an application to the court in 1884 for the partition of the Wharerangi block was dismissed. The block remained intact until 1900, when the court, empowered by an Order in Council issued in 1897, embarked on an investigation to determine whether the four owners in the title held the land in trust. The court decided that a trust did exist, and it revested the block in 46 owners; 370 shares, representing five acres each, were awarded to 22 heads of families. There were some appeals, and minor adjustments were made to the list of owners in 1905. In 1907, the reserve was partitioned, initially into four blocks but, after court orders were issued, eventually into 10 blocks (map 16). There were some further appeals, but these were dismissed in 1911 and 1912.³⁸

Meanwhile, a number of owners had begun selling their individual interests in the blocks. Much of the Wharerangi reserve land was still tied up in leases, so the Maori owners at no stage had full control of their land, or the opportunity to develop it themselves. The following example illustrates how the land in three Wharerangi blocks was alienated.

HG Ballantyne acquired most of Wharerangi 1, 2, and 3 in a series of piecemeal purchases from 1911 on:

Wharerangi 1 (92a 1r) two owners

1911 88 acres purchased from two owners

Wharerangi 2 (279a 3r 12p) nine owners

1911

June 88 acres purchased, interests of three owners

December 47 acres purchased, interests of three owners

1913

March Partition of Ballantyne's total 135 acres into 2B
2A vested in three owners

November

Partition of 2A
2A1 (three acres) purchased
2A2 interests of two owners purchased

1915

Only one Maori owner left in block ; balance area leased by Ballantyne

1967

Remaining 18 acres in Maori title declared general land by status declaration,
lease continued by Public Trustee as executor of Ballantyne estate

37. Document J10, pp 194–195

38. Document 11(1), pp 37–40; doc M1, pp 17–21

Wharerangi 3 (253a 2r 3p) seven owners

1911	Interests of six owners purchased
1914	Partition into 3A (one owner) 20 acres (sold in 1925) 3B Ballantyne's interest 228 acres

Most of the interests in Wharerangi 4 to 8 were acquired in a similar piecemeal way by generations of the Codd family from 1911 to the 1960s.³⁹ The pattern was to acquire a lease, acquire various individual interests in a block and partition these out, then continue to acquire interests and apply for further partitions, and so on, in a mosaic of numerous small partitions purchased, interspersed with others on long-term leases (usually 21 years with rights of renewal). The result is a scattering of sections remaining in Maori title, and some, with four or fewer owners, declared general land by status declaration in 1967, but still owned by Maori (map 16). In recent years, the land has been further subdivided and sold with pastoral land giving way to smaller blocks for horticulture and viticulture.

Of the original 1845 acres reserved for Maori in the Wharerangi block, barely 222 acres remain in Maori title. Maori right-holders in Wharerangi lost control of their reserve in 1867 when the Native Land Court granted the block to only four owners, and, despite protests, the land remained locked up in long-term leases until large amounts of it began to be purchased outright in the early twentieth century. The piecemeal process of the sale of individual interests in the twentieth century has whittled away most of the reserve. As Roberts commented, 'Wharerangi does not appear to have achieved its purpose of being a lasting possession for the natives of Ahuriri', as was set out in the Ahuriri deed in 1851.⁴⁰

5.5.5 Puketitiri

As noted above, McLean had written on 14 November 1851 of his efforts to restrict Maori to 500 acres at Puketitiri when they wanted to retain several thousand. The Ahuriri deed described the reserve: 'Five hundred 500 acres at the place called Puketitiri with a right to snare birds throughout the whole of the forest at Puketitiri.' Evidence from the 1875 inquiry also suggests that Maori may have been under the impression that the reserve was larger than McLean intended, in part due to Wi Tako's quite misleading explanation of the size of 100 acres. In 1860, Government officials George Cooper and Samuel Locke went to survey the 500 acres but were prevented by local Maori, who laid claim to the entire bush.⁴¹ A further undated and unsigned memorandum to McLean around this time (probably written by either Locke or Cooper) noted that 'Natives now claim a large tract, probably three or four thousand acres.' The memorandum also stated that 'Whaka[,] Paul Torotoro & people' were said to:

39. Document M1, pp 21-34

40. Ibid, p 36

41. Ibid, pp 37-39

State that they have not received sufficient money for the Ahuriri Block, that they intended at the time of sale that the whole of the Puketitiri bush would be reserved – They the tribe will not allow the 500 acres to be surveyed unless they received more money, even those who signed the Deed join in this.⁴²

By mid-1861, the matter had still not been resolved and Cooper ventured that ‘If they would sell their rights to this bush (which is valuable) it would be the simplest way of getting rid of the difficulty.’⁴³ This course must have found favour for, in January 1862, Cooper wrote to McLean: ‘The Govt have sent me orders to buy up the claims at Puketitiri if possible. I think you can manage this better than I, as you can contradict their lies about what took place at the sale, which I cannot.’⁴⁴ Late in 1863, McLean had proposed that military settlers be placed on land at Pohue and Puketitiri. Small farm sections south of the Puketitiri reserve were set aside for possibly 100 settlers, but no military settlement was established (map 17).

There is some evidence that payments towards the purchase of the Puketitiri reserve were made in 1864, but no deed of transfer has been found.⁴⁵ Puketitiri Bush (500 acres) was included in Commissioner Heaphy’s 1871 list of ‘Native Reserves . . . For the benefit of Natives Generally’, but this description could apply to Crown land under the Native Reserves Act or to land still in Maori ownership.⁴⁶ By the 1890s, Crown officials were quite uncertain whether or not the Puketitiri reserve had been purchased. In any event, between 1886 and 1890 much of the surrounding area had been partitioned and sold by the Crown (bearing in mind that the reserve itself had never been surveyed), though two ‘timber reserves’, of 508 and 199 acres, were left at Puketitiri. In 1898, the Surveyor-General offered the opinion that the undefined 500 acres originally intended as a Maori reserve would still need to be purchased from its owners. In 1903, Hohaia Te Hoata and 82 others petitioned Parliament claiming compensation because Puketitiri had been taken by the Crown without payment. In 1904, the Native Affairs Committee referred the matter to the Native Land Court for investigation, but this did not occur until 1916.⁴⁷ The court found that it was still incumbent upon the Maori owners to prove that the reserve had not been sold and that it remained Maori land, but it acknowledged that this was complicated by the fact that the land had been declared a timber reserve in 1907.

In 1920, another petition signed by 48 Maori was submitted to Parliament concerning the reserve. This petition was investigated by the Native Land Claims Commission under Robert Jones, which decided that the Puketitiri reserve had not been purchased by the Crown and recommended that 500 acres be returned to Maori ownership. This was effected by section 40

42. ‘Hawke’s Bay Native Reserves Not Defined or Surveyed’, memorandum, undated, McLean papers (as quoted in doc J10, p 205)

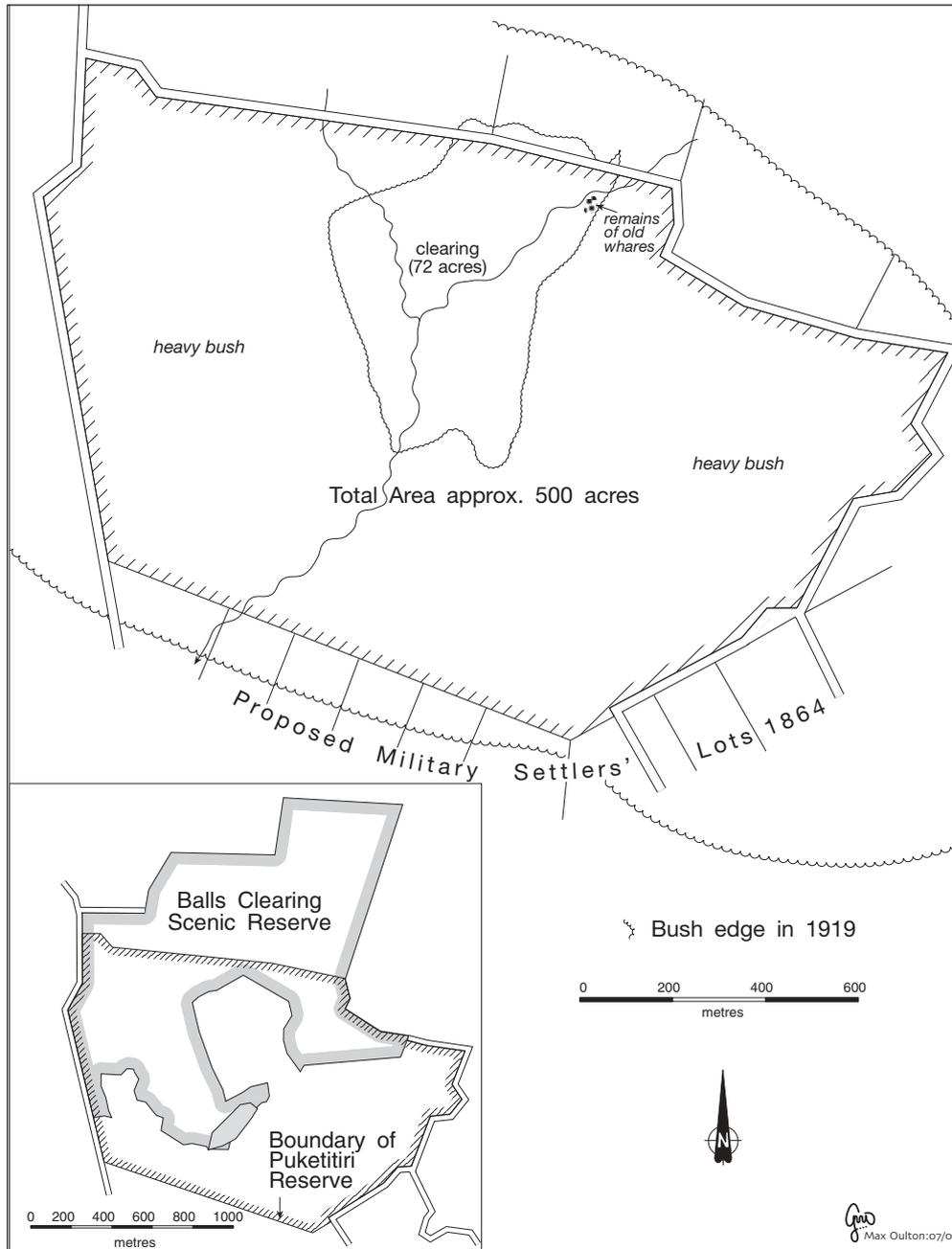
43. Cooper to chief commissioner, 20 June 1861, AJHR, 1862, C-1, p 354 (doc J10, p 206)

44. Cooper to McLean, 24 January 1862 (as quoted in doc J10, p 206)

45. Document w3, pp 7–9

46. Heaphy, ‘Report from the Commissioner’, 31 July 1871, AJHR, 1871, F-4, p 62

47. Document m1, p 42



Map 17: Puketitiri reserve; inset, the reserve at 1996

of the Reserves and Other Lands Disposal and Public Empowering Act 1921, with the Native Land Court awarding ownership to 127 individual shareholders the following year. Some of these shareholders were willing to sell their interests to timber milling companies willing to purchase the whole block. The Crown also wanted to acquire the block, and in 1923 it issued a proclamation prohibiting its alienation other than to the Crown. At a meeting of owners on 4 February 1926, a resolution was passed to sell the Puketitiri reserve to the Crown for £17,815,

or about £35 per acre. The Ikaroa District Maori Land Board confirmed the sale, and the Crown also agreed to waive survey charges on the block.⁴⁸ The Puketitiri reserve became Crown land and was proclaimed State forest later the same year.⁴⁹ Today, most of the former reserve remains Crown land, with about one-third incorporated in Ball's Clearing scenic reserve (map 17).

5.6 NGATI HINEURU INTERESTS IN AHURIRI

Ngati Hineuru held lands inland, west of the Maungaharuru and Te Waka Ranges, and had been unhappy with the Ahuriri purchase proceedings from the outset. A Ngati Hineuru party, led by Te Rangihiroa, travelled to Tangoio as early as April 1851 to protest the inclusion of land at the interior of the block. At the meeting in May 1851, McLean had suggested that the disputed interior section could be left out. However, between the delivery of Park's survey report of the interior boundary in June 1851 (which placed it at the foot of the Kaweka Range) and the signing of the deed in November, the boundary was extended to the summit of the range. It is not clear from the available record when and if any negotiation over this change occurred. In time, as O'Malley noted, the interior boundary became as much of an issue for Maori as the size of the Puketitiri reserve, the Crown's assumption of rights to Te Whanganui-a-Orotu, and the poor price paid for the Ahuriri block.⁵⁰

In November 1856, Cooper privately wrote to McLean, saying that:

The inland part of the Ahuriri block (which contains some tolerable runs) is . . . disputed, that is to say, a small hapu called Ngatihineuru, whose chief is named te Rangihiroa claim it, & they say they received no payment, & never assented to the sale. They are backed up by te Heu Heu, & the sellers are, to say the least, *very lukewarm*. [Emphasis in original.]⁵¹

McLean visited Hawke's Bay in January 1858, principally to mediate the conflict between Te Hapuku and Te Moananui but also to try to settle some of the outstanding grievances from the Ahuriri transaction. He met with Te Rangihiroa but refused to reopen the issue of payment for the block. Te Moananui, however, admitted Ngati Hineuru's claims but stated that he did not have the means to pay them their share of the purchase price. As O'Malley noted, McLean's report on the matter implied that Ngati Kahungunu, not the Crown, were responsible to compensate a rival group for their interests in the block.⁵² McLean endeavoured to

48. Document M1, pp 44–47; doc J10, pp 209–210; doc 11(1), pp 45–48

49. 'Proclamation Declaring Native Land to be Vested in His Majesty under Section 368 of the Native Land Act 1909', 2 September 1926, *New Zealand Gazette*, 1926, no 59, p 2623; 'Proclamation Declaring Crown Land Set Apart as a Permanent State Forest', 4 November 1926, *New Zealand Gazette*, 1926, no 75, p 3113

50. Document J10, pp 211–212

51. Cooper to McLean, 16 November 1856 (as quoted in doc J10, p 212)

52. Document J10, pp 212–213

advance Te Rangihiroa £50 on the Ahuriri chiefs' 'account' so long as all Ngati Hineuru claims to the Ahuriri block were relinquished, but 'the old chief declined'.⁵³

In February 1858, McLean had a 'long discussion' with Te Rangihiroa, Te Moananui, and 'others of the Ahuriri and Taupo natives', which concluded with Te Rangihiroa withdrawing his opposition to the block boundary and Te Moananui promising to 'compensate them for their claim out of the sale of fresh Blocks of land'.⁵⁴ On 24 February 1858, three Ngati Hineuru chiefs signed a deed of receipt for £50 received from McLean in satisfaction of Te Rangihiroa's claims on Ahuriri, and on 20 August 1859 a further £50 was paid to another group of eight Ngati Hineuru 'in complete settlement for the land sold by Ngatikahungunu to the Europeans'.⁵⁵ In July 1859, McLean also purchased the Kaweka block from Ngati Hineuru and Ngati Kahungunu, and the boundaries of that block clearly encompassed part of the interior section of Ahuriri (although McLean's report to the Government on the subject made no recognition of his having repurchased lands he had theoretically acquired some eight years previously). These payments came in May 1859, shortly after Te Rangihiroa forcibly evicted a settler who was leasing some of the disputed land from the Government.⁵⁶

The matter did not rest there, however. In early March 1860, Cooper reported to McLean that the Kaweka block and its surrounds were 'inaccessible and worthless' and that 'the chances of its leading to anything better [were] so problematical, and the demands of the Natives so exorbitant, that I have refused to proceed in further in that negociation [*sic*]'. He added:

the language held by many of the Natives with reference to the Inland parts of the Ahuriri Block is very unsatisfactory: they state that at the time the block was purchased advantage was taken of their ignorance to obtain the land for a fraction of its value, that a bargain made in such a way ought not to be held binding, and they express their determination to resume possession of the inland parts of the block, to the extent probably of nearly one hundred thousand acres, to exact rents from the settlers in occupation, or to drive their sheep across the line which they thought fit to mark off as the Queen's boundary and destroy the homesteads.

I must state at the same time that the influential Chiefs of the party, who sold this land, do not join in the above language, but treat or affect to treat the whole affair with contempt. In these days of King and Runanga, however, the authority of hereditary Chiefs goes for very little when opposed to the wishes of the majority of the tribe, and I know that these Natives look to receive support from the Runanga party in the neighbourhood of Taupo; I have treated all these threats with derision and contempt: and I think that the firmness of my language and demeanour has acted to some extent as a check upon them.⁵⁷

53. 'Report of the Chief Commissioner's visit to Ahuriri etc Dec 1857' (as quoted in doc J10, p 213)

54. McLean, journal (typescript), 6 February 1858 (as quoted in doc J10, pp 214–215)

55. Turton, vol 2, pp 586–587

56. Document J10, pp 216–218

57. Cooper to chief commissioner, 8 March 1860, AJHR, 1862, c-1, p 349 (doc J10, pp 219–220)

Shortly after this dispatch, Cooper again wrote to McLean, reiterating that ‘The language . . . held by some of them about the Ahuriri block, though I can scarcely think it will lead to trouble, is still far from what it should be.’⁵⁸ Soon after, he wrote once more, expressing ‘serious apprehension as to the result of the Ahuriri block affair’. He noted that ‘A meeting is being held at [inland] Patea, from which the Chiefs of this Province have been excluded, and I have reason to think that the resuming of parts of the Ahuriri blocks is to be one of the subjects of discussion.’⁵⁹ The following day, Cooper wrote again to McLean, expressing his concern that:

the Ahuriri Block question will cause us some trouble yet. I wish we dared to bounce them. I should rather say to threaten them with condign punishment, feeling assured that we were able to inflict it. But I suppose we must ‘wait a little longer’.⁶⁰

Cooper’s words in this letter were prophetic. Ngati Hineuru became embroiled in military action at Omarunui and Petane in 1866, as we relate in chapter 7.

It is not immediately clear how the inland boundary issue was resolved. In Cooper’s official 1861 report on the Hawke’s Bay ‘land question’, he did not mention it, although there remained other disputes involving the Puketitiri reserve, harbour reclamations, Maori claims to the ownership of Te Whanganui-a-Orotu, and the completion of the Kaweka purchase. In 1863, McLean paid another £100 to Taupo Maori for their claims to the Kaweka and inland Ahuriri blocks, while the following year £300 was paid to Tareha and others for a full extinguishment of their claims to the Kaweka block (a plan attached to the deed clearly demonstrated an overlap with the Ahuriri block).⁶¹

5.7 A REVIEW OF THE SOURCES

Our narrative detailing the Ahuriri transaction was compiled principally from the report of Vincent O’Malley, who was commissioned by the Crown Forestry Rental Trust for the claimants, and, to a lesser extent, from the report of Angela Ballara and Gary Scott, who were commissioned by the Tribunal.⁶² Tony Walzl completed a narrative of the transaction for the Wai 55 (Te Whanganui-a-Orotu) inquiry, but his account related predominantly to the issue of whether or not the harbour was included in the sale.⁶³ Similarly, the Ballara and Scott report traversed only a proportion of the ground covered by O’Malley. The Crown did not present a comprehensive narrative history of the transaction, but it provided useful

58. Cooper to chief commissioner, 12 March 1860, AJHR, 1862, C-1, p 351 (doc J10, p 220)

59. Cooper to chief commissioner, 18 March 1860, AJHR, 1862, C-1, p 351 (quoted in doc 11(1), p 33)

60. Cooper to McLean, 19 March 1860 (doc J10, p 221)

61. Document J10, pp 222–224

62. Documents 11(1), J10

63. Document F9

documentation relating to the Puketitiri reserve in Crown researcher Brent Parker's report.⁶⁴ Thus, the only comprehensive account of the detail of the Ahuriri transaction has come to us from a historian commissioned for the claimants.

The Ahuriri transaction is discussed in some detail in the *Te Whanganui-a-Orotu Report*. That Tribunal based its narrative on the Walzl report and was, necessarily, preoccupied with the issue of the harbour's inclusion in the sale. However, the report did go into some detail on matters such as the deed, the reserves, the purchase price, the negotiations, and so on. Numerous and lengthy quotations from McLean and others were included, and we have used these in our own Ahuriri narrative. The earlier report emphasised that the harbour was not sold, but it essentially used the language of sale to describe the Ahuriri transaction. For example, the Tribunal stated at one point that 'the principal Ahuriri chiefs agreed to sell McLean the inland Ahuriri block'.⁶⁵

Our review of the Ahuriri transaction in this inquiry has created the unusual circumstance, perhaps not addressed by the Waitangi Tribunal before, where two inquiries have been charged with considering the same purchase. The same could be said for the overlap between this report and that of the Mohaka River Tribunal concerning the 1851 Mohaka transaction.⁶⁶ To draw a clear distinction between this report and those of previous Tribunals, however, we make these points:

- ▶ The *Te Whanganui-a-Orotu* and *Mohaka River* reports were based on separate issues and concentrated exclusively on questioning whether bodies of water were included in land transactions.
- ▶ This Tribunal has received fuller evidence on the land transactions under the Wai 400 and Wai 119 claims.

However, some repetition cannot be avoided. See chapter 1 for further discussion.

Those factors aside, we have written the narrative of the Ahuriri transaction without directly referring to the *Te Whanganui-a-Orotu Report*, other than to note its view, where appropriate, as one of a range of secondary sources.

The Wai 692 statement of claim echoed that of Wai 400 in claiming that McLean promised local Maori hospital and health services as part of the 1851 Ahuriri transaction. However, the report on the Wai 692 claim clarified this issue: 'We wish to make it quite clear at this point that we will not be addressing any aspect of the Wai 400 claim in this report and that nothing we say here should be construed as expressing an opinion on the merits of that claim.'⁶⁷

Therefore, in compiling this report we have not felt constrained by the Wai 692 claim or other Tribunal inquiries. We have also referred to a number of other secondary sources which have provided a valuable context for our narrative.

64. Document w3

65. Waitangi Tribunal, *Te Whanganui-a-Orotu Report* 1995, p 54

66. Waitangi Tribunal, *The Mohaka River Report* 1992 (Wellington: Brooker and Friend Ltd, 1992)

67. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 26

5.8 CLAIMANT SUBMISSIONS

In this section, we review the claimants' submissions on a variety of matters, including the inquiry boundary and the aftermath of the transaction. We then move on to consider their submissions on issues related to negotiation and contract and, finally, the nature of the transaction. We follow this section of the chapter with a summary of the Crown's submissions on the same matters and then relate the claimants' submissions in reply. We conclude with our own comments and our findings under each of the same subheadings.

5.8.1 The inquiry boundary and the aftermath of the transaction

Claimant counsel contended that the Crown did not protect the remaining land endowment of the local hapu after the Ahuriri transaction and instead actively sought to extinguish it. Counsel also argued that the Native Land Court system offered the hapu no protection from land loss and in fact hastened land alienation.⁶⁸ Indeed, instead of the promised benefits of the Ahuriri transaction, claimant counsel argued that local Maori were left with 'land loss, economic marginalisation, and social deprivation'. To illustrate this, counsel drew on the broader context of events beyond our inquiry boundary to the south and cited several distinct post-transaction phases.⁶⁹ These were as follows:

- ▶ 1853–55: Maori enjoyed relative prosperity and continued to use the Ahuriri block, and there was not much settlement.
- ▶ 1855–58: Rivalries over land sales were exploited by the Crown, culminating in the Pakiaka conflict. This was in turn followed by the general agreement to stop selling land.
- ▶ 1859–65: Leasing took the place of land-selling and Maori remained marginally in control in Hawke's Bay.
- ▶ 1865–70: Massive alienation occurred under the Native Land Court system, which destroyed customary Maori tenure and caused dispossession under the 10-owner rule. Land sales were closely linked with indebtedness.
- ▶ 1870–80: The repudiation movement and other protests were prevalent.
- ▶ 1880–1900: Maori became increasingly economically marginalised and had to lease any remaining lands to secure an income.
- ▶ 1900–40: Maori worked for Pakeha farmers, lived off credit, and suffered continued land loss, poverty, and poor health. 'This poverty was . . . a direct result of the loss of their lands since 1851.'⁷⁰
- ▶ 1945–65: The loss of land led directly to the large-scale urbanisation of Hawke's Bay Maori.

68. Document x44, pp 66–67

69. Ibid, pp 102–117

70. Ibid, p 115

We discuss these submissions again in chapter 19, where we consider the general socio-economic impacts of land loss on Hawke's Bay Maori.

5.8.2 Issues of negotiation and contract

Claimant counsel contended that Ahuriri Maori were unduly pressured to part with areas that they were reluctant to sell. For example, he said that McLean 'repeatedly' requested that Mataruahou and the Spit be included, despite the clear opposition of the sellers. Similarly, McLean did not create a reserve at Kaiarero as requested, and he sought to limit Maori to 500 acres at Puketitiri when they wanted several thousand. Furthermore, he did not accede to Maori requests for fishing reserves flanking the harbour.⁷¹

Counsel made much of what he saw as the contradictory assessments of the worth of the Ahuriri block. He cited O'Malley's reference to reports McLean and Park made to their superiors extolling the virtues of the block, which O'Malley contrasted with the land.⁷² Furthermore, counsel drew a direct parallel between what McLean told the assembled Maori in May 1851 – that Park had valued their block at only £500 – and what Park said in his report to McLean – that Ahuriri Maori should perhaps be paid £2000 for the land.⁷³

Counsel also argued that McLean's 'bargaining tactics' were 'unconscionable'. He submitted that McLean had failed to consult all the land's owners during his negotiations and that 'the reserves in the deed were not those agreed to'.⁷⁴ He submitted that McLean exploited the death of Tareha's wife in April 1851, believing that this event would 'more fully determine the natives to sell the land at a moderate price'.⁷⁵ He also pointed to other of McLean's methods, such as paying Tareha special dividends in the form of town sections and making to get up and leave when the chiefs rejected his offer of £1500.⁷⁶

Counsel then claimed that McLean manipulated the chiefs' rivalry to obtain a low price for Ahuriri, reasoning that Tareha, Te Moananui, and the others would take his offer rather than lose prestige vis-à-vis Te Hapuku, who had already successfully negotiated the sale of his Waipukurau land to McLean. This line was also argued forcefully by Ballara and Scott. Claimant counsel further maintained that McLean omitted to inform Ahuriri Maori that they could write to the Governor asking for more money, something he had told Maori at Waipukurau. Moreover, he falsely informed them that he was limited to £1500 to purchase Ahuriri, when the Governor had merely asked him to ascertain the lowest price that Maori would take for the land.

71. Ibid, pp 40–44

72. See, for example, doc J10, pp 122, 142, 238–239

73. Document X44, p 35

74. Ibid, p 22

75. Ibid, p 37; see also doc J10, p 135

76. Ibid, p 36; doc J10, p 139

5.8.3

On the issue of the price paid for the Ahuriri block, counsel argued that the sum paid – £1500 – was ‘derisory’. For some 265,000 acres, it worked out at little more than a penny an acre.⁷⁷ And, with respect to the size of the reserves, counsel claimed that the Crown failed to fulfil its protective function, in that less than one per cent of the Ahuriri block’s total acreage was reserved for Maori use and occupation. Counsel went so far as to argue that McLean failed to ensure that Ahuriri Maori retained a sufficient amount for their ‘future survival’.⁷⁸ He described McLean’s provision as worse even than that made by the ‘rapacious’ New Zealand Company, which used 10 per cent as a guide.⁷⁹ This kind of sentiment is also present in the evidence of Ballara and Scott, who wrote that a consequence of the Ahuriri transaction was that ‘the majority of the tribe had lost their land (the source of much of their subsistence)’.⁸⁰

5.8.3 The nature of the transaction

Claimant counsel described the Ahuriri transaction as one in which Maori had been ‘joint venturers’ with the Crown for the colonisation of Ahuriri and Hawke’s Bay. The chiefs were of the old school and operated in a Maori cultural framework. Thus, the transfer of land was conducted in the traditional style of binding groups and creating relationships. It was an expression of *tuku whenua* – hence, O’Malley’s ‘Treaty of Ahuriri’ description.⁸¹

Claimant counsel pointed to the Tribunal’s *Muriwhenua Land Report*, which found that early sales were not binding alienations and that, by the time Crown purchasing began in earnest in Muriwhenua in 1856, Maori were still operating under their own belief system.⁸² Counsel contended that there was stronger evidence in Ahuriri than in Muriwhenua that Maori had expected collateral benefits in exchange for the transfer of land. Counsel added that price was the main point in a simple transaction, but that in this case Maori were much more concerned about having Pakeha settle on their land than in realising a good price for it. Schools, hospitals, and other benefits were held out as inducements, and these promises formed a legal part of the contract. The inducements also formed part of what the Muriwhenua Tribunal called ‘the Maori law of relationships’. For the claimants, the inducements were ‘expressed and implied promises’.⁸³

Claimant counsel also pointed out that, while only four Ngati Kahungunu chiefs signed the Treaty of Waitangi, up to 500 Maori attended each of three hui to discuss the Ahuriri

77. Document x44, pp 38–40

78. *Ibid*, p 41

79. *Ibid*, p 65

80. Document 11(1), pp 31–32

81. Document x44, pp 69–81

82. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), pp 4, 194

83. Document x44, pp 82–94. For a discussion of ‘the Maori law of relationships’, see Waitangi Tribunal, *Muriwhenua Land Report*, pp 21–25.

transaction. Thus, ‘the Ahuriri transaction was the true political treaty’.⁸⁴ Counsel claimed that this was backed up by historian James Belich, who has written that various land transactions, sealed ceremoniously, ‘were a fifth, living version of *the* treaty’ (emphasis in original).⁸⁵ Counsel submitted that ‘the Treaty of Ahuriri was the real harbinger of Crown sovereignty – or at least the sharing of sovereignty’.⁸⁶

The claimants also professed themselves to be in some agreement with Crown witness Lyndsay Head. Although she had stated that, by 1851, Maori understood European concepts of sale and that Ahuriri was no *tuku*, the claimants took her to say that the sale was conditional on securing the advantages of ‘citizenship’. They did, however, note that she had said that Maori did not expect the land back ‘if citizenship went awry’. They took issue with her on that point, arguing that repudiation was about the lack of collateral benefits rather than not having been paid, and they rejected her idea that Maori sold land for ‘citizenship’ in the new colonial order and willingly submitted to colonial law in the new unitary state. Claimant counsel argued that, in reality, the chiefs jealously guarded their separate authority.⁸⁷

In sum, counsel contended that the terms of the ‘Treaty of Ahuriri’ were as follows: the Crown received a large amount of land for very little money, which it resold at a substantial profit in order to develop the colony’s infrastructure and to purchase more land, and in return, it undertook to benefit Ahuriri Maori ‘enormously’. For Maori, the transaction meant access to new markets, the provision of schools and hospitals, and the heightened standing of various chiefs and, in turn, the chiefs relinquished some of their erstwhile absolute control. Thus, neither party viewed the transaction as a ‘sale’.⁸⁸

The claimants also alleged that Lord Normanby’s view that Maori land, in its ‘unimproved’ state, had little or no value (thus justifying minimal purchase prices from the Crown) was belied by the value it had to Pakeha squatters for pastoral farming. Counsel argued that McLean essentially bullied Maori in Hawke’s Bay into selling by telling them that leasing to squatters would not be tolerated. (This was part of his wider strategy to buy Hawke’s Bay land cheaply before squatters spread there from the Wairarapa and caused the land’s ‘market’ value to rise.) Counsel pointed out that a formal licensing regime could in fact have been implemented under the Native Land Purchase Ordinance, as was indeed conceded by Crown historical witness Robert Hayes. While Hayes added that this would not have worked

84. Document X44, p 93

85. James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Penguin Books, 1996), p 202. Belich refers to these local transactions as ‘local partnerships’. According to Belich, the other four versions of the Treaty were the English-language version; the Maori-language version; the ‘spirit’ or ‘intent’; and the oral agreements ‘among chiefs, as well as between them and those speaking for the Governor’ (emphasis in original): pp 193–197.

86. Document X44, p 93

87. *Ibid*, pp 94–97

88. *Ibid*, pp 99–101

(because of the disputes that frequently occurred between lessors and lessees), claimant counsel argued that the informal leasing system had worked remarkably well.⁸⁹

5.9 CROWN SUBMISSIONS

5.9.1 The inquiry boundary and the aftermath of the transaction

Crown counsel remarked that the claimants' desire to move the inquiry beyond the Ahuriri transaction to encompass the entire area covered by their claims was understandable.⁹⁰ This would allow the Tribunal to report on their story in full and would obviate the need for a second inquiry. It would also make sense for the purpose of historical interpretation. But counsel suggested that the claimants' real purpose was to bolster the Ahuriri grievance because the transaction did not amount to much in itself. To this end, counsel cited the statement by O'Malley that:

The Crown's failure to ensure that Maori retained sufficient lands for their contemporary and future wants was ultimately perhaps its most serious failing, *not so much in terms of the Ahuriri purchase in particular, but Hawke's Bay land transactions in the nineteenth century as a whole*. [Emphasis added by Crown counsel.]⁹¹

Counsel then referred to the Tribunal's agreement that the claimants' research could be extended to the south for the sole purpose of identifying the living conditions of those who may have left the Ahuriri block following its sale. The Crown contended that subsequent evidence given by Walzl and John Hutton 'made no attempt to comply with the letter or spirit of these directions but put the whole of the history of Central Hawke's Bay in issue and explored – in a fashion – the detail of land transactions between the Tutaekuri and Ngaruroro Rivers'.⁹²

Crown counsel then conceded that, to a considerable extent, there were 'serious' issues to consider with respect to the sales of land south of the Tutaekuri River, but it stressed that these would have to be dealt with by a further Tribunal inquiry, or by way of direct negotiation. Counsel also pointed out that it had formally offered to extend the inquiry boundaries when the claimants had received leave to examine issues to the south, but that this offer was rejected by both the Tribunal and the claimants.⁹³

89. Document x44, pp 61–64

90. Document x54, pp 10–11

91. Document j10, p 245. The emphasised words were quoted in the Crown's submission: see doc x54, p 11.

92. Document x54, p 12

93. Ibid, pp 12, 14–15. At a judicial conference held on 26 June 1998, Crown counsel concluded that the Tribunal report would not address all the claims of all the groups in the inquiry (particularly the hapu represented in the Wai 400 Ahuriri block claim) and that this 'may not form a satisfactory platform for the Crown to enter into negotiations for settlement', though counsel did note that 'currently the Crown had no firm view on how this issue might be resolved': paper 2.280, p 3.

5.9.2 Issues of negotiation and contract

With respect specifically to the criticism of McLean for purchasing land around the harbour not originally offered for sale (such as Mataruahou), the Crown responded: 'This cannot be a reasonable requirement. There must be scope for negotiation in the purchase of land.'⁹⁴ Crown counsel implied that there had in effect been a 'willing buyer, willing seller' situation in Ahuriri. Crown counsel also denied that Wi Tako had admitted in 1875 that he had said the lagoon was 100 acres. He added that, in any event, Maori knew from both the deed and the plan that they were only retaining a portion of the bush.⁹⁵

Crown counsel did not address the issue of whether the Crown should have purchased Puketitiri (either in 1926 or when the idea was first mooted by Cooper in 1860).

With respect to the allegedly contradictory assessments of the worth of the Ahuriri block, Crown counsel pointed out that, by and large, the comments in the reports of McLean and Park referred to the 'Ahuriri district', which clearly encompassed an area much larger than the block.⁹⁶ As for the differing amounts mentioned by Park, he contended that claimant counsel had omitted to mention that the £2000 included both the Spit and Mataruahou, whereas the £500 referred only to the inland portion of the block. Crown counsel also pointed out that Park's assessment in July came well after McLean's speech in May and, more to the point, after he had completed his survey of the block.⁹⁷

On the matter of McLean's bargaining tactics, Crown counsel sought to counter the suggestion that some owners were either not consulted on various matters or excluded from the entire process by pointing out that 300 people had signed the deed. Counsel denied that McLean's offer of £1500 was an 'ultimatum', arguing instead that it was a 'firm statement of position'. He added that criticism of McLean for getting a few chiefs in his tent to accept the purchase price was misplaced, since 30 chiefs later signed a letter saying that there had been 'unanimous' agreement to the sale. He also argued that McLean's supposed 'cynical' exploitation of Tareha's wife's death was a non-issue, because there was no clear evidence as to what McLean meant by this. He added that McLean had told Ahuriri Maori that they could write to the Governor and that it was 'implicit' that they could ask for more money when doing so. He also defended McLean's refusal to go beyond £1500 by pointing out that McLean had not exactly said that he was limited to that amount – rather, he had said that he had a limited discretion and would not go beyond that amount.⁹⁸

As for the price paid for the Ahuriri block, counsel argued that, given how wealthy Ngati Kahungunu became shortly afterwards, the small price paid for Ahuriri would have seemed a minor sacrifice. He referred to a statement made by Tareha and others in 1857 in which it was

94. Document x54, p 44

95. Ibid, p 42

96. Ibid, pp 53–54

97. Ibid, p 55

98. Ibid, pp 38, 56–58

said that money was unimportant because Pakeha settlers were the true payment.⁹⁹ Counsel also argued that Ngati Kahungunu's relative wealth was a reflection of their retention of good lands (such as the Heretaunga Plains), and he cited Heaphy to this effect.¹⁰⁰ And, with respect to the reserves, counsel argued that there was no evidence of residences or villages being abandoned. He submitted that the claimants' point that less than one per cent of the block was reserved conveyed a 'false picture', because the 'real reserve' (ie, the Heretaunga Plains) remained intact.¹⁰¹

5.9.3 The nature of the transaction

First and foremost, Crown counsel argued that the Ahuriri transaction was never a significant grievance for Maori at the time. He conceded that genuine grievances existed for the post-1865 period (in Heretaunga), but added that these later grievances were not regarded as 'a basis for upsetting the Ahuriri purchase'. He felt that the claim should be seen for what it was; namely, 'a much larger case based on the other lands of the Ahuriri people'.¹⁰²

Crown counsel suggested that the claimants were 'dumb[ing] down' their forebears. Te Hapuku, Tareha, Renata Kawepo, and others, he said, were not 'men of the past' operating solely in traditional ways. Rather, they knew what they were doing and realised that a sale meant participation within the modern state. Counsel stressed that the Government did not see Ahuriri as an 'arm's length' transaction where the parties would never see each other again. The act of sale was 'an act of faith in the future that modernity would bring', not a licence to have the deal 'rejigged' later if circumstances were not to Maori's liking.¹⁰³ Counsel maintained that Maori never thought that the land transfer might be temporary or that modernity would be 'served on a plate'. The Crown conceded, however, that Maori should not have had 'their opportunities to pursue the material benefits of modernity unreasonably shut down by acts or omissions of the Crown'. 'In that situation, the Crown would have responsibilities to Maori regardless of whether the sale of land is construed as a treaty.'¹⁰⁴

Crown counsel contended that it was quite wrong of the claimants to argue that an alliance with the Crown was the first consideration of Ahuriri Maori and that the price for the block was of secondary importance. Counsel maintained that price had been of paramount importance for Tareha in his discussions with McLean. He added that the Crown had not paid £1500 for 'comparatively poor land' while simultaneously assuming an enormous responsibility for guaranteeing the vendors' future prosperity.¹⁰⁵

99. Document x54, p 65

100. Ibid, p 41

101. Ibid, p 41

102. Ibid, pp 3, 10

103. Ibid, pp 25–30, 33

104. Ibid, pp 33, 36–37

105. Ibid, pp 34–35

Crown counsel denied that ‘explicit promises’ had been made to Ahuriri Maori. To draw the distinction, he gave an example of what he saw as an explicit undertaking made by McLean in the purchasing of land at Mahia in 1864. There, McLean had promised that £100 would be spent constructing a road from Te Mahia to the beach.¹⁰⁶ Counsel contrasted this example with McLean’s request to the Government in 1856 that a ‘medical man’ be made available to Ahuriri Maori. While O’Malley had quoted that request (made only five years after the transaction) as being ‘unequivocal’ evidence of an explicit promise, Crown counsel described it as indicating a ‘legitimate expectation’ held by Maori after the transaction rather than a ‘specific promise’ made by McLean when the deed was signed.¹⁰⁷

Counsel argued that what McLean had told Ahuriri Maori was, in effect, that sales would be ‘stepping stones into the modern world’. Government officials had indeed explained that money raised from the on-sale of land would be used to build roads, schools, hospitals, and the like, but they were outlining the economics of government and settlement rather than making specific assurances. Counsel contended that McLean could not possibly have given any guarantees to Ahuriri Maori that they would enjoy prosperous futures. Counsel even implied that much of their poverty in the latter nineteenth century was attributable to their own naivety and profligacy in the 1860s. That said, he did add that Maori should not, by Crown actions or omissions, have been pushed to the ‘margins of society’, where ‘citizenship is an empty shell’.¹⁰⁸

Crown counsel also placed much emphasis in his closing submissions on rebuffing the *tuku whenua* aspect of the claimants’ case. He took issue with the claimants’ assertion that their ancestors were inexperienced in land transactions. He pointed out that many had spent time in the Bay of Islands in the 1820s and 1830s and while there would have been able to observe first-hand what land sales to Pakeha had entailed. Further, the presence of the Nga Puhī chief Te Wera Hauraki at Mahia Peninsula from 1823 to 1839 would have provided Ngati Kahungunu with further opportunities to acquaint themselves with the implications of selling land to Europeans.¹⁰⁹

Counsel said that he agreed with O’Malley’s claim that, by 1850, most Hawke’s Bay Maori would have visited Wellington. Te Hapuku had, for example, and he had also visited Auckland and therefore witnessed the extent of Pakeha towns not under Maori control.¹¹⁰ Counsel also referred to the arguments over leasing versus selling which were raging in the Wairarapa, and he submitted that Hawke’s Bay Maori would have been well aware of the differences between

106. Ibid, p 50; doc x3, p 3077

107. Document x54, p 50. In making the request for a medical man, McLean had written to the Governor’s private secretary explaining that Ahuriri Maori had made ‘frequent applications to the Government, and very justly urged as a reason for making the application that they had alienated large tracts of land to the Crown in the expectation of deriving various advantages which they have not yet realized’: see doc u12, pp 3–4.

108. Document x54, pp 45–50

109. Ibid, pp 15–16

110. Ibid, p 17; doc j10, p 109. We note that Wilson, from whom O’Malley sourced his comment, in fact wrote that ‘probably the majority of the Hawke’s Bay chiefs had visited Wellington before 1850’ (emphasis added): Wilson, p 192.

leasing land and permanently transferring it by sale. He pointed to O'Malley's statement that leasing was quite similar in nature to traditional *tuku whenua* as being a contradiction of O'Malley's contention that the Ahuriri transaction was 'construed in terms of the underlying values' of *tuku whenua*.¹¹¹

Counsel also cited the sections of the deed that he felt emphasised the exclusive European ownership that would follow the transaction. The references to the Maori rights to take shellfish and the like – rights equal to those of the Pakeha – and their right to hunt birds throughout the entire Puketitiri Bush were, he argued, clear evidence that these things were not givens. The same applied to the canoe landing place, which was specially set aside. Furthermore, the words in the deed 'we will not permit any Native to molest Europeans within these boundaries', counsel said, once more emphasised the exclusive rights that Europeans had over the land.¹¹²

On the issue of leasing, Crown counsel argued that Ahuriri Maori were in fact keen to 'sell', and had been for some time. The use of the 1846 ordinance, he said, was not contrary to the Treaty, since the Government had both the right and the duty to control the interface between Maori and Pakeha. Indeed, the situation in the colony demanded the 'close control of settlement by the government and superintendence of contact between the races'. Order was needed since there were many problems over leases in the Wairarapa, which was 'a distant frontier'. Furthermore, argued counsel, O'Malley's idea that hospitals, roads, schools, and the like should be built by the Crown ignored the fact that the Crown needed revenue to do this – revenue which it had mainly as a result of pre-emption and its land purchasing programme. Squatting, he argued, was no harbinger of 'modernity' but a minimal-outlay, maximum-yield, fly-by-night affair, with an incredibly insecure tenure and future.¹¹³

Crown counsel submitted that New Zealand had to compete for settlers with other colonies and therefore had to offer safe investment opportunities. He also dismissed claimant counsel's suggestion that the settlers and McLean were 'racist' in rejecting Maori landlordism, arguing that the colonists had left Britain to escape this. In sum, counsel concluded that there was 'really no alternative' to land sales 'as a mechanism of development', and that the real issue was the need to strike an appropriate balance between the lands sold and those retained by Maori. Once the Crown had gained a secure foothold in Hawke's Bay through its early purchases, counsel added, the 1846 ordinance was no longer needed: it effectively became a dead letter and Maori leased their remaining lands.¹¹⁴

111. Document x54, pp 17–19

112. *Ibid*, p 39

113. *Ibid*, pp 59–61

114. *Ibid*, pp 62–64

5.10 CLAIMANT SUBMISSIONS IN REPLY**5.10.1 The inquiry boundary and the aftermath of the transaction**

Claimant counsel argued that the Ahuriri transaction could not be viewed in isolation from other events, and added: 'It is clear that even if the Ahuriri transaction was not a Treaty, an analysis of the later transactions is essential in evaluating whether the Crown fulfilled its duty of active protection to Ahuriri Maori.'¹¹⁵

5.10.2 Issues of negotiation and contract

With respect to the purchasing of areas that Maori were reluctant to sell, claimant counsel argued that in fact Wi Tako did not deny saying that the lagoon was 100 acres; he merely said that he could not remember what he had said.¹¹⁶ Counsel also criticised the Crown for not addressing the issue of the eventual purchase of the Puketitiri reserve in its closing submissions.¹¹⁷

As for the differing assessments of the worth of the Ahuriri block, claimant counsel conceded that, in some cases, the 'Ahuriri district' in general was referred to. But he added that this did not alter the fact of the block's inclusion within that district.¹¹⁸ Despite this concession, counsel submitted that McLean nevertheless deliberately disparaged the value of the Ahuriri block to Maori, which action was in keeping with his instructions to acquire the land for the least price possible.¹¹⁹

In the debate about whether McLean effectively issued an 'ultimatum', counsel conceded that this was a semantic point. However, he added that, whether Maori were keen to 'sell' or not, if they had wanted Pakeha to settle on their land, they had little choice but to sell, since McLean had made it very clear that leasing would not be tolerated.¹²⁰

As regards the price paid for the Ahuriri block, claimant counsel submitted that Crown counsel missed the point that 'if what was promised in addition to the monetary payment did not materialise . . . then price inevitably becomes more of an issue'. He maintained that, in any event, price became an issue 'once it became apparent that what had been paid in 1851 was derisory and that other promised benefits were not being delivered'.¹²¹ Finally, in respect of the size of the reserves, counsel submitted that the Crown's argument about the 'real reserve' contradicted its own assertion that the southern lands were areas not able to be considered in this inquiry.¹²²

115. Document Y4, p 18

116. Ibid, p 31

117. Ibid, pp 32–33

118. Ibid, p 41

119. Ibid. Counsel was quoting Alan Ward, Grant Phillipson, Michael Harman, Helen Walter, 'Historical Report on the Ngati Kahungunu Rohe', Crown Congress Joint Working Party, June 1993, p 131.

120. Document Y4, p 42

121. Ibid, p 46

122. Ibid, p 9

5.10.3 The nature of the transaction

Claimant counsel noted the Crown's concession that the Ahuriri transaction was never seen by Government as a purely 'arm's length' deal but felt that this should have been taken a step further to the logical conclusion that it was therefore a treaty or an alliance. With respect to the Crown's claim that the claimants were 'dumb[ing] down' their ancestors, counsel felt that this was akin to saying that Ahuriri Maori should have ditched their own culture 'in pursuit of an illusory "universal society" based entirely on Pakeha cultural values'.¹²³

Claimant counsel referred to the Crown's questioning of the vendors' desire for payment if they were guaranteed eternal prosperity by the transaction. He replied that payment was most important to Maori, both because it gave them the cash to get a foothold in the colonial economy and because it showed the Crown's commitment to a relationship based on reciprocity. Counsel also took exception to Crown counsel's constant reference to Maori having offered land for 'sale' when they had actually frequently asked for settlers to be placed on their land, which was an entirely different matter. Counsel further argued that the insertion of a 'tangi clause' in the deed showed that McLean was worried that Maori would not understand the transaction.¹²⁴

At this point, we should pause to relate the significance of the tangi clause. The English version of this clause stated that the signatories had 'wept over and bidden farewell to and solemnly consented to give up these lands . . . with their seas rivers waters timber and all . . . to Victoria the Queen of England for ever'.¹²⁵ The *Whanganui River Report* explained that McLean used the tangi clause in his Whanganui purchase in 1848 and that it became 'standard' in other deeds.¹²⁶ According to the Mohaka River Tribunal, the clause was an attempt by McLean to 'create an absolute transfer of title to land that would be explicable in Maori cultural terms using metaphors of the tangi'.¹²⁷ Yet, as claimant counsel submitted, the signatories to the Ahuriri deed did not lament or tangi the land, for McLean observed them to be in 'excellent spirits'.¹²⁸

Claimant counsel also took issue with the Crown's suggestion that Maori blew their wealth on extravagant and wasteful feasts. He also pointed out the inconsistency he saw in Renata Kawepo being described by the Crown as too much 'a man of the future' to fit the claimants' case, while at the same time being criticised for succumbing to 'traditional imperatives' in hosting a large feast. Counsel furthermore rejected the Crown's position that McLean was in no position to make explicit promises, arguing that McLean had the ostensible authority to act on behalf of the Crown and that Maori were perfectly entitled to take him at his word.

123. Document v4, pp 19, 25

124. Ibid, pp 26–28

125. Turton, vol 2, p 491

126. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 136

127. Waitangi Tribunal, *The Mohaka River Report 1992*, p 30

128. Document v4, pp 28–29

Counsel also rejected the relevance of Te Hapuku's vision of 'modernity' since he was not an Ahuriri signatory.¹²⁹

Counsel said that Cooper's 1860 observation that Maori were thinking of resuming 100,000 acres of the block because the Crown had taken advantage of their ignorance about the land's value – and therefore felt that a transaction made in such a way should not be binding – showed how wrong the Crown was to say that the Ahuriri transaction was 'unremarkable'. He replied to the Crown's contention that Maori never felt that the transaction could be 'rejigged' by pointing to this as clear evidence that they did.¹³⁰

As for the issue of *tuku whenua*, claimant counsel responded by rejecting the implication of Crown counsel that all Nga Puhi understood sales and that Ngati Kahungunu would have learnt from them what a sale meant. Claimant counsel argued that this was too simplistic a view, since, according to the Tribunal in its *Muriwhenua Land Report*, Muriwhenua Maori, for example, had not even learnt this from Nga Puhi.¹³¹

Claimant counsel said that O'Malley had not been confused as to whether the leases or the Ahuriri transaction had been the equivalent of *tuku whenua*. Counsel maintained that both were, and he referred to O'Malley's reference under cross-examination to his new research (undertaken since his first report was completed) which showed that Maori used the word 'tuku' to describe the transfer of land in the Wairarapa leases. Counsel reminded the Tribunal that, when this material was put to Lyndsay Head under cross-examination, she incorrectly identified a document referring to a lease as one referring to a purchase. Claimant counsel also argued that the passage in the Ahuriri deed whereby Maori pledged not to 'molest Europeans' was little more than a promise to maintain good relations, and was of little significance.¹³²

With specific regard to leasing, therefore, claimant counsel submitted that his Crown colleague had overlooked the fact that McLean had seen the 1846 ordinance as 'instrumental' in getting Hawke's Bay Maori to sell their land. He also said that it was an exaggeration to claim that Hawke's Bay Maori automatically favoured sales over leases, given the fact that some squatters were already at Ahuriri. He reiterated the claimants' stance that land leasing on the Wairarapa frontier was nowhere near as chaotic as Hayes had made out (as, indeed, the examples put to Hayes in cross-examination had shown). Counsel maintained that, if a levy or a tax on rents had been instigated (such as Governor FitzRoy's levy under his short-lived pre-emption waiver scheme), a formal system of leasing could have paid for the development of the country's infrastructure as effectively as purchasing.¹³³

129. Ibid, pp 35–37, 44

130. Ibid, pp 49–50

131. Ibid, p 22; Waitangi Tribunal, *Muriwhenua Land Report*, pp 194–201

132. Document Y4, pp 24, 29

133. Ibid, pp 24, 43–45

5.11 TRIBUNAL COMMENT

5.11.1 The inquiry boundary and the aftermath of the transaction

It is axiomatic that the Ahuriri transaction cannot be seen completely in isolation, but the claimants' stance puts us in a difficult position. We have an approximate notion of the extent of the grievances in the Heretaunga district (which Crown counsel conceded were 'serious' issues) but are insufficiently equipped with the facts to make any authoritative comment. Nor should we pre-empt the findings of a subsequent Hawke's Bay Tribunal. The Heretaunga transactions have not properly been the subject of pleadings before us and are the subject of other registered claims. It is not appropriate for us to suggest redress of the Ahuriri claim on the basis of Heretaunga events, given that another Tribunal will recommend redress for any southern claims judged to be well-founded at a later date. The problem for the Ahuriri claimants in our inquiry is that it is impossible to lay the blame for late nineteenth- and twentieth-century regional ills solely at the door of the 1851 transaction. We do sympathise, however, with their desire to overcome the enforced split in the historical context.

This raises the question of why we declined to accept the Crown's offer to extend the inquiry boundaries. In reality, however, we had no practical option of doing so, given the lack of completed research on Heretaunga, the fact that the Heretaunga claimants were not ready to proceed whereas the Wai 400 claimants were, and the planning of the Tribunal's own forward programme. Nevertheless, we do draw on the Ahuriri claimants' more regionally focused research when we consider the connection between land loss and poverty in detail in chapter 19.

5.11.2 Issues of negotiation and contract

Before discussing the purchasing of areas Maori were reluctant to sell and other issues of negotiation and contract, we should note that there was a standard of conduct which was known to purchase officials at the time, and by which their actions can be measured. Normanby's instructions explicitly stated that Crown purchase agents were to act in a protective manner, and, as will be seen, there is evidence that McLean acted accordingly in some of his transactions.

In essence, in purchasing a block of land the Crown had to be sure at all times that all Maori who held rights were fully informed on the meaning and permanence of a sale, that they knew its full extent (from a survey or a walking of the boundaries or both), and that they readily assented to the sale, as evidenced by witnessed signatures or marks on the deed. Those who still opposed the sale after all of this were entitled to have their interests cut out of the block. Such Treaty-compliant behaviour was described in another Tribunal hearing as giving the tikanga an 'opportunity to operate', and was argued to have been achieved by McLean to a certain extent in the Rangitikei purchase. In discussing that transaction (which was finally concluded in 1852 when the last instalments on the block were paid), historian

David Armstrong noted that there was still ‘some sharp practice’ but that ‘at least all of the people who claimed interests were sat down at a big hui where they all expressed a view, and in the end there was some kind of resolution’.¹³⁴

We should add that something similar seems to have occurred in McLean’s 1848 Wanganui purchase. The Tribunal’s *Whanganui River Report* discussed this transaction and quoted McLean’s description of his ‘minute and public investigation’ of the claims of every tribe. In order to afford the tribes ‘every opportunity of adducing their claims, and fully reflecting on the engagements they were entering into’, McLean reported that he had given ‘timely notice’ of three public meetings in Wanganui on 26, 27, and 29 May 1848. His surveyor, Wills, added that, for three days prior to the deed signing, Wanganui was full of Maori from various parts of the district and that they ‘held daily meetings at which the respective claims of the members of the tribe were fully discussed’. On 26 May, Wills wrote, all the chiefs:

expressed their pleasure that the purchase was at length to be completed and their gratification at the ample opportunities Mr McLean had offered them of fully discussing their claims and at his patience in having at all times listened to their representations.¹³⁵

With respect specifically to the purchasing of areas that Ahuriri Maori were reluctant to sell, however, we consider that McLean fell short of the kind of standards Normanby envisaged and which McLean himself may have met in Rangitikei and Wanganui. In particular, we believe that, in assessing McLean’s actions, Crown counsel overlooked both McLean’s Treaty obligations (article 2 stating that Maori could retain lands ‘for as long as it is their wish to retain the same in their possession’) and his function as the simultaneous protector of Maori interests and the purchaser of their lands (Grey’s abolition of the role of protector of aborigines in 1846 had combined the two roles).

With particular respect to Puketitiri, and despite the claim and counterclaim as to who said what, we feel that McLean undeniably pressured Maori into parting with a larger area of the bush than they had wanted to and that the claimants have a reasonably clear-cut case of grievance. Five hundred acres was agreed to as a reserve after Maori had made it plain that they wanted more (and at a time, too, when it is unclear whether Maori completely understood Pakeha measurements of land area). Soon after the transaction, Maori refused to allow the reserve to be surveyed because they did not feel enough land was being set aside. In later years, the Crown assumed that it owned the reserve despite having no clear evidence that it had purchased it. When the land was finally returned to Maori ownership in the 1920s, an action which Crown counsel all too easily referred to as having been caused by an ‘oversight’ by Crown officials since the land had been bought in 1864, the Crown promptly bought it anyway.¹³⁶ In the Wai 119 claim, the Crown conceded that, after the Stout–Ngata commission’s

134. David Armstrong, oral comments, northern South Island inquiry, Nelson, 12 June 2002

135. Waitangi Tribunal, *The Whanganui River Report*, p 134

136. Document x54, p 43

report in 1907, it should have exercised particular care not to further diminish Maori land holdings.¹³⁷

With respect to the differing assessments of the worth of the Ahuriri block, and on a close inspection of the documents in question, it appears that Crown counsel is correct and that O'Malley and claimant counsel overstated the extent of McLean's 'duplicity' in his descriptions of 'Ahuriri'. We also agree with Crown counsel that Park's assessment of the block's value came after he had completed his survey and that McLean was therefore not privy to it when he made his speech in May. However, McLean had obviously spoken with Park, who was already familiar with the block's topography by this time. McLean noted in his diary entry for 2 May 1851 that Park had reported to him that the block was 'very hilly broken & poor'.¹³⁸ It is unclear whether Park had also indicated to McLean the block's potential, as he did in his June report, when he wrote that 'wherever the fern has been burned off . . . the grass springs up abundantly, and it only requires sheep and cattle to make it a rich pastoral country'.¹³⁹ McLean's disparagement of the block on 2 May was probably based on Park's preliminary assessment; certainly, if at that time McLean was aware of Park's positive rejoinder, he chose neither to record it nor to pass it on to the Ahuriri Maori.

As for McLean's bargaining tactics, it is clear to us that some of his methods were not within what we might call the 'spirit' of the Treaty of Waitangi. For example, Tareha appears to have been bought off by the provision of personal town sections for him, and McLean's apparent making to leave when his £1500 offer was rejected seems to have had the desired effect of forcing the chiefs into a hurried acceptance of the offer. Furthermore, despite the semantic issue of whether or not McLean told Maori that he was limited to the figure of £1500, McLean certainly failed to follow the letter of his instruction, which was to ascertain the lowest amount that Maori would take for their land. Rather, he stepped beyond his brief by naming a low sum and not budging from it.

This should not, however, obscure the framework in which McLean was instructed to negotiate. Taking advantage of their monopoly right to purchase the land, his superiors asked him to ascertain the lowest price that Maori would accept for it. Such an approach was potentially exploitative of Maori, who were inexperienced in land transactions and unsure of what price to seek. The Crown's pre-emptive right was in theory a protective measure, but in instances such as this it could clearly be used to the disadvantage of Maori land vendors.

On the other hand, it is not immediately clear that Tareha and Te Moananui felt forced to accept the low price in order that they did not lose face before their rival Te Hapuku. The claimants and Ballara and Scott have not considered the extent to which the acceptance of a purchase price which was almost a third of that received for Waipukurau (a block of similar size) may have in itself caused some loss of face. The Crown is also correct in its assessment

137. Document x55, p 32

138. McLean, journal, 2 May 1851 (as quoted in doc J10, p 138)

139. Park to McLean, 7 June 1851 (as quoted in doc J10, p 141)

that McLean's reference to the death of Tareha's wife is ambiguous, although it is certainly open to an interpretation that does not reflect well on McLean.

The issue of the exclusion of certain groups from the negotiations is a complicated one. It seems that McLean initially omitted to deal with Ngati Tu at Tangoio. He thereafter appears to have had little patience with them when they began to voice protests, almost casually mentioning in late 1851 that their 'troublesome' nature may have been due to his original overlooking of them. The larger issue, however, relates to Ngati Hineuru and their Ngati Tuwharetoa relations, whom McLean often collectively referred to as the 'Taupo' Maori. The claimants maintained that Ngati Hineuru were never consulted, but as outlined in the narrative, McLean wrote to Te Heuheu on 6 January 1850 regarding the block's inland boundary, and he appears to have spoken with both Te Rangihiroa and Poihipi regarding the concerns of Ngati Hineuru and Ngati Tuwharetoa in late April 1851. In May 1851, McLean stated publicly that the internal boundary would be moved to avoid disputes.

However, it seems that, after this, Ngati Hineuru's concerns were disregarded. Park's July 1851 survey report described the inland boundary as running along the top of the Kaweka Range rather than at its base, yet it is unclear how and when this change occurred. In subsequent years, the protests of those with interests in the inland portions of the block became more strident, and McLean and Cooper were effectively forced to begin belatedly to pay Ngati Hineuru for their interests.

With respect to the price paid for the Ahuriri block, we first need to consider the issue of the prices that Maori were generally paid for their land. As we related in chapter 2, Normanby told Hobson that pre-emption was necessary to save Maori from 'land-jobbers'. But he nevertheless instructed Hobson to purchase Maori land cheaply. Normanby assumed:

that the price paid to the natives by the local Government will bear an exceedingly small proportion to the price for which the same lands will be re-sold by the Government to the settlers. Nor is there any real injustice in this inequality. To the natives or their chiefs much of the land of the country is of no actual use, and, in their hands, it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased, by the introduction of capital and settlers from this country. In the benefits of that increase the natives themselves will gradually participate.¹⁴⁰

The Crown's purchase agents in New Zealand were to need no further bidding to buy Maori land cheaply. Large blocks of pastoral land in the South Island and parts of the Hawke's Bay were bought for a few pence per acre (or much less, as the table below illustrates). Then the Crown sold it dearly, usually for £1 an acre for rural land after the passing of the Australian Waste Lands Act 1842, which set a uniform price for the on-sale of land. Normanby evidently

140. Ibid, p 87

saw no contradiction between justifying low purchase prices for Maori land and his reference to 'land-jobbers'. He went on to advise Hobson that:

All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith, as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves.¹⁴¹

The principles of 'sincerity, justice, and good faith' did not justify the Crown buying Maori land for a pittance and reselling it at a substantial profit, especially if it had done little to improve the land before reselling it. The difference between the original payment and the resale prices was a form of taxation on Maori which went into general revenue. Though Hobson was instructed to reserve 15 to 20 per cent of this land revenue for establishing the protectorate and for 'promoting the health, civilization, education and spiritual care of the natives', no effect was given to this instruction in our inquiry district.¹⁴²

Thus, with specific regard to the price paid for the Ahuriri block, we think it is clear enough that it was very low, and we criticise the Crown's position on two fronts:

- ▶ it uses the wider Hawke's Bay context to justify the low price paid, although the Crown had already criticised the claimants for widening the context of the Ahuriri claim; and
- ▶ it ignores the genuine disquiet felt among some Maori regarding the price paid at, and soon after, the transaction (although Crown counsel attributed this to agitation from the King movement).

In addition, what Crown counsel omitted to include from the Heaphy quotation was Heaphy's reference to the fact that, as he saw it, Hawke's Bay Maori were in danger of becoming 'landless' and 'paupers' as a result of the Native Land Court system.¹⁴³ This further undermines the Crown's justification of the low purchase price.

The low price is brought into sharp relief when compared to both the price paid for the Waipukurau block (see the table below) and the annual returns available from leasing land to squatters in the Wairarapa. The claimants did not stress the point, but it is obvious that Te Hapuku got a much better price for Waipukurau, in part because McLean had earmarked him as a man who could help him in his plans to buy much more land. Waipukurau was

141. Ibid

142. Russell to Hobson, 28 January 1841, BPP, vol 3, p 174

143. Charles Heaphy, 'Report on the Native Reserves in the Province on Hawke's Bay', 29 May 1870, AJHR, 1870, D-16, pp 12-13

clearly superior land, but the Ahuriri block had the advantage of a harbour, which added value. In the space of a few short years, the low price paid rankled many of the former owners of the Ahuriri block.

Block	Year purchased	Area purchased (acres)	Price paid (£)	Price per acre (pence)
Kemp's purchase (Canterbury)	1848	2,000,000	2000	0.24
Ahuriri	1851	265,000	1500	1.36
Mohaka	1851	85,700	800	2.25
Waipukurau	1851	279,000	4800	4.13
Castlepoint	1853	275,000	2600	2.27
Porangahau	1858	145,000	3000	4.97

Prices paid for pastoral land blocks purchased by the Crown, 1848–58

The Te Whanganui-a-Orotu Tribunal, for its part, seems to have accepted the point made in evidence by Walzl that Park virtually admitted in 1851 that the price negotiated for the block was unfair.¹⁴⁴

As for the size of the reserves, we think that the Crown is essentially correct in saying that Maori were not displaced by the lack of reserves (although we stress that this issue should be differentiated from that of the retention by Maori of the areas they wished to keep, such as Mataruahou and Puketitiri Bush). Other than some of the interior areas of the Ahuriri block (which may have been resided on by Ngati Hineuru), it seems that the land principally used by Maori was that around the harbour (for fishing, the gathering of kaimoana, and in the context of the various landing places and wahi tapu) and at Puketitiri (for the resources the bush provided). McLean himself pointed out to Maori on 2 May 1851 that 'as yet they had not sold the most valuable part of their land'.¹⁴⁵ There was a small community of 40 or 50 people at Wharerangi, where a reserve was created. The picture of Maori having to move off the block en masse because of the inadequate reserves (as conjured up by Ballara and Scott) is misleading. Most of the cultivations and habitations of Ahuriri Maori would appear to have been south of the Tutaekuri River at such places as Omahu and Pawhakaio, or north of the block at Petane and Tangoio (although it may well be that some areas remained unoccupied after the return from exile of so many at Mahia in the 1820s and 1830s).

We should note that the Crown also reminded us that the claimants sought to 'extend the research but not the claim' to the Ngaruroro River – a request which we granted on the basis that the Wai 400 claim area not be extended and that the research 'examine the social and economic conditions of the people of Ahuriri who left following the sale of the block'.¹⁴⁶

144. Waitangi Tribunal, *Te Whanganui-a-Orotu Report* 1995, p 46

145. As quoted in doc 110, p 138

146. Paper 2.206, p 2; see doc x54, p 12

However, we now agree that it is not clear that anyone left the Ahuriri block permanently following the 1851 transaction.

While that may be so, we believe that the reservation of less than one per cent of the block was too little. As we say in chapter 11, with respect to the Mohaka and Waihua Crown purchases, the Crown should always have taken care to set aside sufficient land to allow Maori to share more easily in the developing economy. It is all very well to say that the 'real reserve' still existed at the time, but this was already negated by the Crown's policy of buying as much land as possible. Moreover, if the 'real reserve' was left to the fetters of the market after 1865, it could in no way have been guaranteed. Setting aside a sufficiency within the Ahuriri block would have been a simple means of ensuring the participation of Maori in the emerging pastoral economy. We say this in the knowledge that we have already discussed the problematic issue of the inquiry boundary. Despite the fact that we agree that it is very hard to treat the Ahuriri transaction in isolation, we nevertheless believe that the reserves set aside were inadequate, irrespective of the broader context.

It may well be that, given their ongoing holdings to the south, Maori did not insist on substantial reserves in the Ahuriri block. What we can say with certainty, however, is that, despite having made an agreement in the Ahuriri deed to reserve certain lands, the Crown failed to ensure that there was an adequate mechanism by which to preserve these lands in Maori ownership and control. The Crown attempted to purchase Puketitiri in the 1860s and finally did so in 1926. The island of Te Roro o Kuri was included in the Te Pahou block when its title was vested in only 10 owners by the Native Land Court in 1866, and it was sold privately in 1870. In 1867, the Native Land Court vested Wharerangi in only four owners, although in 1900 a new investigation of title vested it in 46. Instead of encouraging Maori to embark on pastoral farming, the lands were allowed to be leased to Pakeha settlers. By the 1900s, the restrictions on alienability were removed, partitions were allowed, and a process of the piecemeal alienation of most of the reserve began. Native Land Court matters and the effect of the 10-owner rule in section 23 of the Native Lands Act 1865 are also considered in chapter 6 in relation to the Te Pahou and Petane blocks.

Reserves were not made at Pukemokimoki or Kaiarero, and the 'canoe reserve' on the Western Spit was never formally vested in Maori ownership. Thus, quite apart from any argument over the size, context, or adequacy of the reserves in 1851, the Crown failed to ensure that the reserves remained 'a lasting possession' for the Maori of Ahuriri and their descendants.

5.11.3 The nature of the transaction

The expectations that Maori had of collateral advantages from the selling of their land did not necessarily mean that they expected that the land would return to them if these advantages were not forthcoming. To some extent, therefore, selling land was a venture or a gamble on their part. Nevertheless, it is important to signal that these expectations were legitimate.

As we discussed above, the provision of schools, roads, hospitals, and the like were held out as inducements to Maori to sell land throughout New Zealand in the 1840s and early 1850s. Governor Gore Browne later commented that such promises were always made, and Governor Grey recalled that such promises were made explicitly in Hawke's Bay on his instructions. We cited examples of this practice being followed in the South Island (with regard to purchases from Ngai Tahu) and in the Wairarapa. Furthermore, Crown purchase agents gave Maori general assurances that, if they sold land, they would be able to participate in the benefits of Pakeha settlement.

We have had to consider whether Maori viewed these assurances as being 'general' or 'specific' – and therefore part of the gamble or part of the contract. The question is whether Maori could later legitimately seek remedial action on specific matters (such as the lack of a hospital) or general matters (such as an overall lack of prosperity), on the basis of assurances associated with the Ahuriri transaction in 1851. We make the following points:

- ▶ The Ahuriri transaction was a political compact of major significance for Ahuriri Maori, but it was an endorsement of, rather than a substitute for, the Treaty of Waitangi.
- ▶ The Crown was perhaps reckless and manipulative in holding out as many assurances of prosperity as it did to induce land sales, and some of the more specific assurances – such as those relating to hospitals and schools and the development of a town – created quite legitimate expectations.
- ▶ Nevertheless, owing to circumstances well beyond its control, the Government could not legitimately have been expected to ensure that Ahuriri Maori continued to remain prosperous simply in exchange for selling their land in 1851.
- ▶ The Crown should have made a far greater effort to ensure that the spirit of the 1851 agreement was enhanced by taking more positive action in support of Maori interests in Hawke's Bay.

The idea of a political component to the Ahuriri transaction is a point well made by the claimants. The contrast between four Hawke's Bay chiefs signing the Treaty of Waitangi and the hundreds participating in the transactions of 1851 is indeed worth emphasising. But the Ahuriri deed does not replace the Treaty; it was the local embodiment and endorsement of the Treaty.

We accept the claimants' rejection of the ideas of Head that Maori embraced the colonial rule of law in return for the rights of 'citizenship' in the modern state. We prefer James Belich's concept of the Crown initially having nominal – as opposed to substantive – sovereignty, with the chiefs retaining their autonomy until the spread of settlement slowly shifted the balance of power to the colonists.¹⁴⁷

The claimants argued that the Crown did not even view the Ahuriri transaction as a simple sale (a reference to Crown counsel's submission that the transaction was not an 'arm's

147. Belich, pp 181, 197–203

length' arrangement). It is likely that McLean would not have viewed the transaction as he would have viewed a private property purchase in urban Wellington. He would have been well aware that, in 1850, Hawke's Bay was an isolated part of the country in which there had been no Crown presence since Bunbury's brief visit in 1840 (which was made for the sole purpose of securing Te Hapuku's signature to the Treaty of Waitangi). Therefore, entering into a major land transaction would have had immense political significance for Ahuriri Maori. It is wrong of the claimants to imply that McLean viewed the transaction in more or less the same way as the chiefs did, but it seems to be fair to conclude that McLean believed the sale would bring Ahuriri Maori various collateral advantages.

The claimants also cited the alienation of excessive amounts of land in the Heretaunga district and the poverty that ensued as further breaches of the 'Treaty of Ahuriri'. There are difficulties both in citing Native Land Court activity in Heretaunga and in perceiving the Ahuriri transaction as the charter of all rights in Hawke's Bay and the mark by which all grievances must be measured. In regard to the former, Heretaunga is outside the boundaries of this inquiry; in regard to the latter, that role can be filled only by the Treaty of Waitangi itself, and we must measure separate grievances against the principles of the Treaty. We concur with the Crown argument that the claimants have loaded too much onto one transaction.

Maori in Hawke's Bay do have manifest grievances over the alienation of their lands, and they have become significantly marginalised. Furthermore, Ahuriri Maori had justifiable expectations of reaping considerable collateral advantage from the sale of their land in 1851. In finding this, it is, however, not necessary to elevate the Ahuriri transaction to some kind of quasi-constitutional status.

With respect specifically to the issue of 'tuku whenua', we think it clear that Hawke's Bay Maori wanted Pakeha settlers to live among them and to enrich them. But it is another step to say that they also did not believe that the land they sold was going to be permanently lost to them. We accept Tribunal staff researcher Dean Cowie's caution that an expectation of gaining collateral advantages from selling land does not necessarily equate to a belief that those sales could in future be repudiated.¹⁴⁸ If tuku whenua was akin to leasing, as O'Malley contended, and if Ahuriri Maori were familiar with leasing, then one must ask whether they would have realised that signing the Ahuriri deed – which was not a lease – was different. As we have said, selling land to gain collateral benefits was perhaps a venture or a gamble. When the benefits either did not arise or were lost, Maori could feel rightly aggrieved, but they did not necessarily have the fall-back option of reclaiming the land (other than in clear-cut cases of misrepresentation or fraud).

Leasing to squatters was a more localised phenomenon and easy to control, but the sale of a large block and the introduction of a significant Pakeha population was always going to make traditional tuku whenua practices difficult to follow. That is not to say that Maori did not fully

148. Document J12, p 35

expect to receive the collateral advantages that were used to entice them to sell. They certainly did, and they expressed great disappointment when institutions such as hospitals were not built. But the nature of the political compact made with the Crown meant that a straightforward resumption of land as assumed in a *tuku whenua* was not considered. Repudiation did occur, but it tended to be exercised only by those who had not been paid or consulted, those who felt the price had been too low, or those who were inclined to repudiate sales as part of the Kingitanga quest for political self-determination in the early 1860s.

Hawke's Bay was a relative backwater in terms of a visible Crown presence until 1850, and Ahuriri Maori embarked upon a wholly new venture with the sale of land to the Crown in 1851. It is all very well to say that they had observed a Pakeha town at Wellington, but the Ngati Kahungunu population was much bigger and more cohesive than the Maori community in Port Nicholson and it was much more capable of 'controlling' a town in its midst. Likewise, while some findings of the Muriwhenua Tribunal may be relevant to the Hawke's Bay context, the important difference to bear in mind is that the Ahuriri transaction was on a different scale and had a different political dimension to the early Muriwhenua purchases.

Claimant counsel argued that the 'considerable' evidence of ongoing Maori occupation of the Ahuriri block well after the completion of the purchase was a further indication of the fact that it was not viewed as a sale. He cited Belich's argument that Maori habitually continued to use land after they had sold it.¹⁴⁹ Crown counsel countered that this ongoing use was clearly opportunistic, in that Pakeha settlers had by and large not yet arrived to take up possession of the land. (He also denied that the practice was widespread, arguing that the claimants had produced only one example, that of Petane.)¹⁵⁰

In this, the Crown had a point. O'Malley referred to the fact that in the late 1850s, when the balance of power had changed, many small farmers took advantage of the situation to run their stock over Maori land and simply ignored Maori demands for 'grass money'.¹⁵¹ This was a similar form of opportunism, as the Crown pointed out. Moreover, Belich's observation was not necessarily reliant on Maori feeling that the land was not gone from them permanently; instead, it related to the fact that, land sales notwithstanding, the effective frontier between Maori and Pakeha spheres of control crept slowly. (It also related to his ideas of the eventual imposition of substantive, as opposed to nominal, sovereignty.)

As for the issue of leasing, little is really known about the informal Wairarapa leases, but the claimants did seem to be able to refute Hayes' assertion that their very nature (labelled 'promiscuous' by Crown counsel) led to inherent problems between the parties. Similarly, the Crown argument that for some time Hawke's Bay Maori had been predisposed to sell rather than to lease is perhaps misleading. While the 1846 ordinance did indeed allow for the orderly provision of leases to squatters, the Crown had made it clear that this would not be

149. Document x44, p 92

150. Document x54, p 40

151. Document j10, p 184

permitted, and leasing was therefore not an option. Further, early letters from Hawke's Bay chiefs are couched much more in terms of wanting settlers placed on the land, rather in terms of straightforward sales and purchases.

The Crown's argument that it had a duty and a right to apply pre-emption to ensure orderly relations between Maori and Pakeha was somewhat belied by its selective application of it. The removal of pre-emption by legislation in 1862 and the operation of the Native Land Court system did not, in hindsight, safeguard Maori interests. Crown arguments of high principle, therefore, are a little hollow. The Crown's reference to the 1846 ordinance becoming a dead letter in the early 1860s showed again that, when it suited, the Crown was prepared to act expediently, and without having full regard to what measures might be needed to protect Maori interests.

The Crown's contention that O'Malley forgot that the Crown needed revenue to build hospitals, schools, and the like begged the rejoinder that perhaps the British Empire was really overextending itself if it could secure that revenue only by paying Maori a relative pittance for their land. Crown counsel contended that competition for settlers from other colonies and the under-financing of New Zealand effectively meant that it was fair to ban leasing. But this was not part of the deal struck by Maori at Waitangi in 1840. In effect, what the Crown was doing was acquiring 'Empire on the cheap'.¹⁵² If the settler colonies of the British Empire could not be financed from home, the corollary seems to have been – and this is the implication of Crown counsel's submission – that the indigenous people would effectively have to finance them. As explained in chapter 2, the difference between the payment and resale prices of land blocks was effectively a form of taxation used for general purposes. Claimant evidence was certainly that Maori bore the financial brunt of financing the new colony both by selling land cheaply and by paying a large proportion of the customs duties.¹⁵³

The Crown made a valid point in stating that, rather than objecting specifically to Maori landlords because of some 'racist' sentiment, the settlers objected to landlordism in general. The Tribunal also does not accept claimant counsel's description of McLean as a 'racist': he was a man of his time and in many ways held comparatively liberal views towards Maori. Nevertheless, it is probably fair to say that Maori landlords were much less palatable to him. Of course, many Pakeha were more than happy to lease Maori land in Hawke's Bay from 1865 on, but it is also true that some were simultaneously ensnaring their Maori lessors in debt – debt which was paid off in land.

We agree with the point made by the Crown that a balance should have been struck between the amount of land sold and the amount retained by Maori. Had that happened, arguments over leasing would have had less relevance. If indeed Ahuriri Maori favoured 'selling' to the Crown rather than leasing, as Crown counsel contended, it could still be construed that Ahuriri Maori did not so much want to incorporate individual settlers into their

152. The title of a research report by Barry Rigby in the Muriwhenua inquiry.

153. Document x44, p 57

communities (such as squatters, whalers, and traders), as to embrace Pakeha settlement on a grander scale. To that extent, the Ahuriri transaction must be regarded as being a significant political arrangement along the lines that the claimants argued (namely, that it was a compact or alliance). The Crown contention that the transaction was seen by Maori as a means of embracing the ‘fruits of modernity’ was not, in fact, a particularly different line of argument.

5.12 FINDINGS

We find that the Crown, in its dealings over the Ahuriri block and its reserves, breached the principles of the Treaty of Waitangi and that Ahuriri Maori were prejudiced thereby.

More specifically, we find that:

- ▶ Although the purchasing of land by the Crown from willing sellers was provided for in the Treaty of Waitangi, doubts do arise over the low price paid for the Ahuriri block. In particular, the price was very low compared to that in the contemporaneous Waipukurau purchase. McLean was instructed to ascertain the lowest price that Maori would accept for their land and not go beyond it, and this was at odds with the theoretically protective nature of the Crown’s monopoly right to purchase. The Crown thus breached the duty of active protection and clearly did not enter the negotiations in good faith.
- ▶ Furthermore, it is also doubtful whether all parties with rights in the land were consulted, fully understood, and agreed to the transaction. For example, insufficient effort was made to obtain Ngati Hineuru’s agreement; instead, their ‘consent’ was essentially acquired *ex post facto*, when the transaction was a *fait accompli*. McLean was also negligent in his efforts to consult Ngati Tu. The Crown was thus in breach, *inter alia*, of the duty of consultation.
- ▶ We consider that some of McLean’s negotiating tactics were unscrupulous. While he arranged for several well-attended hui to be held and for negotiations to be carried out with individual Maori leaders, and though he organised an open deed-signing with 300 Maori present, McLean was not averse to manipulating matters to his own advantage. It was not only singularly inappropriate but also in breach of the Treaty guarantee to Maori of the undisturbed possession of lands they wished to retain for McLean to pressure Maori into parting with the area around the harbour as well as the majority of Puketitiri Bush. Maori clearly did not wish to sell these areas (or, more to the point, the price on offer was clearly little enticement to Maori to part with them). The Crown was thus in breach of the Treaty’s actual terms as well as the duty to act reasonably and in good faith towards its Treaty partner.
- ▶ Inadequate reserves were set aside for the use and occupation of Maori, irrespective of arguments about the ‘real reserve’ lying to the south of the purchased area. Furthermore,

no protection mechanism was put in place to ensure that Maori continued to use and control their small reserves. The Crown's pursuit of the Puketitiri reserve is one example of the dereliction of its duty to protect Maori interests actively.

- ▶ Maori had legitimate expectations of participating in the material benefits of the infrastructure and services of a town and Pakeha settlement generally. The expectation of collateral advantages deriving from the sale of land for Pakeha settlement was raised by Crown land purchase officers elsewhere in their negotiations. Ahuriri Maori leaders had themselves asked for a town and Pakeha settlement on their lands, and the Ahuriri deed was a first step toward that. As we have said, it is difficult to assess the extent to which the Crown breached the Maori right to development and mutual benefit because of the limits of our inquiry boundary. However, we can reiterate that the inadequacy of the reserves within the block itself impacted upon the vendors' ability to share in and prosper from the new economy.

The Ahuriri transaction was – along with the Waipukurau and Mohaka purchases – the first of many sales of land in Hawke's Bay. In 1865, the Native Land Court began a revolution in its treatment of customary Maori land tenure. In 1867, the adjacent lands in the Mohaka–Waikare district were confiscated. These and other issues are outlined in the following chapters, which put the Wai 400 claim into a regional context.

CHAPTER 6

CROWN AND PRIVATE TRANSACTIONS, 1852–69

6.1 INTRODUCTION

In this chapter, we review a number of land transactions around the town of Napier and in the Mohaka–Waikare district made before this area was confiscated under the New Zealand Settlements Act 1863 (map 18). Land transactions in the Mohaka district made in this period are reviewed in chapters 11 and 12. We begin with a general review of the growing opposition to land transactions in the 1850s, before we outline Crown acquisitions around Napier and then proceed to look at other Crown acquisitions in the Mohaka–Waikare confiscation district before 1868. In 1866, the Native Land Court, operating under the Native Lands Act 1865, began investigating title to a number of blocks in Hawke’s Bay. We focus on the Te Pahou and Petane blocks, both part of the Wai 299 claim. (A separate claim, Wai 732, also relates to the Petane block.) Both blocks were investigated by the Native Land Court, were vested in only 10 owners under the Native Lands Act 1865, and soon afterwards were sold to private purchasers. We review the impact of the 10-owner rule in our discussion of the Petane block claim, an issue already touched on in the previous chapter in our review of the alienation of land in the Wharerangi reserve.

6.2 LAND TRANSACTIONS IN THE 1850S

As we noted in chapter 4, McLean’s foray into Hawke’s Bay was designed to forestall the pastoralists and acquire Hawke’s Bay land cheaply before pastoralists’ ‘grass money’ leases with local Maori forced up the price. In fact, the pastoralists were not far behind McLean. On the very day that the Ahuriri purchase deed was signed, McLean was informed by one of the squatters that all the recently acquired Crown lands were already bespoken.¹ They went to ‘a few wealthy flockmasters and stockkeepers’, according to one who had missed out.² As Matthew Wright put it, ‘Once the door to pastoral settlement had been opened, pastoralists flocked to Hawke’s Bay with phenomenal speed. McLean was joined by opportunists who

1. Document J10, p172

2. *New Zealand Spectator and Cook’s Strait Guardian*, 12 March 1853 (as quoted in doc J10, p172)

rushed back to Wellington and lodged applications for the land.³ Wright names more than a dozen persons who had acquired 14-year pastoral licences by 1852. These people were to found the great estates of Hawke's Bay, mainly on the lands which the Crown had just acquired or was soon to acquire and which it quickly let out on extremely favourable terms. The licences exacted an annual fee of just £5 and allowed the licensees to purchase the freehold of 80-acre homestead sites. Though the Crown could resume title to the land and put it up for auction, this was seldom done.

Grey cancelled the licences in 1852, a move which engendered, in JG Wilson's words, a 'petition of protest' from various licensees.⁴ In 1853, a new set of regulations was issued which allowed individuals to purchase lands (except for the 80 acres around the homestead) at the rate of five shillings an acre for pastoral land or 10 shillings an acre for agricultural land. The Crown's terms were more attractive for runholders than the grass rentals, which in the Wairarapa had often amounted to several hundred pounds per annum. Moreover, the runholders were not beholden to what they regarded as the capricious behaviour of their Maori landlords. According to O'Malley, several thousand acres were purchased under Grey's regulations by the end of 1854. So rapidly did the pastoral industry advance that, by 1864, more than 550,000 sheep were being grazed on Hawke's Bay lands and, less than a decade later, the figure had reached more than a million.⁵

The leading lights in Hawke's Bay political and Maori affairs were heavily involved in the acquisition of Maori land, either indirectly from the Crown or later directly from Maori under the Native Lands Acts. McLean, for example, acquired his Maraekakaho run by employing both methods. He began by purchasing a flock from a squatter and depasturing them on Maraekakaho. Then, having purchased that block for the Crown in 1856, he took out an occupation licence over his home block. Later, he added to that run by purchasing adjoining land under the Native Lands Act 1865, building up his holding to some 30,000 acres. John Ormond also built up a sizable holding. As a 20-year-old, he held a grass money lease for his Wallingford run near Porangahau until it was purchased by the Crown in 1858, at which time he got a legal pastoral licence.⁶ He subsequently extended the block with further purchases of Crown land, bringing the total area to 13,400 acres by 1860 and to some 34,000 acres by 1895.⁷

Almost half of the 265,000-acre Ahuriri block was acquired by George Whitmore, whose Rissington run was initially a Crown grant for his military service, but he augmented it by buying the pastoral licences of several neighbours until he had acquired some 110,000 acres stretching from the Kaweka Range almost to the coast.⁸ As we note in chapter 7, McLean,

3. Matthew Wright, *Hawke's Bay: The History of a Province* (Palmerston North: Dunmore Press Ltd, 1994), p 38

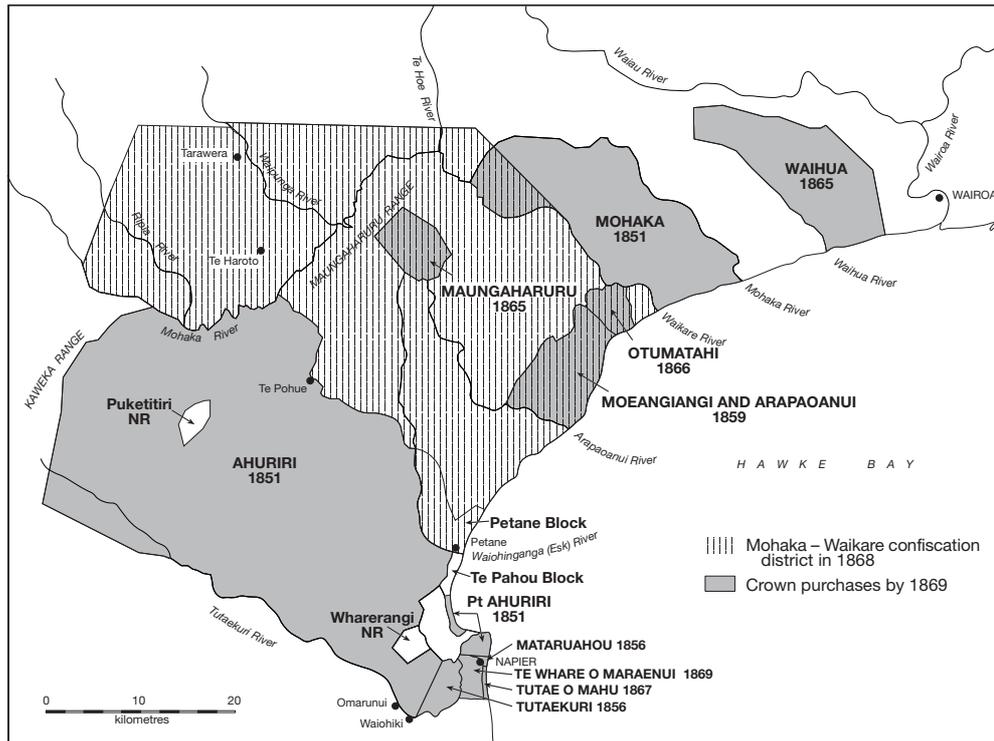
4. James Wilson and others, *History of Hawke's Bay* (Dunedin: AH and AW Reed, 1939), p 230

5. Document 110, p 173

6. Wright, p 41

7. Miriam Macgregor, *Early Stations of Hawke's Bay* (Wellington: AH and AW Reed, 1970), pp 262–263

8. *Ibid*, pp 192–194



Map 18: Crown land acquisition, 1851–69

Ormond, and Whitmore were all heavily involved in the events that led to the military assault on the Pai Marire party at Omarunui and the subsequent land confiscation.

Lowland portions of the Ahuriri block along the Tutaekuri and Waiohinga (Esk) Rivers were also taken up. The Greenmeadows Station along the Tutaekuri River was purchased from the Crown by HS Tiffen and Henry and George Alley in 1857. GEG Richardson and Hutton Troutbeck took up the rugged hill country on the south side of the Waiohinga River in the early 1860s, and they joined this to the Petane block across the river, which they had acquired under the Native Lands Act 1865, a purchase that we discuss further below (see sec 6.5.2). However, the rugged interior of the Ahuriri block on the edge of the Kaweka Range was not taken up until later.⁹ The Mohaka block, purchased for the Crown by McLean in 1851, was let out on pastoral licences to half a dozen pastoralists later in the 1850s.¹⁰

Having returned to the Wairarapa to purchase large areas of land there, following the Waipukurau, Ahuriri, and Mohaka purchases in 1851, the Crown land purchase officers resumed purchasing in southern Hawke's Bay in 1854. But, in the face of growing Maori resistance, the Crown then changed its tactics. It began dealing secretly with senior chiefs such as Te Hapuku and Tareha in Wellington and Auckland and started to rely on their signatures alone. McLean had already dealt in a clandestine fashion with two of the chiefs over the Ahuriri block, but

9. Macgregor, pp 69, 76

10. Ibid, pp 65, 91, 135, 189

at least in that case he concluded the transaction with a public hui and gained numerous signatures. This was not the case with the purchases that were commenced between 1854 and 1856 (which, in some cases, were not finalised until 1859). These purchases netted the Crown some 1.5 million acres and included Ruataniwha North and South, Porangahau, Ruahine Bush, Tautane, Otaranga, Aorangi, and, as noted, Maraekakaho.¹¹ These blocks all lie to the south of our inquiry district.

The negotiations with Te Hapuku occurred in Wellington while he was visiting and being entertained by Superintendent Featherston. When this news filtered back to Hawke's Bay, it caused, according to Samuel Williams, 'the greatest state of excitement and indignation'.¹² On a visit to Ahuriri in April 1855, McLean paid Tareha and two others £100 for the Tutaekuri block, a 1000-acre block on the southern side of Te Whanganui-a-Orotu, with new district land commissioner George Cooper paying them a further £100 in November 1856. At these same times, two separate sums of £25 each were also paid to the same chiefs for land at Napier (the Mataruahou block – see below), with Tareha also being paid with two individualised town sections. While more public than the secret purchases of 1854 and 1855, these two transactions were still made with a very small number of owners. We consider these transactions in the next section.

By 1856, opposition to the transfer of land was beginning to mount, no doubt fuelled by the notorious 'secret' transactions and the practice of acquiring land from one or two individuals. Williams observed that Maori had hoped to be able to control the selling by rival chiefs by their own means but now feared that 'they would be driven to maintain their position by force of arms'.¹³ In November 1856, Te Moananui also refused to accept the final instalment for the Cape Kidnappers block purchased in 1855, because, according to Cooper, 'he imagines that by adopting this course he will be able to get back a part of the land'.¹⁴ This was an indication of a growing opposition to land selling among Maori generally, which culminated in attempts to reassert Maori independence through political movements such as the Kingitanga. In 1856, Te Moananui, Karaitiana Takamoana, Tareha, and many others attended a hui called by Te Heuheu in Taupo. There, it was:

proposed to put an immediate stop to all sales of land to the Government, and to use every possible means to induce squatters to settle with flocks and herds upon the extensive plains in the interior; such squatters to occupy the position of vassals to the Chiefs under whose protection they may live, whose orders they are to obey in all matters, and to whom they are to afford a revenue, by way of rent for their runs, to assist in maintaining the power and influence of their landlords.¹⁵

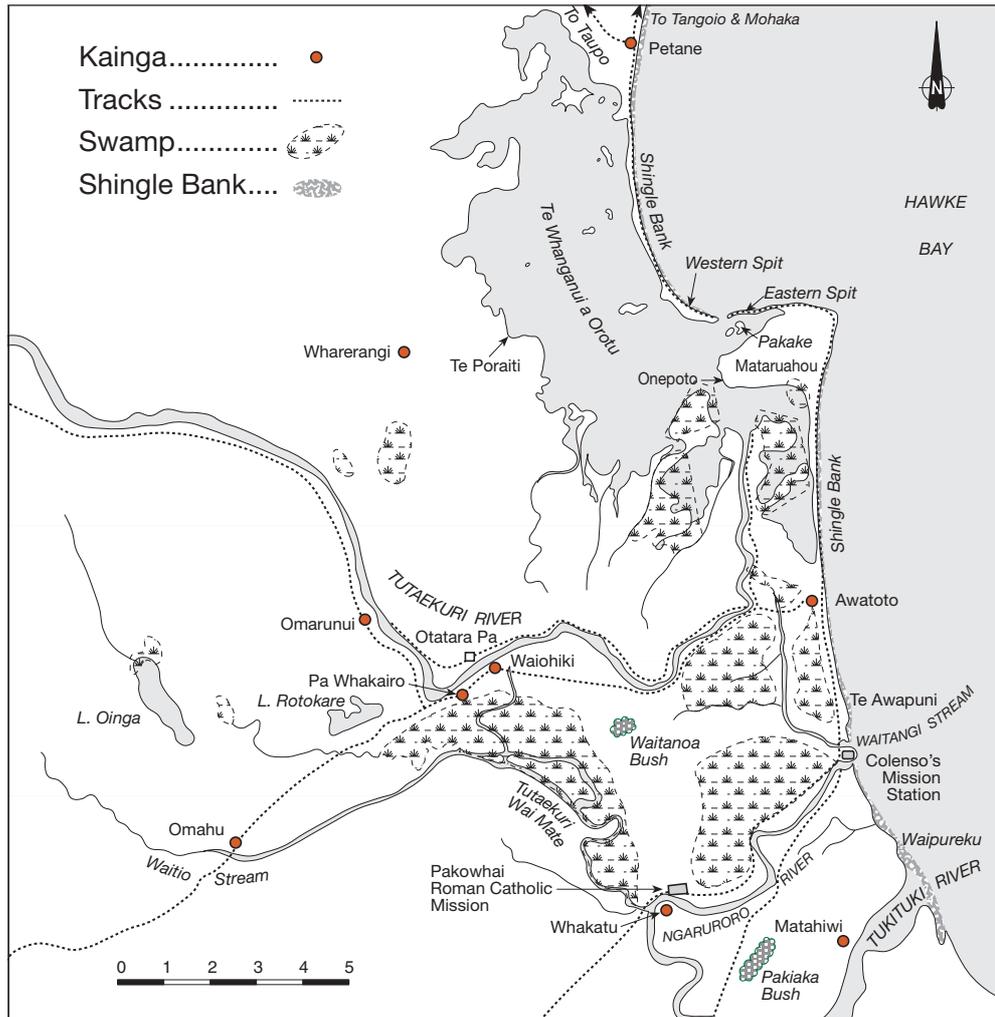
11. Document J12, pp 265–267

12. S Williams, 'Remarks upon Land Purchases in the Hawke's Bay Province' (as quoted in doc J10, p 175)

13. Ibid (p 177)

14. Cooper to McLean, 29 November 1856, AJHR, 1862, c-1, p 322 (doc J10, p 177)

15. Ibid, pp 323–324 (pp 177–178)



Map 19: Ahuriri, circa 1850

Cooper attributed Te Moananui's behaviour over the Cape Kidnappers payment to a visit paid by Te Heuheu to Hawke's Bay shortly beforehand, which had, he wrote to McLean, had 'the effect of unsettling the minds of some of the Natives'. He added, 'A good deal has also been said about returning the money for Okawa, and about resuming possession of a part of the Ahuriri block, in consequence of the low price which was paid for it.' Te Hapuku, for his part, remained in favour of land selling, warning Te Heuheu against 'interfering with him or his lands'. The unfortunate effect of this was to end abruptly the recent reconciliation between Te Hapuku and Te Moananui. All in all, however, Cooper reasoned that Ngati Kahungunu had become used to an idle lifestyle and were so indebted that they needed to keep selling land 'as a means of obtaining supplies which have now become necessary to their existence'.¹⁶

16. Ibid (p 178)

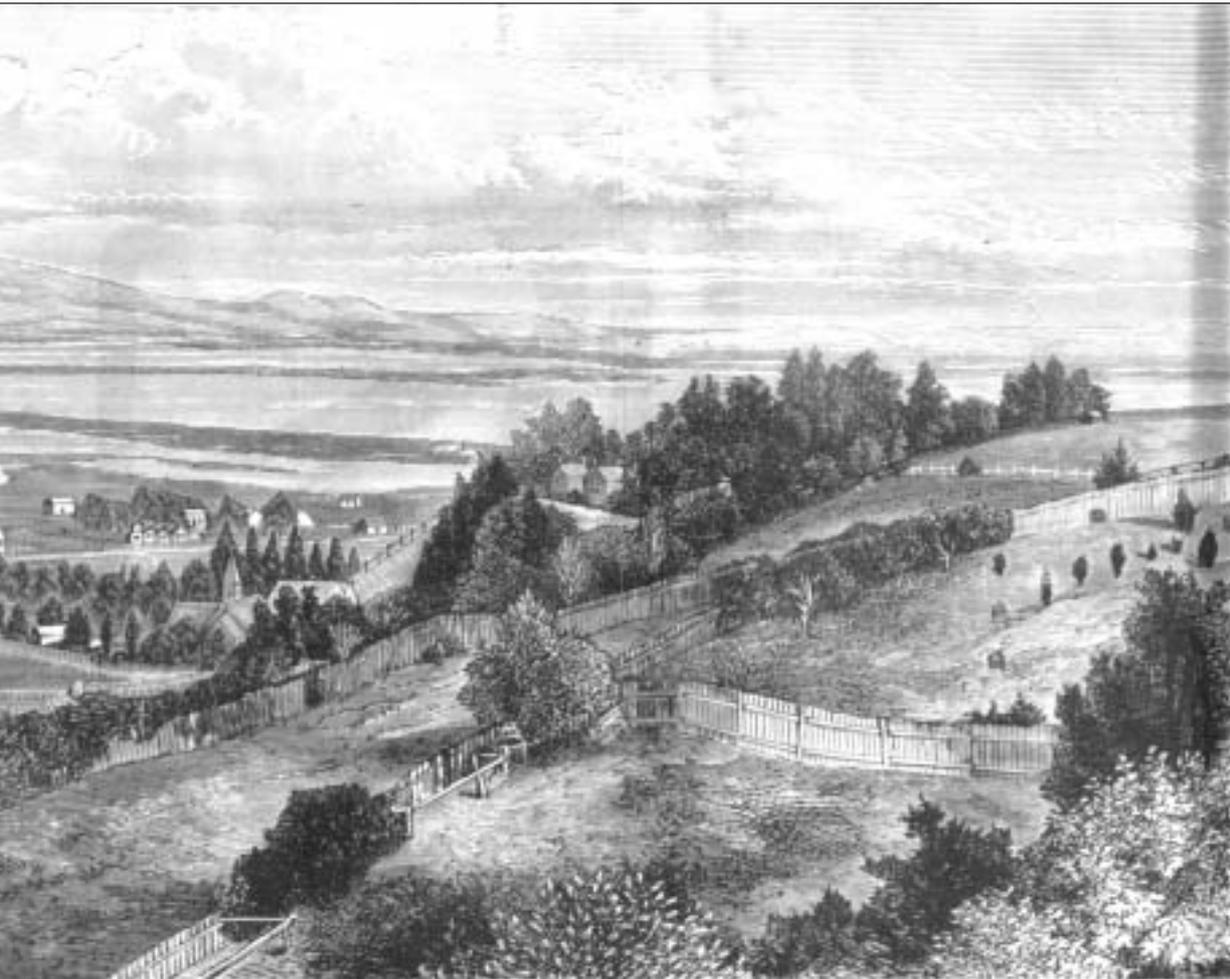


Fig 5: Panorama of Napier. Source: Julius Vogel, ed, *The Official Handbook of New Zealand* (London: Wyman and Sons, 1875).

Te Hapuku's ongoing attempts to sell land to which he held dubious title continued to raise tensions until, in August 1857, armed conflict broke out at Pakiaka Bush between him and his rivals (who included Tareha, Te Moananui, and Karaitiana Takamoana). Peace was not made until March 1858, when Te Hapuku was forced to withdraw from the disputed ground he had occupied. The victorious chiefs informed the Governor in September 1858 that they had resorted to action against Te Hapuku because he had been attempting to sell their land without the consent of the proper owners.¹⁷ Cooper also reported that, except for Te Hapuku and his followers:

an agreement was unanimously made that in future every one should do as he pleased with his own land, that the system of selling through the Chiefs should be abandoned, and that

17. Te Moananui and others to Governor, 29 September 1858, AJHR, 1862, C-1, p 340 (doc J10, pp 179-180)



any one who should hereafter be guilty of selling anothers property or of misappropriating any payment for land, should be punished with death.¹⁸

By 1859, land selling had more or less ground to a halt. Cooper explained that Maori had ‘removed the chance of further bloodshed, by preventing land from being sold by claimants with doubtful titles; or, what was still more dangerous, by rightful and acknowledged claimants, against the wishes of a majority of those interested’.¹⁹ O’Malley thought that Cooper wrote this as if the Crown were ‘merely an innocent bystander’.²⁰ McLean, for his part, wrote a report at the end of June 1859 in which he made the point that there was relatively little land

18. Cooper to chief commissioner, 30 September 1858, AJHR, 1862, C-1, p 340 (doc J10, p179)

19. Cooper to chief commissioner, 12 March 1860, AJHR, 1862, C-1, p 350 (doc J10, p182)

20. Document J10, p182

left to purchase in Hawke's Bay in any event.²¹ By and large, however, those opposing land sales set the agenda, and it was not until the introduction of the Native Land Court system in 1865 and the removal of pre-emption that the sale of Maori land began again in earnest.

In the meantime, and with the Native Land Purchase Ordinance now effectively a dead letter because of the Crown's successful acquisition of so much Hawke's Bay and Wairarapa land (as Crown counsel had suggested – see section 5.9.3), informal leasing returned on a significant scale. The strict letter of the ordinance was overcome by flock owners who leased only the grass, not the land. Two such payers of 'grass money' were, ironically enough, none other than McLean and Cooper. By 1864, almost half of the unpurchased Hawke's Bay land was effectively being leased.²² The balance of power was shifting from Maori to the settlers, and many small farmers ignored Maori demands for payment. The Native Land Court system legalised the leasing arrangement and directly broke Maori resistance to land selling. This had devastating results, such as the loss of many reserves made out of former Crown acquisitions.

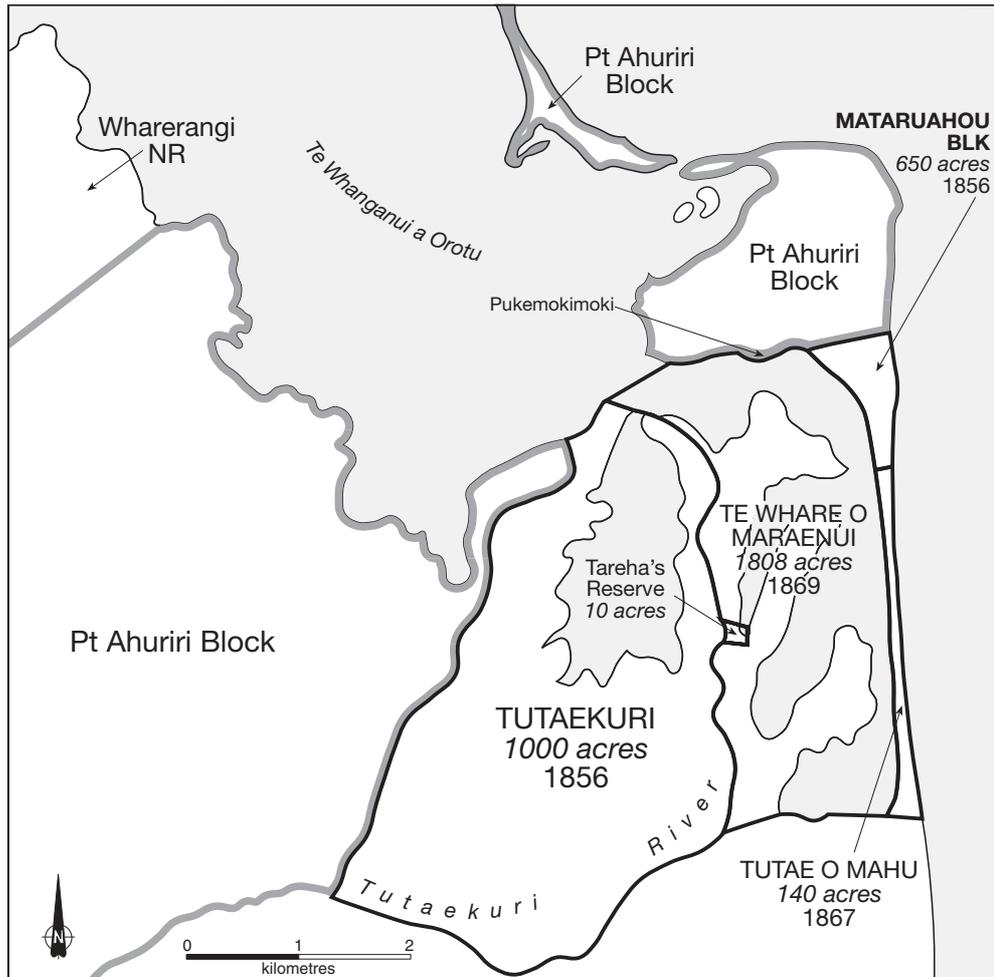
6.3 CROWN PURCHASES AT NAPIER

The physical site of the town of Napier was a difficult one to develop (map 19). Mataruahou, also known as Scinde Island, was steep hill country, and there was little level land adjacent to the old Port Ahuriri inside the eastern spit, now known as the Napier inner harbour. The western spit was a very constrained site on a narrow shingle bank. The only extensive level area, albeit somewhat swampy, lay to the south of Mataruahou behind another shingle bank. It was on this land that the central town area was laid out. Further inland, the landscape was one of shallow lagoons, mudflats, swamps, and low-lying land around the estuary of the Tutaekuri River, which at that time flowed into the southern end of Te Whanganui-a-Orotu. The view in figure 5 of the town of Napier in 1875 (looking south from Mataruahou) illustrates the severe constraints of the site for a town that was intended to become a port and regional centre for Hawke's Bay.

There was a further constraint to the development of the town in that although Mataruahou was included in the Ahuriri purchase in 1851, the level land to the south was not. McLean initiated negotiations to acquire the Mataruahou and Tutaekuri blocks in 1856 and these were completed by Cooper. In 1867 and 1869, the Tutae o Mahu and Te Whare o Maraenui blocks were also acquired (map 20). Here, we summarise each of these transactions:

21. McLean estimated that the province contained 2.7 million acres and noted that 1.4 million of them had already been purchased; 500,000 were 'waste and useless'; 200,000 to 300,000 were required for the present and future needs of Maori; and of the remaining 500,000 to 600,000 acres, 200,000 were already 'under negotiation': McLean to Smith, Assistant Native Secretary, 29 June 1859, AJHR, 1862, C-1, p 345 (doc J10, p 181).

22. See doc J10, pp 184–186



Map 20: Crown purchases at Napier, 1856–69

- ▶ Mataruahou (650 acres): sold in 1856 by Tareha, Karauria Pupu, and Hone Hoeroa. Payment of £50 was made to these three, and Tareha was also promised two town sections. On 30 December 1862, Tareha received Crown grants for sections 179 and 180 in Carlyle Street, Napier, which he sold soon after for £50 (see map 15). There was no separate plan of this block, which had already been included in the 1855 plan of Napier. There has been some confusion in the evidence, probably because the deed is headed 'Mataruahou (Scinde Island) Block', and dated 13 November 1856, whereas the deed receipt for the downpayment of £25 to Tareha is dated 11 April 1855 and headed 'Mataruahou Island (Land Adjacent to)'.²³ The land involved in this transaction was the 650 acres of level land south of Mataruahou on which most of the central area of Napier now stands.

23. HH Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printers, 1878), vol 2, pp 509–510, 580; Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995* (Wellington: Brooker's Ltd, 1995), pp 80–82; and see doc 11(10), pp 8–9



Fig 6: View of the Spit at Napier showing wharves, reclamation, and buildings, circa 1890s. Photograph by Burton Brothers. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (Burton Brothers collection, ¼-008779).

- ▶ Tutaekuri (1000 acres): sold in 1856 by Tareha, Karauria Pupu, and Hone Hoeroa for £200, Tutaekuri was almost entirely swampy lagoon lying between the Puremu Stream and the old course of the Tutaekuri River. The first instalment of £100 was paid on 11 April 1855, with the second £100 paid on 13 November 1856. These are the same dates as those for the Mataruahou transaction.²⁴
- ▶ Tutae o Mahu (140 acres): sold in 1867 by Tareha, Tutae o Mahu comprised a narrow strip of shingle bank along the coast and formed part of the route south from Napier.²⁵
- ▶ Te Whare o Maraenui (1808 acres): sold in 1869 by Tareha and Wiremu Nga Maia, for £800, Te Whare o Maraenui was mainly swampy mudflats between the Tutaekuri River and the shingle bank along the coast. Within it, a reserve of 10 acres was set aside for Tareha personally.²⁶

The Whanganui-a-Orotu Tribunal commented that there was little information about these purchases. Cooper's purchase methods, which had the approval of Donald McLean (by then, the chief land commissioner in Auckland), were less open than those McLean had used in 1851, 'when the deals were discussed at large public meetings of local chiefs and people on the spot'. By contrast:

24. Turton, vol 2, pp 510–511, 580–581; *Te Whanganui-a-Orotu Report 1995*, pp 82–83

25. No purchase price has been found for this block and it does not appear in Turton's deeds.

26. *Te Whanganui-a-Orotu Report 1995*, pp 84–86



Fig 7: From Bluff Hill, Napier, looking south, circa 1880s. Photograph by William Williams. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (ER Williams collection, G-25787-1/1).

the 1854–59 transactions were often conducted secretly with chiefs in town without the knowledge and consent of all the rights holders, who also did not share in the proceeds. Moreover, the sales were often solicited with advance payments, and attempts to return purchase moneys by persons repudiating them were refused. In this wider context, two smaller purchases in 1855 and 1856 and two more in 1867 and 1869 under the Native Land Court system completed and extended the Ahuriri purchase at the southern end of Te Whanganui-a-Orotu.²⁷

Part of this ‘wider context’ was of course the sale of lands in the Heretaunga Plains, to the south, which are outside the Mohaka ki Ahuriri inquiry area.

None of the Mohaka ki Ahuriri claimants advanced any further evidence or submissions about these blocks, and they have been reviewed here simply to complete the picture of land alienation in the Napier area.

6.4 CROWN PURCHASES IN THE MOHAKA–WAIKARE DISTRICT

As we noted in our discussion of southern Hawke’s Bay in chapter 4, pastoral occupation either preceded or quickly followed Crown purchases of land. This was less so for the rugged

27. Ibid, p80

6.4.1

hill country, that ran right down to the coast between the Ahuriri and Mohaka blocks, which later became the confiscated Mohaka–Waikare district. One pioneer pastoralist in the district was Philip Dolbel, who obtained a lease from Maori of the large Maungaharuru run on the range of that name in the 1850s (see also chapter 11).²⁸ Several others were probably behind the applications that were lodged by Maori for hearings of the Native Land Court in 1866, but these were cancelled on McLean’s instruction and the land was confiscated instead. We consider the raupatu or confiscation of the Mohaka–Waikare district and its aftermath in part III of our report. In the meantime, the Crown had purchased, or had paid deposits on, several blocks in the district when opportunities arose, and some of this land was soon let out to pastoralists. We now discuss these activities, beginning with four blocks purchased by the Crown before the confiscation and retained by it afterwards (see map 18).

6.4.1 Arapaoanui

Arapaoanui is a coastal block, initially estimated at 2000 acres, which lies to the north of the Arapaoanui River. It should not be confused with another of the same name to the south of the river which was confiscated but returned to Maori. The Arapaoanui block north of the river was purchased by the Crown in three transactions on 19 April, 20 June, and 7 July 1859.²⁹ The first deed of purchase was negotiated by Cooper with Hepenaia Tokuhai and 11 others, who supposedly represented Ngati Te Rangitohumare and Ngai Te Aonui. Cooper had recommended a payment of £150. However, this transaction was repudiated by other owners, some of whom appear to have signed the second deed of 20 June. Payments of £240 were made to the signatories of that deed, but the area of the block was doubled. The third deed appears to have been signed by a sole seller, Kopu Parapara, who was paid £10. The Crown notified the purchase in the *Gazette* on 1 November 1860, and surveying of the block began. Although no arrangement for reserves appears to have been made at that time, a reserve of 100 acres called Wairoa was recorded in a ‘return of reserves’ in 1862. By 1870, however, the whole block had been included in the Mohaka–Waikare confiscation and been retained by the Crown as part of the larger Moeangiangi block to the north, which had also been purchased by the Crown.

6.4.2 Moeangiangi

The Moeangiangi block runs northwards along the coast from the Waipapa Stream to the Arakarekare Stream (just south of the Waikare River) and inland for about 10 kilometres. It was estimated to contain some 10,000 to 12,000 acres. According to an entry in McLean’s diary, as early as 6 March 1851, ‘the natives of Waikare’ offered to sell him a somewhat bigger

28. Macgregor, p 129

29. Turton, vol 2, pp 528–531

block that extended further north to the Waitaha Stream, which was just north of the Waikare River (see ch11). However, a deed of purchase was not negotiated until 7 July 1859. It was signed by Toha Rahurahu and 14 others and provided for the sale of 10,000 acres for £300, with an additional payment to be made if the block was found to be larger.³⁰ On 8 August 1859, another £10 was paid to Maata Kairahi, who did not sign the original deed. The block was gazetted on 1 November 1860 and a return of native land purchases for that year listed Moeangiangi as being 12,000 acres and costing £310. A further £150 was paid in 1862 to Te Teira Te Paea, Hoera Haurangi, and Te Manuhera Nikau, none of whom had signed the earlier deeds (which suggests that they were additional claimants rather than that the payment was for the extra 2000 acres).

There was also some confusion over the size of the one reserve that was made. The deed described a reserve of 200 acres on ‘the east side of Moeangiangi’ as being ‘a dwelling place for us’, but it said that the boundaries were ‘to be fixed by us with the Surveyor and the landing place for the boats of the Europeans’.³¹ The reserve was listed on 23 January 1862 as 670 acres in size but it was later said to be ‘about 1,000 acres’. In 1866, the title of the reserve was determined by the Native Land Court in favour of Pitiera Kopu, Winiata Te Awapuni, and Te Retimana Ngarangipai, three of the original vendors, who promptly sold all but a 10-acre landing reserve to the Crown for £160.³² Their sale of the reserve was the subject of a complaint to the Hawke’s Bay Native Lands Alienation Commission in 1873 by some resident sellers of the original block. Though the two European commissioners agreed that the complainants had been badly treated over the secretive sale of the reserve, they left the matter of any recompense to the Government, which did nothing about it. In 1897, the 10 acres remaining of the reserve were allowed by the Native Land Court to pass into private ownership because a Department of Lands and Survey map had failed to mark the reserve as Crown land.³³

6.4.3 Otumatahi (Otumatai)

The 4470-acre Otumatahi block north of Moeangiangi was purchased by the Crown in two transactions. The first was with Ihaka Te Waro and six others in January 1866, the second with another group of seven (this one led by Tieme Puma) on 11 December 1866, just a month before the confiscation was proclaimed. The Crown paid £400 for the block, but it is not clear why it decided to complete the purchase when it was already intent on confiscating the land.³⁴ The Otumatahi block seems to have been included in the extended Moeangiangi block after the confiscation.

30. Ibid, pp 533–534

31. Ibid, p 534

32. C W Richmond, ‘Report on Case No x’, 31 July 1873, AJHR, 1873, G-7, p 16; doc J30, p 53

33. Document 11(13), pp 5–10

34. Document J12, p 109

6.4.4

6.4.4 Maungaharuru

The mountainous Maungaharuru block of some 8000 acres was listed along with Tangoio and Tarawera in an 1865 return of lands for which negotiations had commenced. It was included in the list on the strength of a £100 deposit, and was what researcher Dean Cowie aptly called one of the Crown's 'lay by' purchases.³⁵ Though no deed remains to confirm the precise arrangements agreed in 1865 or that any subsequent payment was made, the block was retained by the Crown on the strength of this 'purchase' after it was also swept into the 1867 confiscation. Since confiscated land became Crown land anyway, it was probably assumed that it was unnecessary to complete the purchase.

6.5 CROWN NEGOTIATIONS FOR OTHER MOHAKA–WAIKARE DISTRICT BLOCKS

During the early 1860s, Crown purchase officers had made advance payments on three other blocks in the Mohaka–Waikare district. The Crown did not always rely on deposits, however, and it simply used the 1867 proclamation of confiscation to acquire some or all of the three blocks. We note only the initial payments here and take up the story of these blocks again in chapters 9 and 10.

6.5.1 Waitara

On 3 April 1863, the Crown paid an advance of £100 to Te Ngoki and seven others for some 20,000 acres of what later became known as the Waitara block. The 'deed' was merely a receipt for an advance payment, and the final amount was to be fixed on the completion of a survey. A rough sketch plan showed a rectangular block sandwiched between the Mohaka River and the Maungaharuru Range. Te Ngoki and the other signatories were coastal Ngati Kahungunu. The inland Ngati Hineuru were not consulted and through Nikora Te Whakau-nua protested vigorously over the deal. However, the Crown did not complete the purchase and the Waitara block was subsequently retained as confiscated land.³⁶

6.5.2 Tangoio

In 1864, an advance deposit of an undisclosed amount was paid on the Tangoio block, with the remainder to be paid after a survey. The block was listed as being some 100,000 acres, but this figure would have referred to all of the land east of the Maungaharuru Range that had not already been purchased by the Crown. Apart from being listed in a 'return of native lands for

35. Document J12, p 109

36. Document U14, pp 23–26

which negotiations had been commenced’, which was printed in the 1865 *Appendix to the Journal of the House of Representatives*, there is no other record of a Tangoio purchase and no record that a survey was completed.³⁷ However, in Native Land Court panui of 2 June and 8 November 1866, Tangoio was listed with several other Mohaka–Waikare blocks for hearing before the court. In the result, those hearings did not proceed.³⁸ Armed conflict had come to the district in October 1866, and McLean chose the easier option of confiscating the land rather than proceeding through the Native Land Court to acquire it. An area of about 8500 acres was retained as confiscated land and this was described as the Tangoio block. A small coastal block to the south was returned to Maori as the Tangoio South block.

6.5.3 Tarawera

In 1864, the Crown also paid a deposit of £50 for the Tarawera block, which was said to cover 10,000 acres, with the balance to be paid on the completion of a survey.³⁹ That survey was never undertaken, however, because the block was in ‘Hauhau country’. As a result, the Native Land Court hearings concerning Tarawera, which were to have been held in August 1866, were cancelled. The reference to ‘Hauhau country’ was an early indication that Pai Marire was moving into Hawke’s Bay – moving, moreover, along old fault lines between different iwi and hapu factions.⁴⁰ Those facilitating both the sale of the inland Tarawera block to the Crown and the Native Land Court hearing were the coastal chiefs Te Waka Kawatini and Paora Torotoro. However, Tarawera was clearly within the rohe of Ngati Hineuru, who had often been at loggerheads with the coastal Ngati Kahungunu and were, as we have noted, closely affiliated with Ngati Tuwharetoa of Taupo. As Pai Marire, or ‘Hauhauism’, spread from Taranaki to the Waikato and the Bay of Plenty and to the central North Island and the East Coast, it was easy to tar the non-selling Ngati Hineuru with the ‘Hauhau’ brush. The Crown did not persist with its efforts to purchase the Tarawera block, and it too was swept into the area proclaimed as confiscated land in 1867. Though most of the confiscated Tarawera land was returned, two key blocks on the strategic road to Taupo were retained as locations for Armed Constabulary redoubts.

37. ‘Return of Land Purchases in New Zealand’, 23 August 1865, AJHR, 1865, C-2, p 4 (cited in doc J12, p108)

38. Document J28, pp 57–58

39. Document J12, p108

40. We have used the term ‘Pai Marire’, meaning good and peaceful, to refer to the religious movement led by Te Ua Haumene. The terms ‘Hauhau’, ‘Hau Hau’, or ‘Hauhauism’, were more commonly used in nineteenth-century sources and were derived from an element in the Pai Marire karakia, or ritual chanting. While some of the more recent evidence has continued to use the term ‘Hauhau’, we use this terminology only in quotations. ‘Hauhau’ became a pejorative term and was often used loosely to describe Maori ‘rebels’ who opposed Crown policies in any way. The essentially pacifist and millennial elements in the teachings of the Ngati Hineuru ‘prophet’ Panapa (see ch 7), an apostle of Te Ua, suggest that ‘Pai Marire’ is the more appropriate term in this context.

6.6 LEGAL SUBMISSIONS

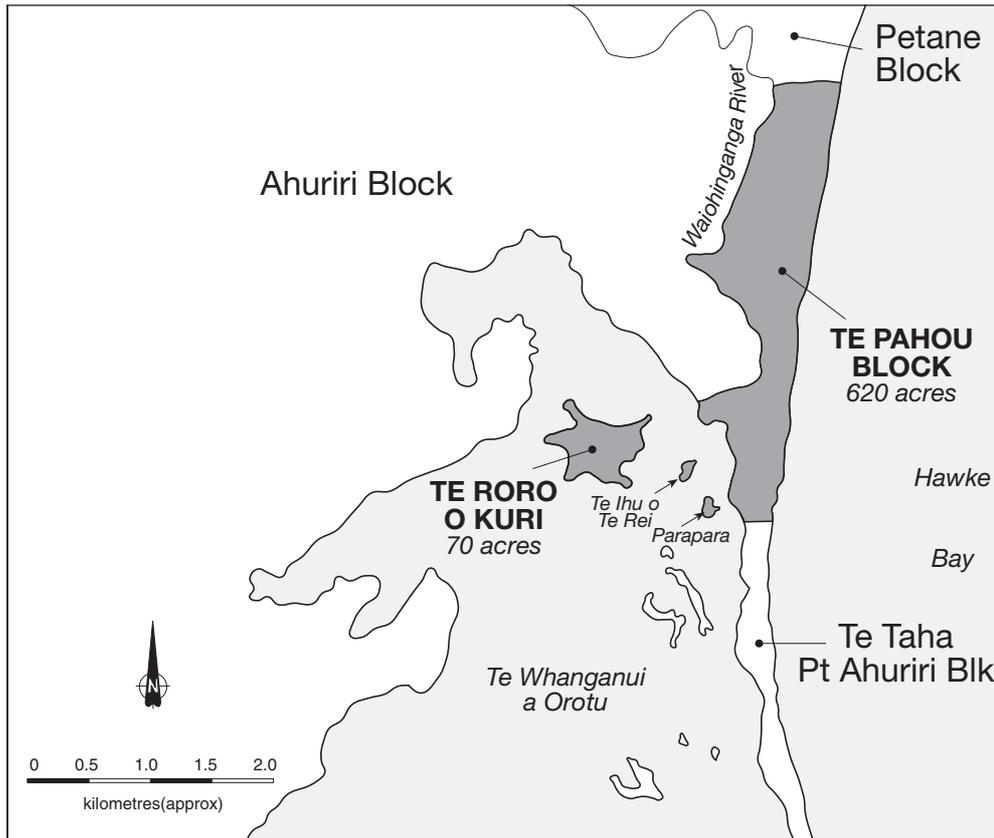
Counsel for Wai 299 did not make any submissions on the Crown's purchasing activities in the Mohaka–Waikare district prior to the confiscation. His submissions on Crown purchasing related to activities that followed the return of some of the blocks under the 1870 agreement. (We discuss this issue in chapters 9 and 10, where we also comment on and make findings with regard to the confiscated blocks retained by the Crown.) Likewise, the other claims relating to the confiscation district referred mainly to specific blocks of land and were again concerned with post-confiscation actions or omissions of the Crown. Accordingly, apart from providing a brief summary of its dealings before 1870, the Crown did not make any submissions on its pre-confiscation purchasing activities.

6.7 PRIVATE PURCHASES UNDER THE NATIVE LANDS ACT 1865

The unpopularity of Crown purchases in the late 1850s and the outbreak of war over Waitara land in Taranaki in 1860 gave impetus to the settlers' long-simmering demand for the abolition of the Crown's Treaty-based right of pre-emption and the introduction of direct private purchases. This wish was given effect by the Native Lands Act 1862. When that Act was replaced in 1865 by a new Native Lands Act – one that provided more favourable terms for the individualisation of Maori customary titles and the alienation of their land – the Hawke's Bay squatters were amongst the first to turn the process to their advantage.

Once again, the squatters were most active in southern Hawke's Bay and were notably so in the fertile 20,000-acre Heretaunga block. Having sold the Crown so much of their land adjoining the block, the Maori owners were desperate to retain it as a reserve. The purchase of the Heretaunga block by the 10 'apostles' – a ring of speculators led by Thomas Tanner – is perhaps the most notorious transaction in the annals of the Native Land Court. But it cannot be examined in this report because the block lies to the south of our inquiry district. Instead, we should examine several lesser transactions, such as those concerning the coastal Te Pahou and Petane blocks, which do lie within our boundaries.

As we have indicated above, Native Land Court hearings were advertised for some of the Mohaka–Waikare blocks in 1866 but were cancelled on the eve of the October conflict. However, some court sittings did proceed, among them hearings for two coastal blocks near Napier, one of which was subsequently included in the Mohaka–Waikare confiscation district. The Native Land Court eventually decided titles to the Te Matai and Pakaututu blocks in the south-west of the confiscation district, but since this happened after the confiscation, we discuss it in chapter 8.



Map 21: The Te Pahou block

6.7.1 Te Pahou (Wai 299)

Te Pahou is a small coastal strip of land of about 620 acres sandwiched between the coast and the old main outlet of the Waiohinga River, which, before the Napier earthquake, discharged into the estuary of Te Whanganui-a-Orotu. Also included in Te Pahou were Te Roro o Kuri (an island of about 70 acres) and the islets Te Ihu o Te Rei and Parapara, all of which were within Te Whanganui-a-Orotu. They raised the total area to 694 acres (map 21). Although Te Pahou falls outside the proclaimed confiscation district, we have included it in our discussion because it was included in the fourth amended statement of claim for Wai 299. Te Roro o Kuri was one of the reserves in the Ahuriri purchase, but we have no information as to why it was included in the Te Pahou block. That block was investigated by the Native Land Court on 16 August 1866 and granted to 10 owners on 3 October 1866, just nine days before the engagements at Omarunui and Petane which led to the confiscation in 1867.

The subsequent alienation of the Te Pahou block was examined by claimant researcher Richard Boast. After the Crown grant was issued, the block was purchased on 28 January 1870 by Thomas Richardson, a lessee of other Maori land in the district. However, the transaction

was controversial at the time, and it was one of many such private transactions under the Native Lands Act 1865 that were referred to the Hawke's Bay Native Lands Alienation Commission of 1873. Boast's report relied largely on the report of that commission. He noted that, although Richardson had tried to initiate the purchase with Paora Torotoro (one of the coastal chiefs heavily involved in land selling through the Native Land Court), he could not reach an agreement with him, so he handed over the negotiations to RD Maney, a Meeanee publican and storekeeper who was also a native land purchase agent. These three aspects of Maney's business were conveniently combined. As the commission noted, Maney sold liquor (which was illegal) and other goods on credit to prominent Hawke's Bay chiefs and charged the items against their land. As a result, they seldom received cash payments for the sale of land.

Torotoro told the commission that he had asked Richardson for £1400 for Te Pahou but that Richardson had countered with an offer of £400 and a personal payment to Torotoro of £100. Richardson had then handed the negotiations over to Maney, who told Torotoro to accept Richardson's offer. Torotoro asked for the £100 to be paid to him in cash. Maney agreed to this, got Torotoro to sign the deed of transfer, and promised to pay him the £100 the next morning. According to Torotoro, the £100 was never paid, but according to Maney it was simply credited to Torotoro's account. So, too, apparently, was Richardson's £400 payment for Te Pahou, but since Torotoro's account with Maney was perpetually in debit, he never saw that money either. Nor, it seems, did he ever receive a copy of his account from Maney.⁴¹ In any case, he would scarcely have understood it, more especially because he was involved in numerous other transactions with Maney, who did not keep separate accounts for each block of land.⁴² It seems that the other owners named in the Native Land Court certificate of title did not receive any payment either. Several of them complained to the commission that they had received neither money nor goods for the land. Though they had been put under pressure to sign the transfer, they had refused.

Besides the named owners, there were, according to Utiku Te Paeata, about 40 others (plus, presumably, Ngati Matepu from Petane) who were left out of the certificate of title because the Native Land Court insisted on restricting ownership to 10. This restriction, often referred to as 'the 10-owner rule', derived from section 23 of the Native Lands Act 1865, which provided that the Native Land Court, after hearing claimant and other evidence, was to issue a certificate of title specifying the names of the persons or the tribe who, according to native custom, had an interest in the land concerned. The section also stated that the court could not issue the certificate to more than 10 persons, except that, where a block was more than 5000 acres in area, the court could use its discretion to award title 'in favour of a tribe by name'. In the case of Te Pahou, which was of course less than 5000 acres in size, 10 names were included on the title and those left out received nothing for the land. As Utiku Te Paeata put it:

41. Document T15, pp 13–20

42. Ibid, p 26

Paul [Torotoro] himself, unseen by us, wrote the names of those persons whom he wished to be grantees, but we were all equal in the land – those who were in the grant and those who were not. The ten who were in the grant said they were to be the guardians for those who were outsiders.⁴³

The chairman of the commission, CW Richmond, wrote a brief report on Te Pahou. Though he admitted in the report that some grantees received no payment, Richmond said that they had consented to the sale (even though some had told him that they had not) and that they therefore had no legal basis for remedy. If they had not received payment, that was the fault of their chiefs. Richmond had little sympathy for the principal chief (Torotoro) anyway, and simply dismissed his complaint of the non-payment of the £100 sweetener as ‘pure fiction’.⁴⁴ Richmond also examined some of Maney’s accounts. According to Boast, this examination showed that some of the grantees who complained that they had received no payment in money or goods for the land did not have accounts with Maney. On the other hand, some of those left out of the title, including Te Paeata, did have accounts with Maney which were credited with money from the sale to Richardson. This means that they probably did get a payment, at least in goods, from Maney’s store.

We note that one of the two Maori commissioners, Wiremu Hikairo, was more critical of the transaction than Richmond. He believed that Maney deliberately withheld Richardson’s payment to induce Maori grantees to extinguish their credit by buying goods from his store. The transaction, he concluded, ‘was not quite fair’.⁴⁵ Richmond, on the other hand, concluded that it was apparent that they had consented to the sale and that, ‘unless their consent was obtained by means of false promises, or other fraud on the part of the European purchaser, we conceive that they are not entitled in equity to repudiate their own act’.⁴⁶ Just as Richmond saw no evil in what Maney and Richardson were doing, he heard no evil either; he simply would not believe what the Maori witnesses were saying. We comment further on this issue in our findings section (sec 6.8).

6.7.2 Petane (Wai 732 and Wai 299)

The Petane block, the subject of two claims, is clearly inside the confiscation boundary (map 22). The 10,908-acre block lies to the north of the Waiohinga River and is within the rohe of Ngati Matepu. It commanded an important corridor to the central North Island and linked the coastal peoples with Ngati Hineuru and others. As we note below, Petane was an important focus of the building tension connected with Pai Marire and was near the site of the ambush of Te Rangihiroa’s small force on 12 October 1866.

43. ‘Minutes of Evidence: Case No 11’, 31 July 1873, AJHR, 1873, G-7, p 5 (doc T15, p 15)

44. CW Richmond, ‘Report on Case No 11’, AJHR, 1873, G-7, p 11 (doc T15, p 19)

45. Wiremu Hikairo, ‘Report on Case No 11’, AJHR, 1873, G-7, p 56 (doc T15, p 20)

46. CW Richmond, ‘Report on Case No 11’, AJHR, 1873, G-7, p 11 (doc T15, p 19)

The Petane title was investigated by the Native Land Court at Napier on 18 August 1866, two days after the hearing for Te Pahou. By that time, the kainga at Petane was regarded as a hot-bed of 'Hauhauism', with the resident Ngati Matepu significantly involved. Nevertheless, the evidence was led by outside chiefs, more particularly the loyalist Ngati Kahungunu chiefs Paora Torotoro and Te Waka Kawatini, though some Ngati Matepu did give evidence and some of them were included in the title. The 10 owners, who were selected from a list proposed by Torotoro and Kawatini, were named by the court as Paora Torotoro, Te Waka Kawatini, Tame Tuki, Paraone Kuare, Ani Te Whaanga, Anaru Kune, Takataina, Ahere Te Koari, Tamihana Te Rakatairi, and Hamahona Taingaehe. According to Stephen Robertson, who prepared a research report on this matter for the claimants, only the last two named were local Ngati Matepu. Though the leading Ngati Kahungunu chief, Tareha, was not included in the title, three from his kainga at Waiohiki were.⁴⁷ A Crown grant for the land was issued on 11 January 1867, the day before the confiscation proclamation was issued. On the court's order, under section 68 of the Native Lands Act 1865 the Crown grant was issued initially to Octavius Bousfield, the surveyor, since his survey costs remained unpaid.⁴⁸

It is not known when the title reverted to the Maori owners. Once again, Richardson was involved in the purchase, but this time Hutton Troutbeck joined him. Through Maney, who acted as their agent, they offered £1000 to be equally divided between the 10 grantees. According to Te Waka Kawatini, they also paid him another £500. Maney purchased eight of the 10 shares in Petane for Richardson and Troutbeck between April and August 1870. The eight sellers appear to have been paid £200 each, double the amount originally offered. The two remaining shares were held by Tamihana Te Rakatairi and Hamahona Taingaehe (sometimes known as Hamahona Tarawai), the only local Ngati Matepu grantees.⁴⁹ They refused to sell, and Richardson and Troutbeck had to be content with leasing their shares of the block.

As with Te Pahou, there were several complaints from the grantees to the Hawke's Bay Native Lands Alienation Commission in 1873, mainly to the effect that they had received goods and liquor from Maney but little or none of the purchase money. There were also complaints from others who were left out of the certificate of title. But, once again, Richmond was satisfied that Maney's accounts had allowed the sellers credit for their share of the sale price. Richmond also dismissed a claim by the non-sellers that they had been promised, but had failed to receive, a reserve in the coastal part of the block. He did this because the claimants were divided over the location of the reserve and he preferred to accept Maney's word that there had been no promise of a reserve at all.⁵⁰

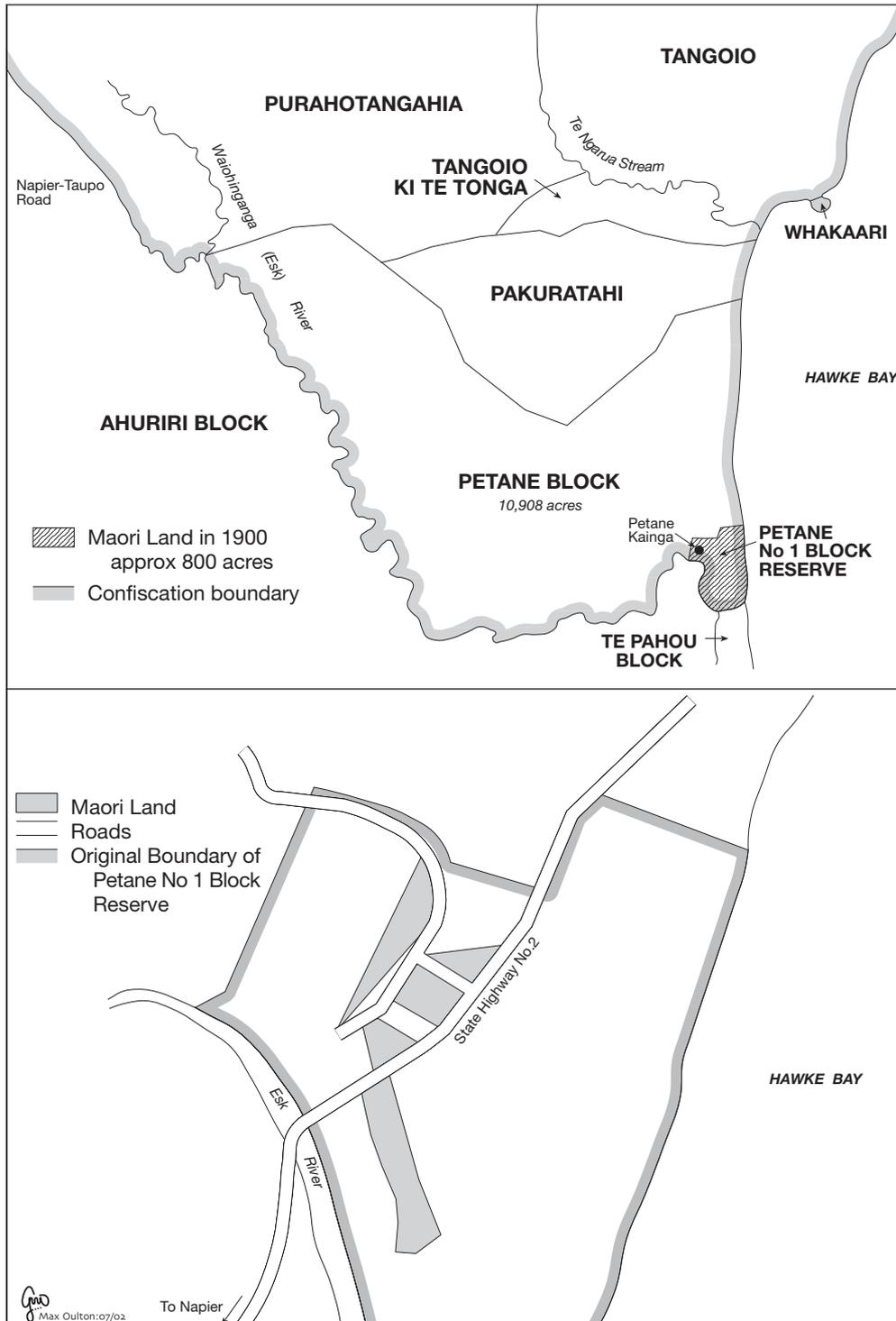
We now trace the fate of the two remaining shares, which were held by Hamahona Taingaehe and Raima Whakia (who had succeeded to the share of her father, Tamihana Te

47. Document R4(b), pp 12–14

48. *Ibid*, p 14

49. *Ibid*, pp 26–27; doc T15, p 24

50. See CW Richmond, 'Report on Case No XI', AJHR, 1873, G-7, p 17 (cited in doc T15, p 28)



Map 22: The Petane block; top, block boundaries, 1870; bottom, Maori land in the Petane 1 block reserve in 2000

Rakatairi). Although these two, and their successors, made several applications to the Native Land Court for their shares to be partitioned out of the block, this was not done until 1900. In 1882, Troutbeck acquired the interests of Taingaehe's successors, Henare Pangopango and Akenehi Hineraro. He then executed a 'deed of covenant' with these two that, should he acquire the last remaining share in the block or the ownership of a reserve described in a deed of covenant of 29 March 1876, he would convey 100 acres of that reserve to Pangopango and Hineraro. The 1876 deed of covenant for a reserve has not been discovered by any of the claimant researchers, although, according to Robertson, the reserve covered 600 acres and was located in the south-eastern corner of the Petane block.⁵¹

The Petane block was finally partitioned by the Native Land Court in June 1900 into three blocks:

- ▶ the 10,090-acre Petane 1, which was vested in George Richardson and Arthur Cotterill;
- ▶ the 273-acre Petane 2, which was vested in Iripoama Rakatairi; and
- ▶ the 545-acre Petane 3, which was vested in Eriata Pokai.⁵²

Subsequently, according to Robertson, a block of 106 acres (including six acres for roads) was taken from Petane 1 and awarded to Pangopango and the successors of Hineraro – presumably, in fulfilment of Troutbeck's 'deed of covenant'. Robertson had difficulty tracing the subsequent history of the reserve block owing to the loss of records during the Napier earthquake, though he found some evidence of its subsequent partition and alienation, particularly for roads. However, the bulk of the land, including its marae block, was retained until at least 1945.⁵³

Petane 2 and 3 were gradually alienated. George Ebbett, a Napier solicitor, purchased all of Petane 2 and 290 acres of Petane 3 in 1903.⁵⁴ He leased the remainder of Petane 3 and, when it was subsequently partitioned, bought a further 224 acres – 200 in 1907, 18 in 1910, and six in 1912. Only a little more than 25 acres then remained in Maori ownership, and Robertson was unsure of the fate of this.⁵⁵

There is still a marae at Petane in the Petane 1 block reserve; the whare nui is Te Amiki, and a new dining hall, Te Awhina, was opened in 1998. Heitia Hiha, a descendant of Henare Pangopango who appeared for Wai 299, told the Tribunal that when he was growing up at Petane there were 16 houses around the marae but that by 1998 only two remained. Although many Ngati Matepu and related hapu live up the Eskdale Valley, in Napier, and elsewhere, the marae was still a focus for the community, which feels 'a strong affinity with the land'.⁵⁶ The chairman of the marae committee, Richard Rewi (a descendant of Akenehi Hineraro

51. Document R4(b), pp 37–39

52. Ibid, p 41

53. Ibid, pp 44–45

54. Ibid, p 52

55. Ibid, pp 57–58

56. Document T50, p 4

who appeared for Wai 299), also commented that, although few people lived at Petane, it was ‘important to everyone that the focus is the marae’.⁵⁷ Unfortunately, the small remaining area of land in Maori title – about 23 acres (10 ha) – is fragmented into small holdings (see map 22).

Barry Wilson, another descendant of Henare Pangopango who appeared for Wai 299, looked at the possibilities for future development:

Much of the flat area of the block is fragmented with multiple ownership. Currently the area is grazed with a portion leased out for cropping. The income currently generated for the owners is minimal. We are looking at ways that larger areas can be worked together to provide greater returns and employment opportunities for our people back on their own land . . . The land is silt soil and potentially very valuable for viticulture and other intensive horticultural use.⁵⁸

Although some interest in commercial and joint-venture arrangements had been expressed by some national companies and outside groups, Mr Wilson was concerned about keeping their ownership and management in local Maori control, with the aim of developing skills and providing employment for Ngati Matepu, and creating ‘good opportunities for our people that are sustainable, long term and enable our people to become less dependent on benefits and handouts’.⁵⁹

In contrast to the Wai 299 claimants we have quoted above, the Wai 732 claimants (the Eden whanau) are – like Richard Rewi – descendants of Akenahi Hineraro, but they now have no interests in the Petane block. Evidence was given by Angela Harmer, daughter of the claimant Albert Eden, and Susan Baker, sister of the claimant, who told us that, though they had recently attended the opening of the wharekai at Petane, they had felt ‘as if we did not belong to Petane’ because their families’ names were not mentioned ‘with other whanau who claim interests to Petane Marae’.⁶⁰

6.7.3 Claimant submissions

The Wai 299 claimants made submissions on the private purchase of the Petane and Te Pahou blocks under the Native Lands Act 1865, and the Wai 732 claimants made similar submissions on the Petane block. Counsel for Wai 732 noted that their claim was ‘complementary’ to the Wai 299 claim and was in no way in competition with it.⁶¹ Accordingly, we will discuss the submissions of both counsel in tandem.

57. Document T52, p 2

58. Document T51, pp 1–2

59. Ibid, p 2

60. Document T48; doc T49, pp 2–3

61. Document X38, p 1

The Wai 299 claimants say that they have been prejudiced by the alienation of both the Te Pahou and Petane blocks as a consequence of the 10-owner rule and the operations of the Native Land Court under the Native Lands Act 1865.⁶² Counsel for Wai 732 submitted that his clients have been prejudiced in a similar fashion with regard to the Petane block. He said that the instigators of the court inquiry, Paora Torotoro and his nephew, Te Waka Kawatini, were ‘well experienced in Native Land Court hearings, well versed in the . . . manipulation of the Ten Owner Rule . . . and perhaps even [in] collusion with Crown authorities and particularly Crown purchase agents such as McLean’. As Wai 732 claimant counsel put it, ‘persons friendly to the Crown were encouraged to make application for an interest in Petane and managed to have themselves listed as most of the 10 permitted owners’.⁶³ The Wai 732 claimants also said that they were subsequently prejudiced by the Crown’s taking of reserved land for public works and by its failure to protect the interests of the descendants of Akenehi Hineraro.⁶⁴ The Wai 299 claim was supported by a research report by Boast, the Wai 732 claim by a research report by Robertson.⁶⁵

Counsel for both Wai 299 and Wai 732 made extensive comments on the 10-owner rule, which, as we have mentioned, was derived from section 23 of the Native Lands Act 1865. Counsel for Wai 299 submitted that the rule ‘caused massive damage to the fabric of Maori society’ – the vesting of ownership of large blocks of land previously held by hapu in only 10 owners ‘did not and could not reflect Maori customary tenure’.⁶⁶ Both counsel observed that, while the second proviso of section 23 allowed for the title of an area exceeding 5000 acres to be determined in favour of a tribe as a whole, this provision was rarely adopted by the court.⁶⁷ Moreover, counsel for Wai 732 quoted O’Malley’s statement that the court had not awarded tribal titles because it saw its ‘primary function’ as ‘extinguishing not perpetuating [the] tribal ownership of land’.⁶⁸

Counsel for Wai 732 also adopted Boast’s view as to the disastrous effects of the 10-owner rule in facilitating the alienation of tribal land. The 10 named owners were tenants in common rather than joint tenants and could sell or lease their individual interests without the consent of the other grantees. They were also now liable for individual debts and their land could be seized in payment of those debts – as we have seen happened in the case of Petane grantees. Although some who were not grantees, such as Utiku, who gave evidence to the 1873 commission, had hoped that the grantees would be ‘guardians for those who were the outsiders’ – that is, right-holders left out of the title – this was not the case in law. Those named in the court’s certificate had an unfettered right of alienation, though, as Richmond admitted, they were not the owners according to native custom. The effect of awarding land

62. Claim 1.22(e), pp 5–6

63. Document x39, pp 6, 8

64. Claim 1.56

65. Documents T15, R4(b)

66. Document x39, pp 96–97

67. *Ibid*, p 97; doc x38, p 13

68. Document x38, p 13

to only 10 grantees was that land was often sold without the consent or knowledge of the wider group of right-holders.⁶⁹

Counsel further argued that the individualisation, under the 10-owner rule did ‘ultimately assist in the taking of land from Maori whether at a fair price or not’.⁷⁰ Counsel for Wai 299 also submitted that the 10-owner rule ‘opened the door to frauds and the kinds of sharp practice by Maney and others . . . in the Petane and Te Pahou blocks’.⁷¹ He argued that the Crown had failed to ameliorate the ‘exploitation of owners’ that the 1873 commission had documented or to act upon the complaints of owners that, because of the 10-owner rule, they had not been granted interests in the land, and he submitted that these failures amounted to breaches of the Treaty.⁷² Likewise, counsel for Wai 732 submitted that the Crown’s failure to preserve the interests of Akenihi Hineraro and her descendants in the Petane block, particularly through the Troutbeck covenant, was also a Treaty breach.⁷³

6.7.4 Crown submissions

Crown counsel noted that Te Pahou had been vested in 10 owners in 1866 and had been sold for £470 in 1870. He added that ‘The conveyance was executed by all the grantees and also by Tareha and several others not named in the grant.’⁷⁴ He observed that some of the grantees who signed were not paid and that, as a result, the main complaint concerning Te Pahou before the 1873 commission related to the distribution of the payment. As we noted earlier, Richmond felt that those who had missed out on being paid had to look to their chiefs rather than the purchaser for their share. In any event, counsel suggested that the parties could have ‘sought relief in a court of equity’.⁷⁵ Likewise, if the commission’s recommendation about a fishing reserve on Te Pahou had not been acted upon, then the parties could have resorted to the courts. In respect of the Petane block, Crown counsel suggested that the issues were similar to those around Te Pahou and he accepted Boast’s summary. Counsel also noted that the commission referred to both Te Pahou and Petane in its criticism of section 23 of the Native Lands Act 1865.⁷⁶

6.7.5 Claimant submissions in reply

Counsel for Wai 732 noted in reply that Crown counsel’s submissions on the Petane block formed only ‘three lines’, and he submitted that the Tribunal needed to give ‘somewhat more

69. Document T47, pp 7–8

70. Document X38, p 13

71. Document X39, p 100

72. *Ibid*, p 106

73. Document X38, p 19

74. Document X58, p 25

75. *Ibid*, p 26

76. *Ibid*, p 27

6.7.6

thought' to this claim, particularly since it provided 'the best exposition of the ten owner rule and the disastrous effects of it'.⁷⁷ Counsel submitted that, while some tipuna of the Wai 732 claimants went to 'strenuous efforts' to obtain the reserve that was set out for them, they were 'frustrated in this aim firstly due to the incomplete operation of the ten owner rule and secondly due to the fact that neither the Native Land Court nor the Maori Land Court protected their interests'.⁷⁸ Counsel for Wai 299 did not make specific submissions in reply on the Te Pahou or Petane blocks. However, he submitted generally that the Crown 'singularly failed to actively protect the Claimant hapu interests and taonga and act honourably, reasonably, sincerely and on the basis of justice, and utmost good faith towards them'.⁷⁹

6.7.6 Tribunal comment

For a start, we should note that the Te Whanganui-a-Orotu Tribunal has already made findings on the Te Pahou block. That Tribunal concluded that:

In ordering a Crown grant for Te Pahou to 10 'owners' the Native Land Court acted inconsistently with customary law and Treaty principles. By including the reserve of Roro o Kuri in Te Pahou, it acted inconsistently with the 1851 deed of sale [of the Ahuriri block]. By failing to take appropriate action to remedy this situation and to reserve a fishing and access right for Maori, the Crown acted inconsistently with its Treaty and contractual obligations.⁸⁰

We agree with this finding, although we believe that the Crown breached Treaty principles in passing the legislation allowing the court to award title in the way that it did, rather than that the court failed to comply with the Treaty itself per se. The Petane block was not considered by the Te Whanganui-a-Orotu Tribunal.

Other Tribunals have commented both on the Native Lands Acts and specifically on the 10-owner rule. The *Report on the Orakei Claim* of 1987 commented at some length on the rule before discussing it in relation to the awarding of the 700-acre Orakei block to 13 (not 10) beneficial owners, an action which meant that the remainder of the tribe (who numbered well over 100) were 'involuntarily dispossessed of any interest in the land'. This, said the Tribunal, was 'a most flagrant violation of the Treaty' – the block ought to have been 'vested in the tribe as some form of corporate entity'.⁸¹ The Tribunal considered that the 10-owner rule was clearly inconsistent with the terms of the Treaty, under which the Crown was required to recognise te tino rangatiratanga of Maori over their lands. This meant acknowledging their

77. Document 77, p 37

78. Ibid

79. Document 72, pp 7, 32

80. Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995*, p 88

81. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington: Brooker and Friend Ltd, 1987), pp 211, 213

right to 'hold their land in accordance with long-standing custom on a tribal and communal basis'.⁸²

We agree with the Orakei Tribunal that the 10-owner provisions were in breach of the Treaty. What that Tribunal said in relation to the Orakei block applies equally to the Petane and Te Pahou blocks, except that Petane was over 5000 acres in size. In the case of Petane, therefore, as per the second proviso of section 23 of the Native Lands Act 1865, the court had the option of awarding the block in a tribal title. In our view, the court should have taken that option. Its failure to do so compounded the breach of the principles of the Treaty implicit in the 10-owner rule. According to Dr David Williams, who has made a detailed study of section 23, the court awarded land in tribal title in only a very few instances. Williams also noted that former Chief Judge Francis Fenton admitted in 1891 that he could remember only two such occasions. However, Williams attributes this virtual failure to grant tribal titles not so much to the refusal of the court to allow them but to the failure of claimants to ask for them, since they assumed that the 10 named owners were in fact trustees for the rest of them.⁸³ As we have seen, this appears to have been the case with the Petane block. Furthermore, the judges certainly gave the impression that there was no alternative to the 10-owner 'rule', because they asked the claimants to name their 10 'owners'.

Also, as the Orakei Tribunal and several historians have pointed out, Fenton was in the habit of simply ignoring parts of statutes that he disagreed with. He continued to impose the 10-owner rule even when section 17 of the Native Lands Act 1867 required him to list on the back of the certificate of title the names of all the tribal owners of the block in addition to the 10 listed on the front of the certificate. The Orakei Tribunal cited Professor Alan Ward's opinion that Fenton deliberately negated the operation of the tribal representation provision of section 17 – probably because it amended the Native Lands Act 1865 that Fenton had drafted.⁸⁴ We might add that it was also doubtless because, as Ward put it, Fenton publicly expounded the view that 'the principal men of each hapu should be established in property and allowed to live as gentry, while the remainder were compelled to labour for a living'.⁸⁵ Ward also wrote that 'Reform in Maori land law was also frustrated to a considerable extent by the wilfulness and self-aggrandisement of Chief Judge Fenton'.⁸⁶ Where the chief judge led, the other Native Land Court judges usually followed.

Having agreed with the Orakei Tribunal that the 10-owner rule was in breach of the Treaty, we must also consider whether the Crown attempted to rectify that breach through

82. Ibid, p 209

83. David Williams, *'Te Kooti Tango Whenua': The Native Land Court, 1864–1909* (Wellington: Huia Publishers, 1999), pp 161–162

84. Waitangi Tribunal, *Report on the Orakei Claim*, p 47

85. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press, 1973), p 216 (quoted in *Report on the Orakei Claim*, p 48)

86. Ibid

legislation. Section 17 of the Native Lands Act 1867 was clearly one attempt to remedy the situation, although, as we have noted, the chief judge refused to implement it.

In response to complaints from numerous Hawke's Bay Maori (including one from Utiku relating to the Petane title), the Hawke's Bay Native Land Alienation Commission also considered the operation of the rule and recommended a remedy. The Government agreed, and in 1873 it passed a new Native Land Act. The 1873 Act repealed the 1865 Act and replaced the 10-owner certificates of title with a memorial of ownership listing all who had rights in custom to a particular block (ss 47–63) and required the approval of all of them to alienate the land. In that way, the Crown, in our view, made an attempt to rectify the breach caused by the 1865 Act, even if the 1873 Act had its own weaknesses, both in the law and in its implementation. However, the Crown did not invalidate the certificates of title already issued under the 1865 Act, which conferred beneficial ownership on the 10 or fewer persons named in those certificates and dispossessed all others with customary rights. As we have noted, the majority of right-holders in both Te Pahou and Petane were indeed dispossessed. Finally, in 1886 the Native Equitable Owners Act was passed. This allowed for the readmission of excluded owners to titles, provided that the land concerned had not been partitioned or alienated in the meantime. But this was a shutting of the stable door after the horse had bolted – in regard to Petane, eight of the 10 named as owners had already sold their interests.

6.8 FINDINGS

We find that the Crown, both in its passage of the Native Lands Act 1865 (and, in particular, section 23 of that Act), and in its subsequent failure to remedy effectively the original prejudice, breached the principles of the Treaty of Waitangi. We find that the forebears of the Petane and Te Pahou claimants were prejudiced thereby.

More specifically, we find that:

- (a) The Te Whanganui-a-Orotu Tribunal was correct in its assessment that the Treaty was breached by the way in which the Te Pahou title could be awarded to 10 or fewer owners. The same applies to the Petane block. The Orakei Tribunal was also correct on the more general point that section 23 of the Native Lands Act 1865 was in 'flagrant breach' of Treaty guarantees to Maori. Specifically, we consider that, in respect of these matters, the Crown breached the principle of options, the principle of reciprocity, and its duty of active protection.
- (b) In passing amending legislation in 1867, and in repealing the 1865 Act in 1873, the Crown twice recognised the shortcomings of the 1865 Act and took remedial action. It also legislated in 1886 for the readmission to titles of excluded owners. But it failed

to ensure that the judiciary complied with the 1867 amendment and it did not compensate any Maori for whom, by 1873 or 1886, it was too late. The Crown was thus in breach of the principle of redress.

- (c) We find in conclusion that those who are descended from the dispossessed – and they include the Eden whanau – have a well-founded claim against the Crown for the loss of their Treaty-guaranteed rights.

PART III

RAUPATU (WAI 299, WAI 638, AND OTHERS)

In this report, the term raupatu has been applied to confiscation of the land by the Crown. On 12 January 1867, about 295,000 acres in the Mohaka–Waikare district were confiscated from Maori by a proclamation issued under the New Zealand Settlements Act 1863.* Some of the Maori occupants of this area were deemed to be in rebellion against the Crown. The events leading up to this confiscation, in particular the military engagements at Omarunui and Petane on 12 October 1866, are outlined in chapter 7. In chapter 8, we consider the Mohaka–Waikare confiscation in the context of other confiscations of land in Taranaki, Waikato, and the Bay of Plenty, and consider whether there could be said to have been a ‘rebellion’ or not. We also examine the actions of various officials in implementing the confiscation.

Some of the confiscated lands were returned to Maori, but there was continuing dissension because these land grants from the Crown did not acknowledge ancestral rights, and some right-holders, both those deemed to be ‘rebels’ and others, were dispossessed. On some of these returned blocks, the subsequent history has been complex. Under the heading ‘Aftermath of the Raupatu’, we review the blocks on the seaward side of the Maungaharuru Range in chapter 9 and the inland blocks in chapter 10.

The Mohaka–Waikare raupatu is the principal grievance in the Wai 299 claim. A number of other claims refer to matters arising out of the confiscation in relation to particular blocks. The structure of the four chapters in part III of this report has been to provide a comprehensive narrative of all lands in the Mohaka–Waikare confiscation district and comment on issues relating to particular claims at relevant places in the narrative. We also note that part of the Mohaka block purchased by the Crown in 1851 and part of the adjacent Rotokakarangu block were at one stage included in the confiscation district, but were subsequently excluded. These lands will be reviewed in part IV under the Ngati Pahauwera claim (Wai 119). Further, part of the Wharetoto block, inland from Tarawera and Te Matai, was included in the confiscation district but not treated as confiscated land. We do not deal with Wharetoto at all in this report because the greater part of it lies outside the confiscation district (see map 2) and it was not raised in the claims before us.

* This was the total amount of land that the Crown considered it was confiscating, not the total acreage of the entire confiscation district. The latter included lands the Crown had already purchased or part-purchased.

CHAPTER 7

TOWARDS RAUPATU: OMARUNUI AND PETANE, 1866

7.1 INTRODUCTION

The resistance of small parties of Pai Marire to forces acting on behalf of the Crown at Omarunui and Petane on the morning of 12 October 1866 was deemed by the Crown to be a rebellion in terms of the New Zealand Settlements Act 1863. As a consequence, the Mohaka–Waikare district was confiscated by proclamation on 12 January 1867. We examine that confiscation in our next chapter and defer our analysis of whether there could be said to have been a ‘rebellion’ to there as well. Here, we examine the background to the engagements, look closely at them, and examine the arguments of claimant and Crown counsel as to whether the Crown’s actions were justified or in breach of the principles of the Treaty of Waitangi. Before examining the engagements at Omarunui and Petane, we sketch in the background of a spreading war that started elsewhere and ultimately came to Hawke’s Bay.

7.2 THE WARS IN TARANAKI, THE WAIKATO, AND THE BAY OF PLENTY

The New Zealand wars of the 1860s began in Taranaki in March 1860 when forces of the Crown attacked Wiremu Kingi and his people at Waitara following their refusal to allow the sale and survey of the Pekapeka block. Though a truce was arranged in 1861, the fighting resumed in Taranaki in 1863 and soon spread to the Waikato with the invasion of the territory of the Maori King in July 1863. That military campaign was largely concluded by the British victory at Orakau in April 1864, though the war was carried into the Bay of Plenty with an attack on Ngai Te Rangi and their allies at Gate Pa, Tauranga, on 28 April 1864. The British force was defeated there but subsequently gained a decisive victory at Te Ranga. But the wars were far from over and they spread to other parts of the island, where followers of the Pai Marire movement, which started in Taranaki under the leadership of Te Ua Haumene in 1862, came into conflict with the Crown. That movement brought not only a new Maori unity but also new rifts among hapu already divided by old animosities and between allegiances to the British Queen and the Maori King. The murder of the missionary Carl Sylvius Völkner by Pai Marire apostles at Opotiki on 2 March 1865 further inflamed the situation. So did the slaying of Government agent James Fulloon by Pai Marire followers in Whakatane on 22 July 1865.

Hawke's Bay Maori could not remain immune from what was happening to Maori in the rest of the island; even before the war, they had had to take a stance on developments elsewhere. Ngati Kahungunu had been invited to join the Kingitanga and, though they did not do so overtly, some of their chiefs had supported the movement with funds. The chiefs were 'deeply troubled' by the fighting in Taranaki and were critical of Governor Browne for his attack on Wiremu Kingi over the Waitara (Pekapeka) purchase.¹ The invasion of the Waikato brought new strains, and although Ngati Kahungunu generally did not support the King's forces, about 20 of them, apparently from Wairoa, fought in the defence of Orakau.² The Ngati Matepu chief Paora Toki from Petane and some supporters made two trips to the war zone in the Waikato, but they appear not to have joined in the fighting.³ Although the coastal Ngati Kahungunu were regarded as loyal to the Crown, they were, as Crown historian Dr John Battersby emphasised, 'a political force in their own right'. He added: 'Any crude labelling of all or some of them as "Kawanatanga" or Queenite Maori seems too simplistic, for they seemed to have made up their own minds on major issues and reacted to each case on its merits.'⁴ Battersby's point is important, but for lack of another label, we refer to them as 'kawanatanga' at times in this report. The inland Ngati Hineuru, whose lands sat astride the route to Taupo and beyond, were suspected of having Kingite sympathies. But, although their leader, Te Rangihiroa, was accused of making inflammatory Kingite speeches, other chiefs, such as Nikora Whakaunua, provided Hawke's Bay authorities with intelligence on possibly hostile activities. (Whakaunua changed sides in 1866 and was with the Ngati Hineuru prophet Panapa at Omarunui when it was attacked.⁵) Nevertheless, the activities of Paora Toki and Te Rangihiroa fed rumours that the Waikato Kingites, or at least Ngati Hineuru, were about to descend on Napier.⁶

7.3 THE EAST COAST WARS

Though it seemed likely that the war would enter Hawke's Bay from the Taupo–Napier corridor, it came in fact from Poverty Bay to the north and in the wake of Pai Marire. The Pai Marire message was carried to Poverty Bay by the prophets Kereopa and Patara in January

1. Document w11, p 90

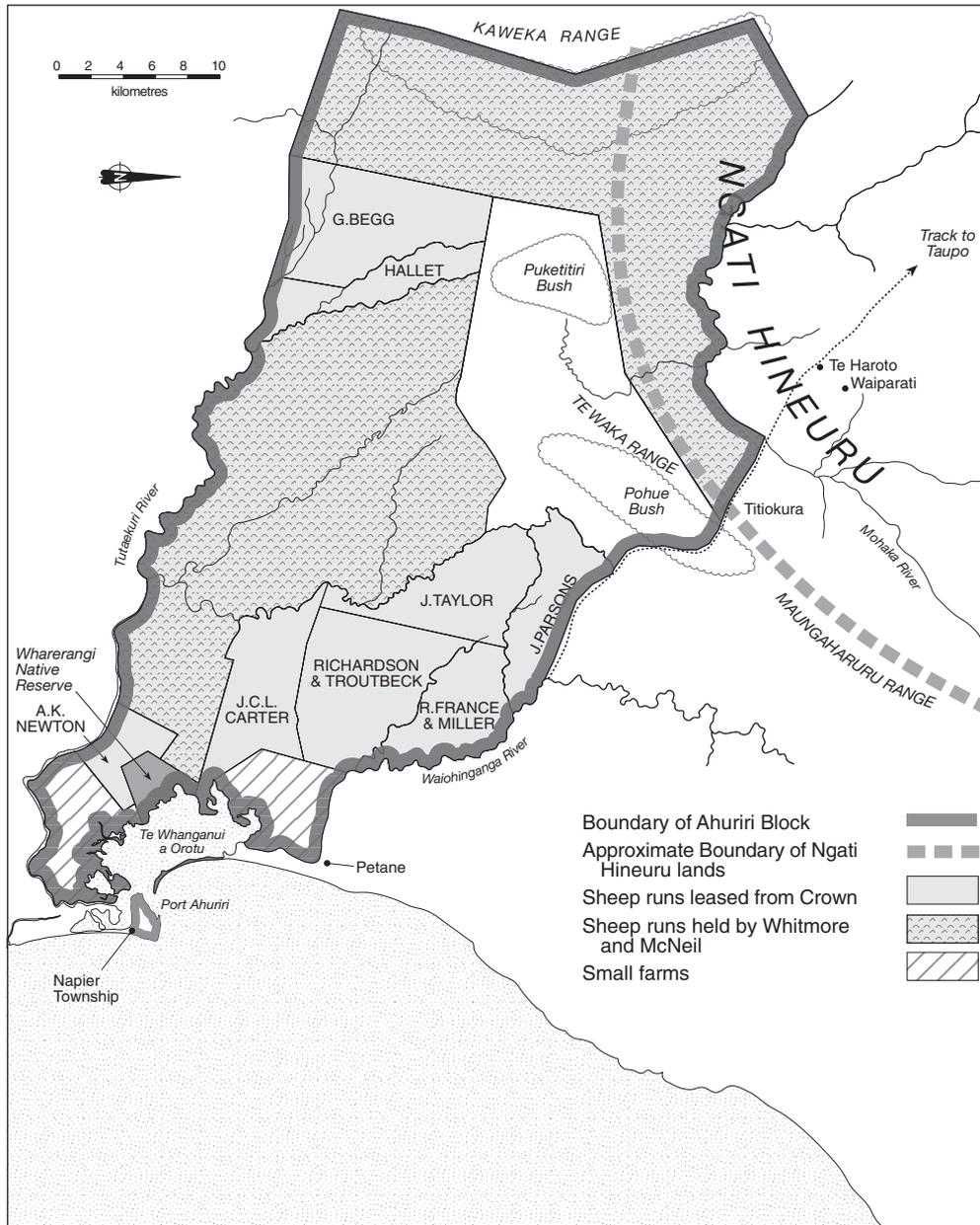
2. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Auckland University Press, 1986), p 167; John Te H Grace, *Tiwharetoa* (Wellington: AH and AW Reed, 1959), pp 465–468

3. Document u14, p 129

4. Document w1, p 43

5. Document u14, p 34; doc w11, p 185

6. Document u14, pp 34–40. For example, in mid-April 1864 the Government Maori language newspaper *Te Waka Maori o Ahuriri* reported that Paora Toki had returned from Waikato to rally support for an attack on Napier: doc u14, p 38. Similarly, Locke wrote on 28 May 1864 that 'The natives in the neighbourhood of the Pohui and the Haroto, assisted by the Ureweras, have been, for the past ten or twelve months, preparing for an attack on this Province': doc u14, p 36.



Map 23: Pakeha settlement on the Ahuriri block, 1864. Redrawn from map by Alexander Koch, 1864.

1865. Patara went to Waiapu, where he made some headway with Ngati Porou, though the bulk of them remained loyal to the Crown. Kereopa was more successful with Ngati Porou's rivals at Turanganui a Kiwa, Rongowhakaata and Te Aitanga a Mahaki, most of whom were converted to the new faith. In resultant internal fighting among Ngati Porou at Waiapu, the loyalist chiefs, led by Mokena Kohere and Ropata Wahawaha, armed by the Government, and supported by a detachment of military settlers, prevailed. Some of the defeated Pai Marire

force retreated south, where they joined Rongowhakaata and Te Aitanga a Mahaki at Waerenga a Hika Pa. They were pursued and attacked there in November 1865 by a combined force of Ngati Porou loyalists, military settlers, and colonial militia organised by Donald McLean, Major James Fraser, and Captain Reginald Biggs. After a seige of more than a week, the Pai Marire force was defeated with more than 100 killed. Another 400 or so were taken prisoners and exiled to the Chatham Islands. They included Te Kooti Arikirangi Te Turuki of Rongowhakaata, who had fought on the Government side but was dubiously accused of spying for the opposition and was imprisoned without trial.⁷ However, some of the Pai Marire force escaped and retreated south to Wairoa.⁸ The pursuit of them by McLean's combined force brought the war to the edge of Hawke's Bay.

In his East Coast campaigns, McLean had developed a consistent strategy. Pai Marire forces were given an ultimatum to surrender and pledge their allegiance to the Crown or face attack. Those who surrendered or who chose to fight and were defeated were deported to the Chathams and had their land confiscated. McLean was now to apply this strategy to the Pai Marire adherents in Hawke's Bay.

7.4 THE SPREAD OF PAI MARIRE INTO HAWKE'S BAY

The full history of Pai Marire in Hawke's Bay is, as Richard Boast says, 'still uncharted in the secondary literature', but there is a good deal of uncoordinated information on it in primary sources, as he demonstrates.⁹ As early as 7 March 1863, the Government-subsidised Maori language newspaper *Te Waka Maori o Ahuriri* was reporting on hui to discuss the movement in Hawke's Bay – and was cautioning local Maori against supporting it. At one such hui, attended by about 100 Pai Marire from the Waikato, the leading coastal chiefs, among them Karaitiana Takamoana, Tareha, and Renata Kawepo, decided to remain aloof from the movement.¹⁰ The intentions of the Waikato emissaries appear to have been peaceful; they told McLean that they did not wish to fight and that the war should be left where it was – on the West Coast, in the Waikato, and in the Bay of Plenty. Hawke's Bay was to remain as a 'Post of Peace'.¹¹ This peace policy was in keeping with the views of the Maori King, who, in the second half of 1864, had stayed with Te Ua. (It was Te Ua who had given him the name Tawhiao.¹²) Despite Te Ua's hopes for a 'grand union of all Maoris', and his continuing emphasis on Pai Marire's peaceful intent, the appeal of this gospel was, as Paul Clark has noted, 'deeply rooted

7. See Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press, 1995), ch 2; Belich, pp 210, 217

8. James Cowan, *The New Zealand Wars*, 2 vols (Wellington: Government Printer, 1955), vol 2, pp 117–128

9. Document J28, p 23

10. Paul Clark, *'Hauhau': The Pai Marire Search for Maori Identity* (Auckland: Auckland University Press, 1975), p 43

11. *Ibid*, p 43

12. Document w11, pp 151–152, 168

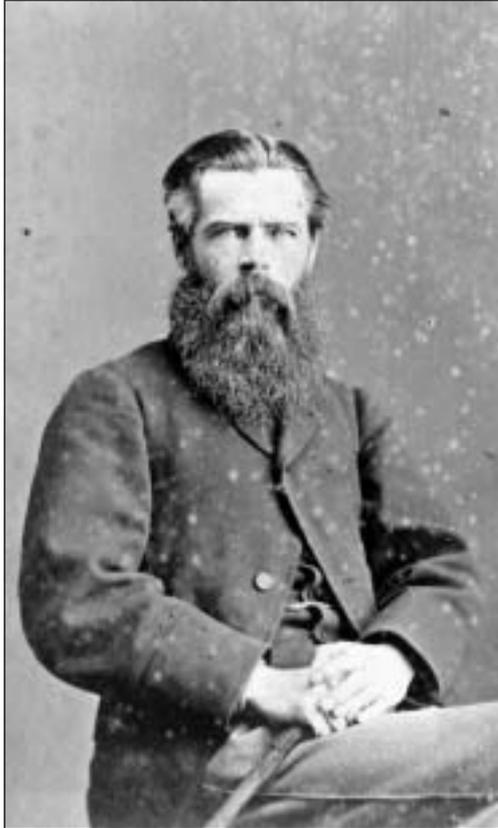


Fig 8: George Stoddart Whitmore, circa 1865. Photograph by William Davis. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (E Ellis collection, F-5306-½).

in local circumstances and individual concerns', as later conflicts were to show.¹³ From February 1865, small groups came through the Taupo–Napier corridor. A party from the Waikato that arrived in mid-February received a cool reception at Petane, but they were more cordially received at Te Hapuku's pa, where they practised their Pai Marire rites.¹⁴ Paora Toki was an early convert, though Te Hapuku, apparently, was not.

However, as Tribunal staff researcher Richard Moorsom put it, the murder of Völkner by Kereopa and others 'sent shockwaves through settler and Maori society in Hawke's Bay'.¹⁵ Following a hui at Pakowhai on 20 March, the chiefs published a condemnation of the killing. They threatened to seize and, if they resisted, kill any bearers of Pakeha heads.¹⁶ At another hui convened at Pakowhai by Karaitiana Takamoana and Renata Kawepo on 29 April, most of the chiefs spoke out against Pai Marire and one of the few advocates for the movement in Hawke's Bay, Paora Toki, had to stress its peaceful intent.¹⁷

13. Clark, p 27

14. Document w1, pp 79–82

15. Document u14, p 89

16. *Hawke's Bay Herald*, 25 March 1865 (as cited in doc u14, p 89)

17. Document r3, p 29

Later in 1865, however, the nearly unanimous opposition of coastal chiefs to Pai Marire began to disintegrate. According to Clark, this was because of local feuds between Te Hapuku and Tareha and the others over land. As Clark put it:

The arrival of the Pai Marire emissaries, as at Opotiki, had acted as a catalyst on the local situation. It upset the existing balance in local politics, and was tentatively embraced or opposed largely according to different groups' positions in land feuds. . . . The politics of land had overcome the teachings of the prophet.¹⁸

Those politics of land, however, did not merely divide the coastal Ngati Kahungunu chiefs – they divided those chiefs from the inland Ngati Hineuru, who were annoyed by the coastal chiefs' selling of interior lands on the Ahuriri block that Ngati Hineuru claimed (map 23). As Ballara and Scott put it, 'Ngati Hineuru conceived themselves as having two enemies; one was the Crown; the other was that group of powerful Hawke's Bay coastal chiefs who had seen fit to sell their lands to the Crown.'¹⁹ Moorsom, however, suggested that this picture was 'somewhat overdrawn', and he noted several instances of cooperation between the Ngati Hineuru and coastal chiefs.²⁰ Nor were the Ngati Hineuru chiefs always a united force. Though Kingita and Kipa, who were half-brothers of Te Rangihiroa, accepted small payments for the Ahuriri block in 1858 and Nikora Te Whakaunua did likewise in 1859, Te Rangihiroa himself refused to take any money and was subsequently regarded by Crown agents as a troublemaker. In May 1865, he was accused of spreading 'Hau Hauism' during a visit to the Wairarapa.²¹

Nevertheless, the deterioration of the situation in Hawke's Bay was caused more by rumour than by actual insurrection. Pakeha settlers and officials around Napier thought that the influx of Pai Marire into Hawke's Bay was evidence of the spread of rebellion into their province. But none of the Pai Marire groups had been involved in violence while they were in lowland Hawke's Bay. In August 1865, there were signs of a consolidation of the movement with the erection of a niu pole at Petane (see fig 9). Around this time, a new Pai Marire settlement was established at Waiparati, near Te Haroto, under the guidance of the Ngati Hineuru prophet Panapa, who had spent some time in the Waikato as a mission catechist.²² By the early months of 1866, however, the Pai Marire movement was in disarray. It had been discredited by the excesses of Kereopa and Patara in the Bay of Plenty and by Governor Grey's detention and subsequent public display around the North Island of Te Ua. In Hawke's Bay, Grey administered an oath of allegiance ceremony to Te Hapuku's people.²³ Individual groups of Pai

18. Clark, pp 44–45

19. Document 11(15), pp 23–24

20. Document 14, p 132

21. Ibid, pp 42–43

22. According to Thomas Lambert, Panapa had previously gone to Waikato and become a missionary but had then 'returned to his own tribe': Lambert, *The Story of Old Wairoa and the East Coast District, North Island New Zealand, or Past, Present and Future: A Record of Over Fifty Years' Progress* (Auckland: Reed Books, 1998), p 610

23. Clark, p 26

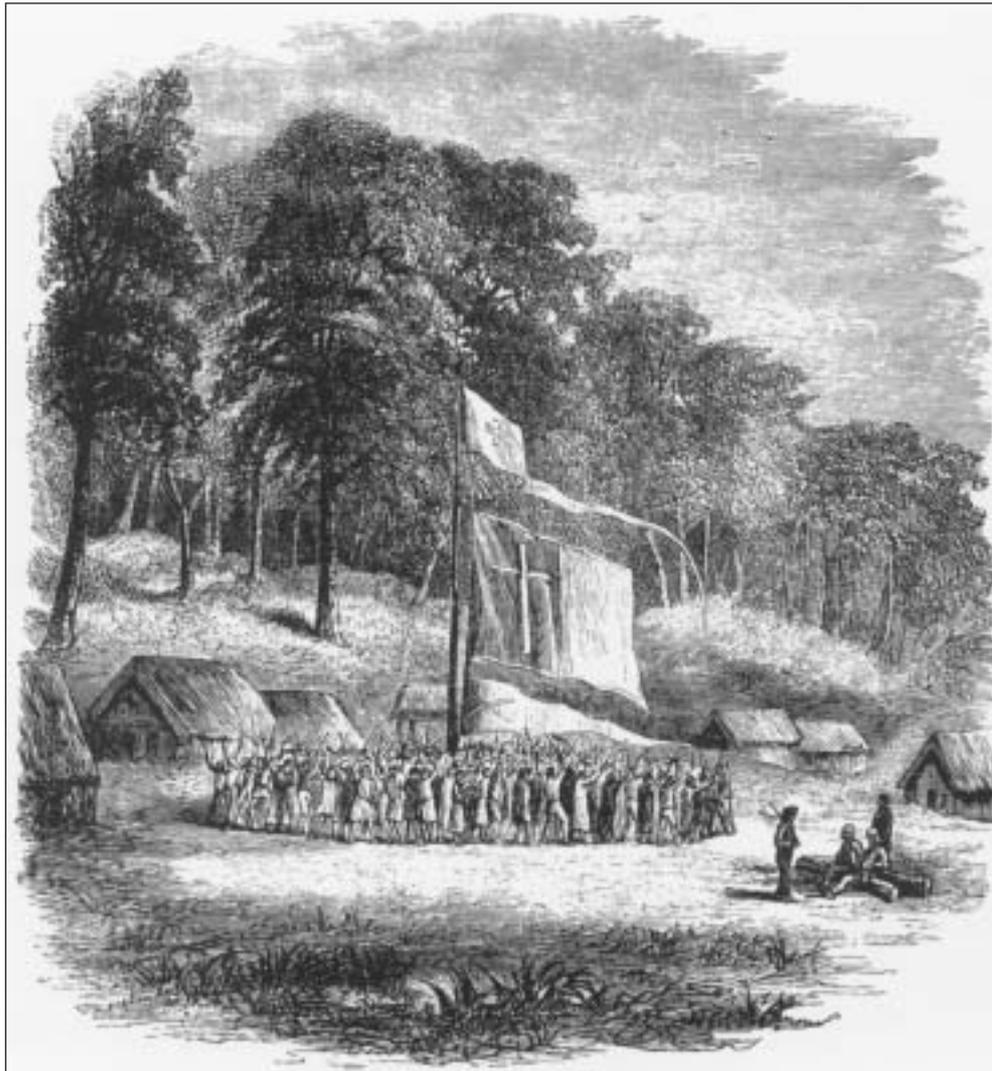


Fig 9: Pai Marire karakia around the niu pole in the Taupo district.

Source: Herbert Meade, *A Ride through the Disturbed Districts of New Zealand* (London: John Murray, 1870).

Marire, led by local prophets, went their own ways. But their message was essentially one of peace; they continued to regard Heretaunga (Hawke's Bay) as 'a Post of Peace'. By mid-1866, the Ngati Hineuru leaders were still trying to avoid fighting with the coastal Ngati Kahungunu chiefs, as Te Rangihiroa and Panapa explained in a letter to McLean of 29 June 1866:

I have nothing new to say; what I say to you now is what I said before. We do not want fighting between us [Maori]. Do not let men's sins onto our marae, in case we sin like them. Thus we write to you that you might not extinguish your goodwill, for we said that Heretaunga is to be where your goodwill lies . . .

We do not want to fight; leave our community to lie in peace. For it is yours and Tareha's strength which keeps the peace within Heretaunga. If someone desires to fight, direct him to Taranaki . . .²⁴

The coastal Ngati Kahungunu chiefs refused to hear this message of peace and, instead, began to prepare for fighting by swearing in a 'Heretaunga militia'.²⁵

There was also more friction over allegations of sheep stealing from frontier runs on the Ngati Hineuru border, most notably from Major Whitmore's run on the Mohaka River (see map 23). An attempt by a police party to arrest the alleged culprits at Te Haroto and take them to Pa Whakairo for interrogation ended in failure when the Ngati Hineuru chiefs refused to give them up.²⁶ One of those chiefs, Nikora Te Whakaunua, claimed that the real culprits in the long-running sheep-rustling saga were Whitmore's own men.²⁷ Nevertheless, the failure to effect arrests encouraged McLean and Whitmore to favour a military solution to both the pastoral frontier problem and the Pai Marire 'threat'. McLean, who was the agent of the general government as well as the superintendent of Hawke's Bay province, sought authority from the Government to deal with incidents such as these. Premier Stafford conveyed the Government's response as follows:

The Government is strongly of opinion that depredations of this kind should be checked at once or otherwise the Hau Haus will be led to believe that such crimes may be committed with impunity. It relies on your judgement and discretion to determine what steps should be taken in this case, and, if you should think it necessary, you are authorised to avail yourself of any armed force at your disposal to bring the criminals to justice.²⁸

McLean now had a free hand to take the offensive against Pai Marire in Hawke's Bay, and in Whitmore, the commander of the Napier Military District Defence Force, he had an enthusiastic lieutenant who would lead the military expedition against them.

Moreover, McLean had already begun his campaign in northern Hawke's Bay, which he saw as a continuation of his war against Pai Marire in Poverty Bay. He reassembled his colonial and kwanatanga force at Wairoa and added some local Ngati Kahungunu led by Ihaka Whaanga and Kopu Parapara. At the end of November 1865 and in the early weeks of 1866, they fought several engagements against refugees from Waerenga a Hika and local Wairoa Pai Marire. In May, the principal Pai Marire leader from upper Wairoa, Te Waru Tamatea, surrendered and, along with 100 other prisoners, took the oath of allegiance in the presence of McLean. As a consequence, McLean agreed not to send them to the Chatham Islands.²⁹

24. Te Rangihiroa and Panapa to McLean, 29 June 1866 (as quoted in doc w11, p 188)

25. Document w11, pp 188–189

26. Document u14, pp 43–49

27. Te Whakaunua to McLean, 9 May 1866 (as cited in doc w11, p 185)

28. Stafford to McLean, 15 February 1866 (as quoted in doc u14, p 97)

29. *Hawke's Bay Herald*, 12 June 1866 (as cited in doc w1, pp 117–118)



Fig 10: Karaitiana Takamoana, 1870s.
Photograph by Samuel Carnell.
Reproduced courtesy of Alexander
Turnbull Library, Wellington, New Zealand
(S Carnell collection, F-181854-½).

A week later, Ihaka Whaanga and Kopu Parapara, with some 100 supporters and the prisoners in tow, swept down the coast hunting down opponents, scavenging food, and destroying houses and niu poles at Waikare, Arapaoanui, and Petane. On their arrival in Napier, they were feted at a public dinner which was attended by leading Pakeha citizens and kawanatanga chiefs and at which McLean warmly thanked them for their loyalty to the Queen's authority.³⁰ The combined colonial and kawanatanga forces had effectively destroyed 'Hauhauism' in northern Hawke's Bay and had given a warning that a similar 'remedy' would soon be applied to others who resisted unconditional surrender.

Subsequently, several refugees from the Wairoa engagements, including Anaru Matete of Te Tai Rawhiti, escaped. In May 1866, Matete passed through the Urewera and went to see King Tawhiao. This visit, according to Judith Binney, 'radically changed both his tactics and objectives'. Having previously rejected an alliance with the Kingitanga, Matete now sent Tawhiao's latest proclamation to the East Coast and Hawke's Bay tribes inviting them to join with the King. He also stressed in a separate dispatch that God would help the tribes retain their land. Binney explains this as showing that Matete and his followers had 'turned their

30. Document v14, p98; doc w1, p119

back on war', although this shift in policy was not understood at the time. As Binney puts it, 'It was because the government considered Anaru to be the instigator of a broad Maori alliance, reaching to the Kingitanga, to Taranaki and to Tuhoe, that he was thought to be so dangerous.'³¹ When it became known that Matete had joined Panapa's group at Tarawera, wild rumours soon circulated that they were about to descend from the hills and attack Napier. For example, on 28 August 1866 the *Hawke's Bay Herald* reported on intelligence received that a 200-strong war party had gathered at Titiokura with the intention of attacking the town.³²

Some chiefs, such as Karaitiana Takamoana, had already been advocating an attack on Te Rangihiroa and Ngati Hineuru at Waiparati.³³ So too had Whitmore and Joseph Rhodes (the deputy superintendent of Hawke's Bay), both of whom were substantial runholders and both of whom favoured a surprise military attack. By September 1866, a Pai Marire group had gathered at Te Pohue, where they were accused of stealing Whitmore's sheep.³⁴ Whether or not there was substance to these charges, military action was hardly required to resolve the problem, as Locke pointed out at this time:

Major Whitmore is back and of course he is very much excited about what has been going on at the back of his run in the way of sheep stealing. It seems to me, to be more a case for the Outlying Districts Police Act 1865, than a declaration of war. We shall never have peace if we are going to fight over every theft etc, that may take place in the colony. It is a robbery and ought to be first acted upon as such.³⁵

Meanwhile, McLean had returned to Wellington, where he remained while Parliament was in session, leaving Rhodes to handle the sheep-stealing allegations. However, confrontation might still have been avoided had the main body of Pai Marire, led by their prophet, Panapa, not moved from Titiokura to Petane and Omarunui in September 1866 and had the Crown's forces not responded provocatively. The conflicts that resulted at Omarunui and Petane were used to justify the confiscation and thus they need to be carefully examined.

7.5 THE ARRIVAL OF PANAPA AND TE RANGIHIROA

Early in September 1866, a largely Ngati Hineuru party of about 80 men (according to Cowan) led by Panapa and Te Rangihiroa assembled at Te Pohue (map 24). There, they were joined by refugees from the earlier battles at Wairoa. Later estimates put the total force at some 270, but there were also women and children with the group. This suggests that, although Ngati Hineuru were the largest single group present, they were by no means the

31. Binney, p 56

32. See doc w1, p 125

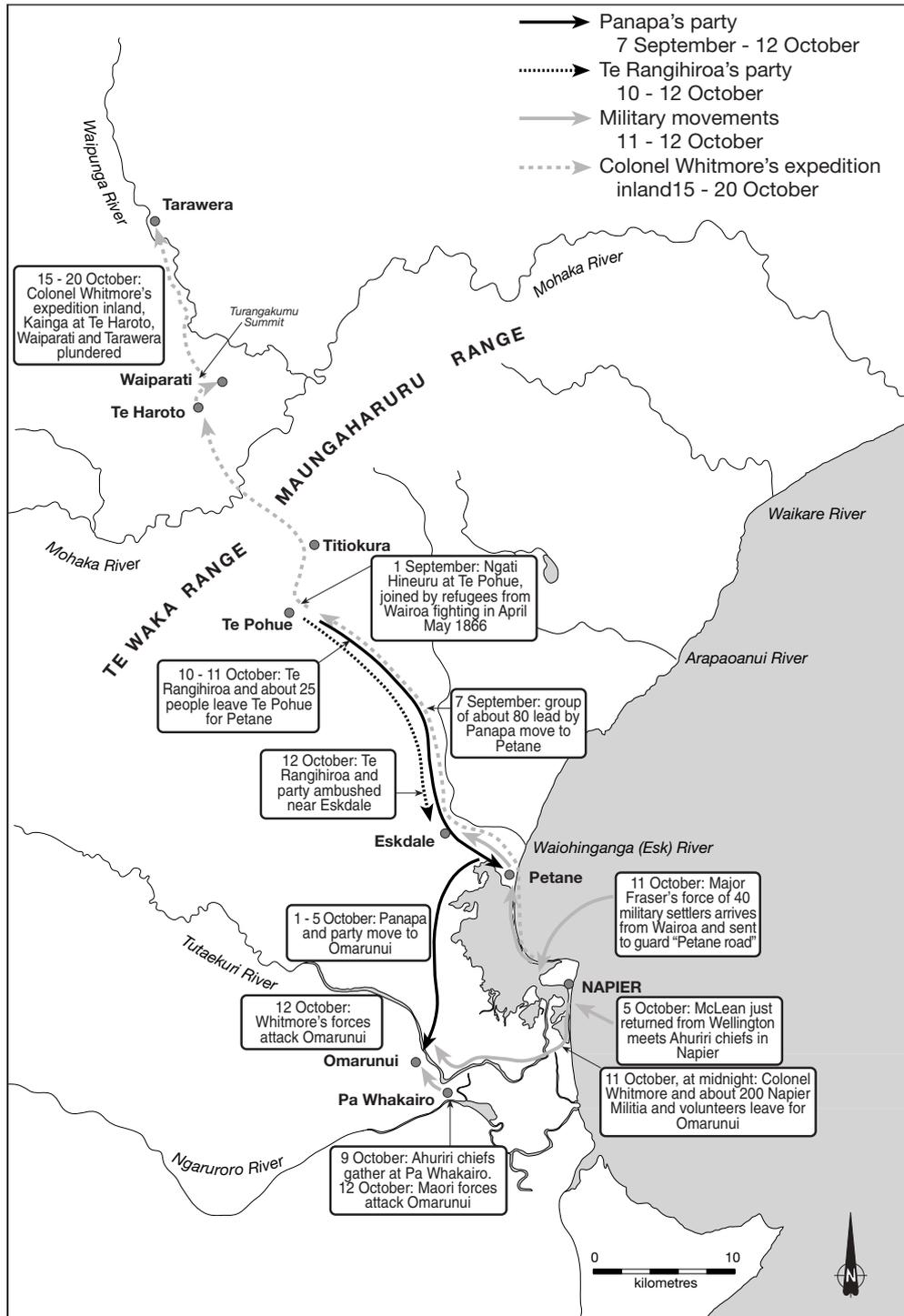
33. Document U14, p 99

34. Ibid, pp 101–106

35. Locke to McLean, 4 September 1866 (as quoted in doc w1, p 128)

TOWARDS RAUPATU: OMARUNUI AND PETANE, 1866

7-5



Map 24: Military action, October 1866

majority.³⁶ The party then divided, with the bulk of them led by Panapa going initially to Petane, about 10 kilometres north of Napier, on 7 September. At that time, there was doubt about their intentions, though they had told Locke, who had visited them at Petane, that they had gone there in response to an invitation from McLean:

The only reason for our coming here is that Mr McLean's letter reached us, telling us to leave where we were and talk with him, then good might come. (An understanding might be arrived at.) Therefore we are come. Watene brought the letter to us. We sent a letter informing you of our coming but the Europeans must have delayed it at Petane.³⁷

McLean did receive the letter, though it is not certain when he received it. It was dated 30 August 1866 and read as follows:

Friend, your letter has reached us. What you said was good when you said we should cast aside our strange prayers. Yes. And so in accordance with those words of yours, we will come with our women, our children, our guns, with all our things, we will come into your presence. These are our words: you should send many boats to this side of the river [the entrance to Te Whanganui-a-Orotu or Napier harbour] so that we can board them. You should also send all your soldiers to this side of the river to escort us to your presence, to the office of the Court at Ahuriri so that this misguided faith can be cast aside, so that your bible can be kissed again.³⁸

A postscript to the letter indicated that Te Rangihiroa and Panapa wanted to avoid the humiliation of surrendering in front of the coastal chiefs: 'Don't send our letter to the Maoris, lest they turn up there to take us captive. Let it be just to you, the Pakeha, who do it.'

Had Panapa's party been intent on a secret raid on Napier, they would hardly have notified McLean of their expedition in such a public manner, let alone requested a military escort into the town. Had McLean been in Napier and had he heeded Te Rangihiroa's and Panapa's requests, he may well have secured their 'surrender' and renunciation of Pai Marire without violence. But McLean remained in Wellington, and as Crown witness Lyndsay Head put it:

the window of opportunity so briefly open, closed again . . . McLean had been consistently unflappable about any Hauhau 'threat' in Heretaunga, and would not return there until October. By that time the contemplation of submission had been replaced by the decision to live or die for their beliefs.³⁹

36. Document R3, pp 35–36

37. Ngati Hineuru to Locke, 9 September 1866 (as quoted in doc w1, p134)

38. Te Rangihiroa and Panapa and all the people to McLean, 30 August 1866 (as quoted in doc v14, p 63, translated by Winifred Bauer). Bauer did not translate the post-script to the letter. We have used Head's translation of this in document w11 at p 191. Cross-examined by counsel for Wai 638, Mr Porteous, on the two translations, Head said that she was 'quite happy with Winifred's translation', though she preferred to stick with her translation of karakia porangi as 'foolish' rather than 'misguided' faith: transcript of proceedings, 28 July 1999, p 237.

39. Document w11, pp 192–193

In the meantime, on 14 September, McLean had been informed by Rhodes that ‘Panapa . . . & the rest have come in on account of a letter written by you to them to do so. They have come down to Petane thinking you were back.’⁴⁰

Panapa’s party remained at Petane for almost a month without taking any aggressive action, though they were becoming increasingly short of food – so much so that they dismantled the church there and sold the timber to buy supplies.⁴¹ Tareha wanted them to be provided with food, but Rhodes refused this request unless Panapa’s party was willing to surrender and give up its arms.⁴² Whitmore, reporting on their plight, told McLean:

they are really hungry, I believe, and want Rhodes to feed them . . . I suppose it would not do to introduce a little ‘mix’ or ‘arsenic’ into the flour sent over to them? Or else they might be profitably ‘fed off’, at Petane. But seriously could you not perhaps manage to get them to agree to be deported to the Chathams on promise of plenty of food for 6 months? They would do a good deal for 6 months’ food right now.⁴³

Whitmore’s arsenic ‘solution’ was reminiscent of the treatment of Aboriginals on the Australian pastoral frontier. Although Whitmore may not have been seriously advocating arsenic poisoning, he was continuing to agitate for a military solution, followed by deportation to the Chathams. As a prelude to this, and despite the absence of aggressive action by Panapa’s party, Rhodes issued arms to the Heretaunga chiefs and settlers.⁴⁴

The presence of the party at Petane added fuel to the rumours of an impending attack on Napier. Although it was accused of sensationalism by its rival the *Hawke’s Bay Herald*, the *Hawke’s Bay Times* wrote on 24 September 1866, under the heading ‘Threatened Attack on Napier’: ‘These Hau-haus left Titiokura with the intention of taking Napier, having been told by a European that there were only fifteen soldiers left in the place, and it would be quite easy to take the barracks and all the ammunition.’⁴⁵

In any event, the shortage of food may have been a reason why, in early October, the main body of the Pai Marire party moved to Paora Kaiwhata’s kainga at Omarunui on the Tutaekuri River, some 16 kilometres south of Napier. Panapa and several other leaders of the party had already been there since mid to late September at the apparent invitation of Paora Kaiwhata himself.⁴⁶ Kaiwhata and his people then evacuated Omarunui and moved to Tareha’s nearby Pa Whakairo. As Moorsom observed, the leaders’ move to Omarunui was logical, given the proximity of the latter to Pa Whakairo and the ‘diplomatic efforts by leaders

40. Rhodes to McLean, 14 September 1866 (as quoted in doc w1, p136)
41. Document u14, p66
42. Ibid, p107
43. Whitmore to McLean, 18 September 1866 (as quoted in doc u14, p109)
44. Document w1, p138
45. *Hawke’s Bay Times*, 24 September 1866 (doc w1, p141)
46. Rhodes informed McLean on 26 September 1866 that they were ‘staying with Paora Kaiwhata, so he told me, until you come back’: doc u14, p65.

on both sides to defuse the tension'.⁴⁷ He also suggested that the move was timed to coincide with McLean's return to Hawke's Bay on 4 October: 'When McLean finally arrived, the Petane party moved without delay to Omarunui, expecting to be called to Pa Whakairo.' Moorsom suggested that they took the direct overland route behind Te Whanganui-a-Orotu, 'a well worn trail that other Pai Marire travellers had followed in early 1865', rather than crossing the estuary and proceeding through Napier.⁴⁸

A second party of some 25 mounted men, headed by Te Rangihiroa, had remained at Te Pohue. They set out for Petane after Panapa's party had gone to Omarunui, probably in response to McLean's demand in his letter of 5 October that Te Rangihiroa needed to be present before he could be assured that the Pai Marire party's intentions were peaceful (see below). It was Te Rangihiroa's party that was ambushed as it approached Petane on the morning of 12 October (map 24).

At Omarunui, Panapa's party made no attempt to fortify the kainga and took nothing, other than some potatoes and local stock for food. According to James Cowan, who cited no source, Te Rangihiroa was to make a night attack on Napier from Petane, while Panapa was to attack the outlying Pakeha settlers and Maori loyal to the Crown before joining Te Rangihiroa in the sacking of Napier. That attack, if successful, was to be a signal for a general Pai Marire rising in Hawke's Bay, an invasion of the province by Tuhoe, and a renewal of the war in the Waikato.⁴⁹

But that scenario is far too dramatic. For a war party intent on a secret lightning raid, Panapa's force was surprisingly open in its demeanour. It camped for a week at Omarunui, with Panapa professing peace and parleying with Government agent James Hamlin. Hamlin eventually told them that, unless they returned home, they would be attacked. A settler, W McDonald, who visited the Pai Marire party at Omarunui at this time told McLean that he thought that they had 'no desire to fight at all'.⁵⁰ Over the weekend of 5 and 6 October, McLean sent Te Hapuku, Noa Huke, and Paora Kaiwhata to Omarunui to negotiate with Panapa. They invited Panapa to go alone to Pa Whakairo to discuss a final move of the Pai Marire party to Napier, where, McLean hoped, they would renounce Pai Marire and take the oath of allegiance. But, according to McLean, the group did not accept that Panapa should go alone to Pa Whakairo: they answered that 'all were "Panapas"'. On 8 October, McLean wrote again, asking them to explain what they meant by this statement.⁵¹ As Head put it in cross-examination, the refusal to go alone could be interpreted as 'a statement of solidarity with the Hau Hau group' –; they were 'confirming their identity'.⁵²

47. Document U14, p 65

48. Ibid, pp 135–137

49. Cowan, vol 2, pp 137–142

50. Document U14, p 71

51. McLean to Pananpa and friends, 8 October 1866, AJHR, 1867, A-1A, p 68 (doc U14, p 69)

52. Draft transcript of proceedings, 28 July 1999, p 275

In any case, there was only one reply, and it ended, according to the translation, with a statement that ‘all talking is at an end’. We discuss this correspondence and the ‘final’ statement more fully below. Waha Pango remembered later that two local chiefs, Tareha and Karauria, had also joined the negotiations and had persuaded a few of the Pai Marire to ‘return . . . to loyalty’, but by then the kawatanga chiefs were intent on attacking the Pai Marire party at Omarunui.⁵³ In the meantime, McLean was gathering his forces. On 8 October, the Napier Militia and Volunteers under Colonel Whitmore were called out, and a force of military settlers and kawatanga Maori (the former led by Major Fraser, the latter by Ihaka Whaanga and Kopu Parapara) was brought down from Wairoa. On 9 October, McLean informed Premier Stafford of his plans:

by tomorrow night . . . a force will be collected with which I trust to be able to deal conclusively with the intruding Hau Haus, which I trust may be done without bloodshed, for able as I shall be then to surround them with an infinitely superior force, I trust to obtain their submission, and by that means to absolutely crush out the danger which at present menaces the district.⁵⁴

For what followed, we have only the official accounts (which were written by McLean and the officers in command of the two forces), some rather speculative local newspaper reports, and records of the interrogations of some of the surviving prisoners.

7.6 THE ENGAGEMENTS AT OMARUNUI AND PETANE

Fraser’s force arrived at Napier on 11 October and was sent to guard the road from Petane to prevent any more Pai Marire from joining Panapa’s party at Omarunui. That night, McLean drafted an ultimatum as follows:

Sirs, —

I have addressed several letters to you asking you to explain the reason of your coming to Heretaunga. Up to the present time you have not given any reason for that act. You have come armed into a peaceful district, and created confusion and disturbance. You have declined to go back to your homes when called upon to do so. I have now determined to put an end to this state of things, and I require you to give up your arms and surrender yourselves to the Officer commanding the forces in one hour from the time you receive this letter.

53. Testimony of Waha Pango (as cited in doc R3, p 33). Upon the assembly of the Pai Marire party at Titiokura, Karauria had told Cooper that ‘Their word (intention) is to come down upon us all here and the town is included in this word’: Cooper to Rhodes, 18 August 1866 (doc W1, p 133).

54. Document J28, p 40

A white flag will be kept flying for that hour, and if at the expiration of that time you have not surrendered another flag will be hoisted, and you will immediately be attacked. This is all from McLean.⁵⁵

The ultimatum was carried by Whitmore's Napier Volunteers, accompanied by Whaanga's Wairoa contingent. They left Napier at midnight and marched out to Omarunui, where, along with a local Maori force led by Tareha and Renata Kawepo, they surrounded the kainga at 5 am on 12 October (map 25). The 400-strong combined force was composed of equal numbers of Maori and Pakeha. The Maori contingents remained under the command of their chiefs, though they were accompanied and advised by Locke. At daylight, interpreter James Hamlin was sent in to Omarunui with McLean's ultimatum. Initially, the people ignored Hamlin, possibly because they had begun what Cowan called 'their fanatic services around the *niu* pole' under the leadership of Panapa.⁵⁶ Then, they said that they wanted more time. They were given another hour. By that time, McLean had arrived on the scene, and he instructed Whitmore to enforce the ultimatum. When the second hour had expired, Whitmore sent Hamlin back to 'inform the Hau Haus that I would wait no longer. They replied that there was no reason to do so as they meant to fight.'⁵⁷ Outnumbered four to one,⁵⁸ the Pai Marire fought only in self-defence, after Whitmore had given the order to attack and his troops had opened fire. Volley after volley was fired into the village in an action that lasted an hour and a half. The various Maori contingents either joined the Pakeha militia in the attack or helped to prevent Pai Marire from escaping. Panapa, who came into the open, was shot dead. With casualties mounting, some of the others tried to break from the village, but most were killed, wounded, or rounded up. Only four escaped. Those who remained raised the white flag and surrendered, but it was some time before the ill-disciplined militia could be brought to cease firing.⁵⁹ Whitmore said that the exact number of enemy casualties was unknown and said nothing about the number of wounded, though he did note that 23 dead were buried and that 76 prisoners were taken. Cowan gives somewhat different figures of 21 killed, about 30 wounded (some of whom died in hospital), and 58 unwounded taken prisoner.⁶⁰ (Cooper gave combined casualty and prisoner figures for Omarunui and Petane, and we note these below.) The dead included Te Rangihiroa's two half-brothers, Kipa and Kingita, besides Panapa. Most of the prisoners were later transported to the Chatham Islands. Of the attacking parties, three men were killed and another eight were wounded.⁶¹

55. Enclosure in McLean to Stafford, 15 October 1866, AJHR, 1867, A-1A, p 69

56. Cowan, vol 2, p 140

57. Whitmore to McLean, 13 October 1866; enclosure in McLean to Stafford, 15 October 1866, AJHR, 1867, A-1A, p 70

58. According to Cooper (as quoted in doc w1, pp 168–169) the total number of Pai Marire involved in the Omarunui and Petane actions was 128. Since there were some 22 in Te Rangihiroa's party at Petane, the number at Omarunui was likely to have been just over 100, including a few women and children.

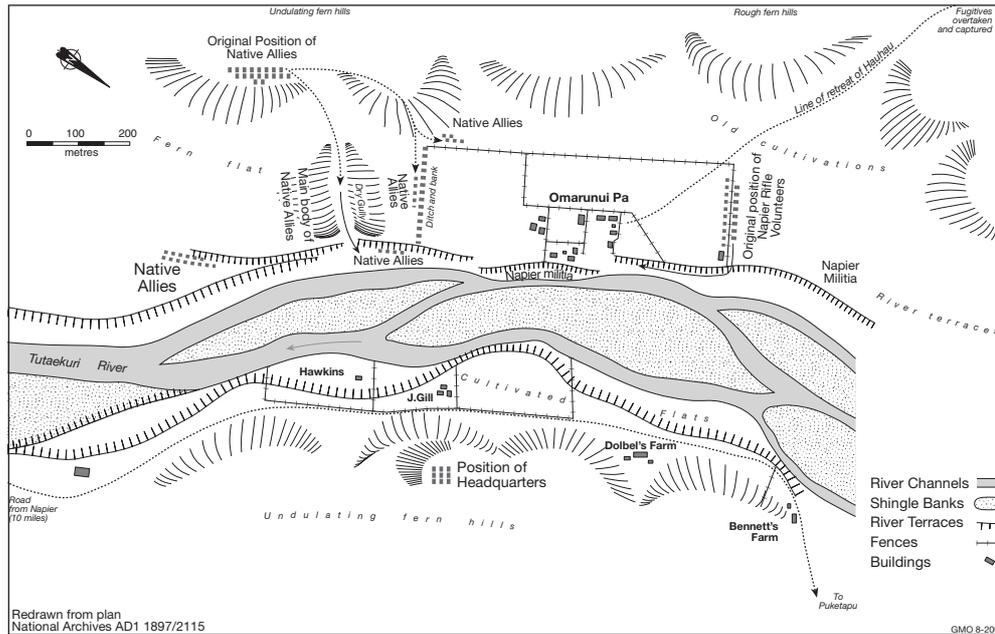
59. *Hawke's Bay Herald*, 27 October 1866 (as quoted in doc w1, p 164)

60. Cowan, vol 2, p 140

61. Whitmore to McLean, 13 October 1866, AJHR, 1867, A-1A, p 70

TOWARDS RAUPATU: OMARUNUI AND PETANE, 1866

7.6



Map 25: Sketch plan of military action at Omarunui, 12 October 1866.

Redrawn from National Archives plan AD1 1897/2115.

That same morning, well after daylight, Fraser's force intercepted Te Rangihiroa's party of 25 horsemen at Herepoho, as they were coming down the bed of the Waiohinganga River towards Petane, and surrounded them in a narrow gully. To be moving in broad daylight seems a strange way to mount a surprise attack on a populous settlement like Napier. It seems more likely, as Battersby admitted under cross-examination, that Te Rangihiroa's party was heading for Omarunui, as McLean had demanded as a prerequisite for negotiations. Since they were intercepted before they had reached the junction with the inland route to Omarunui, it is likely that they intended to take that route, rather than move through Petane and cross the harbour entrance to Napier.⁶²

Fraser wrote two accounts of the action. The first, a hurried note written on the day, said:

Caught Paora Toki and a party coming down armed from the Pohui Bush. Called upon them several times to surrender. They would not, but fired on us, we returned their fire and killed 12 of them.⁶³

Fraser's second account, written the day after the action, was more detailed and considered. He had changed one vital part by admitting that, after Te Rangihiroa's party had repeatedly been asked to surrender and had refused to do so, Fraser himself had ordered his men to open fire. He also gave more details on the 12 killed, noting that among them was 'the Chief

62. Document v14, p 138; see also draft transcript of proceedings, 27 July 1999, p 122

63. Fraser to Whitmore, 12 October 1866 (as quoted in doc w1, p166)

Rangihiroa, who has so long troubled this district'. Of the remainder of the party, one was wounded, three were taken prisoner, and the rest escaped. The escapees, Fraser was 'sorry to say', included Paora Toki and Anaru Matete, 'the ringleaders'.⁶⁴ One of Fraser's men was wounded.

Cooper recorded that 21 were killed at Omarunui and that a total of 37 had died when the casualties from Petane and subsequent operations and later deaths from wounds were taken into account. He also noted that 77 were wounded or taken prisoner and that 14 escaped. Cooper compiled a breakdown of the 86 prisoners (nine of whom were women) taken at Omarunui and Petane that made it clear that the so-called Pai Marire 'rebels' were not all Ngati Hineuru. Indeed, only 34 of the prisoners were, though Ngati Hineuru were the largest tribal group represented. Of the others, nine were Ngati Matepu, seven were Ngati Tu, six were Ngati Kurumokihi, and the remainder were from various other iwi or hapu and included a few from the Waikato and the Urewera.⁶⁵ There was no tribal breakdown of those who were killed or who escaped, but it seems likely that the proportions would have been similar to those for the prisoners.

Although only about 15 Ngati Hineuru escaped from the two engagements, Hawke's Bay settlers in authority (such as JD Ormond) continued to believe that Ngati Hineuru constituted an ongoing threat to their security. This despite the fact that after the 'battle' of Omarunui a Government force led by Whitmore and including some 200 Ngati Kahungunu passed right through the largely deserted Ngati Hineuru territory, reaching Te Haroto on 19 October and going on to Waiparati, which was abandoned, and Tarawera (map 24). In any event, Fraser failed to capture Paora Toki or Anaru Matete. His force cut down a niu pole, looted or destroyed other property, and stole some 200 horses. Whitmore said that he had no control over the kawatanga section of his force, and he conceded that 'These allies were all pretty well paid for their trouble as they got all the loot.'⁶⁶ By the end of 1866, many Ngati Hineuru either were in custody – on the Chatham Islands – or had fled Hawke's Bay.⁶⁷

The uneasy peace that followed was subsequently disturbed by Te Kooti's incursions into the province after he and many of the Omarunui prisoners escaped from the Chatham Islands in July 1868. We discuss his raid on Mohaka in chapter 11. Fifty years after the Omarunui engagement, at a jubilee gathering in 1916, the veteran settler politician JD Ormond, who had been present at Omarunui, unveiled a monument commemorating the 'victory' there, though by then he admitted that 'there cannot be said there was anything heroic in the fight'.⁶⁸

64. Fraser to McLean, 13 October 1866, AJHR, 1867, A-1A, p 72

65. Document w1, p 169

66. Whitmore to McLean, 20 October 1866 (as quoted in doc U14, p 120)

67. Document J28, p 28

68. Rosemary Rolleston, *The Master: JD Ormond of Wallingford* (Wellington: AH and AW Reed, 1980), p 80 (doc J28, p 46)

7.7 INTERPRETING OMARUNUI AND PETANE

In this section, we begin by noting the views in published histories of the wars, and then we examine the views expressed in various research reports presented at our hearings.

7.7.1 The historiography of Omarunui and Petane

Since it was first published in 1922, James Cowan's *The New Zealand Wars* has been the most authoritative account of the wars between Maori and the Crown from 1845 to 1872, despite its now somewhat dated language. Though not unsympathetic to Maori heroism on many occasions, Cowan took on the official view of the time in regard to the simultaneous military engagements at Omarunui and Petane on 12 October 1866 – he saw them as a pre-emptive strike by colonial militia and ‘friendly’ Maori to foil a Pai Marire plot to attack Napier and the outlying settlements. As Cowan put it, Ngati Hineuru, ‘a small but war-loving clan’ whose principal villages were at Te Haroto and Tarawera on the Napier to Taupo track, set out early in October 1866 ‘with the intention of delivering an attack on the Town of Napier’. Cowan added that the ‘daring manifested in the attempt of so small a war-party to attack a well-armed European settlement [was] to be found in its extraordinary confidence in supernatural aid produced by the preachings of the Pai-marire apostles’.⁶⁹ Having invented a plot, Cowan had to devise an explanation for it.

Recent published accounts by Professor James Belich, Matthew Wright, and Dr John Battersby do little to modify Cowan's interpretation. Belich's celebrated history of the New Zealand wars devotes half a paragraph to Omarunui, and this is sourced to Cowan. Belich implies that the Pai Marire force under Panapa was solely Ngati Hineuru. He concludes that, although Panapa's party ‘remained quiet and refrained from any act of violence’ at Omarunui, it was ‘attacked and crushed by colonial forces under Colonel G S Whitmore, supported by the influential Ngati Kahungunu chief Tareha Te Moananui’.⁷⁰ Belich does not mention the ambush of Te Rangihiroa's party near Petane.

Wright's history of Hawke's Bay – *Hawke's Bay: The History of a Province* – though critical of ‘unashamedly pro-Victorian’ accounts such as Cowan's, largely follows the explanations of those accounts. As Moorsom put it, ‘Wright's own two-page narrative differs little in substance from the self-justifying settler rationalisation that he criticises in his predecessors’.⁷¹

We do not discuss Battersby's *The One Day War* here, since it was published after our hearings ended and is, in any case, a virtually unaltered version of the research report that he presented to us.⁷² We discuss that report in subsequent sections.

69. Cowan, vol 2, p 142

70. Belich, p 210; and see Cowan, vol 2, p 139

71. Matthew Wright, *Hawke's Bay: The History of a Province* (Palmerston North: Dunmore Press Ltd, 1994), p 86; doc U14, p 127

72. John Battersby, *The One Day War: The Battle of Omarunui, 1866* (Auckland: Reed, 2000)

Although the engagements at Omarunui and Petane are mentioned in numerous reports in our record of documents, five of these reports examine the two engagements in some detail. These are a report by Boast for the claimants; a report by Ballara and Scott which was commissioned by the Tribunal but which is described on its cover as being written ‘on behalf of the claimants’; a report by Moorsom which was commissioned by the Tribunal; and reports by Battersby and Head prepared for the Crown.⁷³ As we might expect, these authors differ considerably in their interpretations. Rather than summarise the reports, we refer to them where relevant in reviewing what we consider are the main issues relating to the engagements at Omarunui and Petane.

7.7.2 Was there a Pai Marire plot to attack Napier and outlying settlers?

In the aftermath of the October 1866 conflict, it was assumed officially and by later historians such as Cowan (with his two-pronged attack theory) that the Pai Marire forces led by Panapa and Te Rangihiroa had planned to attack Napier and its outlying settlements but that they were foiled in this by the actions at Omarunui and Petane. Hitherto, officials had noted rumours of an attack but had not been averse to dismissing them as unlikely.⁷⁴ However, after the engagements, the erstwhile rumours were embraced as fact. We now consider the views expressed on this supposed plot in the research reports. As Ballara and Scott pointed out, the plot theory came largely from the Reverend Samuel Williams, who was forever spreading rumours of Pai Marire plans to descend on Hawke’s Bay and murder settlers. He was described by Whitmore as ‘an abominable character and at this moment the father of a great many rumours which keep alive the panic among the country settlers’.⁷⁵ In fact, Williams’ information on a supposed plot to attack Napier was extremely flimsy. He later claimed that a week before the engagement at Omarunui he had informed the authorities that Napier was in danger of imminent attack, but in fact Karaitiana Takamoana had told him around that time that the Pai Marire party wished for a peaceful solution. In any event, and perhaps influenced by Williams, McLean informed Premier Stafford of the rumour on 9 October, just three days before the battle.⁷⁶ This story was reinforced by information obtained from interrogations of prisoners carried out by Williams and others after the Omarunui engagement. Among those who Williams questioned was Te Rangihiroa’s 15-year-old son Tawhana. Williams admitted that he ‘could not get a word out of him at first’. ‘So I told him to sit down, and I myself would tell him, which I proceeded to do.’ It was only when Williams told Tawhana that ‘they intended to attack Napier from the west across the lagoons’ that Tawhana ‘carried on the

73. Document 11(15); doc 128; doc 114, pp 29–149; doc w1, pp 116–179; doc w11, pp 159–222

74. For example, Cooper told Rhodes, in relation to his intelligence in August 1866 from Karauria (see note 53 above), that ‘I don’t suppose there is reason to be uneasy’: Cooper to Rhodes, 18 August 1866 (doc w1, p 133).

75. Whitmore to McLean, 15 October 1866 (doc w1, p 181)

76. Document 114, pp 113, 117

story himself, and said that if we looked in a certain place, we would find the canoes with which they intended to cross'.⁷⁷ In fact, the canoes belonged to Tareha, one of the prominent kawatanga chiefs who joined with Whitmore's force in the attack on Omarunui. Another Omarunui prisoner, Ihaka, who was interrogated by Government agent George Worgan, said that Panapa had 'encouraged [them] by saying that *his God* had delivered Napier into his hands' (emphasis in original). Another prisoner, Taipura, told Worgan: 'Panapa pledged himself to the destruction of Napier, saying that his Atua had delivered the Pakeha into his hand'.⁷⁸ It was easy for Pakeha interrogators to put words into the mouths of their captive witnesses and then to take such statements as literal confirmation of a plot to attack Napier. As Moorsom put it, the 'facts' extracted from the prisoners were 'fitted neatly with the by now well worn conspiracy theory'.⁷⁹ The information was then used by the Government to justify the attack on Omarunui to the British Government.⁸⁰ Ballara and Scott concluded that 'the Crown's case was forced to rest on a story put together and documented *after* the fight rather than primary evidence from before it' (emphasis in original).⁸¹

In our examination of the plot theory, we need to look at both the descent of Panapa's and Te Rangihoro's parties into lowland Hawke's Bay and the behaviour of Panapa's party at Omarunui in the days before the attack, as revealed especially in Panapa's final correspondence with McLean.

(1) *The descent into Ahuriri*

The research reports devoted varying attention to the travels of the Pai Mariri parties. Ballara and Scott did not examine their movements at all, and Boast admitted that the question of 'Why so many of Ngati Hineuru descended on lowland Hawke's Bay' was 'still rather a mystery'. Despite this, he added that there was 'no evidence that those who went down to Omarunui saw themselves as spearheading an attack on Hawke's Bay by the Kingitanga'.⁸² Moorsom, on the other hand, provided a detailed analysis of the parties' journeys to Petane and Omarunui, based mainly on correspondence in the McLean papers. This suggests that Panapa's move to Petane was a disciplined affair, with the leaders trying to reassure local settlers that their intentions were peaceful and that they had come in response to McLean's invitation. As we noted above, they asked McLean for boats to cross the harbour entrance and troops to escort them into Napier. According to Moorsom, 'military action had no place in their planning'.⁸³ Battersby, who used much the same material as Moorsom but also referred to local newspapers, reported the movements in some detail. He too admitted that Panapa's

77. Williams to McLean, 13 October 1866 (as quoted in doc u14, pp 76–77)

78. Worgan to McLean, 20 October 1866 (as quoted in doc u14, pp 78–79)

79. Document u14, pp 73, 79

80. See doc w1, p 189

81. Document u(15), p 29

82. Document j28, p 28

83. Document u14, p 64

7.7.2(2)

party had travelled to Petane in response to McLean's invitation. However, he discounted a food shortage as the explanation for the dismantling of the church at Petane. He also said that it was around the time that Panapa's party moved to Omarunui that the situation began to deteriorate, at least in the eyes of the loyalist coastal chiefs, McLean, and other officials and settlers. But Battersby produced no evidence of Panapa's party committing any violence or undertaking any military preparations, though he noted that vegetables and cattle were taken for food.⁸⁴ No hard evidence, as distinct from rumour and speculation, was presented in any of the research reports that Panapa and his party were getting ready to swoop on the loyalist Maori or the settlers. Likewise, although Battersby reported speculation about the remainder of the Pai Marire party gathering under Te Rangihiroa and Anaru Matete at Te Pohue and Titiokura, neither his report nor any of the other research reports had any information on the party's departure for Petane on the morning of 12 October. However, as we note below, the reports agreed that Te Rangihiroa did set out in response to McLean's 5 October request that he proceed to Omarunui.

(2) *The final correspondence*

All the research reports placed considerable importance on the final correspondence exchanged between McLean and Panapa from 5 to 8 October 1866, though there are differences in interpretation. In this section, we reproduce each letter before discussing the varying interpretations. However, we note that the sequence printed in the *Appendix to the Journal of the House of Representatives* was out of order. Here, we reproduce the letters in their correct sequence, beginning with McLean's letter of 5 October:

Napier, 5 October 1866:

I have heard from [Tareha] Te Moananui and Te Hapuku the statement made by you that it was my letter which brought you to Petane. If the Rangihiroa were one of your number, and you were coming to abandon proceedings, then it would be understood that your intentions were for peace, and in accordance with my letter. I am not yet clear whether this expedition of yours is intended for evil or good. Therefore I say go back to your own homes; and when you visit Heretaunga do so in a proper manner when you are invited, and with intentions of peace, that what you mean may be known to us and the chiefs of Heretaunga. It is not right that you should go to Pawhakauro. Our thoughts and those of the chiefs of Heretaunga are one.

From your friend,

D McLean⁸⁵

84. Document w1, ch 7

85. McLean to Panapa and friends, 5 October 1866, AJHR, 1867, A-1A, p 67 (doc J28, p 38)



Fig 12: Napier barracks, circa 1865. Photographer unknown. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (Rhodes album, F-110494-½).

Ballara and Scott, Moorsom, and Battersby all agreed that it was McLean's comment in relation to Te Rangihiroa that prompted the latter's fateful journey to Omarunui, which ended with his ambush near Petane. Ballara and Scott said that the letters from Panapa to McLean suggested that, 'far from contemplating rebellion, Ngati Hineuru were hoping for McLean to mediate between themselves and what they saw as the belligerent Ngati Kahungunu chiefs, and to discuss with him their Paimarire allegiance'. They saw Ngati Hineuru's move to Petane and Omarunui as being a response to McLean's invitation to them to disarm and surrender. McLean acknowledged as much in his letter to them of 5 October.⁸⁶ Battersby saw McLean as wanting Te Rangihiroa and those with him to 'come in' and take the oath of allegiance, just as Te Waru's followers had done at Wairoa in June.⁸⁷ We agree. Moorsom said that McLean's 'peremptory order for them to depart', which following his invitation to them to come in, must have 'come as a body blow to the Ngati Hineuru leaders' – they were being told to go home, without a chance to present their case or to meet McLean face to face.⁸⁸ Battersby thought that McLean's invitation was withdrawn because he had not expected such a large number of people to accompany Panapa, but this is a rather contradictory explanation, since

86. Document 11(15), p30

87. Document w1, p145

88. Document u14, pp 67–68

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Battersby had also said that McLean wanted the leaders and their followers all to take the oath of allegiance.⁸⁹

Panapa's reply to McLean on the same day was brief:

Te Rapaki, 5th October 1866

Saluting you. This is the word to you: You have already known, and so also have the Chiefs of Heretaunga.

Na Matoa Kotoa⁹⁰

Moorsom described this reply as 'pained, angry and to the point. . . . They had, after all, taken pains to inform officials and settlers of their mission, as well as McLean himself, and had offered assurances of their peaceful intentions.'⁹¹ The other reports made no specific comments on this letter.

McLean also replied on the same day, affecting puzzlement:

Napier, 5th October, 1866:

I am at a loss to know the meaning of the one sentence in your letter which speaks of the knowledge which I and the Chiefs possess. I do not know what this means, and I wish you to explain it.

From your friend,

Te Makarini [McLean]

The reply came back, still on the same day:

Te Rapaki, 5th October, 1866

To Mr McLean,

Friend, saluting you. This is the word into your long searching as to the meaning of that sentence. This is your word: That we should come here, and throw off the foolish god.

From us all.⁹²

Moorsom interpreted this message as:

challenging what they perceived to be game-playing on the part of McLean. They had come, as he requested, to discuss their Pai Marire allegiance with McLean and the kawanatanga chiefs, and expected to be conducted to a meeting for that purpose.⁹³

89. Document w1, p 145

90. Panapa to McLean, 5 October 1866, AJHR, 1867, A-1A, p 67 (doc J28, p 39)

91. Document U14, p 68

92. McLean to Panapa and Panapa to McLean, 5 October 1866, AJHR, 1867, A-1A, p 67 (doc J28, p 39)

93. Document U14, p 69

McLean and the kawanatanga chiefs, on the other hand, wanted the group to surrender unconditionally (even though Panapa and most of his supporters had not in fact been engaged in war), lay down their arms, and take the oath of allegiance to the Queen. Battersby did not comment specifically on this letter, though he considered that McLean was right to be puzzled by Panapa's obscure replies. Head also argued that McLean 'did not get a clear answer' from Panapa; she described a 'double track' of the Pai Marire mind, which meant that they 'could interpret events either spiritually or actually' and 'could utter threats and still not intend to fight'. However, she went on to argue that the Heretaunga chiefs 'could not similarly slip from one reality to another': they were intent on fighting.⁹⁴ We agree on Head's last point. On 6 October, Karaitiana Takamoana informed McLean that the Pai Marire answers to McLean's letter of the previous day meant that they had come to fight and that it was time that McLean made up his mind to do something.⁹⁵

The sequence of correspondence so far was extraordinary. The delivery of two letters from each side between two places 16 kilometres apart at a time when motorised transport, let alone e-mail, did not exist must have constituted a record in the annals of New Zealand's postal system. It does of course raise the question as to why McLean insisted on written communication and did not just visit Panapa and his people at Omarunui, as lesser officials and kawanatanga chiefs were able to do without danger.

Nevertheless, McLean took a respite from this frantic correspondence. He did not reply until 8 October:

To Panapa and friends, Rapaki

8th October, 1866

I have received your letter which states that you came in to throw off your foolish god. Te Hapuku, Noa, and Paora Kaiwhata have been to you and told you that, if this statement be true, Panapa should come to the Pa Whakairo and arrange matters at that place before coming in here. Now you did not accede to their proposition – you answered that all were 'Panapas'. I do not know what this sentence means, and what you mean by your proceedings in general. To request that you should return peaceably to your homes you have turned a deaf ear – it was a good word from us all (to you). Now if your intentions are evil tell us, and if good let us know, that we may shortly understand each other.

From your friend,

D McLean⁹⁶

94. Document w11(c), p 218

95. Document w1, p 146

96. McLean to Panapa, 8 October 1866, AJHR, 1867, A-1A, p 68 (doc J28, p 39)

7.7.2(2)

Moorsom described McLean's reply as 'disingenuous', since the only means of communication McLean had left open were to write to Panapa or to send him 'alone and unprotected into the domain of [his] opponents'.⁹⁷ It was not surprising that Panapa's Pai Marire flock wanted to stick together – to be all 'Panapas'. Battersby saw McLean's letter as another round in his continuing fight to persuade Panapa to 'come in'. However, Panapa was still refusing to cooperate, as demonstrated by his final reply to McLean.⁹⁸

This was Panapa's reply, also written on 8 October (not 5 October, as the printed papers have it). We print the Maori text as well as a contemporary English translation:

te Rapaki

8 Oketopa /66

Kia ma

Tenei kua tae mai tau reta na noa raua ko & Rueti i kawe mai kua kite matou e na ana koe, ae kia rongu mai koe he taonga tonu te pai & he taonga tonu te kino, mo to iu te na ki, ta matou mahana hoki kaore ano matou kia whakawahia e koutou ko nga Rangatira ka te mea i te ara ano matou kia mai e haere ana whakahoki noa koe he oi kua mutu te korero.

Na matou katoa⁹⁹

An anonymous translation of this letter, done at the time and accompanying the original Maori text in the National Archives file, is as follows:

Te Rapaki

8th of Oct 1866

To Mr McLean

We have received your letter brought by Noa and Edward (Mr Hamlin); we see that you are asking Yes – do you listen, peace is a property, and evil is also a property. This is the answer to your question, – Our thought is that we have not yet been judged by you and the chiefs; since while we were on the road we were sent back by you – now talking is at an end.

From us all¹⁰⁰

This last letter has been the subject of varying interpretations by both sides of the argument. According to Moorsom, it gave some insight into how the Pai Marire leaders expected to proceed; they regarded their attitude to good or evil as an issue that was yet to be determined and they anticipated that this would be done at the hui that they had long expected with McLean and the kawanatanga chiefs. They were still complaining that, despite having invited them to meet him, McLean was continuing to turn them away. The somewhat

97. Document U14, pp 69–70

98. Document W1, p 146

99. Panapa to McLean, 8 October 1866 (doc U14C, 22/1)

100. Translation of above in doc U14C, 22/4

ambiguous answers suggested that Panapa and his people were concerned that they had not ‘yet been judged by you and the chiefs’ – in other words, they were unsure how they and their new faith would be received by McLean and the coastal chiefs.

Yet, McLean and the kawatanga chiefs chose to interpret the letter as a conclusion to the negotiations; indeed, with that final clause interpreted as ‘now talking is at an end’, they saw it as tantamount to a declaration of war. But it was the kawatanga chiefs who were insisting that talking was at an end and who were intent on fighting. On 9 October, they informed McLean of ‘the decision we have arrived at to fix a day for attacking these people . . . Talking is at an end.’¹⁰¹ In our understanding, the final clause – ‘kua mutu te korero’ in the original Maori text – was simply a conventional ending to the korero (the talk or discussion) in the letter. It was saying that the discussion in that letter had ended; not that all future discussion was at an end. Yet, McLean, the kawatanga chiefs, and, in due course, most subsequent commentators, including Head (who misdated the letter at 5 October) and the Crown in its submissions to us, chose to regard the final sentence as a determination by Panapa to break off the discussion and fight.¹⁰² It was not Panapa who broke off the discussion but McLean. McLean was actively engaged in preparations for a military showdown at Omarunui, and there is strong circumstantial evidence that the correspondence and McLean’s affected misunderstandings were merely delaying tactics to give him time to assemble an overwhelming military force. This might also explain McLean’s reluctance to meet Panapa face to face at Omarunui. After all, he was not lacking in experience in meeting Maori at hui, though he was in the habit of procrastinating over sticky situations.¹⁰³

In summing up on this correspondence, we conclude that it provides no evidence of an aggressive or rebellious intent on the part of Panapa and his supporters. We agree with Ballara and Scott that, ‘far from contemplating rebellion, Ngati Hineuru were hoping for McLean to mediate between themselves and what they saw as the belligerent Ngati Kahungunu chiefs, and to discuss with him their Paimarire allegiance’.¹⁰⁴ We also agree with their statement that ‘To conclude that Ngati Hineuru were “in rebellion” from the little extant material there is leading up to the fight at Omarunui does not seem warranted.’¹⁰⁵ We agree with the various research reports that Te Rangihiroa and his small party of horsemen travelled to Petane in response to McLean’s demand that a chief of Te Rangihiroa’s stature was needed before negotiations could begin. They were not, as the official version has it, planning to sack Napier. As Moorsom argued, if the Pai Marire forces were intending a surprise attack on Napier, it would seem strange that they were still seeking a meeting at Pa Whakairo or Napier with McLean and the kawatanga chiefs as late as 8 October. Previously, they

101. Document w1, p149

102. Document x51, pp50–51

103. For example, in delaying the completion of the Waitara ‘purchase’ in Taranaki, see Keith Sinclair, *The Origins of the Maori Wars* (Wellington: New Zealand University Press, 1957), pp 57–59, 159–160.

104. Document 11(15), p 30

105. *Ibid*, p 32

had requested a military escort to accompany them to Napier.¹⁰⁶ Although there had been rumours for several years of likely Pai Marire attacks on Napier and outlying settlements, much of the ‘evidence’ for the so-called conspiracy of Panapa and Te Rangihiroa to attack Napier was gathered after they had been attacked at Omarunui and Petane, as we have noted above.

We next have to ask whether there is any additional evidence to support the notion of a plot to attack Napier and the neighbouring settlements. It is notable that Battersby, the Crown’s chief witness on the Omarunui and Petane engagements, quoted numerous rumours of plans by the Pai Marire force to attack, mainly from the Hawke’s Bay press, but located no hard evidence. He claimed that ‘From 8 October McLean faced a genuine security risk to the locality of Napier.’ But his only evidence for that was a letter of that date from McLean to a settler at Titiokura: ‘I am apprehensive a collision is about to take place between the Pawhakaio natives & those of Titiokura.’¹⁰⁷ Battersby did not explain how a fight between the Pai Marire and the kawatanga Maori was likely to cause a security risk for Napier. Likewise, Head emphasised the likelihood of a confrontation between the two Maori groups. She stressed the militarism of Panapa’s party:

In September Ngati Hineuru marched to Petane. They travelled with military discipline, and when they arrived they continued to act like a fighting force, keeping up [as Whitmore described it] ‘all military ceremony’. At Petane they began to act as if they were prepared for trouble.

Head went on to describe the group’s commandeering of food and the pulling down of Colenso’s old church as being in keeping with the similar destruction of missionary property by Pai Marire at Opotiki, Pukawa, and Waerenga a Hika. By the time that Panapa’s force had shifted to Omarunui, their ‘contemplation of submission had been replaced by the decision to live or die for their beliefs’.¹⁰⁸ Crown counsel, who relied on Battersby and Head, also focused on the potential intra-Maori conflict and the fear that it might boil over and endanger the settlers. Counsel maintained that, in the face of such dangers, McLean was right to have made a pre-emptive strike after Panapa had failed to surrender. We discuss the Crown’s final submissions in more detail later but note here that the Crown and its main witnesses tacitly abandoned the notion of a plot to attack Napier and the outlying settlements.

7.7.3 Why, when called upon to surrender, did Panapa and Te Rangihiroa fight back?

As we might expect, when they addressed the matter at all, the research reports gave varying explanations as to why Panapa and Te Rangihiroa refused the call to surrender and fired back

106. Document U14, p 72

107. Document w1, p 148

108. Document w11(c), pp 212–213

when attacked. Ballara and Scott recited Panapa's final letter and noted McLean's final ultimatum, but they merely concluded that 'the situation had deteriorated beyond mending, and the occupants of the pa determined to fight. . . . Once the pa at Omarunui was surrounded, the suspicions of the occupants prevented a peaceful settlement.' They suggested that Anaru Matete, who had found that the colonial forces did not respect a white flag of truce at Waerenga a Hika, may have warned Panapa against any further negotiation.¹⁰⁹ So far as Petane is concerned, Ballara and Scott merely repeated Fraser's explanation that, when challenged, Te Rangihiroa continued to seek cover.¹¹⁰ Boast, likewise, was content to describe the engagements, as taken from official sources, without giving an explanation for the resistance. Moorsom, like Ballara and Scott, argued that Panapa's people had no alternative but to fight once McLean's ultimatum had expired: 'Boxed into a corner and perhaps not yet fully aware of the forces ranged against them, they may have felt that the only alternative left was to defend themselves.'¹¹¹ However, he did not comment on the resistance of Te Rangihiroa and his party to Fraser's ambush.

The Crown's researchers presented a somewhat different picture. Battersby began with McLean's assumption, shared by Whitmore and the press, that if the occupants of Omarunui were confronted, they would surrender and 'Peace would be secured without bloodshed'.¹¹² However, this is not what happened. To Battersby, the decision to fight at Omarunui was:

a critical piece of evidence. . . . In their choosing to fight, any question remaining over their intentions evaporated. Officials and settlers alike were convinced by this that McLean's move on Omarunui had been fortuitous indeed, pre-empting an imminent attack on Napier itself. Panapa's decision to fight gave little justification to believe otherwise. In re-assessing the evidence some 130 years later that decision still leaves grave doubt about the integrity of their professions of peace. This doubt is further deepened by the fact that not just at Omarunui, but at Petane as well – surrender was given as an option, and was declined. In both cases the Pai Marire groups were armed and chose to fight.¹¹³

This, in effect, endorsed the official explanation of the time, as outlined in the correspondence of the two chief official actors, McLean and Whitmore. However, under cross-examination Battersby essentially distanced himself from the so-called plot for an attack on Napier.

Head saw things differently. She stressed the militarist approach of Pai Marire. Indeed, she refused to use the name Pai Marire (good and peaceful), which the movement's adherents favoured and which is used by other modern scholars such as Paul Clark, and instead referred

109. Document 11(15), pp 32–33. For the exact details of the 'flag of truce' and the fighting at Waerenga-a-Hika, readers should refer to the Tribunal's report on the Gisborne claims.

110. *Ibid*, p 34

111. Document R3, p 46

112. Document w1, pp 152–153

113. *Ibid*, pp 158–159

to 'Hau Hauism'. When the Pai Marire moved to Omarunui and were confronted by McLean's forces, Head said that 'the contemplation of submission had been replaced by a decision to live or die for their beliefs'.¹¹⁴ This suggestion puts quite a different complexion on their resistance.

We accept that this alternative approach needs to be explored, especially since other research reports, apart from Moorsom's, stressed the secular and political aspects of the movement. Head provided a brief background on the development of Pai Marire by Te Ua Haumene, and his recruitment and baptism of the second Maori King, Tawhiao. She reminded us that Te Ua 'had not come to preach new gods, as his opponents often thought, but Christianity purified of missionary error'.¹¹⁵ In the summary of her main report, Head described Pai Marire as:

a millennial sect who believed that the last days recorded in the 'Book of Revelation' were to be fulfilled in their generation. They preached the deliverance of the righteous from the terrible, imminent wrath of God, and looked forward to a blissful future in a theocratic state called New Canaan. Believers experienced their relationship with God in worship, where they spoke in tongues and prophesied, and witnessed miracles. The Hauhau lived out the message of the second chapter of the Acts of the Apostles; their experience duplicated that of the disciples, and therefore seemed proof of God.

It is not possible to understand the course of Hau Hau history without accepting that they were ecstasies, bound to a spiritual reality which can't be analysed in ordinary real-time terms.¹¹⁶

Unfortunately, Head did not apply these very useful comments on Pai Marire in general to the particular situation of Panapa and his followers at Omarunui or specifically to their decision not to surrender when called upon to do so by McLean's proclamation.

Though Head discussed the spread of the Pai Marire movement through the island by Te Ua's prophets, including the expedition to the Bay of Plenty which resulted in the murder of Völkner and incursions during 1865 into the East Coast and Hawke's Bay, she said very little about Panapa's role. She even suggested that, by 1866, Panapa, 'who had led the Ngati Hineuru Hauhau for nearly two years', and Ngati Hineuru's long-time leading chief, Te Rangihiroa, were losing ground to 'the new generation of national Hauhau leaders, in particular Anaru Matete'.¹¹⁷ Yet, Head also admitted that Panapa and Te Rangihiroa sought peace, even if this meant submission and 'giving up their god', citing their letter to McLean of 30 August 1866 in support.¹¹⁸ As we noted above, it was McLean's failure to seize what Head called this 'window of opportunity' that led, remorselessly, to the respective attacks on Panapa and Te Rangihiroa.

114. Document w11(c), p 212

115. Document w11, p 152

116. Document w32, p 30

117. Document w11, pp 191–192

118. Ibid, p 192

When Panapa's correspondence with McLean from Omarunui failed – 'steps in a diplomatic dance', as Head described it – Hamlin reported to McLean that Panapa had explained that the group's future conduct, 'whether for good or evil', would depend on the directions 'their . . . god might give them'.¹¹⁹ Head saw this as contradictory behaviour. As she put it, 'the contradiction made action dependent on the word of God, expressed through his prophets'. But:

'waiting on God' suggests why it took almost two years of rumour and false alarms before the Hauhau finally decided to fight, and why, if they had not been challenged to surrender by the government forces surrounding their pa at Omarunui on 12 October 1866, they might never have fought at all.¹²⁰

This was an important admission because it shows that, in the last resort, Head, like Battersby, had little faith in the so-called conspiracy to attack Napier. But it does not go far in explaining the religious motivation that led Panapa and his followers both to ignore McLean's ultimatum to surrender and to fight back when they were attacked. On this, Head concluded that in the end the people were delivered:

into the hands of leaders claiming a special line to God, as happens so often in religious cults. Given that the Hauhau were outnumbered, poorly armed, underfed and in a poorly defensive situation, belief was once again the prelude to tragedy. When called upon to submit . . . on the morning of 12 October, the Hauhau delayed. There are many possible reasons the Hau Hau kept the *kawanatanga* waiting. It may have been for some tactical reason, or a show of independence, or because the people were at their prayers, or waiting for a sign, or because in the absence of a sign, the option to surrender was still available. In this situation . . . all the options, spiritual and political, had closed down. They might as well acquit themselves like the warriors that a thousand years of culture had honoured.¹²¹

Ultimately, Head kept all her options open. She did not explain Panapa's 'special line to God' or the religious motivation that, in our view, led Panapa and his followers to resist the attack on them.

In his cross-examination of Head, Quentin Duff for the Wai 299 claimants tried to explore this religious motivation. He sought to locate it in certain biblical passages. We refer to this cross-examination at some length, since we believe that the biblical passages referred to provide some explanation of why Panapa and his people, however hopeless their military situation, decided to place their faith in God and fight back in self-defence when attacked. Duff asked Head whether it was possible to 'talk about Hau Hau . . . without actually having considered their foundational biblical precepts', especially the second chapter of Acts. Head replied that she was 'well aware of the foundations in the Bible of the Hau Hau faith', though

119. Ibid, p 198; McLean to Stafford, 9 October 1866, AJHR, 1867, A-1A, p 66 (doc w11, p 199; doc U14, p 80)

120. Document w11, p 170

121. Document w11(c), p 221

she said that the 'whole Bible' provided those foundations, not just Acts 2. But she did agree that in their services Pai Marire 'lived out the message of the second chapter of the Acts of the apostles'.¹²² At Duff's request, Head read out verses 1 to 4 of Acts 2:

When the day of Pentecost came they were altogether in one place. Suddenly a sound like the blowing of a violent wind came from heaven and filled the whole house where they were sitting. They saw what seemed to be tongues of fire that separated and came to rest on each of them, and all of them were filled with the spirit and began to speak in tongues as the spirit enabled them.¹²³

Duff then invited Head to read from verses 10 to 14, which referred to Jews, Romans, Arabs, and others 'declaring the wonders of god in [their] own tongue'.¹²⁴ Speaking in tongues was a prominent feature of Pai Marire worship and was facilitated by the niu (news) pole: the foreign tongues, particularly English, were conveyed by the hau (wind), transmitted down ropes attached to the pole, and passed to the eager hands grasping those ropes (see fig 10). According to Cowan, the people at Omarunui were conducting a service around a niu pole when McLean's ultimatum was delivered to them. The fact that much of the time McLean allowed them to consider surrendering was instead spent conducting their ritual suggests that they had chosen to place their faith in their god and ignore the threat.

Duff's cross-examination of Head drew attention to further passages in Acts that could explain other aspects of Pai Marire behaviour at Omarunui. Duff suggested that Acts 2, verse 44 – 'All believers were together and had everything in common, selling their possessions and goods' – could be seen as an explanation both for the Pai Marire statement 'We are all Panapas' and for their planting of large gardens. But Head thought that this was going 'too far': such exercises in biblical exegesis might or might not explain various aspects of Pai Marire behaviour, she said, but of that, no one, these days, could be certain.¹²⁵

We need to remember that Panapa was a prophet who expected the literal fulfilment of his prophecies; he thus did not see a need to carry them out by military means. In shifting from Head to Moorsom, who was also aware of the religious connotations of Pai Marire, we note the latter's suggestion that 'It is difficult to detect anything more specific in [these statements] than the broad millenarian promise of deliverance. . . . There is no sign here of planning, let alone a military conspiracy'.¹²⁶ Instead, Moorsom suggested that 'maybe there was no detailed plan of campaign in the heads of the Pai Marire leaders at Omarunui: their followers trusted their judgement and the Prophet's ability to interpret the will of the atua'.¹²⁷ Such was their

122. Draft transcript of proceedings, 28 July 1999, p 255

123. Ibid, p 257

124. Ibid

125. Ibid, pp 257–258

126. Document U14, p 79

127. Ibid, p 80

faith in their prophet and in their god that, in the three days between the cessation of correspondence with McLean and the attack on Omarunui, they made no offensive or defensive preparations. Even on the morning of the attack, the people were going about their ordinary avocations – the women fetching water from the river, the men chanting karakia – and they did not shoot back until they were fired on from close quarters.¹²⁸

In conclusion, we say that the decision of Panapa and his followers not to surrender but to put themselves in the keeping of their God seems to us to be the best of the various explanations of their behaviour. After all, there was no way that they could win a military confrontation against the forces surrounding them. If this conclusion seems strange in a secular age, we need to remember that the history of millennial movements is littered with similar examples from around the world.¹²⁹ Finally, we note that our discussion has focused almost exclusively on Omarunui and has neglected Petane (though this simply reflects the paucity of information available on the latter engagement). It is vaguely possible that the refusal to surrender at Petane was similarly motivated, but the absence of the prophet and the suddenness of the ambush make the resistance seem more spontaneous and the above explanation less applicable.

7.7.4 Were the attacks by Crown forces at Omarunui and Petane part of a carefully orchestrated strategy by McLean to suppress 'Hauhauism'?

In our discussion of the two previous questions, we have been concerned with explanations that, in one way or another, 'blame' the forces led by Panapa and Te Rangihiroa for the tragic events at Omarunui and Petane. In other words, those forces were bent on a secret plot to attack Napier and the outlying settlements and, having been given the opportunity to surrender and return to allegiance, refused to do so. But it is also possible to look at the same tragic events from another perspective – one that puts the 'blame' on the other side; namely, the agents of the Crown and their kawanatanga allies. In particular, we need to see to what extent the bloodshed was due to initiatives taken by McLean and other officials (as representatives of the Crown), by prominent settler soldiers such as Whitmore (who had pastoral interests on the frontier), or by prominent kawanatanga chiefs such as Tareha. If we wished to turn the conspiracy theory against its chief protagonists, we might even ask whether they had a plot,

128. Ibid, pp 80–81

129. Although there is a considerable literature on millennial movements among European Christian sects, there is a distinctive character in such movements among indigenous societies responding to Christian teachings. Studies in the Pacific include P Worsley, *The Trumpet Shall Sound: A Study of 'Cargo' Cults in Melanesia* (New York: Schocken Books, 1968) and C Ralston, 'Early Nineteenth Century Polynesian Millennial Cults and the Case of Hawaii', *Journal of the Polynesian Society*, vol 94, 1985, pp 307–331. A detailed analysis of millennial movements among American Indian tribes in the United States in the nineteenth century can be found in James Mooney, *The Ghost-Dance Religion and Wounded Knee* (New York: Dover, 1973).

disguised as a pre-emptive strike, to attack Pai Marire after Panapa and his followers had descended into Hawke's Bay. After all, they, not the Pai Marire forces, did the attacking.

Several of the research reports have noted the similarity of McLean's tactics at Omarunui to his earlier actions at Wairoa and, before that, at Waerenga a Hika. In each case, a combined force of colonial militia and local kawanatanga carried the attack to the Pai Marire forces, and, once the fight was won, the surviving prisoners (except for those at Wairoa) were transported to the Chatham Islands and their land was confiscated. One could say it was all part of McLean's grand strategy to cleanse the East Coast and Hawke's Bay of the Pai Marire 'menace' – and to acquire their land into the bargain. Omarunui and Petane were simply the last links in the chain (at least until the escape from the Chathams of Te Kooti and the Omarunui prisoners brought about a renewal of the war).

With his interest in military history, Battersby provided the fullest detail on McLean's East Coast strategy, of the carry-over to the Wairoa campaign, and in the use of Fraser's military settlers from there, on Petane.¹³⁰ In the end, however, Battersby saw the attack on the Pai Marire at Omarunui and Petane as a necessary response to their intransigence and potential for aggression.

Ballara and Scott did not comment on the preceding East Coast–Wairoa campaign, except in relation to the supposed deception of Anaru Matete over the white flag at Waerenga a Hika. Boast did comment but mainly in relation to McLean's strategy. He noted that, with the arrival of Pai Marire on the East Coast, McLean and pro-Government forces had insisted on 'oaths of loyalty to the Crown and a formal disavowal of Pai Marire'.¹³¹ Boast reminded us of McLean's key position: on 15 March 1865, while remaining the member of the House of Representatives for Napier and the superintendent for Hawke's Bay, McLean was appointed agent of the general government for the East Coast and, as such, the head of civil and military affairs. His letter of appointment gave him supreme authority to deal with the crisis that followed the murder of Völkner and the spread of Pai Mairie to the East Coast and Hawke's Bay. His powers included the authority to make 'such arrangements' as he thought 'most advisable' with 'friendly' chiefs in order to preserve the peace. In return for the chiefs' cooperation, McLean could offer them 'substantial rewards for services rendered'. He was also able to call out, train, and arm local militia and 'loyal Natives'.¹³² Boast also stressed how McLean tended to:

think in strategic terms, the desired objects being the fragmentation of Maori centres of resistance and the security of the Province. As well as moving groups of 'friendly' and 'hostile' Maori around the map as if they were pieces on a chessboard, McLean had a particular concern with the road from Napier to Taupo.¹³³

130. Document w1, pp 98–118

131. Document J28, p 23

132. Weld to McLean, 15 March 1865 (as quoted in doc J28, p 30)

133. Document J28, p 34

We discuss that strategic concern with the Napier to Taupo road below, but we note here that Boast did not discuss McLean's strategy in relation to the East Coast war, which he regarded as merely 'a curtain-raiser to the events of October 1866'.¹³⁴

Moorsom suggested that, in the Omarunui and Petane engagements, 'government leaders were to some extent playing out broader agendas'.¹³⁵ In particular, Moorsom mentioned three agendas that McLean had. The first of those was to test the new regime of colonial self-reliance that followed the British decision late in 1865 to withdraw the imperial troops. (In this respect, we note Battersby's point that, although a small detachment of imperial troops arrived at Napier just before the Omarunui engagement, they were not used there, and the attack on Omarunui was carried out by militia and volunteers – that is, local settlers under arms – and a native contingent.) Secondly, McLean sought to bring about 'the ending of Pai Marire influence in Hawke's Bay'. He hoped to achieve this by a bloodless victory, as he told Stafford on 9 October, by surrounding Panapa's party at Omarunui with 'an infinitely superior force'. McLean's third agenda was a 'grand strategy' to counter an equally great design whereby Ngati Maniapoto and Tuhoe were supposed to reinforce local disaffected groups in an invasion of Hawke's Bay. But Moorsom questioned how far McLean himself believed in such a grand conspiracy theory.¹³⁶ In any event, McLean could use this supposed threat to justify tightening his noose over Panapa at Omarunui. Finally, we note in relation to McLean's grand strategy that he did not remain content with the 'victories' at Omarunui and Petane and unleashed Whitmore on a campaign into the Ngati Hineuru heartland, ostensibly to secure the Napier to Taupo roadway. As we note in chapter 8, McLean regarded the confiscation as yet further amplification of that strategy.

Moorsom also considered McLean's strategy in his supplementary report. There, he noted that, with the conclusion of the Wairoa campaign in May 1866, 'the way was open for McLean to intensify his campaign against Pai Marire influence in his provincial heartland of central Hawke's Bay'.¹³⁷ As part of this campaign, Moorsom noted that the victorious kwanatanga chiefs at Wairoa, Ihaka Whaanga, and Pitiera Kopu, acting on an 'understanding' with McLean, embarked on a swing down the coast, hunting down Pai Marire supporters and destroying their property. This expedition, Moorsom observed, 'sent shock-waves through the volatile and competitive relationships between the Hawke's Bay chiefs, triggering a scramble to demonstrate their kwanatanga credentials'.¹³⁸ Likewise, with alleged depredations of stock on settler runs (which we discuss below) and frequent rumours of Pai Marire or Kingite incursions into Hawke's Bay led by such 'traitors' as Anaru Matete, there was, as Moorsom put it, a 'considerable head of steam building up for colonial military action'.¹³⁹ Though the likes

134. *Ibid*, p 35

135. Document R3, p 43

136. *Ibid*, pp 43–45; see also McLean to Stafford, 9 October 1866, AJHR, 1867, A-1A, p 67

137. Document U14, p 98

138. *Ibid*

139. *Ibid*, p 106

of Whitmore, Rhodes, and Ormond were forever pushing such a 'solution', they all deferred to the sagacious McLean and awaited his eventual return from Wellington in September 1866. We have already detailed the responses McLean gave when he did finally return, and we need not do so again. But we need to bear in mind that behind those responses was always his grand strategy to defeat 'Hau Hauism', peaceably if possible but by force if need be. McLean was so determined to force the issue that when the former missionary Colenso offered to act as a mediator, McLean did not take up his offer.¹⁴⁰ McLean may well have believed that his ultimatum would result in Panapa and his followers surrendering and taking an oath of allegiance, but when, after two hours, this did not occur, he gave Whitmore permission to attack. Whitmore did not require a second bidding.

In all the research reports, however much the authors may have disagreed over McLean's motives and need to act, he is regarded as the major player in the drama that unfolded at Omarunui and Petane. We conclude that, above all, McLean was concerned to seize the moment presented by Panapa's arrival at Omarunui and bring him to submission as part of his continuing strategy to eliminate the 'threat' of 'Hau Hauism' in Hawke's Bay. If he could play up the so-called plot of Panapa and Te Rangihiroa to attack Napier and the outlying settlements, so much the better. For example, McLean readily embraced the news that the 'confessions' extracted by Williams had revealed that 'an attack on the town of Napier had been planned by Panapa and Rangihiroa'.¹⁴¹

Finally, we note in this section that some commentators have assigned a significant, even a dominant, role in the Omarunui engagement to Tareha and the other kawatanga chiefs. In effect, this meant that McLean had to launch a pre-emptive strike at Omarunui or the kawatanga chiefs would have acted unilaterally. This would turn the affair into a Maori war between the loyalist coastal chiefs and the inland Ngati Hineuru. Crown counsel described Omarunui as 'a Maori fight'. We discuss this in relation to the Crown submissions below.

Battersby and Moorsom cited numerous instances following the first arrival of Pai Marire doctrines in Hawke's Bay where kawatanga chiefs wanted to strike against the movement's adherents, and especially at groups of them supposedly located in various Ngati Hineuru settlements. When bearers of Pai Marire came into coastal Hawke's Bay, vigorous debate usually ensued, though there was no violence. Whether the two sides would have fought it out had they remained alone must, however, remain speculative.

We noted above that in the days before Omarunui the kawatanga chiefs wanted to fix a day for attacking the Pai Marire force. McLean advised them to have patience, adding: 'When the proper time arrives to carry out your proposal I shall not fail to write to you.'¹⁴² Clearly, once he had assembled his Pakeha forces, McLean intended to use the kawatanga forces as auxiliaries in the movement against Omarunui. On the day, the kawatanga forces went in

140. Document w1, p 149

141. McLean to Stafford, 15 October 1866, AJHR, 1867, A-1A, p 69 (doc U14, p 117)

142. McLean to chiefs of the Government at Pa Whakairo, 9 October 1866 (as quoted in doc w1, p 149)

under their own chiefs, thus demonstrating that their alliance did not compromise their independence. But it was an alliance nevertheless, and in victory the Maori allies expected their due reward – a reward which McLean had been authorised to offer them. We do not know whether McLean promised them confiscated land before Omarunui, but afterwards that is certainly what he gave them. We discuss this in our next chapter.

We conclude that it would be too simplistic to characterise Omarunui as a ‘Maori’ war, since that would overlook McLean’s very real role as chief agent of the Crown. Omarunui was admittedly a minor battle in the context of the New Zealand wars, but it did form part of the Crown-initiated conquest of resistant Maori forces that started with the attack on Wiremu Kingi at Waitara in 1860 and was not to conclude until some six years after Omarunui.

7.7.5 Were the attacks at Omarunui and Petane part of a strategy to ‘solve’ the frontier problem of pastoralists?

There remains the question as to what extent Omarunui and Petane were engagements in a settler war that was designed to acquire land. The various research reports commented on the pastoralists’ frontier problems to a greater or lesser extent. Battersby and Moorsom both discussed the alleged sheep-stealing incident on Whitmore’s run in early September 1866. Part of the run was on the inland side of the Ahuriri block, which McLean had purchased for the Crown in 1851, and part of this was claimed by Ngati Hineuru (see map 23). As well, Te Rangihiroa, soon to be killed at Petane, had refused to accept a belated payment from McLean for his interest in the Ahuriri block. Whitmore clearly had a vested interest in resolving his Ngati Hineuru ‘problem’ and was forever demanding an expedition to arrest the so-called sheep stealers. However, other frontier pastoralists who also lost sheep (such as John Parsons at Te Pohue) were less belligerent. We should note that sheep-stealing incidents often arose when sheep strayed beyond the unfenced boundaries of runs, but they were usually amicably settled by negotiation between the parties.¹⁴³ Perhaps the only real significance of sheep stealing was that it so angered Whitmore that he was determined to get revenge, which he eventually did at Omarunui.

Though Battersby had more faith than Moorsom in the sheep-stealing reports, it is hardly necessary for us to try to decide who is correct. Rather, it is more important to assess the responses of the provincial authorities to Whitmore’s demands for action. Both Battersby and Moorsom quoted the statement Locke made in response to Whitmore’s demand for an expedition to arrest the alleged perpetrators: ‘We shall never have peace if we are to fight over every theft etc, that may take place in the colony.’¹⁴⁴ Other officials, such as Cooper and Rhodes, were equally reluctant to act. Though Rhodes had once demanded that the militia be

143. See, for example, doc U14, pp 44–45

144. Locke to McLean, 4 September 1866 (as quoted in doc W1, p128; doc U14, p104)

sent in to ‘root out this body of banditti’, he waited on McLean to deal with the problem.¹⁴⁵ We have already discussed how McLean and Whitmore dealt with Panapa’s party at Omarunui and how Fraser dealt with Te Rangihiroa’s horsemen at Petane. There seems little doubt that Whitmore seized upon that opportunity to settle his personal grievance with Ngati Hineuru, though McLean, also a pastoralist with a run in southern Hawke’s Bay, had larger strategic interests in mind. Fraser represents another interest since he led a contingent of military settlers who had been promised confiscated land (though they later took up Wairoa confiscated land rather than any of the confiscated Mohaka–Waikare block).

Nearly all of the leading politicians were also substantial pastoralists. Though most had, like McLean and Whitmore, got Crown land from the Ahuriri purchase, they and others were also seeking to acquire Maori land beyond that block. Much of this land was already illegally leased from Maori, and the pastoralists were moving to get their titles validated by the Native Land Court, which had recently been established under the Native Lands Act 1865. To do so, they needed to get their clients, the coastal chiefs, to apply for court hearings. One of the first to do so was Paora Torotoro, who applied on 8 January 1866 for a determination of title in the inland Tarawera and other neighbouring blocks, which were all in or on the borders of the Ngati Hineuru rohe. A panui was published on 15 June notifying a proposed hearing for this land and for the neighbouring Mohaka and Maungaharuru blocks at Napier on 7 August. Although these hearings were postponed, a new panui was issued on 28 September giving a new hearing date of 17 December. This came out just as the Pai Marire expedition was arriving at Petane.¹⁴⁶ It seems likely that those court hearings were in the minds of those who were involved in the events that culminated in the engagements at Omarunui and Petane. But, as we noted in chapter 6, at the instigation of loyalist coastal chiefs such as Torotoro, hearings did proceed for the coastal Te Pahou and Petane blocks.

There was clearly a large vested interest in the ‘settlement’ of the frontier problem posed particularly by Ngati Hineuru, whose leading chiefs, such as Te Rangihiroa, were opposed to dealing in land. It was convenient to brand them as troublemakers or Pai Marire ‘fanatics’. Though the settlers could always hope to use the law, particularly the Native Lands Act, to secure their landed interests, they were equally ready to don their uniforms as local militia, take to the field against Pai Marire, and seize their land under the New Zealand Settlements Act 1863. In one way or another, the settlers would solve their problem of frontier security and advance their land interests. They were fortunate in that they had valuable allies in both matters in the coastal chiefs.

Yet, all of these matters did not necessarily make the Omarunui and Petane engagements a settlers’ land war. In the last resort, the local settlers and militia, like the kawanatanga Maori, were dependent on the word of McLean, who, whatever his personal interests, acted on behalf

145. Whitmore to Rhodes, 2 September 1866 (as quoted in doc w1, p 127)

146. Document R3, pp 39–42

of the Crown. It was as agent of the general government and with the blessing of his Premier, Stafford, that McLean authorised the attacks at Omarunui and Petane.

7.8 LEGAL SUBMISSIONS

We now discuss the submissions made by counsel for the Wai 299 claimants and Crown counsel on the Omarunui and Petane engagements.

7.8.1 Claimant submissions

In his closing submissions, counsel for the Wai 299 claimants argued that:

There was no legal justification for the Crown's imposition of martial law in Hawke's Bay as no 'State of emergency' in English common law terms . . . existed either at the date of McLean's appointment or the battles at Omarunui and Petane or subsequently.¹⁴⁷

We were given no details or reference for the Crown's supposed imposition of martial law in Hawke's Bay, though it seems that counsel was referring to the authority granted to McLean on his appointment as general government agent for Hawke's Bay on 15 March 1865. Under this authority, McLean was empowered to 'make such arrangements as [he thought] most advisable with the friendly Chiefs of the District, to repel aggression, and in the case of emergency forcibly detain or remove from the District emissaries of sedition or disloyal persons'.¹⁴⁸ He was also empowered to call out the militia and to raise a cavalry corps. Counsel argued that these powers were illegal because they were granted to 'pre-empt' what the Crown viewed as 'a potentially emergency situation' and because there was 'absolutely no evidence of concerted action against the Crown for the purpose of overthrowing, by armed force or the threat of armed force, the authority of the Crown'.¹⁴⁹

We have been unable to trace a proclamation of martial law, though it may have been contained in the proclamation that McLean issued and gave to Whitmore, but did not have time to print, on the evening of 11 October. The main purpose of that proclamation was to call out the militia so that they could proceed that night to Omarunui, but it is doubtful whether such an informally prepared proclamation could have legal effect anyway.¹⁵⁰ According to claimant counsel, the Crown could invoke martial law only where a state of emergency existed in the realm; it could not be used to 'pre-empt an emergency'.¹⁵¹ Counsel added that 'No State of

147. Document x39, p 34

148. Weld to McLean, 15 March 1865 (as quoted in doc j28, p 30)

149. Document x39, p 36

150. According to Battersby, the proclamation is mentioned in Whitmore to Minister of Defence, 15 November 1866 (as cited in doc w1, p 154).

151. Document x39, p 34

Rebellion was declared in Hawke's Bay'. In support of this, he invoked Professor Brookfield's paper, which was commissioned by the Tribunal for its Taranaki raupatu inquiry. Brookfield defined 'rebellion' in the martial law context as 'concerted action against the Crown, engaged for the purpose of overthrowing, by armed force or the threat of armed force, the authority of Her Majesty or Her Majesty's government'.¹⁵² On the strength of this definition, counsel argued that no such threat against the Crown's authority existed either at the time of McLean's appointment or when Omarunui was attacked. In adapting Brookfield's argument to Omarunui, counsel submitted that Maori were 'therefore entitled to respond to the aggression on the part of the Crown with force in defence of their dwellings and their lives'.¹⁵³ We discuss Panapa's legal right to resist attack below.

Claimant counsel also made submissions on Crown actions in the aftermath of the Omarunui and Petane engagements. He noted that the Magna Carta, the English Petition of Right 1627, and the Bill of Rights 1688 were all adopted in New Zealand by the English Laws Act 1858. Though the right of habeas corpus derived from the Magna Carta had been suspended by the Suppression of Rebellion Act 1863, that Act had expired before McLean's appointment as agent for the general government and the Omarunui and Petane engagements. As British subjects, Maori had the right under habeas corpus not to be imprisoned without trial. However, those Ngati Hineuru who were taken prisoner at Omarunui and Petane were sent, without trial, to the Chatham Islands, where they were detained until they escaped with Te Kooti in 1868. Counsel also adopted Moorsom's suggestion that there may have been an element of 'duress' in the interrogation of the captives. Furthermore, Ngati Hineuru suffered the destruction or theft of their property during Whitmore's raid into their territory after the Omarunui engagement.¹⁵⁴ Counsel quoted Brookfield's opinion on the Crown's attack on Wiremu Kingi, his people, and their property at Waitara in Taranaki as being relevant to the attack on Ngati Hineuru's settlements and property. Brookfield said 'there can be no doubt in my opinion that the Crown's servants would have been liable both criminally and civilly for the destruction of dwellings and cultivations on the [Waitara] Block'.¹⁵⁵ Counsel said that it appeared that no Act of indemnity was passed justifying the actions of the Crown officials and that, even if one had been passed (as one was in respect of Taranaki), it would have done nothing to redeem the unlawfulness of the original actions. For its part, the Taranaki Tribunal had dismissed such a course as a technicality to make 'all illegalities legal' and a 'remarkable piece of legislative wit'.¹⁵⁶ We consider below the question of whether the Crown's actions in the aftermath of Omarunui were in breach of the principles of the Treaty.

152. Document M11(a), p 11; doc x39, p 35

153. Document x39, p 40

154. *Ibid*, pp 41–42

155. Document M11(a), p 40; doc x39, p 45

156. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), pp 9, 10 (doc x39, p 46)

7.8.2 Crown submissions

We need now to consider the position of the Crown. This was presented in two parts: the first was a discussion of the general historical issues and relevant legal argument and the second was a detailed assessment of the Crown's behaviour before, during, and after the Omarunui and Petane engagements.¹⁵⁷

Counsel for the Crown began by arguing that Wai 299 counsel's 'emphasis on matters of strict legality was, in many ways, misconceived'. He suggested that:

The Tribunal's primary role is to examine the actions of [the] Crown and measure these against the standards inherent in the Treaty. This is a broad jurisdiction. It frees the Tribunal from the need to consider whether or not the Crown has acted within the four corners of the law. The crucial question is: has the Crown complied with the principles of the Treaty?¹⁵⁸

Quoting a judgment from the Court of Appeal that any conclusions by commissions of inquiry on matters of legality were, in the end, 'only expressions of opinion', Crown counsel concluded that it was 'inappropriate and unnecessary for the Crown to respond with an opinion of its own on legal questions raised in the claimant pleadings'.¹⁵⁹

Despite his reluctance to comment on issues of legality, Crown counsel did make a number of points in relation to claimant submissions that involved 'obvious errors of fact and law'.¹⁶⁰ For example, Crown counsel said that claimant counsel had 'incorrectly stated that martial law was declared in Hawke's Bay'.¹⁶¹

The other issues raised by Crown counsel were not so much matters of law but matters of historical facts or opinions. Thus, the powers delegated to McLean as Crown agent, though legally proper, could be exercised only in an emergency, though not necessarily in a 'state of rebellion'. For Crown counsel, 'the affair at Omarunui was precisely the kind of situation they contemplated'.¹⁶² In response to the claimants' assertion that the Pai Marire party were justified in firing in self-defence, Crown counsel replied that 'This overlooks the fact that the Hauhau at Omarunui had taken over the "dwellings" of the true owners, and created a situation of extreme tension in so doing'.¹⁶³ In further response to the claimants, counsel argued that there was 'no evidence that the information obtained by the prisoners was obtained by "duress"'.¹⁶⁴

We now turn to Crown counsel's detailed assessment of the Crown's involvement in the Omarunui and Petane engagements. That assessment is based mainly on Battersby's and Head's research reports, but it also contains some new material. There are, for instance, details

157. Documents x51, x56

158. Document x56, p 10

159. *Ibid*, p 12; see *Peters v Davison* [1999] 2 NZLR 164, 180 (CA)

160. Document x56, p 15

161. *Ibid*

162. *Ibid*, p 17

163. *Ibid*, p 40

164. *Ibid*, p 17

of interactions and intermarriages between the inland Ngati Hineuru and the coastal Ngati Kahungunu and a reminder that we should not regard all of the former as Pai Marire nor all of the latter as loyalist kawanatanga.¹⁶⁵ The Crown's position was that the Pai Marire parties at Petane and Omarunui constituted a threat to the security of Hawke's Bay settlers and kawanatanga Maori and that, as a consequence, the military actions at Omarunui and Petane, following the failure of the Pai Marire to heed demands to surrender, were justified.

We do not intend to repeat details relating to Omarunui and Petane unless they have been used by Crown counsel in his arguments over the Crown's involvement and responsibilities. Counsel began with a discussion of the rumours about Hawke's Bay being invaded, which dated from the beginning of the Waikato war, and the suspicions held about the attitudes of the likes of Paora Toki and Te Rangihiroa. Counsel concluded that there was 'a perception that conflict had been a real possibility, especially during the early part of 1864'. After that time, the 'threat' was 'deferred rather than entirely dissipated'.¹⁶⁶ Rumours of invasion resumed during 1865 with the spread of the Pai Marire movement. Crown counsel's discussion of this movement followed Head's approach, stressing that the movement had warlike tendencies and was not merely pacifist, as historian Paul Clark is said to have argued. 'What clearly emerges', counsel argued:

is that the Hauhau were guided by 'imperative belief' in the imminence of these events. The logic of their prophet's teaching, together with the setting in which the religion was born, created a tension between action and passivity, which found practical expression in the division of the country into zones of peace and war.¹⁶⁷

This was an oblique reference to Te Ua's proclamation of Hawke's Bay as a 'post' or zone of peace. But Crown counsel referred to it only to dismiss the notion of peace: 'While their district was nominally a post of peace, the precedents of Hauhau activity elsewhere and the reports that flowed to them justified suspicion.'¹⁶⁸

By 1866, Te Ua was a prisoner of Governor Grey, had recanted his faith, and was being exhibited around the country, and the leadership of the movement was passing to others, including King Tawhiao, who had previously been converted by Te Ua. In April 1866, Tawhiao sent out a proclamation to 'all East Coast tribes'. Crown counsel, quoting Head, alleged that, by this declaration, 'Politically, Tawhiao restated a fundamental basis in opposition to the Pakeha, with whom no peace could be made.'¹⁶⁹ The relevant passage is as follows: 'Friends, be watchful. The plans have changed. Peace will never be made. It rests with God to arrange things now.'¹⁷⁰

165. Document x51, pp 6–12

166. Ibid, pp 34–35

167. Ibid, pp 36–37

168. Ibid, p 40

169. Document w11, p 181; doc x51, p 37

170. The Lord and Tawhiao to all East Coast tribes, 15 April 1866 (as quoted in doc w11, p 180)

Crown counsel quoted Head's comment that 'The authority of the king and the newly appointed leaders rested on the hidden plan, therefore 1866 was a year weighted with expectation.'¹⁷¹ This theory was bolstered by a quote from Tawhiao to Anaru Matete: 'As yet we see no reason for you to act.' Crown counsel sought to combine the notion that Matete might yet act with 'renewed activity and the gathering of armed outsiders [which] sent ominous signals to the Heretaunga chiefs. This was reinforced by communications from the Hau Hau which, intentionally or otherwise, contained a subtext of impending threat.'¹⁷² Later in his submissions, Crown counsel continued to refer to communications from 'Hauhau' as containing 'a subtext of threat'.¹⁷³

In moving on to Omarunui, Crown counsel characterised it as 'a Maori fight', with the kawanatanga chiefs (rather than McLean and Whitmore) the major players. The chiefs' involvement in the conflict, he emphasised, was essentially a last-minute decision, made after Panapa and his people had taken up residence at Omarunui.¹⁷⁴ Here, Crown counsel argued, Panapa's party:

remained – armed – and consumed the food of the absent owners, while making no attempt to communicate their intentions in any meaningful way. There could be few precedents for peaceful visitors acting in this manner. Every day that the Hau Hau remained in these circumstances was a glaring provocation to the people at Pawhakauro and a portent of war.¹⁷⁵

Counsel went on to engender suspicion that 'the continued absence' of such leaders as Te Rangihiroa, Matete, and Paora Toki:

must have heightened fears of warlike preparations in the hinterland. If there was any intention to negotiate, why did these men not come? On the other hand, if war was now intended, there was every likelihood that the cadre at Titiokura were coordinating reinforcements.¹⁷⁶

Crown counsel then proceeded to analyse McLean's correspondence with Panapa over 4 to 8 October, as others have done for this inquiry. He supported McLean's 'unambiguous pleas for an explanation' and said that 'A clear message of reassurance [from the Pai Marire followers] would have helped to defuse the situation. Yet all they would offer (orally and in writing) was an indication that the next steps – whether for good or evil – depended on their God.'¹⁷⁷ Crown counsel, along with Head, seized on the statement that 'all talking is at an end' in the 8 October letter from Panapa (which Head and Crown counsel both misdate to 5 October) as being 'a further step along the road to war', as Head described it in cross-examination, a

171. Document w11, p 186; doc x51, p 38

172. Document x51, p 38

173. Ibid, p 44

174. Ibid, p 53

175. Ibid, pp 47–48

176. Ibid, p 48

177. Ibid, p 49

statement quoted by Crown counsel.¹⁷⁸ Panapa's phrase was then taken up by the kawana-tanga chiefs, who also said that their talking was at an end and that they intended to attack the Pai Marire at Omarunui. The chiefs' decision to attack was defended by Crown counsel, who said 'The move to Omarunui had signalled an ominous change in the disposition of the Hauhau. The tenor of the written messages reinforced their conviction that the Hauhau now meant to fight.'¹⁷⁹

Crown counsel countered the view of the settler McDonald (who had visited the Pai Marire group at Omarunui) that the Pai Marire did not wish to fight by saying that the kawanatanga chiefs, who had formed a different impression, were 'better placed to interpret the situation'.¹⁸⁰ He quoted Hamlin's view, expressed after his visit to Omarunui on 9 October, that the Pai Marire were in a 'sulky and badly-disposed state'. They told Hamlin that 'their future conduct whether for good or evil would depend upon the directions their Hau Hau god might give them'. Crown counsel admitted that 'This may well have been a frank statement of the situation as the Hau Haus saw it.' But he added, 'For those who did not inhabit their spiritual world, however, it was no reassurance in these circumstances to hear that "evil" was an outcome that God might dictate.'¹⁸¹

Crown counsel then detailed various rumours of an impending attack on kawanatanga Maori by Te Rangihiroa's force or Panapa's party from Omarunui. He added, 'With messages of this nature in circulation, it was reasonable for the Ngati Kahungunu to believe that they were at least as exposed to threat as the European population.' And he concluded, 'With the movement of the Hauhau to Omarunui, the Heretaunga chiefs came to the conclusion, on eminently reasonable grounds, that the newcomers had hostile intentions and conflict was unavoidable.'¹⁸² Once the Heretaunga chiefs had decided to fight, McLean and his officials were, in Crown counsel's view, dragged along in their wake. 'The urgency of the Heretaunga chiefs was in contrast to the rather complacent attitude of the government officials', as Crown counsel put it; McLean's 'prolonged absence during the early phase of the Hau Hau expedition shows that he was not perturbed by the turn of events'.¹⁸³

Crown counsel went on to discuss why the Pai Marire followers at Omarunui did not surrender to the overwhelming force. Though he admitted that the letter from Panapa and Te Rangihiroa to McLean of 30 August 1866 may have expressed 'a genuine intention to give up', the fact that McLean was absent from Napier when they arrived at Petane meant that 'the window of opportunity so briefly open, closed again', as Head had put it. After this, Crown counsel, like Head, saw a hardening of the Pai Marire attitude:

178. Document x51, p 50

179. Ibid, p 51

180. Ibid

181. Ibid, p 52

182. Ibid, p 53

183. Ibid, pp 54-55

Once installed at the coast, Panapa veered towards conflict. He had possibly decided that the fate of the expedition would become a test of the faith – perhaps a sign that would galvanise the other Hau Hau groups. The move to Omarunui heralded this new mood and the Heretaunga chiefs at once detected the change in tone. This was a step calculated to bring the weeks of waiting to a climax. If Panapa had not yet resolved to begin the fighting himself, he was courting a reaction from the local chiefs. Any first step that he contemplated may have been directed against these people. He may even have hoped that numbers of them would defect. At any rate, there was now an urgency to summon the party at Titiokura and any reinforcements they had managed to gather.¹⁸⁴

But it was the Pai Marire followers' occupation of Omarunui and their 'cryptic communications and demeanour' that pointed either to 'an intention to fight' or to 'an almost reckless indifference if the Pawhakaio chiefs and the government read their actions in that light'. From then on, Panapa, according to Crown counsel, was the 'crucial figure'. He kept his followers in the dark over his intentions but, if they wavered in the face of the force assembled against them, he 'steered [them] to fight'.¹⁸⁵

Crown counsel gave some credence to the 'evidence' of plans to attack Napier that was collected from prisoners after the Omarunui engagement, but in the end he gave away the so-called plot for a two-pronged attack, as he was bound to do once Battersby had also conceded the point. Instead, he fell back on whether the Pai Marire 'could reasonably be perceived as a threat to order' and, if they could be:

were the steps to neutralise the threat reasonable in the circumstances? In deciding this point it is immaterial whether the Hauhau had any coherent strategy for attacking the town. . . . In any case, it is probably a mistake to measure the situation against 'orthodox' military tactics. The Hauhau were motivated by faith.¹⁸⁶

In addressing the questions of whether the Pai Marire followers constituted a 'threat to order' and whether the Government's response was 'reasonable in the circumstances', Crown counsel continued to insist that the Pai Marire had behaved in a threatening manner. As evidence of that, he referred to a contemporary report that said that they had 'dismembered the pa at Petane'.¹⁸⁷ Crown counsel then said that the Pai Marire followers had 'taken over Omarunui as an armed body, displaced the owners, eaten their food and summoned an armed body of supporters, reportedly with the object of attacking local Maori'.¹⁸⁸ By 8 or 9 October, when, as Crown counsel put it, McLean had begun to seek military assistance,

184. Ibid, p 62

185. Ibid, p 58

186. Ibid, pp 62–63

187. Ibid, p 68

188. Ibid, pp 68–69

‘there can be little doubt that McLean had gathered information . . . that would justify him concluding that there was an imminent threat to order and a likelihood of armed conflict. His immediate concern was fighting between the Heretaunga people and the Hauhau’.¹⁸⁹

Having satisfied himself that there was a threat to the order of the community, Crown counsel went on to discuss whether reasonable steps were taken to remove that threat. He said that McLean ‘had little time to play with’ – both the Heretaunga chiefs and the Omarunui Pai Marire ‘had indicated there would be no more negotiations’, and, according to John Parsons, a settler at Te Pohue, ‘the inland Hauhau were mobilising’.¹⁹⁰ Counsel added a verbal comment that, at that stage, ‘McLean had no reasonable alternative’.

McLean moved to contain the alleged threat by encircling Omarunui with an overwhelming force in the expectation that the Pai Marire followers would surrender when confronted by such numbers. Crown counsel said that this expectation ‘nearly proved correct, but there would be one last demonstration of Panapa’s authority – around 20 Hauhau and several of their opponents died before the ceasefire’. With respect to Petane, counsel said that ‘the opportunity to surrender was also declined and twelve more Hauhau died’.¹⁹¹ Counsel argued that the reasonableness of the Government’s response did not depend on there being only one way to deal with the perceived threat, but he added that any present-day suggestions as to how else it could have been dealt with relied on hindsight and information that was not available to McLean.

Finally, Crown counsel replied to several points raised by claimant counsel concerning the aftermath of the Omarunui and Petane engagements. Crown counsel argued that Whitmore’s inland expedition was carried out for legitimate reasons: namely, ‘the capture of escapees, reconnaissance, assessment of any threat that remained . . . and deterrence of further Hau Hau activity’.¹⁹² He said that Whitmore’s troops appeared to have conducted themselves ‘in an orderly manner’, and he attributed the looting of horses and other property to the kawanatanga forces that tagged along with Whitmore. It was ‘unrealistic’, Crown counsel said, ‘to expect that Whitmore could exercise the same degree of control over the Maori expedition’. Though ‘hard to excuse’, plundering was ‘an unsurprising reaction given the tension which the Hauhau had created among the lowland Maori communities’.¹⁹³ Counsel noted that in 1868 the Government had set up an inquiry into claims of damage suffered as a result of military activity at which some Maori claims were investigated, though ‘people connected with the Hauhau’ were ‘unlikely to have participated’.¹⁹⁴ Crown counsel also took issue with claimant counsel’s suggestion that no Act of indemnity was passed. He pointed to the Indemnity Act 1867, which he said was no ‘remarkable piece of legislative wit’. On the

189. Document x51, pp 69–70

190. Ibid, p 71

191. Ibid

192. Ibid, pp 73–74

193. Ibid, p 74

194. Ibid

contrary, he argued, it was entirely normal for the Legislature to ‘protect those who do what must be done to preserve or restore law and order during an emergency’.¹⁹⁵

Crown counsel also commented on the imprisonment without trial of those captured at Omarunui and Petane. He admitted that the Government appeared to have no plan to try the prisoners and argued that there may have been ‘logistical problems of bringing them individually to trial’. In some cases, trials might have resulted in harsher penalties, but with the passage of time, ‘exile to the Chathams began to assume the character of indefinite detention without trial’. Counsel argued that this could have been justified if there was a ‘compelling need’ to keep the prisoners on the Chathams. However, he admitted that, ‘on the balance of probabilities’, it did not seem that ‘the state of affairs on the mainland could be deemed to be a compelling reason to continue the detention’. He concluded that the prisoners ‘should have been released well before they took it upon themselves to escape, and their continued detention assumed the character of punishment without trial’.¹⁹⁶

7.8.3 Claimant submissions in reply

In his submissions in reply to the Crown, Wai 299 claimant counsel contested Crown counsel’s assumption that the Tribunal’s need to measure Crown actions against the principles of the Treaty freed it from ‘the need to consider whether or not the Crown has acted strictly within the four corners of the law’. Claimant counsel rejected ‘the notion that this frees the Crown from the need to comply with the law generally,’ especially in regard to a claim like that before us, which ‘is concerned with breaches of fundamental human rights and constitutional rights of citizens’.¹⁹⁷ Counsel argued that Crown counsel’s use of ‘order’ and ‘reasonableness’ diminished the Crown’s wider obligations under the Treaty, including the need under article 1 to govern ‘in accordance with constitutional process’ and the need under article 3 to uphold the granting to Maori of the rights and privileges of British subjects.¹⁹⁸ In any case, the notion that the Treaty of Waitangi ‘represented a promise of “order” to Maori in 1840’ was ‘too simplistic’ a view, because the Treaty embodied a partnership with reciprocating guarantees. Though ‘the promise of good government was important to Maori’ so too was Maori’s desire for ‘prosperity, protection, fair process and recognition as British subjects’, as indeed one Crown witness, Lyndsay Head, had argued.¹⁹⁹ The Crown had submitted that under its Treaty obligations it had a duty to protect Maori at Pa Whakairo, even if to do so would have involved a technical breach of the law. Claimant counsel replied that the Crown’s duty to protect one group of Maori (who even Crown witness Dr John Battersby had

195. Document x56, p17

196. Document x51, pp75–76

197. Document y2, p12

198. Ibid, p13; see Department of Justice, *Principles for Crown Action on the Treaty of Waitangi* (Wellington: Department of Justice, 1989), p 6

199. Document y2, pp15–16

admitted were not in danger) did not entitle it to make ‘an unlawful attack’ on another group of Maori.²⁰⁰

Another consequence of the Crown’s reliance on ‘order’ was that it failed to consider other principles of the Treaty, including those of *kawanatanga*, reciprocity, *rangatiratanga*, and partnership.²⁰¹ Claimant counsel was also critical of the Crown’s application of its test of ‘reasonableness’:

This test is being applied in a subjective way. The Crown is assessing the behaviour of the Crown and its officials from its own perspective and is thus imposing its own subjective test of ‘reasonableness’ based on its own view of the Crown’s perception of the material facts at the time.²⁰²

Claimant counsel gave some examples of the Crown’s subjective tests of ‘reasonableness’, such as the notion that it was reasonable for the Heretaunga chiefs to believe that there was a threat to peace in the district and that it was reasonable for McLean to rely on their judgement. This meant, claimant counsel argued, that the Crown in its submissions to the Tribunal was doing ‘exactly what the Crown was doing in the 1860s, ie capitalising on and exacerbating existing tribal animosities’. It was wrong for the Crown to characterise Omarunui as a ‘Maori fight’ when the attack was led by the Crown. The Crown had a duty under the Treaty to Maori at Omarunui and to Ngati Hineuru that ‘was not in any way reduced by the perception of other iwi and hapu groups in the area or by any animosity, which may have existed between them’.²⁰³ Finally, claimant counsel took Crown counsel to task for his defence of the Crown against accusations of plunder during Whitmore’s Waiparati expedition.

7.9 TRIBUNAL COMMENT

We begin this section with some specific comments on the claimant’s and Crown’s submissions before making some general comments in conclusion. First of all, we need to respond to Crown counsel’s preliminary submission about the Tribunal’s principal role in these proceedings. We are aware that our primary jurisdiction is to consider whether or not particular actions of the Crown that are the subject of a claim were in breach of the principles of the Treaty. However, we believe that the lawfulness or otherwise of Crown actions is a relevant thing for us to consider, since, in Treaty terms, the Crown had an obligation to act within the four corners of its own legislation, just as it expected its citizens to. If it failed to so act, it breached its Treaty duty to exercise good government.

200. Document Y2, p 19

201. Ibid, pp 20–21

202. Ibid, p 26

203. Ibid, pp 30–31

On the particular matter of legal interpretation raised by Crown counsel, we consider that counsel is correct. We agree that there was no proclamation of martial law. We have been unable to find any evidence of such a proclamation, and McLean's ultimatum of 11 October 1866 does not amount to one. We also agree with Crown counsel that claimant counsel was incorrect in saying that no Indemnity Act was passed. As suggested by its long title ('An Act for indemnifying persons acting in the suppression of the Native Insurrection'), the Indemnity Act 1867 covered all persons, including the military, who were 'acting under the authority of the Government of New Zealand or of any responsible civil authority' in quelling any 'Insurrection' that 'lately existed in various districts' and 'at any time before the passing of this Act'. This would have covered the Crown's actions in relation to Omarunui and Petane and the expedition to Waiparati.

However, we do take issue with the Crown's submissions on the 'subtext of threat' emanating from Tawhiao and other adherents of Pai Marire. For example, Tawhiao's proclamation to the East Coast tribes need not necessarily be read as an intransigent pursuit of war. Instead, it could mean that Tawhiao accepted that peace could not be made with the Pakeha because of the confiscation of the King's Waikato land (always a sticking point in subsequent negotiations for peace in the Waikato and for the opening up of the King Country). In the circumstances, it was necessary for the King and his supporters to place their faith in God. As for Tawhiao's comment to Matete that 'As yet we see no reason for you to act', Crown counsel omitted the previous sentence from Tawhiao's letter – 'This is a message to you that we are living in perfect peace.'²⁰⁴ And the example counsel referred to as evidence of a 'subtext of threat' in the Pai Marire correspondence does not bear closer scrutiny. The reference was in fact to a translation by Head of a letter that Panapa sent Tareha and Te Hapuku on 29 June 1866. In it, Panapa said:

I have nothing new to say; what I say to you now is what I said before. We do not want fighting between us [Maori]. Do not let men's sins onto our marae, [in] case we sin like them. Thus we write to you that you might not extinguish your goodwill, for we said that Here-taunga is to be where your goodwill lies.

If anyone wants to fight, let him go to Taranaki.²⁰⁵

It might have been better if Head and Crown counsel had paid attention to what Panapa wrote rather than reading between his lines for a 'hidden plan' or a 'subtext'. While it is always possible that this letter may have a 'subtext' (as may any written document), the Crown's interpretation is only one of various alternative possibilities, each plausible. It can hardly be regarded as fulfilling the standard that Crown counsel set himself of constituting 'a balance of

204. The Shepherd and the Twelve of Canaan to Anaru Matete, 11 September 1866 (as quoted in doc w11, p194)

205. Document w11, p188

probabilities'.²⁰⁶ In the quest to understand a document, it is always best to begin with what the author actually wrote, assuming in this instance that the translation is accurate.

Crown counsel suggested that legitimate fears were held that warlike preparations were being made in the hinterland. In response, we note that historians short of hard evidence all too frequently resort – as did Crown counsel – to such qualifying phrases as ‘must have’ and ‘every likelihood’, or to rhetorical questions. There is, as we stated above, an alternative explanation: namely, that Te Rangihiroa and the other leaders set out for Omarunui as soon as they heard that McLean wanted them to be involved in the negotiations. (Besides, Panapa’s ‘reinforcements’ numbered all of 25.) We should reiterate that the initial introduction of Pai Marire into Hawke’s Bay in 1865 was peaceful and, having been debated at length at various hui, was no cause for alarm. Given events in the Bay of Plenty, Taranaki, and Waiapu, it is understandable that the settlers were nervous, but those responsible for the excesses of Pai Marire in the Bay of Plenty, which included the murder of Völkner, did not enter Hawke’s Bay. Both Te Ua and, later, Tawhiao, as we have said, designated Hawke’s Bay as a ‘Post of Peace’.

We should add that it is not surprising that Ngati Hineuru, who sat astride the ‘road’ from Taupo to Hawke’s Bay, were more influenced by Pai Marire emissaries than the lowland Hawke’s Bay communities. Pai Marire was established amongst Ngati Hineuru by their prophet, Panapa, but he does not appear to have tried to proselytise actively beyond their territory. Until the expedition to Petane and Omarunui, Panapa was overshadowed in Pakeha demonology by the old rangatira Te Rangihiroa, who was accused, with little justification, of spreading the Pai Marire faith as far afield as the Wairarapa. Nevertheless, the divisions that were caused by long-standing rivalries and the new-fangled Pai Marire movement were not simply a dichotomy between an inland Pai Marire following amongst Ngati Hineuru and support for the Government from coastal Ngati Kahungunu. All we can say is that most of Ngati Hineuru found themselves in the Pai Marire camp, whether by choice or by ascription, and most of Ngati Kahungunu ended up in the kawatanga camp (though this did not mean that they were subservient to the Crown). Ngati Hineuru formed the largest iwi contingent in the prisoners captured after Omarunui, though they were not a majority, and that is probably a fair representation of their wider involvement in the Panapa and Te Rangihiroa expeditions and in the Pai Marire movement generally.

As for Panapa’s letter of 8 October 1866, which concluded that ‘all talking is at an end’, we believe not only that Crown counsel misdated the letter but that the so-called ‘declaration of war’ was nothing of the kind – it was merely a conventional closure of the letter. Panapa was in effect saying that his korero (discussion) in that letter was finished, not that there would be no ongoing discussion. We might add that it was really the kawatanga chiefs who first decided that all korero was finished and that it was time to fight. As for Hamlin’s view that the Pai Marire group were ‘sulky’ and ‘badly-disposed’, Crown counsel did not appear to have

206. Document x56, p8

considered that they may have been so because they considered that they had been deceived by McLean. McLean made no serious attempt to negotiate a settlement and surrender with Panapa, preferring to work through correspondence and lesser emissaries than through face-to-face negotiation. For a man of his vast experience in Maori matters, he should have made that his first option.

We might ask just what were the ‘eminently reasonable grounds’ that Crown counsel submitted the kwanatanga chiefs had for fearing attack by the Pai Marire followers. We were not told, unless we were expected to believe the rumours (bearing in mind that virtually all of the rumours of imminent attacks over the preceding few years had been false). We must remember that the party that occupied Omarunui was not heavily armed, that it included women and children, that it had not engaged in any violent activity, and that it had taken no defensive precautions.

We disagree with Crown counsel’s notion of McLean as a sidelined player in the impending Maori war. McLean himself had expressed alarm at the occupation of Omarunui, writing to Parsons that he was ‘apprehensive a collision is about to take place between the Pawhakaio natives & those of Titiokura’.²⁰⁷ The Crown’s depiction is in sharp contrast to the version put forward by the claimants and by Moorsom, which portrayed McLean as having stalled negotiations to give himself time to bring in an overwhelming military force. As we indicated above, we accept this latter view.

Claimant and Crown counsel differed on whether the Pai Marire group, once they were ensconced at Omarunui, were welcome guests or intruders. Claimant counsel submitted that the Pai Marire were justified in firing in self-defence when the attack on them eventually came because they were defending house and home. By contrast, Crown counsel contended that their occupation of Omarunui was provocative and an invasion of the dwellings of others. We address this issue in chapter 8, but we can say here that we believe that neither counsel is quite correct on this issue. The dwellings belonged not to Panapa and the Pai Marire party but to Kaiwhata and his people. However, Panapa and his party did not seize them by force; they apparently occupied them peacefully with the acquiescence of Kaiwhata. Certainly, Panapa and the other Pai Marire leaders had been invited to Omarunui by Kaiwhata before the main body of the party moved there, and Kaiwhata subsequently returned to Omarunui with other kwanatanga chiefs to hold discussions with Panapa. We believe that it is an exaggeration on the Crown’s part to say that the Pai Marire occupation of Omarunui ‘created a situation of extreme tension’. Panapa’s people committed no act of aggression at Omarunui, nor had they at Petane. The most that they had done at Petane was to eat produce and cattle belonging to others and to dismantle a church. This might have amounted to theft or willful damage in the criminal law, but it was stretching matters to consider that the law may have judged it to be a ‘rebellion’ (see chapter 8 for further discussion).

207. McLean to Parsons, 8 October 1866 (as quoted in doc w1, p 148)

On this point, we do not believe that the Pai Marire group's supposed 'dismembering' of the church at Petane was evidence of them constituting a 'threat to order'. The source for this view was in fact the aforementioned *Hawke's Bay Times* account – an account said by the rival *Hawke's Bay Herald* to have been sensationalist – which referred to the dismantling of the church and the sale of some of the timber.²⁰⁸ We also disagree with Crown counsel that there was anything untoward or provocative in Panapa's summoning of Te Rangihiroa and his 'armed body of supporters'. As we noted above, this was a response to McLean's insistence that Te Rangihiroa was needed for meaningful negotiations. We might add that McLean's 'immediate concern', as Crown counsel put it, was that on 9 October the Heretaunga chiefs had issued their declaration that they intended to attack the Pai Marire followers at Omarunui. We should therefore ask why McLean did not use his militia to restrain those Heretaunga chiefs instead of combining the two forces for an attack on Omarunui. In any conflict between Maori, the Crown had an obligation to prevent the groups from fighting, not to join one to fight the other. Simply put, the Crown had a duty to mete out even-handed justice that did not favour one group of Maori at the expense of others. After all, at Waitangi Hobson had promised to prevent Maori from fighting one another, and this promise to bring order to the Maori world was one reason why many of the chiefs signed the Treaty.²⁰⁹

The Crown's test of 'reasonableness' seems a subjective exercise. We have pointed out instances where Crown counsel relied on rumour rather than fact, and accordingly made unwarranted suppositions. In our view, Crown counsel's conclusion that 'McLean had no reasonable alternative' but to attack Omarunui is based on at least two false assumptions: that the inland Pai Marire followers were 'mobilising' and that the Omarunui Pai Marire followers had indicated that there would be no more negotiations. As for the first assumption, 'mobilising' is a military term quite out of keeping with the number of the inland Pai Marire followers and, as we have said repeatedly, they were merely responding to McLean's summons to Omarunui. As for the second assumption, it rests on what is, in our view, a misinterpretation of Panapa's final comment in his letter of 8 October.

Despite noting McLean's expectation that the Pai Marire would surrender when confronted with overwhelming force, Crown counsel did not go on to examine whether the measures that followed were 'reasonable'. We might add that counsel dismissed the Petane engagement even more briefly, merely observing that the opportunity to surrender was not followed up and that 12 more 'Hauhau' died. Counsel's assumption was that McLean had no alternative to the course he followed. We do not accept this and believe that there were plenty of alternatives that McLean could have followed at various stages of the affair. He could, for example, have:

208. *Hawke's Bay Times*, 24 September 1866 (as quoted in doc w1, p141)

209. For example, Claudia Orange noted that one motive for Maori to sign the Treaty was 'the possibility of manipulating British authority in inter-tribal rivalries'. Several chiefs encouraged others to sign for the protection and peace offered them by the British Crown: Orange, *The Treaty of Waitangi* (Wellington: Bridget Williams Books, 1987), pp 49, 58.

- ▶ tried harder to negotiate beforehand and met Panapa face-to-face at Omarunui, as various Heretaunga chiefs and other Pakeha were able to do safely;
- ▶ restrained the Heretaunga chiefs rather than going with them to attack Panapa's people at Omarunui;
- ▶ given Panapa and his party a less abrasive ultimatum, with more time to consider; and
- ▶ respected the right of the pa's occupants to complete their karakia before expecting them to consider his ultimatum.

In fact, had he been so-minded, McLean could have done all manner of things to cool the situation.

However, we believe that, rather than being of that view, McLean was intent on forcing the Pai Marire followers into a humiliating surrender. Moreover, his two lieutenants – Whitmore, who was in charge of the militia, and Tareha, who led the kawanatanga force – were intent on serving their own purposes, and it suited McLean's strategy to let them loose. He may have hoped that the Pai Marire followers would surrender without fighting, but he and, more particularly, Whitmore were quite prepared to attack to wipe out this latest manifestation of the Pai Marire 'menace'. This strategy followed similar actions by colonial militia and kawanatanga Maori at Wairoa (and before that at Waerenga a Hika). McLean's dawn ultimatum gave the Pai Marire little opportunity to surrender with honour. It was not surprising that they opted to place their faith in their prophet and his God.

We note that very little is said about Petane, but since the only information about the apparent refusal of Te Rangihiroa and his horsemen to surrender comes from the commanding officer who attacked them and from one newspaper report, there is perhaps little that we can say. Despite their small number, the men appear to have been treated as that much-feared inland force that was thought to be bent on attacking Napier or going to the aid of Panapa. The group was, it was thought, fortuitously caught in an ambush.

The supposedly reasonable objectives that Whitmore's inland expedition pursued after the Omarunui engagement were certainly not all achieved. The escapees, who included Paora Toki and Anaru Matete, remained at large. Perhaps the expedition helped to deter further Pai Marire activity in Ngati Hineuru's district, but the cream of their leadership had already been killed or taken prisoner (though many of the latter were to return from the Chathams under the leadership of Te Kooti and would take part in the attack on Mohaka).

The retrospective validity that was applied to the actions of Crown officials in the Waiparati expedition should in no way excuse the excesses of it. All of Ngati Hineuru were punished both by those excesses and later by the confiscation, although not all of them had been involved in the engagements at Omarunui and Petane. For the Crown to say that the expedition was consistent with McLean's delegated powers but that the looting that occurred was carried out by those not directly under Whitmore's control, is, in our view, an evasion.²¹⁰

210. Ibid

All who took part in that expedition, whether colonial militia or kawanatanga Maori, were acting for the Crown. We also accept claimant counsel's argument that the Crown was responsible for the theft or destruction of property that took place during that expedition. It bears some resemblance to Native Minister Bryce's raid on Te Whiti's and Tohu's settlement at Parihaka in 1881, where the invading force also looted and destroyed property. (In relation to that, we note that the Crown, through the Sim commission of 1927 and, more recently, in its settlement statements in relation to the Taranaki raupatu claims, has accepted responsibility and paid for some of the destruction that occurred at Parihaka in 1881.)

We consider that the way in which Samuel Williams admitted extracting 'information' from the 15-year-old son of Te Rangihiroa amounted to obtaining evidence by duress. Finally, we agree with Crown counsel that the detention without trial of the Omarunui prisoners on the Chathams was not justified. In fact, it was probably unnecessary to imprison them at all, given the losses they suffered of kin (at Omarunui and Petane) and of property (as a consequence of Whitmore's Waiparati expedition). Moreover, the confiscation of much of their land was carried out during their Chathams detention and while they were in train with Te Kooti, though not as a consequence of that activity – they were still being punished for their involvement at Omarunui and Petane.

We now conclude by attempting to make some general comments on the Crown's role in the engagements at Omarunui and Petane. We note that Wai 299 claimant counsel has argued that the Crown:

singularly failed to actively protect the claimant hapu interests and taonga and act honourably, reasonably, sincerely and on the basis of justice, and utmost good faith towards them. Further, the Crown took intentional and purposive steps to undermine the claimant hapu's rangatiratanga, treat them in a prejudicial manner and acquire its resources for its own benefit. Finally the Crown failed to govern properly and justly, and to apply and exercise its laws and powers properly, without any underlying desire of benefit, and without unfair discrimination between its pakeha and Maori subjects.²¹¹

These breaches were specified more fully in the claimants' fourth amended statement of claim. Several of the breaches relate to the confiscation that followed the Omarunui and Petane engagements and will be discussed in the next chapter. However, the statement of claim specified several breaches that occurred prior to the confiscation, including the failure of the Crown to make a proper inquiry into the background and circumstances of the Omarunui incident and of those Maori who were involved in the encounter, including their tribal, hapu, or whanau affiliations.²¹²

211. Document x39, p 19

212. Claim 1.22(e), para 3.2

Crown counsel responded by arguing that the Crown had a responsibility under the Treaty to maintain order and that the actions of McLean and his subordinate officials were, in the circumstances, reasonable attempts to maintain order.

During our hearings, we were presented with a welter of evidence and argument, not all of it contradictory. In trying to find our way through this, we were aware of the pitfalls of hindsight. But we also had to be aware of the problem of ‘one-sided evidence’; of the fact that in this case the great bulk of the documentary evidence came from one side only – from Crown officials, European settlers (and their newspapers), and kawanatanga Maori. As Head admitted, once Maori correspondents became opponents of the Government, they usually stopped writing to it.²¹³ Even the slim body of documentary material from the ‘Hau Hau’ side had been subject to subtle changes of meaning during the translation process. Another problem is that the documents in English were full of alarmist rumours, most of which were ultimately revealed as untrue. But rumour, true or not, could spark a Government response. As we have said, one can understand the alarm that many settlers, officials, and kawanatanga Maori felt, especially in the wake of the murder of Völkner. But, although they always needed to take precautions, including military preparations, to ensure that settlers were not slaughtered, Crown officials owed Maori the same responsibility of protection, and that included trying to prevent Maori from killing one another.

7.10 FINDINGS

We find that the Crown, in making or allowing attacks on the Pai Marire followers in Hawke’s Bay, in the pursuit of the escapees of the engagements, the destruction of their property (and the property of others not present at Omarunui or Petane), and the detention without trial of the prisoners on the Chatham Islands, breached the principles of the Treaty of Waitangi. We find that the Pai Marire followers at Omarunui and Petane, and Ngati Hineuru generally, were prejudiced thereby.

More specifically, we find that:

- (a) There was no ‘subtext of threat’ to Pakeha settlers either from King Tawhiao or from Panapa and the rest of the Pai Marire followers. The Crown was not justified in perceiving such a threat or in relying upon rumours and misinformation to justify pre-emptive attacks of its own. In particular, McLean did not make reasonable efforts to secure a peaceful outcome at Omarunui, and we have every reason to suspect that Fraser behaved the same way at Petane. The Crown was thus in breach of the principle of partnership and the duty to act reasonably and in good faith.

213. Document w11, p 3

- (b) Those Pai Marire followers who had come to lowland Hawke's Bay in response to McLean's invitation, and who had acted peacefully and made no warlike preparations, were entitled to have their rights under the Treaty respected. Instead, they were attacked, and in this the Crown breached its duty of active protection.
- (c) The Crown had a responsibility, stemming from the acquisition of sovereignty under article 1 of the Treaty, to use its authority to maintain peace. (Indeed, that was one reason why many chiefs had been willing to sign the Treaty.) Crown counsel's defence of the Crown's actions at Omarunui and Petane in these terms, however, is misplaced, since we do not believe that the peace was so threatened (at least not by the Pai Marire followers). We find that the Crown, in the engagements at Omarunui and Petane, did not exercise its kawanatanga authority with due consideration for the chiefs' rangatiratanga, which was preserved to them in article 2 of the Treaty, and thus it breached the principle of reciprocity.
- (d) Furthermore, while it was proper for the Crown to exercise its peacekeeping role in association with the chiefs, it could not use those chiefs to attack others who were not in rebellion. Though we accept Crown counsel's argument that the Treaty represented a 'promise of order', in preserving that order the Crown needed to act for all its British subjects in New Zealand, irrespective of whether the disputes involved Maori and Pakeha or Maori and Maori. The Crown could not join with one faction to attack another faction that had not breached the peace.

This latter point – what we might call a principle of equal treatment – has already been developed by the Tribunal in its *Maori Development Corporation Report* of 1993. That Tribunal called it the 'Crown's duty to act fairly and impartially towards Maori' and explained that the Crown's guarantee of rangatiratanga was made 'to all of the iwi, not to a selected number. Implicit in this is a guarantee that the Crown would not, by its actions, allow one iwi an unfair advantage over another.'²¹⁴ We believe that this principle has direct relevance to the events that we have described in this chapter.

- (e) The indiscriminate excesses of Whitmore's Waiparati expedition were unreasonable and in breach of the Crown's duty actively to protect the rights of Maori, including the rights of those not even involved in the previous engagements.
- (f) The manner in which 'confessions' were extracted after Omarunui and the prisoners' indefinite detention on the Chathams without trial amount to breaches by the Crown of its duty of active protection and its duty to act reasonably and in good faith.

CHAPTER 8

THE MOHAKA–WAIKARE CONFISCATION

8.1 INTRODUCTION

The Mohaka–Waikare raupatu or confiscation is the main issue in this regional inquiry and Wai 299 is the main claim relating to it. Several other claims relating to specific blocks within the Mohaka–Waikare district are also concerned in one way or another with the raupatu. We discuss in this chapter the issues raised by these claims, and the Crown’s response, as we look at the different stages of confiscation. In our next two chapters, we trace the fate of the various blocks of land within the raupatu district.

The Mohaka–Waikare confiscation was the last of the confiscations carried out in the North Island under the New Zealand Settlements Act 1863. The confiscations began in Waikato in December 1864 and were continued in Taranaki from January 1865, Tauranga in May 1865, Whakatane–Opotiki in January 1866, and finally Mohaka–Waikare on 12 January 1867. Maori claims relating to most of the Waikato confiscation have been settled by direct negotiation with the Crown. Claims relating to the Taranaki confiscation and the Ngati Awa portion of the eastern Bay of Plenty confiscation have been reported on by the Tribunal and are already the subject of settlements with the Crown. In view of the comprehensive discussions on confiscation in the Taranaki and Ngati Awa reports, we do not intend in this report to comment at length on the policy and legislation of confiscation. We need merely to set the Mohaka–Waikare confiscation into that context.

Though the Mohaka–Waikare confiscation might seem a logical extension of the policy, applied in response to the spread of ‘rebellion’ into Hawke’s Bay, it appears to us to have been an anomaly. Indeed, as the earlier raupatu reports pointed out, there was no consistent application of the confiscation policy. Rather, it was applied capriciously in response to changing circumstances, and as a consequence of frequent changes in ministries. In the eastern Bay of Plenty, for instance, the Outlying Districts Police Act 1865 was passed to provide for the confiscation of the land of those suspected of killing Völkner and Fulloon, but it was not used for that purpose and the Government fell back on the New Zealand Settlements Act as a basis for that confiscation. Then, in 1866, the East Coast Land Titles Investigation Act was passed to provide for the confiscation of land in Wairoa and Poverty Bay. That Act used the Native Land Court rather than the Compensation Court to investigate the titles of non-rebels. But the Act was not applied further south, and the Mohaka–Waikare confiscation, like the eastern

Bay of Plenty confiscation, was based on the New Zealand Settlements Act. Having used that Act, however, the Government did not use the Compensation Court to distinguish the land of ‘rebels’ from that of ‘loyalists’; instead, it relied on agreements between Crown officials and Maori claimants, and these were subsequently blessed by validating legislation. We discuss the details below.

In official circles (and in most history books), the Mohaka–Waikare confiscation became a ‘forgotten’ confiscation. The Royal Commission on Confiscated Lands and Other Grievances (the Sim commission) of 1927 did not even discuss it, though it did report on complaints over the Crown’s acquisition of the Kauhoroa, Nuhaka, and Mohaka blocks in the Wairoa district. Finally, by way of introduction, we note that the Mohaka–Waikare confiscation in 1867 was very largely the work of one man, Donald McLean, then the superintendent of Hawke’s Bay and the general government agent for the province. Ironically, when he became Native Minister two years later, McLean admitted that ‘the confiscation policy as a whole has been an expensive mistake’.¹ During his long tenure in that office, he used means other than confiscation to bring about peace and to acquire Maori land. But it is ‘McLean’s mistake’ that we now examine.

8.2 THE CONFISCATION PROCLAMATION OF 12 JANUARY 1867

There is some evidence that the confiscation of land in Hawke’s Bay under the New Zealand Settlements Act was being discussed even before the Omarunui and Petane engagements on 12 October 1866. Boast referred to a letter from Locke to McLean of 27 August 1866, which responded to a comment McLean had made earlier that ‘there must be some confiscation for the [kawanatanga] Natives are waiting for it’.² These discussions continued after the engagements. In an undated letter to McLean, probably written after 20 October, when the Waiparati expedition ended, Whitmore said that ‘The Petane & Tangoio block for [military] Settlers will hardly be available unless the land is confiscated.’ As Battersby suggested, McLean and Whitmore had probably already discussed placing military settlers – possibly those used by Fraser in the Petane engagement and in the subsequent Waiparati expedition – on land to be confiscated in the vicinity of Petane and Tangoio.³ We noted in chapter 5 that in 1864 some lands on the Ahuriri block near Puketitiri had also been proposed for a military settlement but the settlement had not gone ahead. The Defence Minister, Theodore Haultain, also discussed the matter with McLean, as he indicated in a letter to Premier Stafford on 16 November 1866:

1. McLean to Ormond, not dated (as quoted in doc J28, p 53)
2. Locke to McLean, 27 August 1866 (as quoted in doc J28, p 54)
3. Whitmore to McLean, not dated (as quoted in doc W1, p 191)

He [McLean] is anxious that a Block of land . . . of . . . about 200,000 acres the property of the Rebels recently in arms against us, should be confiscated without delay – and I think this ought to be done, it is fully expected by the [kawanatanga] Natives themselves, and it is the right way of dealing with those who commence hostilities against us.⁴

This statement contained several incorrect assumptions, readily made by officials and settlers at the time, that there had been ‘rebels in arms’ against the Crown and that they had commenced hostilities. We discuss this point further below.

On 7 January 1867, McLean wrote to Premier Stafford as follows:

I have the honor to enclose the tracing of a block of land to the north of Napier lying between Petane and the Waikare river on the sea coast and extending inland as far as the boundaries of the Province of Hawke’s Bay.

It is estimated that about one half of this block or land to that extent is owned by natives who were taken in arms at Omarunui and the remaining portion is claimed by a few natives residing on the block about sixty in number.

The chiefs of Hawke’s Bay and all the natives interested are agreed that the land of the natives taken in arms should be confiscated and they urge that this should be done without delay in order that they may afterwards deal with such portions of the land not liable to confiscation as they may think fit.

I would therefore urge upon the Government that this block should be brought under the operation of the New Zealand Settlement Act 1863 and Amendment Acts up to 1866.

It is true that the land in itself is of very little value the whole district is let as runs for £1300 a year and is admitted to be the most hilly rugged and unproductive within the Province, at the same time it is very obvious that natives who have so wantonly disturbed the peace as Paera Toki and other claimants in this block have done should be made to feel the consequences of such conduct by the forfeiture of some of their land and I believe that such a course the justice of which is so fully recognised by the chiefs of Hawke’s Bay may be the means of preventing future outbreaks of a similar nature.

It is very important that a question of this nature should be settled without delay and should His Excellency’s Government concur in the proposed confiscation I shall be prepared to enter into such an arrangement for the administration and settlement of the district as may be deemed fair and equitable after considering the poor character of the land, large claims of friendly natives, survey, and other expenses incident to its settlement.⁵

A note on this letter indicates that an Order in Council under the New Zealand Settlements Act 1863 was executed on 12 January and printed in the *New Zealand Gazette* of 19 January

4. Haultain to Stafford, 16 November 1866 (as quoted in doc w1, pp 191–192)

5. McLean to Stafford, 8 January 1867, RDB, vol 131, pp 50,618–50,622

1867. McLean's recommendation had been implemented without demur or delay by the Stafford Government.

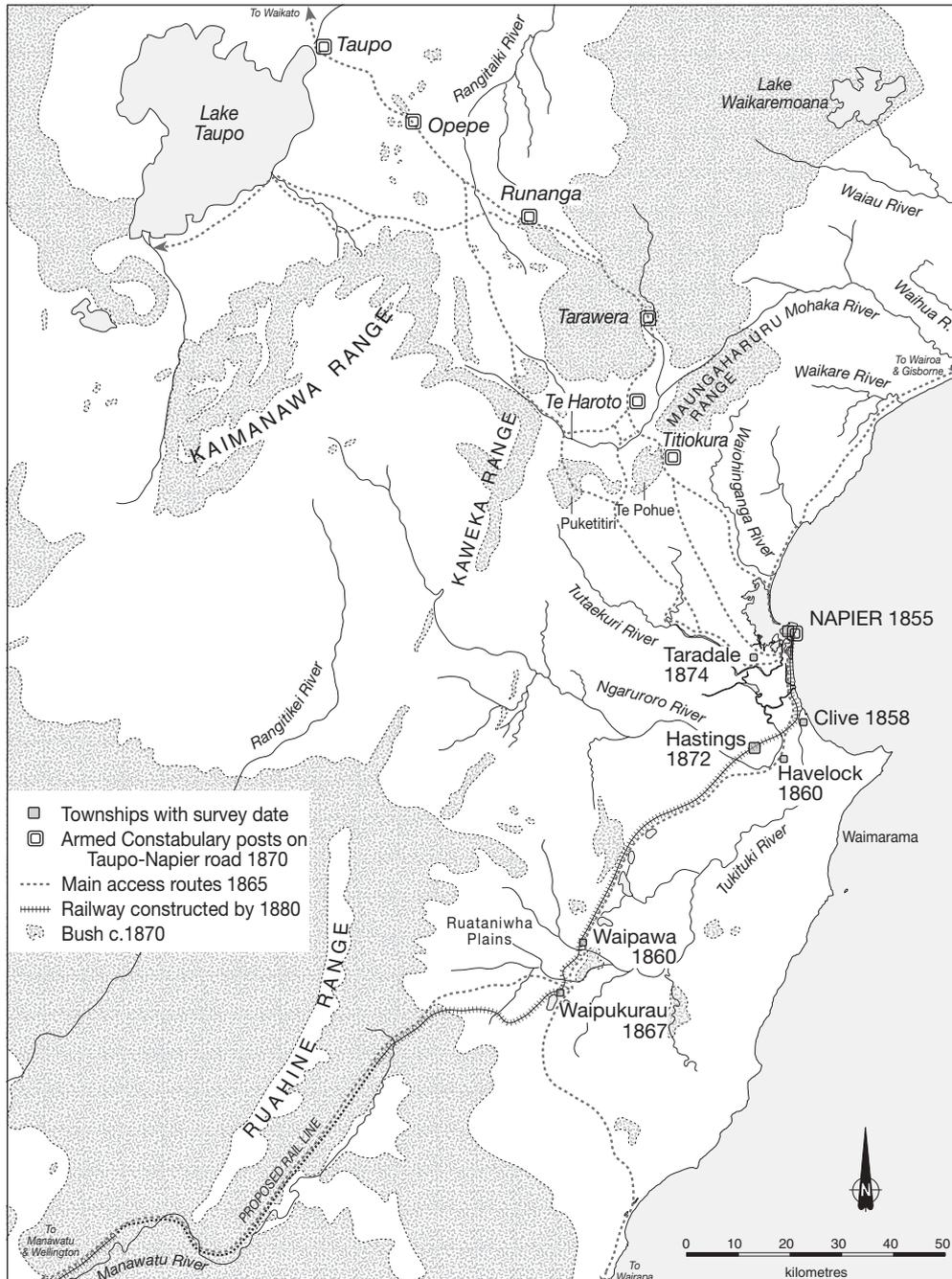
It is difficult to be sure of McLean's objectives on the basis of a single letter, though some observations are appropriate. McLean was anxious to associate 'the chiefs of Hawke's Bay' (he meant the coastal Ngati Kahungunu chiefs) with the confiscation. This suggests that the attacks on Ngati Hineuru and the others at Omarunui and Petane and the subsequent confiscation were part of a long-running rivalry between the coastal Ngati Kahungunu and the inland Ngati Hineuru. The fact that coastal Ngati Kahungunu were rewarded with some of the confiscated land and that one of them, Tareha, got a large block in his own name is a further indication of McLean's collaboration with these loyal and 'friendly' chiefs. These same chiefs were soon to support the Government in the campaigns against Te Kooti.

A second aspect of McLean's letter that is worthy of comment is his reference to the whole of the proposed confiscation district being already 'let' as runs for £1300 per year in rent. This is a reminder of the competition that had been going on for years between European squatters, who were illegally leasing Maori land, and the Crown, which was attempting to purchase it. Though McLean had acquired the Ahuriri and Mohaka blocks in his 1851 purchases before the arrival of the squatters, he had had very little success in purchasing the land in between, apart from the purchases discussed at section 6.3. The squatters' hand had been strengthened by the passing of the Native Lands Act 1865, which allowed them to get legal title to their leases once the Native Land Court had awarded title to Maori owners. All over Hawke's Bay, on land not already purchased by the Crown, runholders were attempting to use the Act and the court to validate their titles. On 2 June and 8 November 1866, the court issued panui giving notice of intended hearings for a number of blocks. Samuel Locke began to survey some of these blocks in preparation for the hearings, which were scheduled to start in December. However, on McLean's instructions, the surveys were suspended shortly after the hearings began, thus preventing the court from issuing title. The Maori applicants were persuaded to withdraw the Mohaka-Waikare blocks from the court in order to 'avoid any further complication', as Locke explained in June 1867.⁶ A year later, Locke further explained what had happened: 'In order to facilitate the confiscation of the above blocks by the Colonial Government the surveys were, at the request of Mr McLean, withheld from the Court, a promise having been made by Mr McLean that the Colonial Government would hold itself responsible for the payment of these surveys.'⁷

It is evident from Locke's comments that McLean had decided by December 1866 to confiscate the land. This was a simpler means of acquiring the land for the Crown than having to work through the Native Land Court in competition with the runholders. However, as we noted in chapter 6, there were two exceptions to the confiscation: the coastal Petane and Te Pahou blocks were passed through the Native Land Court on 11 January 1867, the day before

6. Locke to McLean, 6 June 1867 (as quoted in doc J28, p 58)

7. Locke to Cooper, 27 June 1868 (as quoted in doc J28, p 57)



Map 26: Hawke's Bay, 1850-80

the confiscation proclamation was executed. Both were subsequently alienated to European settlers.

The area confiscated in the Mohaka-Waikare district was all that part of Hawke's Bay between the already purchased Mohaka and Ahuriri blocks, including the two blocks that the Crown had purchased in 1859. The Te Pahou block was outside the proclaimed district. The

Pakaututu and Te Matai blocks, in the south-west of the district, were subsequently passed through the court, as we note in chapter 10. But, with these exceptions, McLean, who had long struggled against squatters elsewhere, had got the upper hand by confiscating most of the Mohaka–Waikare district. However, this did not make much difference to the situation on the ground, since the squatters were able to obtain legal leases for a term of 21 years over the greater part of the confiscated district that was ‘returned’ to Maori. We provide details of this in chapters 9 and 10.

A final point that needs to be emphasised is that McLean had a grand strategic motive for the confiscation. The road route to Taupo ran through the Mohaka–Waikare blocks, and the construction of the road had already begun. McLean now wanted to complete the project and to secure the road with redoubts as part of a larger strategy of cutting off the Kingite tribes from those of the central North Island and the Urewera (map 26). He indicated this in a memorandum, which, although undated, was written before Te Kooti’s 1868 escape and subsequent guerilla campaigns made such a strategy imperative:

The formation of a road from Napier to Taupo which might be carried on to the military posts at Waikato is a subject of such importance in reference to the settlement of the native question that it cannot be too earnestly urged.

There are great numbers of refugees from the war residing at Taupo and until something is done to make that district more accessible, disaffected tribes will always resort to it, from a traditional belief they ascertain that it will be one of their last strongholds.

Those many Natives under friendly Chiefs are in such distressed circumstances that they would readily take employment on the roads and if the general government would undertake it I would give the most cordial assistance to carry it out, and place the provincial Engineer’s services at the disposal of the government for directing the work. The portion of the road in the province of Hawke’s Bay is already in a very forward state.⁸

McLean’s strategy was part of a larger plan that had long been associated with the confiscation and that was most expansively expressed in Premier Domett’s ‘Memorandum on Roads and Military Settlements in the Northern Island of New Zealand’ of 5 October 1863. This plan envisaged the confiscation of vast areas of land, the construction of 1000 miles of roads, and the placing of 20,000 military settlers on the frontiers of the confiscations. Domett’s plan provided for a Napier to Taupo road and the settlement on the northern frontier of Hawke’s Bay of 2000 military settlers.⁹ The road was constructed, though no attempt was made to put military settlers on the confiscated Mohaka–Waikare blocks. However, redoubts constructed on two small blocks of confiscated land at Te Haroto and Tarawera, on

8. McLean, memorandum, undated (as quoted in doc J28, p 56)

9. Alfred Domett, ‘Memorandum on Roads and Military Settlements in the Northern Island of New Zealand’, 5 October 1863, AJHR, 1863, A-8A, pp 1–12

the line of the Napier to Taupo road, were manned for a time by the Armed Constabulary, mainly as a defence against Te Kooti.

The confiscation proclamation of 12 January 1867 followed the prescription of the New Zealand Settlements Act 1863. It quoted from section 2 of the Act:

whenever the Governor in Council shall be satisfied that any Native tribe, or section of a tribe, or any considerable number thereof, has been since the first day of January, 1863, engaged in rebellion against Her Majesty's authority, it shall be lawful for the Governor in Council to declare that the district . . . shall be a district within the provisions of the said Act.¹⁰

The proclamation added that the Governor was satisfied that 'certain Native tribes, and sections of Native tribes' had been in rebellion since 1 January 1863 and that therefore the land within the district defined in the schedule, which was to be known as 'The Mohaka and Waikare District', would be reserved and taken 'for the purposes of settlements' and would be subject to the Act. The schedule described the land between the Esk and Waikare Rivers, running inland from the coast to the boundary of Hawke's Bay province. The proclamation further declared that: 'no land of any loyal inhabitant within the said district will be retained by the Government; and further, that all rebel inhabitants of the said district who come in within a reasonable time and make submission to the Queen, will receive a sufficient quantity of land within the said district for their maintenance'.¹¹

8.3 THE 1868 AGREEMENT

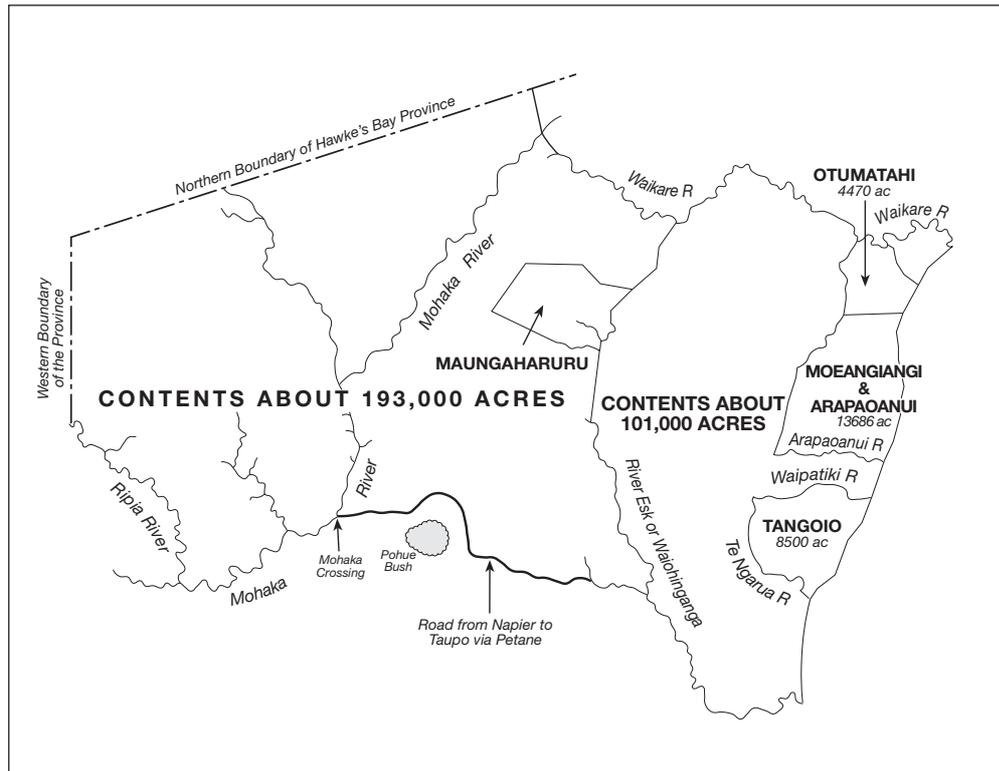
Although the Mohaka–Waikare land was confiscated by proclamation on 12 January 1867, very little was done for the remainder of that year to provide compensation according to the procedures set out in the New Zealand Settlements Act 1863. On 15 March, a proclamation was published in the *New Zealand Gazette* notifying claimants that they had six months from the date of the confiscation to lodge claims for compensation.¹² It is not known whether any claims were lodged, but no judge of the Compensation Court was directed to hear any that were. However, it seems that, around the middle of 1867, James Hamlin was appointed to negotiate an out-of-court settlement with various claimants over the land to be retained by the Crown and the land to be returned to them.¹³ The arrangement was then to have been referred to the Compensation Court for approval. This procedure had previously been used for the Taranaki and Bay of Plenty confiscations, and a slightly different arrangement had

10. Order in Council, 12 January 1867, *New Zealand Gazette*, 1867, no 5, p 44

11. Ibid

12. Notification, 15 March 1867, *New Zealand Gazette*, 1867, no 15, pp 112–113 (doc J28, p 32)

13. Document w1, p 194



Map 27: The Mohaka–Waikare block, 8 May 1868. Plan accompanying 1868 agreement redrawn from Turton.

been made over land at Wairoa, though this had not been taken under the New Zealand Settlements Act. In December 1867, the under-secretary of the Native Department, William Rolleston, recommended that Hamlin apply the same remedy to the confiscated Mohaka–Waikare block: ‘a deed or deeds of the same character as the Wairoa deed would meet the case. That deed as you are aware was an agreement on the part of the natives to withdraw all claims to one part of the block in consideration of the gift by the Government of another part.’¹⁴

In the event, it was not Hamlin but McLean who attempted to settle the Mohaka–Waikare matter along the lines recommended by Rolleston. On 31 January 1868, he informed the Colonial Secretary that the Compensation Court had not yet sat and that no ‘definite settlement’ had been made ‘respecting these lands’. He intended to ‘call a meeting of the friendly Natives to settle with them as to the actual extent to be confiscated, the extent to be set apart for rebels, and [that to be] retained for friendly Natives’.¹⁵ The meeting was apparently not held until early in May, after which the ‘principal Chiefs’ came to Napier, where McLean proposed that ‘the confiscated territory should be divided between those Native owners who had taken no

14. Rolleston to Hamlin, 12 December 1867 (as quoted in doc w1, p 196)

15. McLean to Colonial Secretary, 31 January 1868 (as quoted in doc j28, p 60)

part in the rebellion and the Government in the proportions indicated in the tracing herewith enclosed'. He added that 'Some provision for the Ngatihineuru tribe resident at the Chatham Islands would be necessary within the boundaries of the block of 193,000 acres tinted green and probably some reserves of small extent might be required for other Natives.' McLean drew attention to various blocks that had previously been purchased and those he proposed to retain as confiscated land. Then, he concluded: 'Except for the principle involved the land is really of very little value and might almost revert to the Natives without much detriment to the Public Interests, were it not for the injurious influence such a step might have on other tribes along the Coast.'¹⁶ This final comment indicated that McLean was still thinking in political terms: some confiscation was still necessary as a deterrent against rebellion. He also needed it to reward his coastal allies, as we explain below.

McLean's letter was accompanied by a deed of agreement, also dated 8 May 1868. (A map of the land covered by the deed is reproduced here as map 27.) The agreement began by reciting the background details of the confiscation before noting that it was an agreement between McLean, as agent for the general government, and the 'undersigned chiefs and natives' of the confiscated district. The agreement then recorded that, 'in consideration of the Loyalty and good services of the said chiefs and natives during the Insurrection and rebellion against Her Majesty's authority within the said district,' all claims to confiscated land within certain specified boundaries would be withdrawn. The boundaries of this withdrawn area were defined as:

commencing at the sea coast from the old mouth of the river Esk or te Waiohinganga and following the sea coast to the mouth of the Waikare river up that river to the western boundary of the Te Awa Totara Block . . . thence along the Eastern boundary of the Maungaharuru block thence following a line nearly due south to the source of the river Esk or te Waiohinganga down that river to its mouth being the starting point of the boundaries of the said Block.

Various coastal blocks were excepted from this returned area, presumably because the Crown claimed to have previously purchased them. They were the Otumatai (Otumatahi) block (of 4470 acres), the Arapaoanui and Moeangiangi blocks (13,686 acres), and the Tangoio North block (8500 acres). The Maori signatories also acknowledged that they had received £150 payment for their interests in the land that had been retained by the Crown and that, as a consequence of this and the return of the described land, they withdrew all claims to the rest of the confiscated area. In effect, the Government was returning some 101,000 acres of the coastal portion of the Mohaka–Waikare district and confiscating some 193,000 acres of the interior, most of which lay within Ngati Hineuru's rohe.¹⁷

16. McLean to Colonial Secretary, 8 May 1868 (as quoted in doc J28, pp 60–61)

17. McLean to Colonial Secretary, 31 January, 8 May 1868 (as quoted in doc J28, pp 61–62; doc R3, p 53)

Several brief comments on the agreement are appropriate. First, it was signed on the Maori side by Manaena Tinikurunga, Takapui, Pane Te Kanga, and 47 others. Though Boast raised the issue of ‘who the Maori signatories to the 1868 deed were and what their tribal/hapu affiliations may have been’, he said little about either question. He merely noted that Tareha, who was later to receive a substantial area of land under the 1870 agreement, was not a signatory; and that Ngati Hineuru, who were either prisoners on the Chathams or ‘scattered’, would not have signed.¹⁸ The signatories were probably all coastal people, though Moorsom noted that Pane Te Kanga was recorded in the 1925 reinvestigation as being primarily of Ngati Hineuru descent.¹⁹ While the claimants did not submit any other evidence on the identity of the signatories, this was of little consequence, since the agreement was replaced by another in 1870.

Secondly, the area which McLean proposed to retain as confiscated land was somewhat larger than that finally retained by the 1870 agreement. Finally, we note that it is not clear why the 1868 agreement was not implemented. As late as May 1869, McLean was saying that, subject to the setting aside of some reserves for prisoners and a sitting of the Compensation Court, the agreement was settled.²⁰ But there was no sitting of the Compensation Court. Boast admitted that he was unable to find any documentary evidence on why the 1868 agreement was not implemented and was later abandoned. However, a mere two months after the agreement was signed, Te Kooti and the prisoners from Omarunui escaped from the Chathams, and Boast suggested that the resulting disturbances could have caused the agreement to fade into the background since McLean and other Government officials and the coastal Ngati Kahungunu chiefs were too busy pursuing Te Kooti to implement it.²¹ The loyal support shown by the coastal chiefs in this new crisis gave them even more claim on the beneficence of the Government. In March 1869, Te Kooti led a raid against Ngati Pahauwera and Pakeha settlers at Mohaka, and in his party were some Ngati Hineuru. That fact provided a further excuse for the Government to proceed with the confiscation against Ngati Hineuru, who had taken the opportunity to settle old scores against Ngati Pahauwera. Te Kooti was keen to retaliate against Ngati Kahungunu for their earlier pursuit of him, though he was also searching for Government weapons that had been stored at Mohaka.²² Although Te Kooti remained at large, the East Coast forces pursuing him were scaled down after 1870, and he eventually took refuge in the King Country in 1872.

Some of the Ngati Hineuru who had been with Te Kooti on the Chathams remained with him through his mainland campaigns, but others gradually infiltrated their former lands. Ormond and McLean were intent on protecting the now completed road and telegraph line

18. Document J28, p 61

19. Document R3, p 53

20. Document w1, p 201

21. Document J28, p 63

22. Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press, 1995), pp 160–162

from Napier to Taupo, and so they kept a watchful eye on these returnees, while stationing Armed Constabulary along the road at Titiokura, Te Haroto, Tarawera, and Runanga (see map 26). As Boast put it, ‘With McLean, the strategic route to Taupo was a continuing obsession.’²³ The Crown’s part-payment in 1869 for the large Kaimanawa block, which ran from the western watershed of the ranges to Lake Taupo and included much of the Napier to Taupo road, further strengthened that strategic route.²⁴

8.4 THE 1870 AGREEMENT

It is difficult to piece together the details of the negotiations that culminated in the 1870 agreement since most of the official correspondence has been lost. However, there is some information quoted by Boast, Moorsom, and Battersby that indicates that the Government was under pressure to complete the agreement. In July 1869, Tareha, by then the member for Eastern Maori, raised the issue in Parliament:

With regard to the land on my side – on the East Coast – at Napier, Tauranga [Turanga], and those other lands, they must all be given back to me. Some portions of the land at Napier I pointed out as payment for the sins of men. You must take that, for that is the payment for sin. All the land which is covered by the name of the Government must be given back to me.²⁵

In November, Locke pressed Ormond to make some confiscated land at Te Haroto and Runanga available for Paora Hapi and his people from Taupo as a reward for their support against Te Kooti.²⁶ Later in 1869, McLean, by then the Native Minister, seems to have been involved in the preliminary negotiations for the revision of the 1868 agreement. At a hui at Tareha’s settlement at Waiohiki late in 1869, the Crown apparently agreed to take the Waitara and Tangoio blocks, and parts of Tarawera and Te Haroto, ‘in payment of the Hauhaus taking up arms against the Government’. The Crown would also return 12 named blocks, including the remainder of the Tarawera block.²⁷ But McLean was not involved in the subsequent negotiations, which were carried out by Locke, then the resident magistrate for Taupo, Wairoa, and Waiapu–Poverty Bay. According to Ormond, Locke ‘went about among the Natives and held meetings, and . . . his inquiry was spread over a long time, and every Native . . . in that part of the country must have heard about it’. Ormond added that Locke went to Taupo, Mohaka,

23. Document j28, p 66

24. Ibid, pp 66–67. According to Moorsom (doc R3, p 58, n185) the block was still under negotiation in the mid-1880s.

25. Tareha, 27 July 1869, NZPD, 1869, vol 6, p 116 (doc w1, p 201)

26. Locke to Ormond, 7 November 1869 (as quoted in doc w1, p 202)

27. Petition of Toha Rahurahu and two others (as quoted in doc R3, p 59)

Petane, and also Tareha's place: 'the whole thing took a long time to adjust'.²⁸ However, as Boast noted, Locke was unlikely to have given the negotiations priority over his many other obligations.²⁹

On 18 November 1869, McLean wrote to Locke asking him to complete the arrangements regarding the Waikare–Mohaka block. McLean added:

The Government do not expect or indeed desire to reap any pecuniary or other advantage from the confiscation of this block, or to incur any loss . . . but it is now desirable that all questions connected with it should be finally adjusted and disposed of. You will therefore endeavour to effect as equitable a settlement with the Natives as possible, taking care that large Reserves are made for their own use.

The Chief Tareha is becoming dispossessed of most of his landed property [and] should have Reserves secured upon him within the block.

McLean concluded that Locke needed no further instructions since he was already familiar with the history of the block, though he did ask him to maintain contact with Ormond, who had also taken over McLean's old offices as superintendent and general government agent for Hawke's Bay.³⁰ Well aware that his old ally Tareha was deeply in debt as a result of the campaign against Te Kooti and litigation over his other landed interests, McLean wanted to reward him with a portion of the confiscated land. McLean also told Ormond of his instruction to Locke, adding that it was 'very important that all questions of this nature should be adjusted as speedily as circumstances will admit'.³¹

It took Locke and Ormond more than six months to put McLean's instruction into effect. They were hindered by the lack of a copy of the 1868 agreement and map in the Hawke's Bay provincial offices or in Wellington. Since he was apparently not present when the 1868 agreement was drawn up, Locke had to rely on the memories of others, including some of the kawanatanga chiefs, on what had been agreed. This might explain some of the differences between the two agreements. Moreover, Locke was still preoccupied with Te Kooti and was attempting to make Te Heuheu drop his support for the guerilla leader. However, Locke appears to have had some intermittent negotiations with Tareha about the land to be awarded to him and with others about the blocks to be retained or returned. Indeed, according to Ormond, Tareha had a large hand in the reallocation of the land: 'Tareha was the principal man, and he was looked upon as the man who had a right to be consulted on all these things; and it was really under Tareha's advice that the whole of the partition of the land took place'.³²

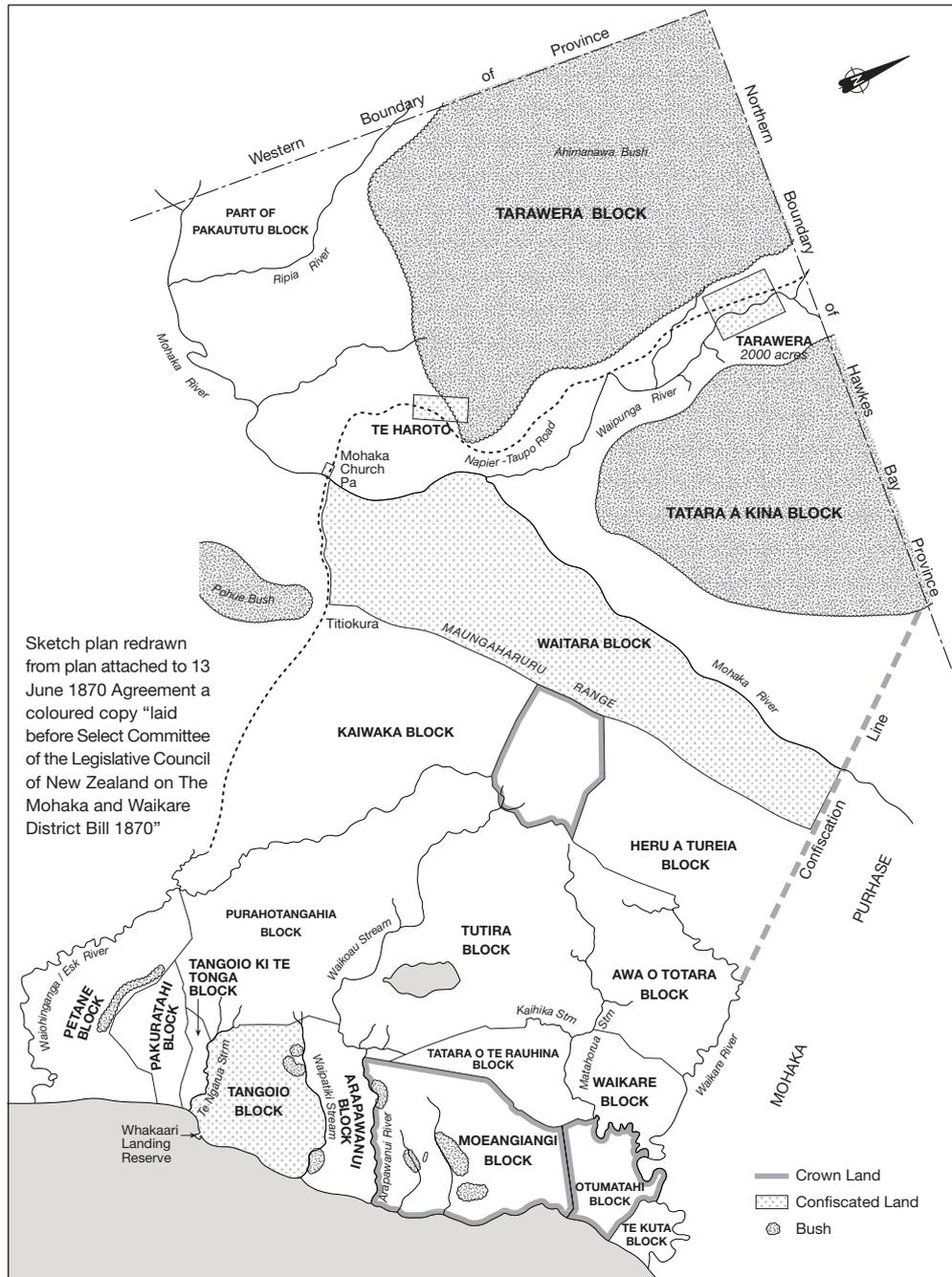
28. Native Affairs Committee, 'Report on the Petition of Toha Rahurahu, together with Minutes of Evidence', 24 August 1888, AJHR, 1888, 1-3C, pp 1-2 (doc J28, pp 69-70)

29. Document J28, p 71

30. McLean to Locke, 18 November 1869 (as quoted in doc J28, p 72)

31. McLean to Ormond, 13 November 1869 (as quoted in doc J28, p 73)

32. Native Affairs Committee, 'Report on the Petition of Toha Rahurahu, together with Minutes of Evidence', 24 August 1888, AJHR, 1888, 1-3C, pp 1-2 (doc R3, p 63)



Map 28: The Mohaka-Waikare blocks in the 1870 agreement

Tareha, it seems, had the major say in who was named in the lists for the various returned blocks, though these lists were left open for several months to allow others to submit claims.³³

Locke attended a large hui at the Council Chamber in Napier on 6 December 1869, where he reminded those present that they had entered into an agreement at Waiohiki the previous

33. Document R3, p 63

year. He added that the Government was ‘now prepared to carry out that agreement’. But, without a copy of that agreement, he was beholden to Tareha and the other chiefs as to what it contained. According to Moorsom, Tareha then ‘upped the stakes’ and insisted that much of the land confiscated in the 1868 agreement be relinquished by the Crown.³⁴ The main exception to his demand was the land between the top of the Maungaharuru Range and the Mohaka River, which land came to be known as the Waitara block. Moorsom added that Tareha’s claim was difficult to turn away, since McLean had asked Locke to see that Tareha was well looked after. He and the kawanatanga forces had recently returned in triumph from the Taupo campaign against Te Kooti, and they needed to be paid for their services. Giving them a substantial part of the confiscated Mohaka–Waikare block was an easy solution for the cash-strapped Government.

The Napier meeting was adjourned to Waiohiki, where it recommenced two days later. It was agreed that in the interval ‘the natives should arrange amongst themselves whose names should be inserted in the certificates of land returned’.³⁵ After the Waiohiki hui, Locke reported that ‘a large assembly of Natives was collected, when they handed over the list of names proposed to be inserted in the certificates, which appeared to me to be a fair adjustment’. Although, as Moorsom noted, Locke’s report on the hui was ‘curiously silent on the actual outcome of the negotiations’, some details did emerge.³⁶ Tareha, who was sticking out for the return of nearly all the land except Waitara, was winning, though Locke did not concede his request for the return of the coastal Tangoio North block. While no final agreement was concluded at the Waiohiki hui, the lists of names for the various blocks appear to have been approved, although there were some later additions.³⁷

In April 1870, with the revision of the agreement still unsettled, Locke admitted to McLean that: ‘Tareha still persists in stating that all the land in [the] Petane–Waikare block on the Taupo side of Mohaka was promised him back, and that he wants that, or a sum of money in lieu of it. He is receiving a good sum in rent from that portion of the Block.’³⁸ Although informal negotiations continued, there is little record of them. It was not until 13 June 1870 that Locke concluded an agreement with Tareha and the others that replaced the one struck in 1868, although Tareha’s claim for monetary compensation remained unsettled. Ormond sent the agreement to McLean with a covering letter that said that ‘all these arrangements have received the assent of the natives interested and they understand that it is the intention of the Government to make the lands so returned to them inalienable’.³⁹ Ormond described Tareha’s claim as being for ‘a small money payment which he advances for abandoning such interest as he and the other loyal natives may have in the blocks retained by the Government’.

34. Document U14, p 145

35. Ibid

36. Ibid

37. Ibid, p 149

38. Locke to McLean, 23 April 1870 (as quoted in doc w1, p 205)

39. Ormond to Native Minister, 4 July 1870, RDB, vol 60, p 22,928

Ormond did not consider Tareha's claim to be 'reasonable', but McLean authorised a payment of £400, which was shared between 29 persons.⁴⁰ Moorsom made the point that this was no private deal with Tareha, since Ormond had noted in February 1871 that 'the Natives are here now and holding meetings about it' and a 'large number' had assembled to receive the payment.⁴¹

We summarise below the main points of the 1870 agreement, and map 28 depicts a sketch plan that was attached to it. The agreement began by reprinting the essence of the Order in Council of 12 January 1867 that confiscated the Mohaka–Waikare block, and it included the promise that 'no land of any loyal inhabitant within the said district would be retained by the Government'. A description of the boundaries followed. Oblique reference was made to McLean's 1868 agreement (this was perhaps an indication that neither Ormond nor Locke now had a copy of that agreement) but it was noted that a new agreement had been reached in terms of McLean's letter to Locke of 18 November 1869. The terms of this new agreement were then spelled out. They were as follows:

- ▶ The Crown was to retain the following blocks of land (see map 29):
 - *Tangoio North*: This block was situated on the north bank of the Te Ngaru Stream and contained 9050 acres, less 10 acres on the Whakaari Peninsula, which were reserved for 'the use and occupation of the Natives as a fishing ground and landing place'.
 - *The Waitara block*: At the time an unnamed block of undetermined acreage, the Waitara block was described by its boundaries, which were stated to run from Titiokura along the watershed of the Maungaharuru Range to 'Heruoturei' at the junction of Government land at the head of the Waikare Stream, thence along the boundary of Government land to the Mohaka River and thence up that river to the boundary of purchased land at Church crossing and finally along the boundary of Government land to Titiokura.
 - *Fifty acres on the left bank of the Mohaka River*: This land was to be retained as a site for a ferryman's house.
 - *One thousand acres at Te Haroto*: This block included the site of the redoubt and 500 acres around it, and another 500 acres for Paora Hapi's people to cultivate or 'such other purposes as Government may desire'.
 - *Two thousand acres at Tarawera*: This block included the site of the redoubt and adjacent land on both sides of the Waipunga Stream.

The last three of these blocks were situated along the Napier to Taupo road.

Apart from the blocks listed above and some blocks that had already been purchased by the Crown or had passed through the Native Land Court and been awarded to Maori

40. Ibid, p 22,929; doc w1, pp 206–207; doc R3, p 70

41. Ormond to Cooper, 10 February 1871 (doc R3, p 70)

owners, the remainder of the land in the confiscated area was to be ‘conveyed to the loyal claimants’ under the following conditions:

- ▶ The whole area was to be ‘subdivided into several portions’, as shown by tracings annexed to the agreement.
- ▶ The Government was to grant certificates of title for those ‘several portions’ to the Maori who were listed in an accompanying schedule.
- ▶ The whole of this land was to be made inalienable ‘both as to sale and mortgage’, and was to be held in trust ‘in the manner provided, or hereafter to be provided by the General Assembly for Native Lands held under Trust’.

In addition, the Government reserved the right to enter any other returned land to take any timber that was required for roading, telegraphic, and other purposes.⁴²

Although the original English and Maori texts of the agreement appear to have been lost, various copies have been preserved and the two texts were also printed in Turton’s *Deeds*.⁴³ The signatures of Tareha and 31 others attached to the agreement were also copied, along with the schedules of names for each of the 13 blocks to be returned. Although Tareha had not signed the 1868 version, Manaema Tinikuranga, the first to sign in 1868, signed underneath Tareha on the 1870 agreement. Altogether, only seven persons signed both.⁴⁴ However, 21 of the 43 who signed the first but not the second agreement did get their names on the blocks listed in the schedule to the 1870 agreement. Many more persons were listed on these block lists than signed the agreements: only 32 signed in 1870, while 165 owners were listed on the scheduled blocks. But six of the 1870 signatories were not named on any of the blocks.⁴⁵

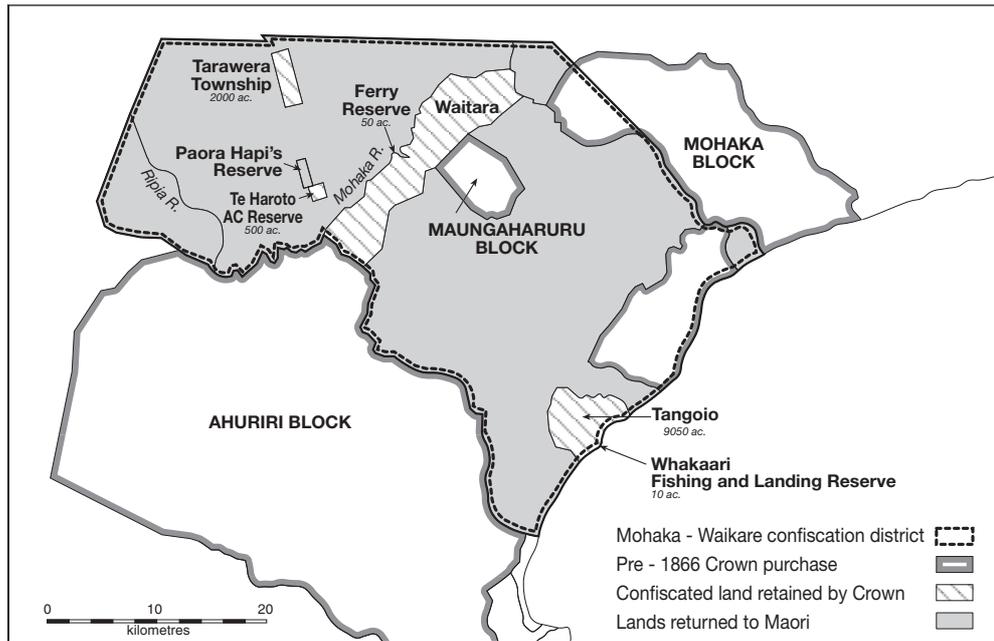
The blocks listed in the schedule to the 1870 agreement and the number of names given for each block were as follows: Tangoio Ki Te Tonga (35 names), Pakuratahi (13 names), Arapaoanui (37 names), Tutira (40 names), Tataraoaterauhina (14 names), Purahotangahia (27 names), Awa o Totara (39 names), Waikare (37 names), Tataraaakina (22 names), Tarawera (24 names), Kaiwaka (one name – Tareha Te Moananui), Heru a Tureia (36 names), and Te Kuta (37 names). The blocks returned in 1870 included four that were not to be returned under the 1868 agreement: Kaiwaka (which was awarded to Tareha rather than ‘returned’ to Ngati Tu), Tataraaakina and Tarawera (which were returned to a mixture of Ngati Hineuru and coastal Ngati Kahungunu), and Pakaututu (which Locke had added to the list of blocks in 1870). However, the coastal Petane block, which had been in the 1868 list, was excluded from the 1870 list, since it had passed through the Native Land Court and been Crown-granted to the owners on 11 January 1867, the day before the confiscation was executed (see ch 6). The Maungaharuru and Moeangi blocks, which lay within the confiscated district, were excluded from the confiscation on the ground that they had already been purchased by the Crown.

42. Document J28, pp 77–78

43. HH Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printers, 1878), vol 2, pp 559–561

44. Document R3, p 72

45. Ibid, pp 72–73



Map 29: The Mohaka–Waikare confiscation, 1870

Many who signed the 1870 agreement were named for more than one block; none more so than Tareha Te Moananui, who, besides being named as the sole owner for the Kaiwaka block, was named for seven other blocks.⁴⁶ Himi Puna, Te Teira Te Paea, and Huka were named for seven blocks, Horiana Hinemate and Rihi Te Awa for six.⁴⁷ Most overlaps occurred for the four blocks fronting the Waikare River (Te Kuta, Awa o Totara, Waikare, and Heru a Tureia), where the lists were virtually identical.⁴⁸ While on the face of it it may appear reasonable to assume that most of those named for the blocks adjacent to the Mohaka purchase were of Ngati Pahauwera and affiliated hapu, we have no direct evidence of this – the hapu or iwi affiliations of those named were not specified – and so we draw the reader's attention to the introduction to part IV of this report, where we discuss the extent of Ngati Pahauwera's interests in the confiscated blocks. It seems reasonable to assume that many of those in the coastal blocks further south were Ngati Tu.

We should note here that at some point the Waikare block ceased to exist and was merged into Awa o Totara. Boast said that, though he had been unable to ascertain the date that this took place, the list of owners was the same for the two blocks and 'so the merger would not itself appear to be of any particular significance'.⁴⁹

The two large interior blocks, Tarawera and Tataraakina, which had little overlap in names (apart from Tareha being named for both), were in Ngati Hineuru territory, though,

46. 13 June 1870, RDB, vol 60, pp 22,932–22,948

47. Document R3, p 73

48. Document J28, p 80

49. Ibid, p 4

according to Moorsom, Tarawera was assigned mostly to persons of Ngati Kahutapere descent, with Tatarakina going mainly to Ngati Hineuru. Moorsom also noted that Tareha was later credited with ‘having a large hand’ in settling the ownership of these two blocks, though that did not prevent some ‘rebels’ from getting into the titles and some ‘loyalists’ from being excluded.⁵⁰ Altogether, 20 persons later identified as Ngati Hineuru were put in the block lists. Although the Government treated all those placed in the block lists as ‘loyalists’, according to Moorsom it is impossible to say today whether they included any who had escaped from Omarunui (or Petane) or any who might have later surrendered. However, two sons of Nikora Whakaunua became owners in Tatarakina, though Te Rangihiroa’s son was excluded, as indeed were most Ngati Hineuru who had escaped with Te Kooti.⁵¹ Apart from a loyalist-designated minority that regained Tatarakina, Ngati Hineuru lost virtually all their other land, either to the Crown by confiscation (Waitara and the Tarawera and Te Haroto redoubt blocks) or to other kinship groups by allocation (most of the rest of the Tarawera block, which was allocated to Ngati Kahutapere). Tatarakina, which was less than a quarter of Ngati Hineuru’s former rohe, was separated from their main settlements at Te Haroto and Tarawera, and was rugged and remote.

It is evident that traditional iwi and hapu boundaries were not followed when the confiscated Mohaka–Waikare district was subdivided into defined blocks. The blocks that emerged seem to have been based on preliminary surveys carried out for Native Land Court hearings, though the hearings were cancelled when McLean decided to confiscate the land.⁵² In February 1871, it was agreed that a minor adjustment should be made to the schedules to the 1870 agreement to add Toha Rahurahu’s name to four of the blocks.⁵³

Nearly three weeks after the agreement was concluded, Ormond sent it to McLean, describing it as ‘a memorandum of agreement with Tareha and the other Natives having claims in the said Block’. He noted also that the agreement specified these lands that were to be retained by the Government and that the rest were to be subdivided into blocks. These blocks were described in the schedules and were for the benefit of those named. All these arrangements, Ormond added, had ‘received the assent of the Natives interested’, who understood that the Government intended to make inalienable the land that was returned to them. Ormond listed two other matters that would require McLean’s consideration:

- ▶ a claim by Tareha, which Ormond did not support, for a small payment for abandoning his and the interests of other ‘loyal Natives’ in the blocks to be retained by the Government; and
- ▶ a claim by surveyors for payment for surveys carried out before the confiscation proclamation had been issued.

50. Document R3, pp 75–76

51. *Ibid*, p 77

52. Document J28, p 85

53. Document 11(15), p 46

McLean dealt with the first matter by paying £400 to 29 signatories as ‘a full and final settlement’ for their interests in the confiscated portions of the Mohaka–Waikare blocks.⁵⁴ As for the second matter, the surveyors’ claims were also accepted.

8.5 NGATI KAHUTAPERĒ

So who are ‘Ngati Kahutapere’? It is important that we pause here to explain our understanding, because, while Ngati Kahutapere are not named as a claimant hapu in the Wai 299 claim, they nevertheless loom as a very prominent group in the events that we narrate both here and in chapter 10.

It seems that the name ‘Ngati Kahutapere’ is derived from Kahutapere II, who apparently lived several generations after the tumultuous events that saw the southward migration of the descendants of Kahungunu.⁵⁵ Despite this, he was described by W T Prentice as having been one of Taraia’s generals in the invasion and the leader of the party that took the land from Te Whanganui-a-Orotu to the Mohaka River.⁵⁶ Prentice’s version was also accepted by Patrick Parsons in his evidence to us,⁵⁷ but it does seem problematic from a chronological standpoint. What we can be more certain of is that Kahutapere II began a campaign and carried war to Tarawera in an attempt to avenge the desecration of the bones of Tupurupuru, Taraia’s elder brother. The desecration had been done by Mahia people with whom Taraia had initially lived after leaving Turanga, some of whom had escaped with the bones to their Tarawera relations Ngati Kurapoto and Ngati Maruahine. Kahutapere II was victorious in his campaign and placed his own sons on the land, and Ngati Kahutapere lived there in relative peace for some time with Ngati Kurapoto and Ngati Hineuru.⁵⁸

This peace was disturbed when Te Uira, a young Ngati Tuwharetoa woman living at Te Pohue who was betrothed in marriage to Te Aria of Ngati Hinepare, was instead given in marriage to a Ngati Tuwharetoa chief. Vengeance was sought, and Ngati Hinepare, Ngati Whatuiapiti, and others journeyed to Taupo and attacked a number of pa, killing various chiefs. Te Heuheu Mananui led the Ngati Tuwharetoa reprisal, taking the pa at Te Haroto and Tarawera district occupied by Ngati Kahungunu and Ngati Kahutapere, including Te Kupenga, which contained most of the leading chiefs. As John Te H Grace writes, the Ngati Kahungunu and Ngati Kahutapere forces were ‘forced across the river to Hawke’s Bay’, and Te Heuheu then set up posts on the Titiokura saddle to ‘mark the boundaries between the

54. Document R3, p 70; Turton, vol 2, pp 561–562

55. For example, Grace says that Kahutapere II lived about six generations after Taraia’s invasion: John Te H Grace, *Tuwharetoa: The History of the Maori People of the Taupo District* (Wellington: Reed, 1959), p 194.

56. W T Prentice in James Wilson and others, *History of Hawke’s Bay* (Dunedin: AH and AW Reed, 1939), p 46

57. Document J13, p 3. Ballara and Scott have also picked up on the doubt over the identity of Ngati Kahutapere’s eponymous ancestor, commenting that there were ‘several possibilities’: doc 11(15), p 3 n 4.

58. Grace, pp 194–197

Hawke's Bay people and Ngati Tuwharetoa'.⁵⁹ It seems that these events occurred in the early nineteenth century.⁶⁰

The struggle for control of the Tarawera district between Ngati Kahutapere and Ngati Tuwharetoa is, we presume, the reason that 'Ngati Kahutapere' figure so prominently in the return of the confiscated lands in 1870. Tareha was himself descended from Kahutapere II, and 'Ngati Kahutapere' was presumably the way people like Tareha and others self-identified in the particular context of claiming rights to lands in the Mohaka–Waikare block, particularly the Tarawera block.⁶¹ The 'Kahutapere' label seems to have lost some currency today, no doubt because of the overwhelming self-identification of tribal members as 'Ngati Kahungunu'. But while Ngati Kahutapere were not named among the hapu claiming in Wai 299 and 400, it is clear from whakapapa that hapu such as Ngati Matepu, Ngai Te Ruruku, Ngati Kurumokihi, and others are the modern manifestations of Ngati Kahutapere.⁶²

8.6 THE MOHAKA AND WAIKARE DISTRICT ACT 1870

In forwarding the 1870 agreement to McLean, Ormond pointed out that legislation would probably be needed to give effect to it.⁶³ He was right. The registrar of deeds refused to register the agreement since it did not comply with the Registration of Deeds Act 1868, though no one appears to have been concerned that the agreement also failed to conform with the New Zealand Settlements Act 1863. McLean had to introduce a validating Bill to Parliament, explaining when he introduced its second reading that it was necessary to give effect to the 1870 agreement and to 'dispose of the difficulties arising out of the confiscations, which had been standing over for the last few years'.⁶⁴ No one else was sufficiently interested to comment, and the Bill – the Mohaka and Waikare District Bill 1870 – passed after some minor amendments in the Legislative Council. Section 2 of the Act declared the 1870 agreement to be valid and binding on the Crown and all individuals named in the agreement and its schedules. Section 4 described the Crown-retained blocks, numbered 1 to 5, which were, on the completion of survey, to be 'deemed to be vested absolutely in Her Majesty' and were to be dealt with in the same manner as other lands taken under the New Zealand Settlements Act 1863. Section 5 dealt with the 'returned' blocks: according to the agreement, Crown grants were to be issued to individuals in fee simple but the land could not be alienated, except by

59. Grace, p 254

60. Parsons says that the events leading to the fall of Te Kupenga occurred 'about 1800': doc M15, p 1. Grace does not specify a date but describes events a year or so after Te Kupenga as occurring in December 1828: Grace, *Tuwharetoa*, p 255.

61. Document J13, p 13

62. See doc J13; doc J18, p 51

63. Ormond to McLean, 4 July 1870 (as quoted in doc J28, p 75)

64. Donald McLean, 30 August 1870, NZPD, 1870, vol 9, p 409 (doc J28, p 87)

lease for no longer than 21 years, nor charged nor encumbered. All deeds, wills, and other instruments purporting to transfer, charge, or encumber any of the land were deemed to be ineffectual. These were stringent conditions, and we comment below on the extent to which they were upheld. The land could not be sold, charged, or taken under any decree, judgment, or process of any court, except under a law relating to the compulsory taking of land for roads, railways, or other public works. The Native Land Court was allowed to declare succession when the owners died. Though the Act envisaged the speedy issue of title to the individuals named in the schedules to the agreement, it was silent on the funding of surveys, which were necessary for each individual holding before title could be granted.

The Act was repealed in 1878, apparently by accident and presumably, according to Boast, because Parliament was under the impression that the Act was ‘legally spent’.⁶⁵ However, the repeal caused problems, and the Native Land Act Amendment Act 1881 was used to deal with some of them. That Act restated the validity of both the confiscation Order in Council of 1867 and the 1870 agreement. It also allowed the Native Minister to ask the Native Land Court to investigate title to blocks named by the Minister and authorised by the Governor, on receipt of the court’s certificates of title, to issue Crown grants to those named, but with restrictions on alienation. When the Native Land Court considered claims in 1882, Judge Brookfield could recognise only those listed in the schedules to the 1870 agreement, or their successors.⁶⁶

8.7 LEGAL SUBMISSIONS

We now discuss the submissions of the Wai 299 claimants and the Crown on the Mohaka–Waikare confiscation, before making our findings on the issues.

8.7.1 Claimant submissions

Counsel for Wai 299 argued that that the introduction of the New Zealand Settlements Act 1863 was illegal.⁶⁷ He also argued that the Mohaka–Waikare confiscation itself was illegal under English law. He maintained that, if it were found that ‘the passage of the New Zealand Settlements Act into New Zealand law complied with English law, the application of the Act in Hawke’s Bay did not’.⁶⁸ In saying this, counsel was following the Taranaki Tribunal, which found that the Act was legally passed but not legally applied. Counsel then set out the procedure that had to be followed by the Crown in legally applying the Act. The Governor in Council had to be ‘satisfied that any Native Tribe or Section of a Tribe or any considerable number

65. Document J29, p 94

66. Document 11(15), pp 50–53

67. Document X39, p 20

68. *Ibid*, pp 48–49

thereof' had, since 1 January 1863, 'been engaged in rebellion against Her Majesty's authority' before declaring by Order in Council that the land of that tribe (or section thereof) would become a district for confiscation subject to the New Zealand Settlements Act. Counsel argued that the proclamation emanated from McLean, not the Governor in Council, that McLean as provincial superintendent had a conflict of interest, and that there was no proper inquiry into the background of both the Omarunui encounter and those Maori who were involved. Because of these factors, the proclamation was 'therefore unlawful'. Counsel argued further that the confiscation was carried out as 'a matter of administrative convenience for the Crown rather than the lawful exercise of an administrative power' and that no 'state of rebellion' in fact existed to support a confiscation under the Act, since a 'state of rebellion would have required a deliberate challenge to the authority of the Crown of which there is no evidence'.⁶⁹ On this last point, counsel invoked Professor Brookfield, who argued that Taranaki Maori who defended their lives and property against unlawful acts by the forces of the Crown were not in rebellion in terms of the common law, that a court might 'properly infer' that the Governor in Council who declared them to be in rebellion 'could not have applied his mind to the relevant facts', and that any resulting order and confiscation effected by it 'would then be invalid'.⁷⁰ We consider this argument after considering the Crown's response.

Claimant counsel also argued that some terms of the confiscation proclamation were not followed by McLean. He referred in particular to the promise of the proclamation that:

no land of any loyal inhabitant within the said district will be retained by the Government; and further, that all rebel inhabitants of the said district who come in within a reasonable time and make submission to the Queen, will receive a sufficient quantity of land within the said district for their maintenance.⁷¹

Counsel argued that neither of these promises was fulfilled. He referred in particular to the awarding of Kaiwaka in sole ownership to Tareha, which confiscated the rights of many 'loyal' Maori, and the failure to make provision for Ngati Hineuru, who were regarded as rebels. He noted also the Crown's failure to use the Compensation Court, which was supposed to determine claims for compensation under the New Zealand Settlements Act. Finally, in his comments on the application of the Act, counsel argued that it merely allowed the Crown to confiscate land belonging to 'rebellious tribes'. But, in fact, the Crown confiscated twice as much as land as Ngati Hineuru possessed (assuming that they were in fact in rebellion). This meant that lands of those 'who were not involved in any act of rebellion' were included within the Mohaka–Waikare confiscation district.⁷² In this respect, counsel picked up a finding from the Taranaki Tribunal that, because the New Zealand Settlements Act was 'confiscatory of

69. Document x39, p 50

70. Document M11(a), p 30; doc x39, p 51

71. Document x39, p 51

72. Ibid, pp 52–54

rights, it was to be strictly construed'. Accordingly, the Crown could not take more land than was necessary for the Act's purpose of 'keeping the peace', and to do so was illegal.⁷³

Claimant counsel also invoked various findings of the Taranaki Tribunal on Treaty breaches relating to the Crown's duty to act in 'good faith', its fiduciary obligations under the partnership principle, and its responsibility to recognise Maori's 'rights of autonomy' and their civil rights as British subjects.⁷⁴ He then claimed that:

- ▶ the New Zealand Settlements Act 1863 and amendments were in breach of the Treaty;
- ▶ the Crown's actions (specified above) in confiscating the Mohaka–Waikare Block were *ultra vires* the Act 'and/or in breach of the Treaty';
- ▶ by failing to determine clearly who was in a 'state of rebellion', the claimants had been prejudiced by subsequent costs and delays;
- ▶ the taking of land of loyal Maori had put them 'at the mercy of Crown officials' who delayed or obstructed the return of their lands (contrary to the promise of the 1870 agreement); and
- ▶ the Crown failed to inquire into the propriety of the confiscation through the Sim commission.⁷⁵

Claimant counsel then made submissions on the 1870 agreement and its implementation under the Mohaka and Waikare District Act 1870. These included that:

- ▶ there was a lack of evidence that the Crown undertook a major investigation of hapu and customary interests;
- ▶ there was confusion over boundaries and over blocks included in the confiscation;
- ▶ there was a failure to ensure that returned land remained inalienable (except for 21-year leases) and subject to a trust (the trust was also supposed to apply to Kaiwaka, though the 1870 Act failed to include this promise);
- ▶ there was a failure to issue any grants for the returned blocks, except for Kaiwaka (which was granted solely to Tareha); and
- ▶ there were defects in the lists of owners for the returned blocks, which defects should have been resolved when the Native Land Court sat in 1882.⁷⁶

We examine some of these complaints below, after we consider the Crown's submissions.

8.7.2 Crown submissions

The Crown made only brief submissions on the legality of the Mohaka–Waikare confiscation. As we noted in the previous chapter, in his general submissions counsel said, in quoting the Court of Appeal, that the Tribunal could merely express opinion on issues of legality and that

73. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), p 130 (doc x39, pp 53–54)

74. *Ibid*, p 132 (pp 55–56)

75. Document x39, pp 56–58

76. *Ibid*, pp 61–63

it was therefore ‘inappropriate and unnecessary’ for the Crown to respond with its own legal opinion (see sec 7.7.2). Counsel did, however, briefly respond to claimant counsel’s closing submission that the New Zealand Settlements Act 1863 was ‘illegal under contemporary English law’. Crown counsel said that not only was this ‘contrary to the evidence/legal opinion provided by the claimants themselves, it was also contrary to the conclusion reached by Professor Brookfield’.⁷⁷

Crown counsel stressed that the Tribunal was obliged to consider possible breaches by the Crown of the principles of the Treaty. But counsel was unwilling to consider whether the New Zealand Settlements Act was such a breach, saying that it was ‘rather too abstract to consider whether the statute itself can be regarded as a breach of Treaty principle’. He considered it ‘more productive to consider how the statute was actually applied’.⁷⁸ But counsel did not carry this examination very far. He said that the ‘proclamation of the Governor in Council [confiscating the land] cannot be deemed unlawful because the suggestion emanated from McLean’, and he added that ‘Strict adherence to the 1867 Order in Council became unnecessary’ because events, such as the statutory implementation of the agreement, overtook it. Counsel then said that, when a different agreement was reached, this was validated by statute.⁷⁹ Crown counsel made no reference to the Tribunal’s findings in other raupatu reports, or to the Crown’s settlement of Waikato Tainui’s raupatu claim in 1995. On being questioned on this omission by a member of the Tribunal and asked whether the Crown’s responses to other raupatu claims might influence its attitude to the Mohaka–Waikare confiscation, Crown counsel said that he had received no instructions on the matter, that the Mohaka–Waikare confiscation was a unique situation, and that the Crown would likely take a position on it after it had received the Tribunal’s report.⁸⁰

However, Crown counsel did comment on the 1870 agreement. He argued that the creation of the lists of owners for the returned blocks was ‘an open and well-publicised process’ and that the lists ‘almost certainly reflected the nature of authority in the Maori community at the time’.⁸¹ Though few Ngati Hineuru were included in the lists, Crown counsel argued that the ‘inclusion of Ngati Hineuru names is another indication that the proceedings in 1868–70 were not tainted by a systematic effort to punish by exclusion from the lists’.⁸² Crown counsel concluded that the 1870 lists expressed ‘a Maori view of the question of fair entitlement’ and ‘the realities of political and social authority at the time’. But counsel then qualified those statements:

77. Document x56, p 16. Crown counsel’s citing of the ‘opinion provided by the claimants’ was a reference to Boast’s evidence.

78. Document x56, p 16

79. Ibid, p 18

80. Closing submissions of Crown counsel, thirteenth hearing, 30 November 1999

81. Document x51, p 87

82. Ibid, p 88

The lists also reflect the influence of the victors. If Omarunui was a vindication of traditional leadership, decisions over ownership were a means of asserting this reinvigorated authority over parts of the district that had long been troublesome to the elder statesmen among the Heretaunga chiefs.⁸³

Counsel added that the 1870 arrangements were ‘a fair outcome in the circumstances then prevailing’, but he admitted that the Government had some responsibility to those who ‘were absent and lacked a voice’, such as Ngati Hineuru.⁸⁴ Captives from Omarunui and Petane who were still imprisoned on the Chathams were left out of the arrangements.

With specific regard to the lists for the inland Tatarakina and Tarawera blocks that were within the rohe of Ngati Hineuru, Crown counsel noted that, while the majority of the owners listed for Tatarakina were Ngati Hineuru, this was the case for only seven of the 28 owners listed for Tarawera. The rest of that list were coastal Ngati Kahutapere, who, according to Parsons, ‘would probably struggle to establish valid claims by occupation’, but may have seasonally used the land. Crown counsel did not dispute Parsons’ view, though he did suggest that Ngati Kahutapere might have gained rights to Tarawera through marriage with Ngati Hineuru. Counsel did, however, admit that proper provision was not made for Ngati Hineuru in the Tarawera block, though some of those who returned from exile were settled on part of the Te Haroto block.⁸⁵ We further discuss Crown counsel’s submissions on the subsequent fate of the titles for the Tatarakina and Tarawera blocks in chapter 10 and the coastal blocks of returned land in chapter 9.

Crown counsel also discussed the award of the Kaiwaka block in sole ownership to Tareha. He did not examine whether Tareha had any customary rights to the block, but he concluded that ‘it would be simplistic – and perhaps insulting to those involved at the time – to reclassify it as land retained by the Crown, but returned to a favoured ally’. On the contrary, counsel regarded the award as a ‘mark of Tareha’s position in that era, and recognition of the costs which that position imposed upon him’.⁸⁶ Although counsel mentioned some of those costs, including the cost of the war in 1866, neither he nor any of the claimant counsel fully examined Tareha’s indebtedness, despite McLean having said that this was the justification for ‘rewarding’ him with Kaiwaka. Nor did Crown counsel say why Tareha should have been paid off with land belonging to others. We examine the subsequent fate of the Kaiwaka block in our next chapter.

Finally, we note that Crown counsel commented on the lands retained by the Crown, among which were various blocks that the Crown had purchased before the war. Since the claimants raised no issue over these blocks, there is no need to pursue the matter. Two other

83. Ibid, p 90

84. Ibid, p 91

85. Ibid, pp 97–98

86. Ibid, p 117

8.7.3

blocks that the Government had begun to purchase – Waitara and Tangoio – were also retained by the Crown, though as confiscations (however, as mentioned in section 8.4, in 1871 the Crown did pay an additional £400 to loyalists as compensation for their interests in these and other blocks). Crown counsel also referred to the Tangoio block and suggested that it might originally have been seen as ‘an eligible site for a military settlement’ – counsel’s only reference to this requirement in the New Zealand Settlements Act for confiscation – but he admitted that the notion was not pursued. However, he did note the confiscation of the small blocks at Te Haroto, Tarawera, and Mohaka Crossing for ‘military and strategic reasons’.⁸⁷

8.7.3 Claimant submissions in reply

In his submissions in reply, counsel for Wai 299 attempted to bring the Tribunal back to a consideration both of previous Tribunals’ findings on raupatu and of Professor Brookfield’s opinion. He concluded that:

- ▶ ‘the Crown singularly failed to actively protect the Claimant hapu interests and taonga and act honourably, reasonably, sincerely and on the basis of justice, and utmost good faith towards them’;
- ▶ ‘the Crown took intentional and purposive steps to undermine the Claimant hapu’s rangatiratanga, treat them in a prejudicial manner and acquire their resources for its own benefit’; and
- ▶ ‘the Crown failed to govern properly and justly, and to apply and exercise its laws and powers properly, without any underlying desire of benefit, and without unfair discrimination between its pakeha and Maori subjects’.

Finally, counsel made a general comment on the evidence presented for the claimants, which, he said, had shown that ‘ultimately the principles of the Treaty were to be subordinated to the self-interest of the Crown’s policies for colonial settlement and pragmatic policies to enforce Pakeha control’. Counsel invited the Tribunal to consider this evidence, along with the body of jurisprudence developed by the courts, previous Tribunals, and commentators, when reaching its findings.⁸⁸

8.8 TRIBUNAL COMMENT

In our previous chapter, we made findings in relation to whether the forces of the Crown, in attacking parties of Maori dubbed as ‘Hauhau’ at Omarunui and Petane, were acting in breach of Treaty principles. However, we refrained from finding whether those Maori, in resisting, were in rebellion. In this chapter, we give our considered views on whether there

87. Document x51, pp 91–94

88. Document y2, p 32

could be said to have been rebellion or not. We also comment on the resultant confiscation, carried out by proclamation under the New Zealand Settlements Act 1863, and the subsequent arrangements for land within the confiscated district that were made by the agreement of 13 June 1870 and were subsequently validated by the Mohaka and Waikare District Act 1870. We make no findings on the agreement of 8 May 1868, since it was superseded by the 1870 agreement. These findings take into consideration those of previous Tribunal reports which have dealt with similar raupatu issues.

The question of whether or not there was a ‘rebellion’ is a legal one, and we were not provided with much argument from the various historical witnesses to help us to answer it. Boast and Battersby did not explore the matter. And, while Moorsom did choose to give some definition to the term, his attempt came under what we might describe as the ‘commonsense’ approach. Moorsom explained that ‘rebellion’ meant quite different things to Maori, on the one hand, and to officials and settlers on the other. For example, many settlers and officials viewed any Maori who supported the King movement or who espoused the Pai Marire faith as a ‘rebel’. By contrast, Maori who resisted the expropriation of their land by force of arms may not have actually seen themselves in ‘rebellion’ against the Queen’s authority. Moorsom then explained that, for his purposes, he would use ‘rebellion’ in its *Concise Oxford Dictionary* sense of ‘open resistance to authority, [especially] organised armed resistance to an established government’.⁸⁹

To assist us, we considered the evidence that Professor Brookfield gave to the Taranaki Tribunal, where he concluded from his study of both the mid-nineteenth century English common law rules of rebellion and the two New Zealand statutes that mentioned rebellion (the Suppression of Rebellion Act and the New Zealand Settlements Act, both of 1863) that the purpose of a rebellion had to be the violent overthrow of the Queen’s authority or her Government. This, he felt, was how New Zealand law defined rebellion in the 1860s.⁹⁰ However, and in rebuttal of this view, Crown counsel in the Tauranga inquiry quoted the works of leading eighteenth- and nineteenth-century English legal authorities such as William Hawkins. In his *A Treatise of the Pleas of the Crown*, Hawkins wrote that:

it is to be observed, that not only those who directly rebel against the king, and take up arms against him in order to dethrone him, but also in many other cases, those who in violent and forcible manner withstand his lawful authority, or endeavour to reform his government, are said to levy war against him.⁹¹

Were such a definition to be adopted, it could be said that the refusal to surrender at Omarunui and Petane, which came after a call to capitulate, and the armed resistance shown to the Government forces (even if done in self-defence), constituted ‘rebellion’.

89. Document U14, p 3

90. FM Brookfield, ‘Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu (Particularly in Taranaki and the Bay of Plenty)’, report commissioned by the Waitangi Tribunal, 1996 (Wai 143 RO1, doc M19(a)), para 4.3

91. Quoted in Wai 215 RO1, doc 02, para 44

Our view, however, is that the standard English common law approach required modification to New Zealand conditions, especially in the light of the Treaty but also since the English Laws Act 1858, which confirmed the introduction of English law to New Zealand from 1840, qualified this as being ‘so far as [is] applicable to the circumstances of the said Colony of New Zealand’. This was taken into account in 1863 when the former chief justice, Sir William Martin, wrote to the Native Minister in response to the proposed New Zealand Settlements Act. Martin argued 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 long been recognised and established’.

He thus advocated a less rigid approach be taken towards Maori than that foreshadowed by the legislation.⁹² We consider that Martin was right, and that Brookfield’s suggestion that, for ‘rebellion’ to have existed, there had to be concerted and violent action for the purpose of overthrowing the State, is thus closer to the mark.

There was also an indirect definition of ‘rebellion’ within the New Zealand Settlements Act itself that we need to consider. Although the 1863 Act allowed the Governor to proclaim a district confiscated once he was satisfied that any tribe or section or considerable number of a tribe were in rebellion against the Crown, it lacked a specific definition of ‘rebellion’. The Act merely excluded certain persons from being able to receive compensation (which was to be awarded by a Compensation Court). As section 5 of the Act explained, excluded from compensation were those who:

- ▶ carried arms or made war against the Queen or the forces of the Crown;
- ▶ ‘adhered to aided assisted or comforted any such persons’;
- ▶ ‘counselled advised induced enticed persuaded or conspired with’ any such person;
- ▶ ‘in furtherance or in execution of the designs of any such persons’, were involved in ‘any outrage against person or property’; or
- ▶ refused to give up any arms in their possession after having been required to do so by the Governor by proclamation in the *Government Gazette*.

Moorsom has said that ‘It is difficult to see how any member of the Omarunui and Petane parties could be regarded as fitting any of the first four categories. Nor does McLean’s surrender ultimatum appear to conform to the requirements of the fifth category.’⁹³ We agree, except that we note that the Pai Marire forces at both places did carry arms, though they only used them in self-defence on being attacked (we also note that, at that time, most people, Maori and Pakeha alike, carried arms). Arguably, in ‘adhering’ to Pai Marire, those at Omarunui and Petane might have come within the second definition. Yet, we do not agree that by joining Pai Marire these groups were in rebellion. Moreover, even if we were to conclude that the Pai

92. William Martin, ‘Observations on the Proposal to Take Native Lands under an Act of the Assembly’, 16 November 1863, AJHR, 1864, E-2, app, p 8

93. Document U14, pp 139–140

Marire forces were rebels according to the above definitions, they were never able to prove otherwise, since the Compensation Court never sat in relation to the Mohaka–Waikare confiscation.

There is perhaps one moot point on the issue of whether there was ‘rebellion’ at Omarunui. Brookfield argued that, under the common law, persons had a right to defend ‘house and home’ from unjustified attack, a point which was accepted by the Taranaki and Ngati Awa Tribunals and which has also been employed by counsel for Wai 299. Brookfield applied that argument to the defence by Wiremu Kingi and his people of their kainga at Waitara in 1860, the occasion for the beginning of the Taranaki war. However, he added that this right of defence did not allow a counter-attack, especially one outside the home territory, and thus in Taranaki it did not justify the attack by Ngati Ruanui on settler homes south of New Plymouth after the invasion of Waitara.⁹⁴ Brookfield was not asked to comment on the Mohaka–Waikare confiscation but we must, bearing in mind our preliminary discussion in the previous chapter in relation to the opinions expressed by counsel.

The situation is not clear-cut. Many, though probably not a majority, of the ‘Hau Haus’ ostensibly in rebellion at Omarunui and Petane were Ngati Hineuru. They had moved out of their home territory into that of various coastal Ngati Kahungunu hapu. At Omarunui, they occupied a kainga belonging to Paora Kaiwhata; several of their leaders, including Panapa, had arrived there on Kaiwhata’s invitation a few days ahead of the main body. Kaiwhata and his people then left Omarunui and went to Pa Whakairo. While at Omarunui, Panapa’s party did not engage in any warlike activity. They remained there for a week, parleying with McLean and officials. Despite rumours that they intended to attack outlying settlers and loyal Maori and then Napier, Panapa’s people did none of these things. They were surrounded by armed militia in the night, and at dawn were given an ultimatum to surrender. When they failed to do so within the allotted time, they were attacked. Only then did they fight back. Likewise, Te Rangihiroa’s party were surrounded in broad daylight as they were proceeding towards Petane, and they too were attacked when they failed to lay down their arms, according to the report by the commanding officer of the attacking party, Fraser. Thus, the two groups were attacked, not in their home territory, but in the territory of others, though they had not themselves embarked on aggressive action or a ‘counter-attack’. Ultimately, and while the issue is open to debate, we do not believe that the fact that they fired only in defence of their lives and not also in defence of their own homes gives sufficient cause to conclude that they were therefore in rebellion.

In this respect, it is revealing to quote from a dispatch of the Secretary of State for the Colonies, the Earl of Carnarvon, to Governor Grey, on learning about the affair from newspapers rather than from the Governor himself:

94. Document M11(a), pp 30, 35–45; doc x39, p 51

you leave me to learn from the newspapers that in the neighbourhood of Hawke's Bay a body of Natives, who refused to give up their arms, had been attacked by the Colonial Forces in their pah (which is said to have been unfortified) and driven into the bush, 23 of them being killed and a like number wounded . . . I need hardly observe that if at any time it were alleged in this country that these affairs described by the Colonial Press as brilliant successes, were, in fact, unwarranted and merciless attacks on unoffending persons, I have no authentic means of reply afforded me by your Despatches.⁹⁵

We concluded in our previous chapter that there was no good cause for the military action against Ngati Hineuru and the others at either Omarunui or Petane unless further attempts to negotiate a peaceable solution had proved fruitless. Nor was there any good cause to use those engagements to pretend that those attacked were in rebellion and thus to confiscate their land.

We note that the proclamation of 12 January 1867 was phrased according to the provisions of the New Zealand Settlements Act 1863, which was legally proper, but some of the statements in it had only a fleeting coincidence with the facts relating to the so-called 'rebellion' in Hawke's Bay. As we indicated in our previous chapter, there was no semblance of 'rebellion' (under even the strictest English legal definition) anywhere in Hawke's Bay before the attack on Ngati Hineuru and the others at Omarunui and Petane on the morning of 12 October 1866. There was no fighting thereafter until Te Kooti invaded the northern part of the district after the confiscation area had been proclaimed. Although Crown counsel has claimed that the arrival of Panapa's party and their eventual occupation of Omarunui constituted a threat to law and order, we have found no evidence of this. We do not accept Crown counsel's summation of the events leading to the engagement at Omarunui as constituting 'rebellion' in terms of the New Zealand Settlements Act.

Overall, we conclude that there was no 'rebellion' at either Omarunui or Petane, even in the firing in self-defence. We thus disagree with Crown counsel's comment that, 'Taken as a whole, these matters would almost certainly have led any Court of the day to conclude the Hauhau *had levied war*, and an unjustified armed resistance to a legitimate assertion of authority by the state – hence 'rebellion' as contemplated by the New Zealand Settlements Act (emphasis added).⁹⁶

We also say this in the knowledge that, as Crown counsel reminded us, the Tribunal's pronouncements on legal matters are not determinative of the questions, and our primary role is to consider matters in terms of breaches of Treaty principle. We nevertheless believe, as we go on to say below, that the Crown had a Treaty-based obligation to adhere to the law in matters affecting Maori interests.

95. Carnavon to Grey, 28 December 1866, BPP, vol 14, p 839

96. Document x56, p 14

The Crown also invited us to apply to the Crown's actions at Omarunui and Petane the test of reasonableness. As set out in President Cooke's judgment in the *Lands* case, this states that the two Treaty partners must behave reasonably and with good faith toward one another.⁹⁷ In particular, the Crown asked: 'Was it reasonable to perceive a threat to order? Were reasonable steps taken to neutralise the perceived threat? And were the measures taken after the fighting reasonable?'⁹⁸ Any reasonable response to the unfolding events would in our view need to be based on an objective assessment of those events, not on false premises. We believe, as we have stated in our previous chapter, that these preconditions were not fulfilled and therefore the Crown's response on the three questions was not 'reasonable' in Treaty terms. The Crown was, in effect, acting in collaboration with one faction of its Treaty partner to suppress another faction.

Next, there is the question of whether the confiscation was 'legal'. It was said by Wai 299 counsel in opening submissions that the claim involved 'the unlawful confiscation of some 340,500 acres of land'.⁹⁹ In closing submissions, counsel also argued that 'the introduction of the New Zealand Settlements Act 1863 in New Zealand by Parliament was illegal under contemporary English law'. In particular, the confiscation was effected by statute 'without conforming to the common law requirements of the English doctrine of forfeiture'.¹⁰⁰ We think that it is clear that the introduction of the New Zealand Settlements Act was valid. The legislation was approved on 26 April 1864 by Edward Cardwell, the British Secretary of State for the Colonies, albeit reluctantly (he described it as a 'standing qualification of the treaty of Waitangi'), and became law.¹⁰¹ In its *Taranaki* and *Ngati Awa Raupatu* reports, the Tribunal concluded that the New Zealand General Assembly had the authority to pass the Act.¹⁰² However, we agree with claimant counsel that the Crown failed to comply with the confiscation legislation in key respects and that, to this extent, the confiscation was not lawful. Similar conclusions have been made by the other raupatu Tribunals. The Taranaki Tribunal found four aspects of the Crown's operations which did not comply with the statute and were unlawful. That Tribunal dismissed the subsequent validating legislation since it did no more than 'validate illegalities arising from want of proper process and form'.¹⁰³ The Ngati Awa Tribunal also described several failures by the Crown to comply with the terms of the New Zealand Settlements Act.¹⁰⁴

97. *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641 (CA)

98. *Ibid.*, pp 13–15

99. Document M11, p 2. This figure would have to include various blocks like Moeangiangi and Maungaharuru that the Crown felt it had already purchased. See our note at the very start of this part of the report.

100. Document X39, pp 20–21

101. Cardwell to Grey, 26 April 1864, RDB, vol 17, p 6684

102. Waitangi Tribunal, *The Taranaki Report*, p 126; Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 65

103. Waitangi Tribunal, *The Taranaki Report*, pp 127–129, 131

104. Waitangi Tribunal, *The Ngati Awa Raupatu Report*, pp 6–66

With regard to the Mohaka–Waikare confiscation, then, we consider that various aspects of it were also unlawful. According to the legislation, the Governor in Council did not have to prove or demonstrate that certain tribes or portions thereof were in rebellion; he merely had to be ‘satisfied’ that they were. But we believe that it was implicit that he had to be able to prove the matter were the confiscation challenged in a court of law; he could not be ‘satisfied’ without good evidence. The Taranaki Tribunal concluded that there the Governor made insufficient inquiry into the facts of the matter to be in compliance with the Act.¹⁰⁵ Although we have no documentary evidence of an exchange between Premier Stafford and Grey or between McLean and Grey, it is likely that Grey was content to accept McLean’s advice to Stafford, quoted above, as satisfying the requirements of the Act. In fact, in his memorandum recommending confiscation, McLean had merely alleged that only half of the district proposed for confiscation belonged to ‘Natives who were taken in arms at Omarunui’. As Moorsom pointed out, McLean ‘offered no justification for taking the other half’.¹⁰⁶

In the other raupatu reports, the Tribunal has pointed out that the New Zealand Settlements Act required a four-stage process to give effect to a confiscation. First, when the Governor was satisfied that a tribe or a section of a tribe was in rebellion, he could proclaim any district in its possession to be subject to the Act. Secondly, the Governor needed to set apart within any such district eligible sites for settlement. Thirdly, for the purposes of such settlements, he could take any land within such a district and declare that land to be Crown land. Fourthly, those whose land had been taken but who were loyal were to be compensated according to the directions of the Compensation Court. The Tribunal noted in its *Taranaki* and *Ngati Awa Raupatu* reports that in those cases the Government had truncated this staged process by declaring all the land within the confiscation districts to be sites for settlement, though in fact little of that land was intended or used as such.¹⁰⁷

This procedure was followed again in the Mohaka–Waikare proclamation, since, as we noted above, all the land in that district, apart from that already held under grant from the Crown (and we are not aware of any such land), was taken by proclamation ‘for the purposes of settlements’. Under section 3 of the New Zealand Settlements Act, these were to be ‘eligible sites for settlements for colonisation’; although the Act did not say so, it was assumed that these sites would be used for military settlements, strategically placed on the borders. As we have noted above, no such settlements were ever established in the Mohaka–Waikare district, apart from the Armed Constabulary camps at Te Haroto and Tarawera and the outpost at Titiokura, and these were redoubts rather than ‘settlements’. The Government thus did not conform to this aspect of the Act and was acting illegally. As counsel for the Wai 299 claimants pointed out, the Government confiscated far more land than was needed (if indeed any land

105. Waitangi Tribunal, *The Taranaki Report*, p 127

106. Document R3, p 50

107. Waitangi Tribunal, *The Taranaki Report*, pp 118–121, 126–127; Waitangi Tribunal, *The Ngati Awa Raupatu Report*, pp 65–66

was needed) to protect the strategic corridor to Taupo; and far more land than was possessed by Ngati Hineuru (if indeed all or any of them could be regarded as being in rebellion). Over two-thirds of the confiscation area belonged to other hapu – hapu that were not involved, or were not significantly involved, in the Omarunui or Petane engagements.¹⁰⁸ Once again, Brookfield's view was called on by Wai 299 counsel: 'Orders in Council under the New Zealand Settlements Act purportedly taking for settlements the whole of the land in a District declared under s2 were invalid as being beyond the powers conferred by that Act.'¹⁰⁹ The Taranaki Tribunal accepted this part of Brookfield's opinion, as do we.¹¹⁰ We also consider that the failure to allow the claims of loyalists to be heard in a Compensation Court was in clear contravention of the legislation, as we discuss below. As we have noted, the New Zealand Settlements Act was perfectly valid, but in instances such as those we have just described, it was not legally applied.

Crown counsel did not comment on the application of the Act and was content to discuss only the legality of the Act itself. On that, Crown counsel reminded us that the Act had to be measured against the principles of the Treaty. We agree with the Crown that this is our 'primary role'. However, we do not accept the Crown's consequential assumption that this primary role 'frees the Tribunal from the need to consider whether or not the Crown has acted within the four corners of the law'.¹¹¹ Indeed, as Crown counsel reminded us, one of the prime considerations for both sides in agreeing to the Treaty was 'the promise of order', which we presume means law as well as order.¹¹² Thus, if the Crown were to expect Maori to obey the law, it had an obligation itself to stay within the four corners of that law. This will be discussed further in our findings section.

As we noted above, the confiscation proclamation concluded with the assurance that 'no land of any loyal inhabitants within the said district' would be retained and, further, that all rebels who submitted to the Queen 'within a reasonable time' would receive sufficient land for their own needs within the said district. Boast reminded us that 'Ngati Hineuru got no opportunity to come in and make submission – they were in custody in the Chathams, or dead, or scattered.'¹¹³ The New Zealand Settlements Act 1863 made no provision for the return of land to those not deemed to be in rebellion; it merely provided for monetary compensation to be awarded to them by a Compensation Court. But section 9 of the New Zealand Settlements Amendment and Continuance Act 1865 allowed land within the same province as the confiscation to be used as compensation. The proclamation was more generous than this – it allowed loyalists to retain their own land. Compensation in the form of cash or land was supposed to be awarded as a result of the deliberations of the Compensation Court,

108. Document M11, pp 18–20

109. Document M11(a), p 34; doc x39, p 54

110. Waitangi Tribunal, *The Taranaki Report*, p 127

111. Document x56, p 10

112. *Ibid*, p 7

113. Document J49, p 16

which had the responsibility under the New Zealand Settlements Act of denying compensation to any who were deemed to have been in rebellion. No Compensation Court ever sat to consider claims to compensation for confiscated land in the Mohaka–Waikare area – not even to bless out-of-court settlements, as occurred with respect to the Taranaki and Bay of Plenty confiscations. Thus, while such blessings of out-of-court settlements had been validated by section 6 of the New Zealand Settlements Acts Amendment Act 1866, the final Mohaka–Waikare arrangement (the 1870 agreement) had to be validated by special legislation. We discuss this below; here, we merely note that this was yet another instance, comparable to numerous others noted in the Tribunal’s other raupatu reports, of the Government paying little heed to the main requirements of its principal Acts or proclamations made under them (in the comfortable knowledge that it could always legalise illegalities by validating legislation).

Even where land was returned to customary owners, it was returned not in customary tenure but rather to individual owners, which the Taranaki Tribunal has already found contravened ‘the tribal right’.¹¹⁴ Moreover, it was returned, as the Mohaka and Waikare District Act 1870 described it, in fee simple, though subject to restrictions on its alienation. This was in keeping with land confiscations in other areas, since the confiscation under the New Zealand Settlements Act extinguished customary tenure and vested the land in the Crown, which could then grant the land under a certificate of title either to colonists or to Maori (including former customary owners). Nevertheless, listing a number of individuals who were entitled to certificates of title to a particular block of land was only the first step in the creation of an effective legal title. The block had to be subdivided and surveyed into individual lots and the fees paid before Crown grants could be issued. The Tribunal found in the Taranaki and the Bay of Plenty confiscations that there were often lengthy delays before Crown grants were issued. Indeed, when they were issued, the grants often went immediately to Europeans or to the Crown who had already made payments on the land and had got a lien on it by paying survey charges.

As we have indicated, the 1870 agreement over the Mohaka–Waikare land was silent as to who was responsible for the cost of surveys for the returned blocks. In 1883, however, the resident magistrate at Napier, Captain George Preece, said that it was always understood that the Government was to bear the cost of surveys. To register survey liens against the titles would be a ‘breach of faith’, since it was understood that those Maori named in the agreement were to have a ‘Crown title free of costs’.¹¹⁵ But, in fact, this promise was never honoured. According to Boast, a Crown-granted title was never completed for any of the blocks except Kaiwaka, and in the twentieth century the Crown was to show no hesitation in imposing costly survey liens on non-sellers on partitioning following Crown purchasing. The

114. Waitangi Tribunal, *The Taranaki Report*, p 139

115. Document J28, p 86

non-completion of the titles and the imposition of survey costs are among the more serious of the Crown's failures to honour the 1870 agreement.¹¹⁶

As we noted above, there was to be a restriction on the alienation of the returned Mohaka–Waikare land, apart from leasing for up to 21 years. The restriction was a useful device for accommodating the Pakeha runholders who already had extra-legal leases over much of the land in the district. But, as we shall explain in more detail in chapter 9, the Crown did not regard itself as bound by the inalienable conditions (and was steadily buying up individual Maori interests), though it did enforce these conditions or use special proclamations to prevent European lessees from converting their leases into freehold. For some of the blocks, that process lasted well into the twentieth century.

The question remains as to whether or not those named had customary rights to the specified blocks. Certainly, the confiscation proclamation promised that 'no land of any loyal inhabitants within the said district will be retained by the Government' and that was repeated in the 1870 agreement. In other words, they were to get back all of their former land. This promise was breached in two and possibly more ways. First, it is most likely that there were 'loyal claimants' with customary rights to blocks that were retained, especially to the Tangoio block on the coast. As Ormond reported to McLean, that point was made by Tareha when he asked for compensation for the interests that he and other loyal claimants had in the blocks that were being retained by the Crown. As we indicated above, the claimants received compensation of £400. We have no way of knowing, at this remove, whether the 29 signatories to this arrangement were representative of the 'loyal claimants' as a whole, although we note that a large number of Maori assembled to receive the payment. However, the fact remains that the Crown retention of lands such as Tangoio breached the confiscation proclamation and the 1870 agreement, and the payment was not a negotiated purchase but a post-facto compensation. We also have some doubts as to whether £400 was a sufficient payment. Tareha was anxious to receive some compensation, but, as Ormond noted, he sought only 'a small money payment' – his primary motivation was no doubt the recognition of his rights. Tareha was, after all, handsomely rewarded in other regards, with the Crown more motivated to accommodate him than to address the rights of 'loyal claimants' per se. As McLean told Ormond in June 1870, 'the Waikare question[,] so long as it is settled in such a manner as to preserve land for Tareha himself[,] may be disposed of in any manner you may deem most judicious'.¹¹⁷

Secondly, it is inconceivable, in terms of Maori customary rights to land, that Tareha could have had a sole right to the whole of the Kaiwaka block. It therefore follows that other 'loyal claimants' to that land were dispossessed. As Judge Browne remarked in 1939, 'it is very improbable that Tareha alone would have been entitled to this area if this block had been dealt

116. Ibid

117. McLean to Ormond, 6 June 1870 (doc w1, p205)

with by the [Native Land] Court as uninvestigated Native land'.¹¹⁸ According to Boast, the 'rightful owners' of Kaiwaka were principally Ngati Tu, whose leading chiefs, Anaru Kune and Te Teira Te Paea, were named in the lists for several coastal blocks.¹¹⁹ Finally, there is the more difficult question, which we address in more detail below, of whether any loyal claimants who had customary rights were deliberately or inadvertently left out of the 1870 lists. Boast calculated that some 177 individuals were included in the 1870 lists, but based on what he presumed to be the likely population of the area, he estimated that some 400 or 500 others were excluded. This figure does not include Ngati Hineuru rebels, who were also left out of the lists.¹²⁰ However, it is difficult to resolve such a question with certainty.

The confiscation proclamation also promised that 'all rebel inhabitants of the said district who come in within a reasonable time and place and make submission to the Queen, will receive a sufficient quantity of land within the said district for their maintenance'.¹²¹ It is not known whether any 'rebel inhabitants' did make submission 'within a reasonable time' (whatever that may have been). However, it seems likely that, by the time the 1870 agreement was negotiated on 13 June, many of those previously regarded by the Government as rebels, including some of those who had escaped from the Chathams with Te Kooti, would have resumed occupying their former but now confiscated land. But the 1870 agreement was 'between the Government and the loyal claimants' and said, after specifying certain blocks of land to be retained by the Government, that 'the whole of the Block described in the proclamation . . . shall be conveyed to the loyal claimants' under various conditions relating to title. The schedule to the agreement listed the blocks to be returned and the individuals who were to receive certificates of title for those blocks. Presumably by then all of these individuals had been deemed to be 'loyal claimants', though as we have noted above, some of those named for Tatarakina had previously been regarded as rebels but had had their names quietly inserted in the schedule.

At the Native Land Court hearing in 1882 that considered issuing certificates of title to those named in the 1870 agreement (see sec 9.14), the chief Manaena asserted that, in the schedule to the 1870 agreement, 'would be found the names of many persons who at the time of the confiscation of the [Mohaka–Waikare] block were known to be in open rebellion while the names of others who had always been loyal to the government were, for some reason or other, omitted'.¹²² According to Wai 299 counsel, local Maori at that hearing were unanimous in insisting that the 1870 lists be abandoned and the titles considered afresh otherwise they would walk out of the court. Judge Brookfield apparently sought advice from Wellington, and

118. Judges James W Browne and H Carr, 'Report and Recommendation on Petition No 66 of 1936, of W Baker and Others, Petition No 262 of 1936, of Kaperiera Te Pohe and Others, and Petition No 301 of 1936, of Matewai Utiera and Others, re Tarawera Block', 21 September 1939, AJHR, 1939, G-6A, p 6 (doc J28, p 84)

119. Document J28, p 85

120. Ibid, p 84. Moorsom, on the other hand, says that 165 persons were named in the lists: doc R3, p 72.

121. Document J28, p 58

122. As reported by Judge Brookfield (as quoted in doc J28, p 97)

he appears to have been instructed to restrict certificates of title to those named in the 1870 agreement or their successors.¹²³ This, he did, but without Maori participation. However, so many errors were made in listing the 1870 owners and their successors that a Bill to correct them was introduced into Parliament. It was not passed, but subsequently numerous petitions were lodged asking for a new inquiry. We discuss these and problems arising from the 1870 lists in our next two chapters.

8.9 FINDINGS

We find that the Crown, in its confiscation of the Mohaka–Waikare block, its retention of certain blocks, and its return of the balance of the land to named individuals, breached the principles of the Treaty of Waitangi. We find that the Maori owners of the confiscated district were prejudiced thereby.

More specifically, our findings are as follows:

- (a) As President Cooke said in the *Lands* case with respect to the principle of partnership, ‘For their part the Maori people have undertaken a duty of loyalty to the Queen’. The peaceful movement of the parties led by Panapa and Te Rangihiroa into lowland Hawke’s Bay and their subsequent behaviour, which included defending themselves when attacked by forces of the Crown, did not, in our view, constitute a ‘rebellion’. We accept claimant counsel’s view, based on Professor Brookfield’s paper, that ‘No state of rebellion or civil war in terms of English common law existed at the time of McLean’s invasion of Omarunui’ and the ambush near Petane.¹²⁴ The two Maori parties were entitled to all the rights and protections provided by the Treaty, which included the protection of their property (under article 2) and their rights and privileges as British subjects (under article 3). These latter rights included freedom of movement, freedom from imprisonment without trial, and freedom of religious expression (which was also guaranteed in Hobson’s promise at Waitangi to protect freedom of religion as well as Maori tikanga). All of these rights were breached by the Crown, as were the principles of partnership and reciprocity. However, we also note that, in so far as they may have taken the property of others, Panapa’s party was liable to prosecution under the criminal law.
- (b) It follows that, since there was not, in our view, a rebellion, the confiscation of the Mohaka–Waikare district under the New Zealand Settlements Act 1863 was a breach of the provisions and principles of the Treaty.
- (c) The New Zealand Settlements Act, though good in law, breached article 2 of the Treaty, which laid down that the Crown could purchase only such land as Maori were

123. Document x39, p 64

124. *Ibid*, p 37

willing to sell. In exercising kawanatanga, the Crown had to pay due respect to Maori rangatiratanga, and the Act clearly breached this principle of reciprocity.

- (d) The New Zealand Settlements Act needed to be legally applied. We have found that it was not in fact applied correctly in certain key respects, such as the requirement for the Governor to set apart 'eligible sites for settlement' (presumably, military settlement). No such sites were ever set aside, and as was the case in Taranaki and elsewhere, the whole district was confiscated, even though the settlement of large parts of it was never intended. The temporary garrisoning of various redoubts on confiscated land, such as at Tarawera and Te Haroto, did not constitute 'settlement' in terms of the Act. As a matter of good faith, the Crown had a duty to keep within the four corners of the law.
- (e) The Governor in Council had to be 'satisfied' that a tribe or a significant portion of a tribe was in rebellion before he could issue a proclamation confiscating a district. We have concluded that implicit in this requirement was the need for the Governor to have a sound basis in proof for his decision. However, Governor Grey was furnished with a paucity of information – certainly not enough to justify the taking of that half of the district that belonged to Maori who were not reported to have taken up arms at Omarunui or Petane. If the confiscation had been tested in a court of law, Grey may well have been shown not to have had sufficient evidence to justify his 'satisfaction'. In this case, the Crown did not act reasonably or in good faith.
- (f) Even if we were to conclude (which we do not) that Ngati Hineuru were in rebellion, we find that land far beyond their takiwa was taken under the confiscation proclamation. The land taken included a great deal that belonged to various hapu that, with the possible exception of a few individuals, were not involved in the resistance at Omarunui and Petane. Even where some individuals were involved, they did not constitute a 'significant' portion of the tribe. We find that the Crown breached the principle of equal treatment and that Ngati Hineuru suffered thereby.
- (g) Despite the provision for it in the legislation, no Compensation Court ever sat to consider claims in the Mohaka–Waikare confiscated district, and therefore there was no judicial determination of whether persons affected by the confiscation were in rebellion. This lack of due process breached the Crown's duty of active protection.
- (h) Despite the wording of the 1867 confiscation proclamation, land of 'loyal inhabitants' was taken. This was in breach both of the proclamation and of the Crown's duty of active protection and its duty to act reasonably and in good faith. It also breached the provisions of article 2 of the Treaty.
- (i) The retention by the Crown of certain confiscated blocks was unjustified and was certainly not for the purpose of military settlements, as the Act required. It was also in clear breach of article 2 guarantees to Maori.

- (j) By 'returning' land to named individuals (in some cases to persons who had no customary right to it), the Crown was in breach of the principle of options, as was also pointed out by the Taranaki Tribunal when it discussed land being similarly returned in its inquiry district.
- (k) By not honouring its promise to bear the cost of surveying the returned blocks, the Crown breached not only the 1870 agreement but also its obligation to act towards its Treaty partner in good faith.
- (l) The Crown failed to enforce the restrictions on alienation placed upon the returned blocks, except where such restrictions suited its own purposes (as chapter 9 outlines). Again, this was a breach of the Crown's duty to act in good faith.

CHAPTER 9

THE AFTERMATH OF THE RAUPATU: THE SEAWARD BLOCKS

9.1 INTRODUCTION

In this chapter, we discuss the fate of the seaward blocks inside the Mohaka–Waikare confiscation district. Then, in our next chapter, we discuss the inland blocks. We have adopted this seaward–inland division partly because of the length of our discussions but also because it makes sense in geopolitical terms. The dividing line between the two is the Maungaharuru Range, which neatly bisects the Mohaka–Waikare district. Though not all the seaward blocks have a sea frontage, all of them have a predominantly seaward orientation, despite being heavily fragmented by steep hills and deep river valleys. The high country inland blocks, on the other hand, have an inward orientation towards the volcanic plateau and Lake Taupo and a tenuous coastal connection through the Titiokura track and the Waiohinganga Valley (later to become the Taupo–Napier highway).

The geographic division coincides to a considerable extent with a kinship division, with Ngati Hineuru being the dominant grouping in the inland blocks, and various hapu of Ngati Kahungunu, such as Ngati Tu and, to the north, Ngati Pahauwera, being dominant in the seaward blocks. However, the various groups overlapped, as we have noted in previous chapters, and there was often friction on the borderlands between them. Though Ngati Hineuru had connections with coastal hapu, they had even closer contacts with Ngati Tuwharetoa of the Taupo district.

We note that several of the seaward blocks, although within the district encompassed by the 1867 proclamation, were not subject to the 1870 agreement. These blocks included two purchased by the Crown before the confiscation: the large coastal Moeangiangi block (which included the 2000-acre Arapaoanui block and the Otumatahi block) and the smaller Maungaharuru block further inland. Since we discussed the Crown purchase of these blocks in chapter 6 and the claimants raised no issues in relation to them, no further discussion is needed here. In chapter 6, we also discussed two blocks on the south-east fringe of the Mohaka–Waikare district, Te Pahou and Petane. Te Pahou was excluded from the confiscation district since it had been passed through the Native Land Court on the eve of the confiscation; Petane was included in the district but was not regarded as confiscated land.

We begin this chapter with a brief comment on two blocks retained by the Crown as confiscated land: Tangoio and the Whakaari landing site. Then, we discuss the ‘returned’



Fig 13: View from the road to Waipatiki. Photograph by Paul Hamer.

blocks, beginning with the southerly Kaiwaka block, which was ‘returned’ to Tareha in sole ownership, before moving progressively through the nine other blocks, which were returned in multiple ownership. These were Pakuratahi, Tangoio South, Arapaoanui, Purahotangahia, Tutira, Tatara o te Rauhina, Te Kuta, Awa o Totara, and Heru a Tureia. All of these blocks are outlined in map 30.

9.2 THE CONFISCATED BLOCKS

9.2.1 Tangoio

We have not traced the fate of the Tangoio block after the confiscation, though at the time of the confiscation European pastoralists, including a Mr Towgood, were in negotiation for it, and probably gained private titles.¹ Today, virtually all of it is in private ownership.

9.2.2 The Whakaari landing site

The 10-acre Whakaari landing site on the Whakaari headland, formerly the site of a shore whaling station, was declared Crown land by section 6 of the Mohaka and Waikare District Act 1870 (which gave effect to the 1870 agreement). The site was to remain a reserve ‘for a landing-place for all Her Majesty’s subjects and as a fishing ground for persons for the time

1. Document J29, p 165

being entitled to any part of the said Mohaka and Waikare District not declared by this Act to remain vested in Her Majesty'. In other words, it was to be a fishing ground for all Maori owners of the returned blocks, though the reserve was still Crown land, having been confiscated from Maori. According to Boast, the landing site remains Crown land, though for many years the Crown leased it to the Pakeha farmers who leased the adjoining land. However, in doing so, the Crown did not ensure that Maori or anyone else retained rights of access to the beach.²

9.2.3 Claimant submissions

Although the Wai 299 claimants and other claimants have presented numerous submissions on the confiscation in general, they have not made submissions on the particular confiscated blocks discussed in this section, apart from a brief assertion by Wai 299 counsel in his opening submission that the Crown's retention of the Waitara and Tangoio North blocks was 'in breach of the Treaty and contrary to the terms of the Proclamation which promised to return all lands to the original owners not alleged to have been engaged in a rebellion'.³ However, that claim was not followed up by counsel in subsequent submissions.

9.2.4 Crown submissions

Crown counsel discussed the blocks briefly, putting them into different categories and explaining why, in the Crown's view, they were retained as confiscated land. Counsel suggested that the Tangoio block 'might have been originally viewed by the Crown as an eligible site for a military settlement' and was accordingly retained by the Crown in the 1868 agreement. However, by the time the 1870 agreement was drawn up, a military settlement there was no longer needed. Notwithstanding this, the Crown decided to retain the land, possibly because it had earlier made a payment on it.⁴ But, by 1871, it had begun to sell the land. Finally, counsel noted that £400 was paid in February 1871 to complete the settlement of (loyalist) claims to various blocks retained by the Crown.

9.2.5 Tribunal comment

As we said in chapter 8, the retention by the Crown of certain confiscated blocks was unjustified and certainly not for the purpose of military settlements, as the New Zealand Settlements Act 1863 required. The Crown appears to have retained the Tangoio, Maungaharuru, and Moeangiangi blocks, however, on the basis of initial payments made or earlier transactions carried out. While the Crown may have been justified in retaining Moeangiangi (see

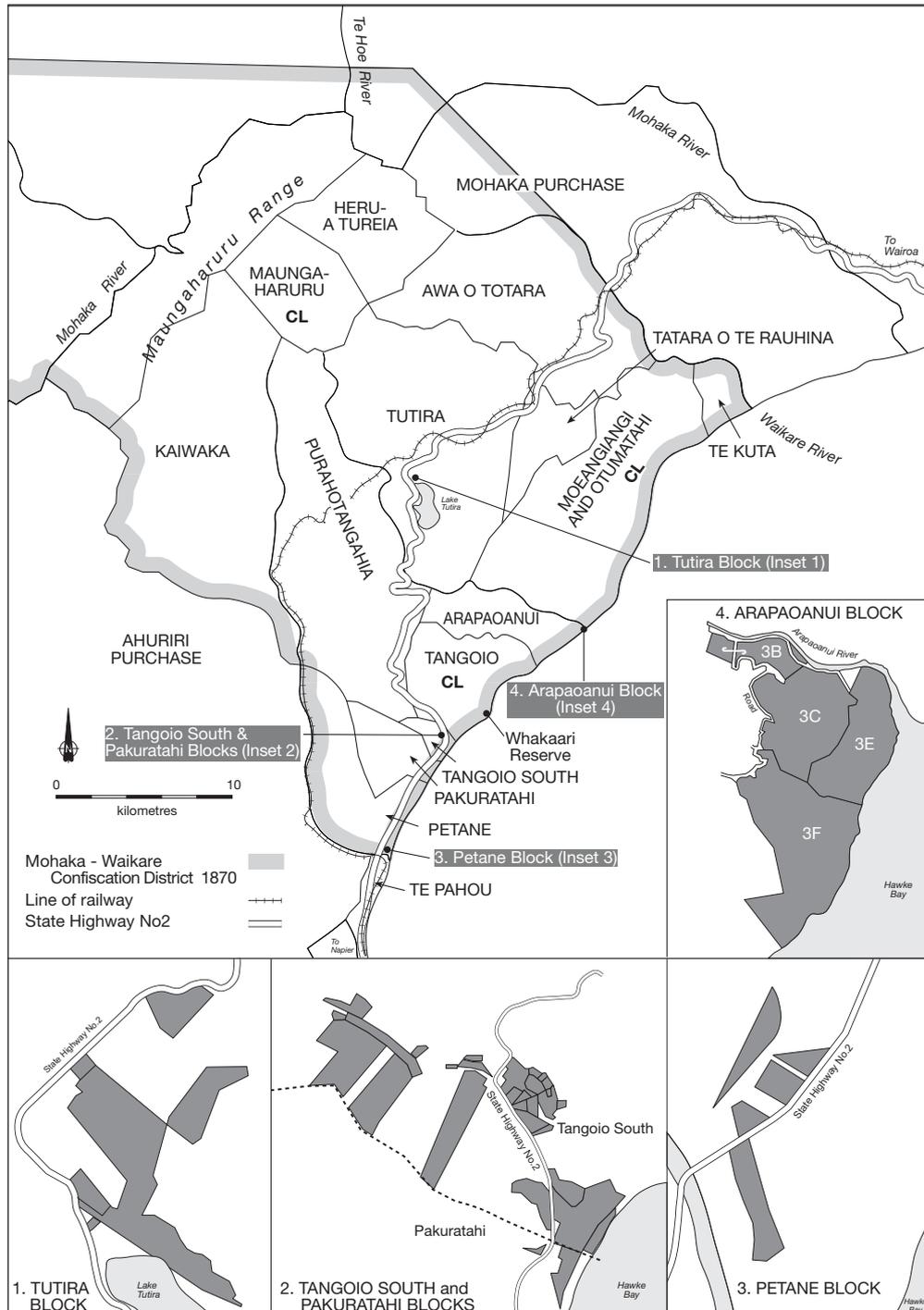
2. Ibid, pp 162–163

3. Document M11, p 23

4. Document X51, p 92

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9.2.5



Map 30: Blocks in the Mohaka-Waikare confiscation - the seaward blocks; insets, remaining land in 2000

secs 6.3.1–6.3.3), we cannot say the same about Maungaharuru, for which the Crown had paid only £100, or Tangoio, for which it paid an undisclosed amount (see 6.3.4, 6.4.2). If this was indeed the reason for the land's retention, we do not believe it to be an adequate justification. If the land was retained on the alternative ground – that it was required by the Crown in terms of the New Zealand Settlements Act – then we see no justification for the retention at all.

For a discussion of the inland blocks confiscated and retained by the Crown, see also section 10.2.7.

9.3 TAREHA'S REWARD: THE KAIWAKA BLOCK

The 'return' of the Kaiwaka block to a single owner, Tareha, was the subject of numerous complaints, petitions, and litigation, which went all the way to the Privy Council but did not alter the status quo. It is not surprising, therefore, that the award was also raised in the Wai 299 claim. The statement of claim says: 'By vesting Kaiwaka in Tareha solely, the Crown acted in breach of the Treaty and to the prejudice of the claimants.' This claim was particularised as follows:

- (i) If it was the Crown's intention to grant Kaiwaka to Tareha as a personal estate this effectively confiscated valuable property of the claimants.
- (ii) If it was intended that Tareha was a Trustee the Crown failed to make this clear in the 1870 deed and legislation.
- (iii) The Crown failed to correct the effects of the Privy Council decision regarding the block.⁵

We must bear these claims in mind as we discuss the tangled web around the Kaiwaka block.

9.3.1 The Kaiwaka title

Boast described the Kaiwaka block as 'one of the best' blocks in the Mohaka–Waikare region.⁶ It contained some 30,765 acres and was bordered by the Napier to Taupo road about 45 kilometres from Napier. Though 'hilly and undulating', it had a 'chiefly easterly' aspect. The soils included some poor pumice but were mainly formed on rich volcanic ash. The block was well watered and had some valuable stands of timber.

Kaiwaka was awarded solely to Tareha under the 1870 agreement as a reward for his service to the Government during the war – and, as McLean admitted, because he had done badly out

5. Claim 1.22(e), para 4.2

6. Document J28, p 102



Fig 14: Tareha Te Moananui, circa 1880.
Oil painting by Gottfried Lindauer.
Reproduced courtesy of Alexander Turnbull
Library, Wellington, New Zealand (G-19389-½).

of litigation concerning other land. As we noted in our previous chapter, Tareha was listed as an owner in seven other Mohaka–Waikare blocks. Whether or not he had a customary claim to Kaiwaka (and even this was denied by those who contested his title), it is inconceivable that Tareha could have had a sole right. Others with customary rights believed that Tareha was put into the title as a trustee for them, and Tareha himself seems to have accepted this in his lifetime, since he assigned some rental income from the block to them. He was said to have admitted that he had no rights in the block and that he intended to return it to its true owners.⁷ But he had not done so before he died in 1880.

Although Tareha was promised the block in the 1870 agreement, a Crown grant was long delayed and was not issued until well after his death. On 6 July 1882, following a Native Land Court sitting, his name was formally recorded as the sole owner of Kaiwaka. But the block had not been surveyed, so a certificate of title was not issued in Tareha's name and the names of his heirs and assigns until 12 July 1894. In his will, Tareha left Kaiwaka to his four children, Te Roera, Kurupo, Hineaiia, and Kawekirangi, and two 'grand-children', Airini and Whitiwhiti. (In fact, Airini and Whitiwhiti were not Tareha's grandchildren but the grandchildren of his sister.) Succession orders were made in favour of these six relatives, and a Crown grant was issued on 13 November 1895. But, by then, a bitter family feud had developed over the block.

According to Boast, what changed everything was the marriage of Airini to George Donnelly, the Pakeha lessee of the block and one of the richest runholders in Hawke's Bay. Airini, a rangatira in her own right, became one of the grand dames of the Hawke's Bay

7. Document J28, p103

squattocracy and was received on terms of equality with her Pakeha counterparts. She was, as Boast put it, a ‘redoubtable, able and ambitious woman’. Airini was fiercely litigious as well, and not merely with her Maori kin.⁸ After Tareha had died, the rent payments that he had assigned to those claiming customary rights ceased, and they blamed Airini for this.

In 1889, Toha Rahurahu, Hemi Puna, and Hoani, representing the claimants to customary rights, petitioned the Native Minister, setting out the situation as they saw it. They complained that Tareha alone had been awarded the Kaiwaka block but that he had ‘no claim to the land whatever, either by his ancestry, continual occupation, or cultivation’, though he was a relative of rank to them, ‘the real owners’.⁹ They believed that he would have handed the land back to them had he not died when he did. However, they had since discovered that the land had been willed to Airini Donnelly and the Tareha family. Had Tareha’s children alone retained the land, the claimants believed, they would have got the land back, and so they asked the Government to pass special legislation, as it had recently done for returned raupatu land at Tauranga and Whakatane, to enable the Native Land Court to investigate their customary rights. The chair of the Native Affairs Committee reported that it appeared that the intention of the 1870 agreement was for the named persons to hold the land as trustees. The Government attempted to meet the petitioners’ wishes (albeit by Order in Council under the Native Land Court Act 1886 rather than by passing special legislation), but it was foiled by Napier solicitors acting for the Tareha family, who argued that the 1886 Act did not confer jurisdiction on the court to hear claims to the land. The chief judge of the Native Land Court upheld their objection.¹⁰ Though the Government could have legislated to overcome this objection, it did not do so, and in May 1891 the court was formally directed to abandon the hearing. The matter may well have rested there had the claimants not heard that the Donnellys were having Kaiwaka surveyed, obviously in preparation for getting a Crown grant.

Toha again petitioned the Government, this time asking that the survey not be proceeded with. His petition was supported by James Carroll and WL Rees, who had recently sat on the Native Land Laws Commission. Carroll went so far as to say that, if the survey were to proceed and a title were to be issued to Airini Donnelly, ‘a gross and unpardonable fraud will be perpetuated upon the proper owners of that land’.¹¹ Although the official survey was suspended, the Donnellys commissioned one of their own, and on 12 July the Native Land Court issued a certificate of title. On 13 November 1895, a Crown grant was issued to Tareha and his heirs and assigns, and it was backdated to 1870.¹² However, that was not the end of the matter.

8. Ibid, pp102–103. Boast notes that her principal legal feud was with the Meinertzhagen family over the Waimarama block, though she also battled Renata Kawepo over the Owhaoko block.

9. English translation of petition of Toha Rahurahu, Hemi Puna, and Haoni Ruru, 10 September 1889 (as quoted in doc J28, p104)

10. Document J28, pp104–105

11. Carroll and Rees to Native Minister, 19 October 1891 (as quoted in doc J28, p107)

12. Document J28, pp107–108

The claimants next went to the Supreme Court. In the case *Te Teira Te Paea v Te Roera Tareha*, the plaintiffs pleaded that they had been loyal to the Crown at the time of the confiscation and ever since, and that they were the rightful owners of the Kaiwaka block, even though the chief judge of the Native Land Court had declined to hear their claim in 1882. They asked:

- ▶ that it be declared that Tareha had been a trustee of Kaiwaka for them during his life time;
- ▶ that the Native Land Court Order of 6 July 1882, which recorded Tareha as the sole owner, be declared null and void and be revoked;
- ▶ that the Native Land Court appointment of successors to Tareha be declared void; and
- ▶ that an inquiry be instituted, if necessary in the Native Land Court, to determine the beneficial customary owners of the Kaiwaka block.

The defendants, Te Roera Tareha and Airini Donnelly, argued that Tareha was the sole beneficial owner and that he and his heirs held Kaiwaka, ‘unfettered by any trust express or constructive whatever’.¹³

The case was not heard in the Supreme Court but went by consent of both parties to the Court of Appeal in 1896. There, after hearing legal argument from the plaintiffs’ counsel, the judges announced that they did not need to hear defence counsel and proceeded to judgment.¹⁴ The court found in favour of the defendants – Tareha was a beneficial owner, not a trustee for the others. The 1870 agreement had provided that the whole of the returned land (not just Kaiwaka) should be made ‘inalienable both as to sale and mortgage, and held in trust in the manner provided, or hereafter to be provided by the General Assembly for Native Lands held under trust’. But the judges held that this agreement failed to identify who the supposed beneficiaries might be and, as Boast noted, the ‘rather strict requirements of the law of trusts at the time normally insisted on the beneficiaries being identified before an intention to create a trust could be inferred’.¹⁵ Moreover, the judges maintained that the Mohaka and Waikare District Act 1870, which gave effect to the agreement, also did nothing to create a trust. As Justice Denniston put it: ‘There is not a single expression in the statute which suggests the existence of a trust on behalf of any persons.’¹⁶

The Court of Appeal decision was described by Boast as a ‘shattering and expensive defeat’ for the plaintiffs.¹⁷ All five judges found against them and they had to pay costs of ‘the highest scale’. Nevertheless, the plaintiffs decided to appeal to the Privy Council. An English King’s Counsel, Richard Haldane, was instructed, and their lawyer, Charles Morison, went to London as his junior counsel. The case was heard in July 1901.¹⁸ Haldane argued that the overall

13. Document J28, p 109

14. *Te Teira Te Paea v Te Roera Tareha* (1896) 15 NZLR 91 (CA). Note that the Te Teira Te Paea involved in this case is not the same Te Teira Te Paea whom we introduced in chapter 3.

15. *Ibid*, pp 109–110

16. *Ibid*, p 110

17. *Ibid*, p 111

18. *Te Teira Te Paea v Te Roera Tareha* (1901) NZPCC 399

objective of the confiscation proclamation of 1867 and the 1870 agreement was to protect the interests of 'loyal Maori'. If the trust referred to in the 1870 agreement was not enforced, he said, 'the intention of the proclamation will be defeated; and the property of many of the loyal inhabitants will be confiscated'.¹⁹ Despite the power of this argument, the appeal was rejected. Lord Linley, in giving judgment, held that the confiscation had altered the tenure of the land – the land had become Crown land and any subsequent title to it depended on the terms of the grant. Otherwise, Linley agreed with the Court of Appeal that there was nothing to show any intention on the Crown's part to create a trust; even the use of the word 'trust' in the 1870 agreement was not sufficient to 'create an equitable right or obligation which can be enforced by legal proceedings'. The notion that Tareha was to be trustee for 'an unascertained and practically unascertainable class of natives' was 'too extravagant to require serious comment'.²⁰ The appeal was dismissed with costs.

Though Boast did not take issue with the legal correctness of the two judgments, he did say that both cases were decided on very narrow grounds, with only a limited range of evidence being produced.²¹ Indeed, the original Supreme Court case was referred to the Court of Appeal merely on a preliminary point of law, and the case was then appealed to London without any substantive hearing ever taking place. No Maori was ever heard.

Following the Privy Council decision, the Kaiwaka plaintiffs petitioned the King, asking for an inquiry into their claim to the land, or for compensation, but their petition was merely referred back to the New Zealand Government, which declined to intervene. Eventually, in 1903, James Carroll, the Native Minister in the Liberal Government, was advised by his department that, in view of the Privy Council decision, the Government could do nothing.²² He appears to have accepted that advice. The claimants' cause was lost.

The subsequent history of Kaiwaka can be briefly summarised from Boast's more detailed description. Since the block was Maori freehold land, it could be freely partitioned. In 1902, it was divided into Kaiwaka 1 (8747 acres) and Kaiwaka 2 (22,018 acres). Kaiwaka 1 was then divided into Kaiwaka 1(1) (6295 acres) and Kaiwaka 1(2) (2452 acres). The larger Kaiwaka 2 was divided in 1906 between its two owners, with Kaiwaka 2A (5735 acres) going to Te Roera Tareha and Kaiwaka 2B (16,283 acres) going to Airini Donnelly. In 1911, Kurupo Tareha, Te Roera Tareha, and Whitiwhiti Hauwaho sold Kaiwaka 1 (now re-amalgamated) and Kaiwaka 2A, a total of 14,482 acres, to the Crown for £14,166.²³ The blocks were opened for selection later in the year. The Donnellys now held all the remaining Kaiwaka land; namely, the 16,283-acre Kaiwaka 2B block. Airini Donnelly had died in 1909, and although her husband, George, was still alive, their only surviving child, Maud Perry, offered to sell Kaiwaka 2B to the Crown

19. *Te Teira Te Paea v Te Roera Tareha* (1901) NZPCC 399

20. Document J28, p 112

21. *Ibid*

22. *Ibid*, pp 115–116

23. This price appears low in comparison to the Government valuation of Kaiwaka 2B. According to the valuer's report of 1910, the soil was of 'poor quality' and the land of 'poor carrying capacity' for sheep: doc J28, p 118.

9.3.2

in 1912. But her asking price of £97,132 was considerably higher than the valuation of £76,204, and negotiations fell through when it became known that the Native Appellate Court in 1912 had approved the conversion of the title to general land.²⁴ Because the block had ceased to be Maori freehold land, the purchase could no longer be negotiated through the Native Land Purchase Department. Maud subsequently went to England, where she stayed after remarrying. The land remained in her name, though by 1915 it was encumbered by a mortgage to the National Bank of New Zealand and a caveat in favour of her father. In one way or another, all of Kaiwaka which had originally been confiscated but ‘returned’ to Tareha had passed out of Maori title.²⁵

9.3.2 Claimant submissions

As we noted at the beginning of this section, the awarding of the Kaiwaka block in sole ownership to Tareha is an important element of the Wai 299 claim. The subsequent disputes over the title which we have recounted above, largely on the basis of Boast’s report, were further discussed in Wai 299 claimant counsel’s opening and closing submissions. We pick up the argument from the latter. Though counsel accepted the legal judgments of the Court of Appeal and the Privy Council, he developed the argument of the statement of claim:

- ▶ If the block was intentionally vested in Tareha as sole personal property, that was equivalent to the confiscation of the hapu’s collective interests, and the Crown owed the hapu compensation.
- ▶ Assuming, however, that the Crown had intended that Tareha should hold Kaiwaka as a trustee, it failed to ensure that this was clearly provided for in law and, but once it became aware that this had not been provided for, it had an obligation to rectify the situation or to compensate those who had customary interests.²⁶

9.3.3 Crown submissions

Crown counsel also commented on the award of Kaiwaka to Tareha, stressing that it was ‘unlikely’ that he was intended to be a trustee for others with claims on the block.²⁷ Counsel added:

From the government’s perspective, it was important that Tareha receive land in the [confiscation] block as recognition of his services and to ensure he had a sufficiency of land reserved to him, much of his other property having been sold. . . . It does not follow,

24. Boast described Kaiwaka 2B as ‘exceptional’, ‘well drained with some very good soils’, and substantially developed by Donnelly: doc 128, p 180.

25. Ibid, pp 117–122

26. Document x39, p 69

27. Document x51, p 111

however, that the circumstances in which Kaiwaka was allocated to Tareha were tantamount to coercion and confiscation.²⁸

At the time, counsel argued, in view of Tareha's many contributions to military campaigns and politics in the district, the awarding of Kaiwaka to him would have been 'favourably received'. And, counsel added, it was not until 19 years after Tareha had been awarded Kaiwaka, and nine years after he had died, that protests were raised over the matter.²⁹

9.3.4 Claimant submissions in reply

Counsel for Wai 299 made no submissions in reply relating specifically to the awarding of the Kaiwaka block.

9.3.5 Tribunal comment

Though it is not within the jurisdiction of this Tribunal to impugn the judgments of any court, it is within our authority to consider the Crown's response to the Kaiwaka decisions in relation to the principles of the Treaty of Waitangi. Irrespective of whether the Crown had any right under the Treaty to confiscate the land in the first place – a matter which we consider elsewhere – we note here that it did have an obligation under article 2 of the Treaty to protect Maori customary rights to land. In the event that the Crown altered the tenure of that land, as it did by enacting the confiscation legislation, it needed to ensure that all those possessing customary rights received titles under the new regime. That clearly did not happen with the Kaiwaka block, since, as Haldane argued in the Privy Council, the property of many 'loyal natives' was confiscated. The Government had an opportunity to convert the implied trust of the 1870 agreement into a legally binding trust by passing special legislation. This would have allowed the Native Land Court to determine those customarily entitled to Kaiwaka, but no legislation was enacted. As we note in our next chapter, legislation was passed in 1924 to allow the Native Land Court to award titles to those with customary rights in the Tarawera and Tatarakina blocks (and to dispossess those granted title as a result of the 1870 agreement), in contrast to what had happened over the Kaiwaka block. (In that case, it may not have been coincidental that Tareha's sons had just sold their interests in the Tarawera block.) But, in regard to the Kaiwaka block, the Court of Appeal and the Privy Council confirmed Tareha's title, and it was the customary owners who were dispossessed. We regard their dispossession as a breach of the Treaty's terms and a breach of the Crown's fiduciary duty under the Treaty.

As we noted above, Crown counsel defended the Government's decision to reward Tareha for his services to the Crown with the sole ownership of the Kaiwaka block. This is, in

28. Ibid, p 112

29. Ibid, pp 113–114

our view, special pleading on flimsy grounds. Counsel did not refute the larger point that, whatever the Government owed Tareha for his loyalty, it had no right to reward him with other people's land – other people, moreover, who were also loyal to the Crown and who had been promised in the confiscation proclamation of 12 January 1867 that 'no land of any loyal inhabitants within the said district will be retained by the Government'. (For a discussion of the proclamation, see section 8.2.) Of course, the Government did not retain Kaiwaka, but it had no right to give it to just one of the loyal Maori citizens of Hawke's Bay.

Having failed to make legislative provision for a trust or for an investigation of customary rights by the Native Land Court, there was no way the Crown could recover Kaiwaka except by purchasing it. Although the Crown did buy almost half of the block, the remainder was offered by Airini Donnelly at such a high price that it would not contemplate the transaction. In any case, in accordance with the then-prevailing attitudes towards the settlement of New Zealand, the portion of Kaiwaka that the Crown did purchase was used for Pakeha settlement, not for compensating unsatisfied Maori claimants. It was not until well into the twentieth century that it was generally accepted that Crown land could be used for Maori settlement. In our view, the Crown should have used the land purchased in the Kaiwaka block for the satisfaction of rightful customary claims, and only once that was done should any remaining land have been made available for European settlement.

We shall return to Kaiwaka in our findings at the end of the chapter, but for now we turn to the other nine seaward 'returned' blocks.

9.4 PAKURATAHI

The 3758-acre Pakuratahi block was 'returned' to 17 owners, including Tareha, under the 1870 agreement. Although Pakuratahi was the closest of the returned blocks to Napier, the Crown did not seek to purchase it until 1915, when the local member of Parliament, John Brown, heard that the leases over the block were due to expire. In a letter to the Native Minister, William Herries, Brown asked that a proclamation be put over the block, arguing that it was 'an opportunity to assist in closer settlement near Napier which if once lost cannot be recovered'.³⁰ We assume that, by 'proclamation', Brown was referring to section 363(1) of the Native Land Act 1909. Under that provision, when the Crown was contemplating or negotiating the purchase of a block of Maori land:

The Governor may, on the recommendation of the Native Land Purchase Board, make an Order in Council prohibiting for such period as he thinks fit, not exceeding one year from the date of the Order, all alienations of that land other than alienations in favour of the Crown.

30. Document J29, p38

Brown wrote again when he saw a notice in the *Gazette* calling a meeting of the Maori owners to consider a proposal to lease the block to two of their number for a term of 21 years. He then urged William Massey, the Minister of Lands and the Prime Minister, to have the land set aside for European settlement. But Thomas Fisher, the under-secretary of the Native Department, requested the Native Minister not to proceed with the proposal, since the Crown had already purchased or was in the process of purchasing a large proportion of the other returned blocks. Fisher noted that the Maori owners of Pakuratahi wanted to retain the land for their future use while leasing it to some of the co-owners in the meantime. Fisher's plea was, however, ignored, and on 26 June 1915 an Order in Council was published which prohibited all private alienations within the block and even prevented the owners from leasing the land themselves. Since the former leases could not be renewed, the owners were in what Boast referred to as a 'legal limbo'; they could neither get income from the land nor work it themselves. Though the proclamation was valid only for a year, it was repeatedly renewed in order to enable the Crown to proceed with a purchase.³¹

Early in 1916, the Native Land Purchase Board decided that the acquisition of Pakuratahi should proceed, and Crown purchase agents began buying shares from individual owners. Then, the Ikaroa District Maori Land Board called a meeting of owners under section 346 of the Native Land Act 1909 to consider a resolution that an offer made by the Crown to purchase the land be accepted.³² A special sitting of the Native Land Court was subsequently held to declare successions and otherwise to tidy up the title. A new valuation was procured, though at £15,039 it was nearly £500 below a 1913 valuation. When the owners did meet at Tangoio on 14 July 1916, the Crown's offer to purchase was 'thrown out by unanimous vote of the owners present', as the registrar put it.³³ However, the Native Department simply ignored this resolution and proceeded to buy individual shares at their 1916 valuation. By September, it had acquired interests in 1647 of the 3758 acres in the block. By March 1917, the department had acquired shares representing 2409 acres, but, because of the stubborn resistance of the remaining owners, it despaired of getting the whole block and opted instead to partition out the Crown's share. The Native Land Court, sitting at Hastings on 20 February 1918, partitioned the block and awarded the Crown 2711 acres. This land was proclaimed Crown land on 19 August 1918. Though the remainder of the block, known as Pakuratahi 1, was subsequently partitioned and the owner of one portion, Pakuratahi 1E, offered to sell that section to the Crown, the offer was declined. It is not clear what subsequently happened to all of the 1047 acres of land that remained in Maori hands after the 1918 partition, but we know that some remains in Maori ownership today (see map 30).³⁴

31. *Ibid.*, pp 38–39

32. Document 11(15), p 99. On the other hand, Boast implies that the purchasing did not begin until after the meeting of owners on 14 July 1916: doc J29, pp 39–40.

33. Registrar, Ikaroa District Maori Land Board, to under-secretary, Native Department, 18 July 1916 (as quoted in doc J29, p 40)

34. Document J29, pp 41–42

Since there is a similar pattern to the Crown's actions in regard to nearly all of the nine returned blocks (usually, it purchased them), we consider claimant and Crown submissions and make our own comments and findings on all of them at the end of the chapter after our discussion of each.

9.5 TANGOIO SOUTH

The Tangoio South block of about 965 acres needs to be distinguished from its larger, northern neighbour, the Tangoio block, which was the only coastal block confiscated by the Crown. In contrast to the other returned blocks on its borders, a fair proportion of Tangoio South remains in Maori ownership. One reason for this is that the block, a narrow valley running inland from the sea and enclosed by steep hills, contains the important Tangoio Marae, which was one of the main centres of occupation right through the period under consideration in this chapter. Tangoio ki te Tonga, as the block was called in the 1870 agreement, was returned by that agreement to 35 persons, including Tareha. It was clearly an important centre for the coastal hapu since it was the place where many hui were held in connection with the sale of other Mohaka–Waikare blocks. It was also the site of our first hearing and is of great importance to Ngati Tu. Another important resource in the block was the coastal lagoon (part of which was in the Pakuratahi block). The lagoon was a valued source of kai moana until it was uplifted by the Napier earthquake in 1931. However, although the flat portions of Tangoio South, including the uplifted land, were used for gardening, most of the hilly parts became infested with blackberry. Indeed, the infestation was so bad that, when some of the owners offered to sell it to the Crown in 1917, the offer was refused.³⁵ Tangoio South remained in Maori ownership, though not under Maori control for much of the period under our investigation.

Because of the blackberry infestation, the block was vested in the Ikaroa District Maori Land Board in 1907, but the owners of the block quickly objected to this vesting. In November 1907, Anaru Pera and three others of Tangoio petitioned Parliament, complaining that they wanted to work the land themselves.³⁶ Although no notice was taken of this petition, the Ikaroa board decided that the block should be divided into two. One block, containing existing kainga and 'mahingas' and adjacent land, was to be reserved for the owners, and the other, if not leased by the owners, was to be offered to the public by tender or auction. Any leases were to contain a 'stringent covenant providing for the eradication of noxious weeds' and, in the case of the land being leased to Maori, a 'provision that if during the first two years of lease, proper progress is not made with such eradication, the lease may be terminated on six

35. Document 11(15), p 120

36. Document 129, p 51



Fig 15: Horses and coaches crossing the Devil's Elbow on the Tutira–Napier–Wairoa road, 1905. Photographer unknown. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (F-19634-¾).

months' notice to the Lessee'.³⁷ Apparently, no such provision was to be applied to a European lessee. As it turned out, the board's administration of Tangoio South did not bring the black-berry infestation under control, despite complaints by the Department of Agriculture. However, the block, which had not been surveyed since the 1870 allocation, was finally surveyed in 1907 on the board's instruction. The block was then divided into six lots, lots A to F. Lot C, of 106 acres, was the lagoon. The others were to be dealt with as follows:

- ▶ Lot A (122 acres): to be set aside as papakainga.
- ▶ Lot B (16 acres): to be set aside as a reserve.
- ▶ Lot D (367 acres): to be leased for 21 years to one of the owners, Te Teira Te Paea.
- ▶ Lot E (353 acres): to be leased for 21 years to one of the owners, Aperahama Anaru.
- ▶ Lot F (just over one acre): to be set aside as an urupa.³⁸

However, this partition was not formalised. On 26 February 1917, a Native Land Court sitting that had been requested by the owners was held, and the earlier subdivision was replaced by a two-way partition. The papakainga block was now divided into 26 lots, varying in size from half an acre (the urupa) to just over 14 acres, and these were awarded to individuals or family groups (the largest was awarded to Te Roera Tareha and 14 others). The bulk of the

37. Resolution of Ikaroa District Maori Land Board, 1 July 1907 (as quoted in doc J29, p 52)

38. Document J29, pp 52–53

Tangoio South block, amounting to 839 acres, was called block 27 and was awarded to all of the owners. However, control of Tangoio South as a whole remained vested in the land board, and the previous leases continued. Although, as we mentioned above, attempts were made by some owners in 1917 to sell their lots (since none of the owners who took leases of various blocks was able to cope with the blackberry and make a living on the steep sloping land), the Department of Lands and Survey recommended that the Crown not acquire them.³⁹ Then, for some inexplicable reason, the 839-acre lot 27 was split into 17 small blocks in 1923. These varied in size from a one-acre store site (27R), formerly owned by Te Teira Te Paea but since sold to Harry Arnott, to a 100-acre block (27A), awarded to 'Akuhata te Hapu and 114 others'.⁴⁰

From time to time, the owners petitioned for the Tangoio South block, or at least the now-partitioned papakainga block, to be released from board administration. However, the board was unwilling to hand the land back, especially since two lessees were in arrears with their rent. Then, in 1924, the owners of the papakainga sections were hit with a demand for local body rates. They refused to pay on the ground that some of their land had been taken for roading without any compensation being paid. In 1927, the owners petitioned again for the release of their land from board control and administration. This time, the board, having tired of the unsatisfactory situation and particularly the problem of getting 'satisfactory' lessees, recommended that the Tangoio South block be revested in the owners. The Native Affairs Committee recommended that the petition be forwarded to the Government for 'favourable consideration'.⁴¹ The land was subsequently revested in the owners by section 56 of the Native Land Amendment and Native Land Claims Adjustment Act 1927.

As we mentioned, descendants of the original owners still own most of the land today (see map 30). Indeed, it was at Tangoio Marae that we held one of our two hearings of claimant evidence for the Wai 299 claim. There, the claimants gave us an oral history of Tangoio community life that included stories of growing crops, hunting, fishing, gathering kai and rongoa, holding dances and sports events, and obtaining employment. It was generally a nostalgic account, albeit tinged with the downside of natural disasters such as the 1931 earthquake and the devastating 1938 flood and the reality of poverty, poor housing, and the steady migration of people out of the area. We pick up on these themes in chapter 19.

9.6 ARAPAOANUI

Arapaoanui is a narrow rectangular block of 5117 acres, sandwiched between the confiscated Tangoio North block to the south, the Crown-purchased Moeangiangi block to the north,

39. Document J29, pp 54–55

40. Boast notes that Akuhata Te Hapu's name was also recorded as 'Akuhata te Hapua' in the award: doc J29, p 57.

41. Registrar, Ikaroa District Maori Land Board, to Jones, 5 September 1927 (as quoted in doc J29, p 61)



Fig 16: Waipatiki Beach. Photograph by Paul Hamer.

and the Tutira block to the north-west. The 1870 agreement listed 37 owners for Arapaoanui, again including Tareha.

Like Pakuratahi, Arapaoanui was purchased by the Crown in what Boast said could 'only be described as a coercive manner'.⁴² Though there are slight differences in detail, the purchasing process was similar to that used for Pakuratahi. It began in 1914, when the commissioner of Crown lands at Napier noticed that the existing settler leases on the block were about to expire and he heard that the Maori owners wanted to farm the land themselves. Fearing that their farming methods would allow the spread of blackberry, the commissioner urged the Native Land Purchase Board to value and report on the block with a view to the Crown acquiring it for closer (Pakeha) settlement. But the owners had other plans. They met on 25 July 1915 and resolved to re-lease 3163 acres of the block to one of the existing Pakeha settlers who had managed his farm well and to farm the rest of it themselves. Unfortunately for them, an Order in Council had already been issued a month earlier, under section 363 of the Native Land Act 1909, prohibiting all private alienations, including leases, for a year. When the issue was referred to the Solicitor-General, he decided that the Order in Council had precedence and that, until it expired, the resolution of owners could not be considered by the board. In the interval, the Native Department began to acquire individual shares, even before a meeting of owners was held on 11 February 1916 to consider the Crown's offer to buy some or all of the block. At that meeting, the Crown's offer to purchase at valuation (£25,285, based on 1913

42. Document J29, p8

figures) was unanimously rejected by the 27 owners present.⁴³ Though most owners rejected a sale at any price, a minority was willing to sell at a better price. Once again, the Crown ignored the resolution not to sell and proceeded to acquire undivided shares. And, once again, Crown agents found owners who for one reason or another – because they lived elsewhere or, like the Tareha family, had interests in other blocks or were in distress – agreed to sell their interests at valuation. By 13 September 1916, Crown agents had acquired interests in 1788 acres. To assist the purchase operations, the prohibition on alienation was twice extended, for a combined total of three years.⁴⁴

By March 1917, when the Crown had acquired about two-thirds of the shares, the acquisitions were slowing and the department moved to have the block partitioned to cut out the Crown's share. On 28 August 1917, the Native Land Court, on the application of the Native Department, made a partition order, which split the block into three. Both Arapaoanui 1, of 344 acres, which was on the western end of the block along the Napier to Wairoa road, and Arapaoanui 3, of 938 acres, which was on the eastern extremity of the block, were awarded to the non-sellers. Arapaoanui 2, of 3835 acres, which was between Arapaoanui 1 and Arapaoanui 3, was awarded to the Crown.⁴⁵ There was a dispute over an urupa and a valued stand of bush in Arapaoanui 2, but neither the Department of Lands and Survey nor the Native Department would agree to accept an exchange of land. The owners of Arapaoanui 3 wanted its boundary moved west and south along the coast to take in the mouth of the Waipatiki River, but this was not agreed to, though the area was later made into a public beach reserve. The Crown portion of Arapaoanui was subsequently subdivided into seven lots and settled by discharged soldiers.

In 1920, Arapaoanui 1 and 3 were further partitioned between the various Maori owners. From time to time through the 1920s, there were negotiations to sell some of the blocks to the Crown, but these appear to have come to nothing; it was even difficult to lease the land. Depressed meat and wool prices during the 1920s and the following slump made farming in rugged country like Arapaoanui precarious. At least one of the returned servicemen on the Crown block walked off his property. The longer term fate of the remaining Maori land was not discussed in Boast's report, but we know from the evidence of claimant Te Hata Kani II, who had lived at Arapaoanui all his life, that Maori ownership of land there has persisted. He said, for example, that in the 1940s the Maori owners had extensive cultivations in the Arapaoanui Valley, particularly of tomato, sweetcorn, and pumpkin, although by that time his was the only family still living there. By 1996, when he gave evidence to us, he had planted much of his property in pines, and his Maori neighbours had converted their whole farm to

43. Document 11(15), p 71

44. Document 129, p 12

45. These are Boast's figures, doc 129, p 17. Ballara and Scott have them at 346 acres for Arapaoanui 1, 3387 acres for Arapaoanui 2, and 964 acres for Arapaoanui 3: doc 11(15), p 73.

forestry. He said he would like to see a marae built at Arapaoanui, as a place for whanau to come back to.⁴⁶

9.7 PURAHOTANGAHIA

The large Purahotangahia block, covering some 26,300 acres, is located between the Kaiwaka and Tutira blocks and is bounded to the south-east by the coastal Pakuratahi, Tangoio, and Arapaoanui blocks. It is divided from Kaiwaka by the Waiohinganga (Esk) River, and from Tutira by the Waikoau River. It was awarded to 27 persons by the 1870 agreement.⁴⁷

Like other Mohaka–Waikare blocks, Purahotangahia appears to have been partly leased to Pakeha runholders, though in this case it was not an impending expiry of leases but a plan to run the Napier to Gisborne railway through the block that prompted the Crown to try to acquire it. On 5 August 1913, Ni Puna and 25 others wrote to the Native Minister, Herries, suggesting that the Crown acquire land on the western or inland side of the proposed railway, leaving the eastern side with the owners. They hoped to use the proceeds from the sale to perfect their titles and develop the remaining land. As a consequence, the Native Department asked the Valuation Department to value the land in two blocks. Herries then signed an order to purchase the 15,950-acre block west of the proposed railway line at a valuation of £51,505. The Ikaroa District Maori Land Board summoned a meeting of owners to consider the usual resolution that the offer by the Crown to purchase the block at valuation be accepted. The meeting was held at Tangoio on 9 December 1913. By this time, the Native Department had decided to try to buy all of the block, not just the portion west of the proposed railway. A resolution to this effect was put to the meeting. However, the titles to Purahotangahia, like those of other Mohaka–Waikare blocks, were chaotic. The original Native Land Court order of 6 July 1882 had listed 22 owners, supposedly to give effect to the list of owners drawn up as part of the 1870 agreement, though that had listed 27 owners. Five names had been omitted by error of the court clerk and it seems that they were never reinstated. A deputation of owners had met Herries in January 1913 and asked him to arrange a Native Land Court inquiry to define the individual interests and to arrange successions, where needed, prior to any transactions with the Crown being carried out. Although Herries had promised an inquiry, none was carried out. Despite this, by the time of the December meeting the board had a list of 72 owners, thus indicating that successions had been declared for at least some of the original owners.

Presumably, it was these 72 listed owners who were required to vote on the resolution proposing the sale of the whole block to the Crown. Since the meeting was reported in the

46. Document J40, paras 22–23, 28–31

47. Document J29, pp 43, 48



Fig 17: View of erosion at Tutira Station, circa 1939. Photograph by John Pascoe. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (Making New Zealand collection, 1892-MNZ).

Hastings Tribune, we have an unusually detailed account of what happened. The claimants were represented at the meeting by counsel, one of whom, TW Lewis, raised the point that, under the Native Land Act 1909, no resolution could be passed unless a vote was taken according to the respective interests in the land of those voting (section 343 of the Act deemed a resolution passed if those voting in favour represented a 'larger aggregate share of the land affected' than those voting against). Since neither the customary entitlements to the seaward blocks nor the relative shares of the owners named in the 1870 lists – for they are not necessarily the same thing – had ever been determined, it is a moot point whether the land board could weigh up the votes for or against the resolution. The newspaper reporter related what happened next:

The meeting then proceeded to deal with the resolution. There were some hundred Natives present, many of them [had] not been owners of the block. A list of the presumed owners was read, and, from replies received, the Chairman came to the conclusion that there were some 42 owners present. Of these 42, the majority were successors to the original deceased owners. After considerable discussion in which many of the elder people objected to the sale on the terms conveyed by the Crown through the Board, others of the younger



Fig 18: Tutira Station homestead, Hawke's Bay, circa 1939. Photograph by John Pascoe. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (Making New Zealand collection, F-1903-¼).

generation expressed their desire to sell. The resolution to sell the whole block at the Government valuation was put to the meeting. There was no enquiry made by the Chairman as to whether those present and voting were owners or not. Out of the 42 [owners] supposed to be present, ultimately a vote was taken which indicated that twelve present were in favour of the sale and eleven were against it.⁴⁸

The Chairman intimated that the resolution had been carried, and, in this perfunctory way, for the present £107,000 worth of land, according to Government valuation, has passed to the Crown.⁴⁹

When this decision was announced, protests were made by those who dissented. This information was wired to Herries, who was again asked to have the titles cleared and the individual interests defined. Although Herries apparently did nothing, the Native Department, acting on behalf of the Native Land Purchase Board, did ask for information on the relative shares of those voting for and against the resolution. The Ikaroa District Maori Land Board decided to

48. In his report to the under-secretary of the Native Department, the president of the Ikaroa District Maori Land Board explained that the other 19 owners present did not vote: doc J29, p 46.

49. *Hastings Tribune*, 10 December 1913 (as quoted in doc J29, p 45)

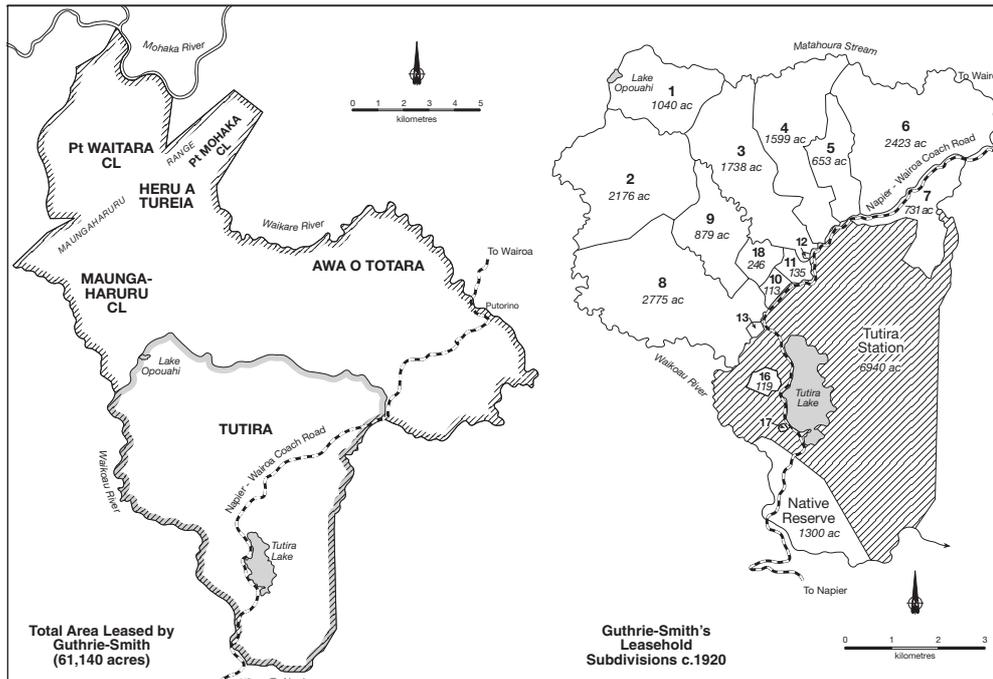
proceed on the assumption that the original interests, as listed in the 1870 agreement and given effect to by the 1882 Native Land Court order, were equal (despite the loss by clerical error of five names).

We comment here that this ‘perfunctory’ process – by no means confined to the Purahotangahia purchase – was probably in compliance with section 343 of the Native Land Act 1909, if only just. The fault lay not so much with the land board, however, as with the decision of the court and the Government (in 1882 and thenceforth) not to allow an investigation of the relative customary interests of the seaward returned blocks, despite strident Maori protest.⁵⁰ (We discuss this at section 9.14.) In any event, under section 348(1) of the 1909 Act, the land board could, having regard to both the public interest and the interests of the owners themselves, confirm, disallow, or defer a resolution in order to allow non-sellers to apply to the Native Land Court for a partition of their shares. By confirming the resolution, the board may have considered that it was doing so in the public interest, though it was hardly acting in the interests of all the owners, merely those of the 12 who had supported the resolution. Under section 348(2) of the Act, if the resolution were postponed, the board could further consider the resolution, and ‘confirm it with respect to the residue of the land, after deducting all shares which have been cut out, by way of partition’. However, the board did not give the owners this option.

The Ikaroa District Maori Land Board did not confirm the resolution to sell the whole of the Purahotangahia block to the Crown until 23 March 1915. After the December 1913 meeting of owners, the Native Department found confusion and ambiguity in the Purahotangahia title: there were 22 names on the 1882 Native Land Court order, 27 listed on the schedule to the 1870 Mohaka–Waikare agreement, and 28 on the original certificate of title. Purahotangahia, along with the Awa o Totara and Te Kuta blocks, was referred to the Native Land Court for an investigation and a report.

Special legislation in section 4 of the Native Land Claims Adjustment Act 1914 had validated former actions of the Native Land Court in the Mohaka–Waikare blocks and declared that the owners listed in the schedule to the 1870 agreement were entitled to equal shares in their respective blocks. In section 4(5), provision was made for any resolution made by a meeting of owners under section 346 of the Native Land Act 1909 in respect of any Mohaka–Waikare blocks to be ‘valid and effectual’. On the strength of this, the Ikaroa District Maori Land Board proceeded to confirm the sale of the whole block. In doing this, it relied on the legalistic interpretation that, despite protests about the 1913 owners’ meeting, no formal memorial of dissent had been filed. On 2 November 1915, the entire Purahotangahia block was proclaimed Crown land.

50. See doc J28, pp 95–101



Map 31: The Tutira block. Source: Herbert Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th ed (Wellington: AH and AW Reed, 1969).

9.8 TUTIRA

Tutira, lying near the centre of the seaward Mohaka–Waikare blocks, is the best known of those blocks, thanks largely to Herbert Guthrie-Smith's classic study, *Tutira: The Story of a New Zealand Sheep Station*. Guthrie-Smith was the main lessee of the block, having first leased it in 1884 and retaining leases of much of Tutira until his death in 1940. He also leased adjacent blocks for a time (map 31). Guthrie-Smith's book *Tutira* was first published in 1921. It went through three editions in the author's lifetime and numerous reprints since his death. Guthrie-Smith was a well-known naturalist, but *Tutira* is much more than a nature history of the run. It is also a superb study of the trials and tribulations of 'breaking in' and managing a rugged East Coast sheep station. Guthrie-Smith remained on good terms with his Maori lessors and he gleaned much information from them on the early Maori history of the run – information which he sympathetically recounted in *Tutira*. He also described the importance that Lake Tutira and its associated waterways had as a prized eel fishery; in one map, he shows 16 pa tuna on a half-mile stretch of the Tutira and Maheawha Streams.⁵¹

The Tutira block also figures prominently in official files, including those from the Stout–Ngata commission of 1907 and Judge Gilfedder's inquiry of 1929. It has been examined at length in Boast's report for the claimants.⁵² There is also a report by Edryd Breese for

51. Herbert Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th ed (Wellington: AH and AW Reed, 1969), facing p 94, and see fig 9 in ch 3

52. Document 129, pp 129–161; see also doc 11(15), pp 101–118

environmental consultants Tonkin and Taylor entitled *Mohaka–Waikare Confiscation Area: Environmental Change*.⁵³

Like other blocks in the Mohaka–Waikare district, Tutira was coveted by Pakeha pastoralists before and during the East Coast war. Initially estimated at 20,494 acres, the block was found on survey in 1921 to be 23,467 acres. It was listed for Native Land Court investigation in a panui of 8 November 1866. Although the block was said to have been surveyed by Williams and Busby in preparation for that investigation, the hearing was cancelled at McLean's instigation when he decided to proceed with the confiscation. Tutira was confiscated, but it was revested in 40 Maori individuals by the 1870 agreement. Pakeha lessees now had to make appropriate arrangements with the owners to continue their leases, which, under the Mohaka and Waikare District Act 1870, could now be legalised for 21-year terms. This does not appear to have been done in regard to Tutira until 10 September 1884, when Guthrie-Smith and AM Cunningham arranged a 21-year lease of the whole of the block, apart from 3000 acres which the owners retained for their own use. In 1895, Guthrie-Smith and TJ Stuart, who had taken over Cunningham's interest, re-leased the front 10,000 acres of Tutira until 1915 on the understanding that they would surrender the original lease on the rugged back portion when it expired in 1905.

In 1907, the leases were reconsidered by the Stout–Ngata commission. After discussing the matter with the owners at Tangoio, the commission recommended new 30-year leases to Guthrie-Smith and his sister, Anne, as follows: 13,420 acres were to be leased to Guthrie-Smith for an annual rent of £1355, and 5570 acres were to be leased to Anne Guthrie-Smith for £70 per annum. In addition, some 500 acres were to be taken out of Guthrie-Smith's leased area and added to an adjoining Maori reserve of 1000 acres. Finally, the owners were to receive half the royalty on flax grown in swamps at the western end of Lake Tutira.⁵⁴ These new arrangements were to increase the owners' income from north Tutira by about £1000 a year. The recommendations were given effect to by section 45 of the Maori Land Claims Adjustment and Laws Amendment Act 1907, through the agency of the Ikaroa District Maori Land Board. Control of the block was vested in the board, which then granted the new leases to the Guthrie-Smiths. The 1300-acre Tutira native reserve on the south-west corner of the block was leased to one of the owners, Arama Pohio, for 26½ years from 11 April 1911 at £177 10s per annum. Boast doubted whether any Maori communities were living on the Tutira block at this time. However, he noted that the lease to the Guthrie-Smiths made express provision for the lessors to shoot waterfowl during the first 10 days of the shooting season and to take eels at all times from Lake Tutira and the adjoining waterways.⁵⁵

These satisfactory arrangements between the Maori owners and the Guthrie-Smiths were soon disturbed by the resumption of Crown purchasing, which affected other Mohaka–

53. Document J32, pp 5–15

54. Document J29, p 131

55. *Ibid*, p 132

Waikare blocks at this time. The first intimation of this was a letter from Wi Puna and 25 others to the Government of 5 August 1913. This letter, which we also commented on in connection with the neighbouring Purahotangahia block, was a response to the proposal to route the Napier to Gisborne railway through the Purahotangahia, Tutira, and Awa o Totara blocks. As we noted, Wi Puna and the others wanted to retain the land on the seaward side of the railway and sell that on the inland side to the Crown. But, in contrast to Purahotangahia, where the Crown quickly sought to purchase the whole block, there was no immediate response from the Crown to Wi Puna's proposal with respect to Tutira. However, on 14 July 1917 seven owners, headed by Te Roera and Kurupo Tareha, offered to sell their interests in Tutira to the Crown at the Government valuation.⁵⁶ The Crown responded by following its usual procedures for purchasing land, though it did so with increased urgency, because it was desperately searching for suitable land for returned servicemen. In this respect, it regarded Maori land as a soft target. The Native Department asked the Department of Lands and Survey for a report on Tutira, and it also asked the Crown Law Office whether existing leases could be terminated. The office confirmed that they could. The Valuer-General was asked for a valuation and gave Tutira a capital value of £42,003 – about £2 an acre – with slightly over half of this sum attributed to improvements made to the land, mainly by the Guthrie-Smiths. The district surveyor was also asked for a report on Tutira. Though he admitted that the land was similar to the adjoining Purahotangahia and Awa o Totara blocks, which had already been acquired for returned servicemen, he advised against disturbing the existing lessees. But then he added the somewhat contradictory advice that the block could be cut into about 20 lots of 700 to 1500 acres and, once the railway was constructed, it could be cut into even smaller lots. That was all the encouragement needed for a Government already determined to acquire land for returned servicemen. As Boast suggested, in the inexorable process of land acquisition that followed, no Crown representative seems to have paused to ask whether the purchasing was in the best interests of the Maori owners.⁵⁷ There were suitable alternatives. The existing leases could have been left undisturbed; they were at least providing some income, if hardly an economic return. Better still, the owners could have been encouraged to resume the land themselves on the termination of the leases, and they could have been given some assistance to develop it.

The commissioner of Crown lands in Napier was the next to comment, and he too opted for Crown acquisition of the Tutira block. Cabinet approved the purchase recommendation on 23 November 1917, and the Valuation Department prepared a new valuation for the block, which placed its worth at £60,921 (of which about a third was due to improvements made). In four years, the value of Tutira had rocketed from £42,003 to £60,921, an increase of nearly 50 per cent, though this was probably on a par with land values around the country, which had been inflating rapidly. The Crown began to purchase the 40 undivided shares that had

56. Ibid, p133

57. Ibid, p135

originally been issued to the owners designated in the 1870 agreement. Because the Native Land Court declared successions to deceased owners, by 1918 those shares had been fractionated into several hundred; so much so that some owners now possessed as little as $\frac{1}{54}$ of an original share or, even more ludicrous, $\frac{2633}{10,800}$ of a share.⁵⁸ In some instances, succession had not been declared at all. Despite such difficulties, the Crown acquired most of the shares very quickly. A quarter of them were purchased within a month, and approximately 32 out of the 40 had been acquired by 27 January 1923. By then, however, the process of acquisition was slowing, and, as happened elsewhere, the Crown decided to apply to the Native Land Court for a partition to cut out its by then considerable share of Tutira.

This partition was not achieved simply or rapidly. For a start, it was found that the block had never been fully surveyed, although this had supposedly been done by Williams and Busby prior to the Native Land Court hearing that had been scheduled for 1866. No one knew the exact size of the Tutira block nor, as a consequence, how much the Crown and the Maori owners would receive once the court had approved a partition between them. It was also difficult to decide how to partition the block on the ground to cut out the portion for the Maori non-sellers while not unduly disturbing the lessees. Moreover, it was not just a matter of inconveniencing the Guthrie-Smiths, since in 1919 Herbert Guthrie-Smith had surveyed and partitioned a large part of his run and sub-let it to settlers: his own 'returned serviceman's settlement' (map 31). Guthrie-Smith wanted this sub-let area to be awarded, on partition, to the Crown, from which his tenants could then get a secure title. On the basis of Guthrie-Smith's survey and other calculations, it was estimated that the total area of Tutira was some 1132 acres larger than had previously been thought (though Boast suggested that this figure was still probably only a third of what it should have been). As a result, Maori who had sold their shares on the basis of a valuation for a smaller area demanded additional payments. The Native Department refused to accept their claims, arguing that sellers had not been called on to make refunds where other blocks had been found to be smaller than their estimates.⁵⁹

While these complications remained unresolved, there was no point in the Crown pursuing a partition; in any case, it could always hope to pick up the remaining shares and thus avoid a partition altogether. So, the Crown withdrew its application for a partition. But then the remaining non-sellers applied for a partition, in order that their interest could be cut out. The Crown, playing for time, repeatedly applied for adjournments, which were granted (with increasing reluctance) by the Native Land Court. Eventually, in April 1926, the Minister of Lands inspected Tutira and instructed the Native Department to apply for a partition. The Native Minister (and Prime Minister) JG Coates, accepted this, and an application for a partition was lodged on 14 April. The hearing took place on 23 July and Tutira was partitioned. The Crown, which had by then acquired 34.65708 shares, was awarded Tutira A (19,426 acres); the non-sellers were awarded Tutira B (862 acres), and Tutira C (one acre) was awarded to Mohi

58. Document J29, pp 139–140

59. *Ibid*, p 142

Nicholson and Wiki Ngakura. However, the partition was not given effect to on the ground, and in the meantime the Crown kept on purchasing undivided interests.⁶⁰

The tussles over Tutira were far from ended. For one, there was the problem of the Arama Pohio lease of the 1300 acres of the Tutira native reserve. By 1920, Pohio had given up the struggle to farm the land, and he tried to transfer his lease to John Bennett, a Pakeha. Other owners objected, arguing that the Ikaroa District Maori Land Board should transfer the lease to one of them, but the board decided to allow the transfer to Bennett on condition that £2000 of the purchase money was paid to the other Tutira owners. In the end, the transfer to Bennett did not go ahead, but in 1923 the board and the Native Minister allowed the lease to be transferred to WR Paterson on the same terms. It is evident that the Native Department did not regard this area as a reserve at all.⁶¹

Though the owners gave up this struggle, they did not give up so easily on Lake Tutira. As indicated earlier, the lake was a valued source of eels. The prospect of losing this resource altogether was probably an important factor behind the resistance of the non-sellers to the sale of the remaining shares in Tutira. Several issues were involved. First, there was the question of whether the lake had ever been included in the Tutira block, even at the time of the 1870 agreement when it was returned to Maori. Perhaps the discrepancy between the block's supposed area and its actual area was made up by the lake. On the strength of this, Boast even suggested that the lake 'must still be uninvestigated papatipu land held on customary title' – though that suggestion overlooks the fact that it was part of the confiscation and was therefore regarded as Crown land.⁶² Alternatively, if the lake was included in the block when it was returned to Maori, there was the question of whether the owners had sold their rights to the lake when they had sold their undivided interests in the land. Further, if there was a partition, could the remaining non-sellers have insisted on retaining some or all of the lake? These questions were to be vigorously argued by both sides during the wrangle over the partition in the 1920s. Whatever the outcome of this dispute, the Crown wanted to reserve the lake as a wildlife sanctuary. If it did, it raised the question of whether former Maori owners would have privileged access to resources or would have to abide by the restrictions put on others. In August 1928, when Wi Puna, the non-seller with the largest remaining land interest, sold his share to the Crown (a reminder that the Crown was still buying after the 1926 partition), he did so on the condition that his right to fish for eels in the lake would remain. The Native Department was content to accede to this request, hoping that it could buy up the remainder of the shares and thus gain title to all of the lake in return for conceding former owners their customary rights to fish. The Department of Lands and Survey, on the other hand, wanted to partition the lake as it had partitioned the surrounding land between the Crown and the non-sellers.⁶³

60. Ibid, p 148

61. Ibid, pp 149–150

62. Ibid, p 150

63. Ibid, p 152

With further Crown purchases forever whittling away the non-sellers' land – by 1927, it was reduced to 582 acres – they appealed for another Native Land Court hearing to work out a new partition. Before this was held, the Department of Public Works complicated the situation by compulsorily taking a four-acre site on the outlet of the lake, ostensibly for a roadman's residence. The non-sellers were incensed, since this area had been used for generations as a camping and fishing site. The dispute was taken to the Native Land Court, which finally decided on 28 July 1928 to finalise the partition of the whole of the Tutira block, including the lake. This decision varied the 1926 partition to allow for the changes that had taken place in the interval as follows:

- ▶ Tutira A, which had been awarded to the Crown, now contained 19,726 acres 2 roods.
- ▶ Tutira B, which had been retained by the non-sellers, contained 561 acres 2 roods, including just over 30 acres of the lake and two acres of the area taken by the Department of Public Works.
- ▶ Tutira C, containing two acres on the east side of the lake, had been gifted to the Crown as a memorial to Te Wae Wae, a famous warrior chief of the Ngati Kurumokihi people, the former occupants of Tutira.⁶⁴

The partition pleased neither side. The Maori non-sellers regretted that they had not got the whole of the lake and the public works site. Kipa Anaru and others lodged a petition to have both the lake and the public works site returned. The Department of Lands and Survey, which by then was in accord with the Native Department, wanted the Crown to have all of the lake so that it could better police the sanctuary – and thus prevent the Maori owners from going beyond their portion and 'roaming at will over the lake'.⁶⁵

There was a prospect of resolving the issue one way or the other when, on the recommendation of the Native Affairs Committee, Anaru's petition was referred to Judge Gilfedder in the Native Land Court. In his decision, Gilfedder was content simply to restate the views of both sides. He noted the long-standing claim of the non-sellers to the supposed surplus of 3000 acres in the Tutira block, which the Crown had not paid for, and their offer to relinquish their unsold shares if they were allowed the whole of the lake. If they were granted the lake, they would then gift it to the nation, provided they were guaranteed that it would not be 'appropriated by some enterprising pakeha individuals or organizations, to the exclusion of the Maori people'. Alternatively, they proposed that the 3000-acre surplus be located so as to embrace the lake and that both be left in the names of the 'Native owners of the Tutira Block'.⁶⁶

Gilfedder's judgment was followed by an argument between the Crown Law Office and the Native Department over the Crown's liability to pay for the excess land (which, after a survey,

64. Document J29, pp 152–153

65. Pfeifer, draughtsman in charge, Native Lands Branch, Department of Lands and Survey to commissioner of Crown lands, Napier, 27 September 1928 (as quoted in doc J29, p 153)

66. Document J29, p 155

had finally been calculated at 3350 acres). Crown Law held that there was no liability, while the department, though reluctant to admit a Maori customary title to the bed of the lake, held that, if compensation were to be paid, an adjustment would have to be made to the acreages of both parties. This is what happened. In 1931, the Native Minister, Sir Apirana Ngata, referred the issue to the Native Land Court, which recalculated the areas as follows:

- ▶ the Crown's portion, Tutira A, was fixed at 22,790 acres 2 roods 0.58 perches; and
- ▶ the non-sellers' portion, Tutira B, was fixed at 677 acres 2 roods 24 perches.⁶⁷

As for the lake, it was to be partitioned between the Crown and the Maori owners of Tutira B. In 1935, the Crown finally paid £6470 for the surplus area.

Finally, there is the question of what happened to the remaining Maori portion, the 677 acres in the Tutira B block. In 1931, the Native Land Court partitioned it into 18 lots. The owners then found themselves burdened with survey costs for the initial partitioning of Tutira B from the Crown's Tutira A (estimated at £26 9s 4d) and for the subsequent surveying of the 1931 partitions of Tutira B. It is not clear why the owners of Tutira B were lumbered with the whole cost of cutting their land off from the Crown's land. Judge Harvey of the Native Land Court thought that the Crown ought to pay it, but the Department of Lands tenaciously pursued the payment until 1941, when a compromise was reached. The department agreed to remit the charges for the initial survey, and the court ordered the Native Trustee, who had been holding Guthrie-Smith's final annual rent payment of £124 2s 11d, to pay the department that amount in satisfaction of its claim.⁶⁸ As for the land in the Tutira B subdivision, it remained unoccupied and undeveloped (since most of the owners lived in the vicinity of Tangoio), despite suggestions from time to time from the Native Department that it be brought under a development scheme. The Maori-owned portion of Lake Tutira was constituted as the Tutira Maori wildlife refuge in 1951, and the Crown portion was gazetted as a wildlife refuge in 1957, but negotiations to unite them as one refuge were unsuccessful: the Maori owners would neither sign away control nor sell their portion of the lake. As for the lake itself, by 1997 it had reached what Breese described as 'an advanced state of eutrophication' which has had severe effects on the fisheries.⁶⁹ Claimant Bevan Taylor also maintained that the lake had been poisoned through toxic farm run-off; he lamented that 'our younger generations will never experience what I have witnessed in the catching of eels'.⁷⁰ For a further discussion on Lake Tutira, see chapter 18. There is still Maori land at Tutira today (see map 30), but the situation now is most unlike that in the 1940s, when, according to claimant Rere Puna, the block supported quite a few Maori families, who mainly seem to have worked as shearers and general farm labourers.⁷¹

67. Ibid, p156

68. Ibid, p159

69. Document J32, pp 13–14

70. Document J48, para 29

71. Document J42, para 30

9.9 TATARA O TE RAUHINA

Tatara o Te Rauhinā is a small hill country block of 5760 acres sandwiched between Tutira on its western border and the Moeangiāngi block to the east. Put in the names of 14 owners by the 1870 agreement, the block was leased to Pakeha runholders.⁷² It was not until December 1915, when Mihi Ngawaka, holding a quarter of a share, offered to sell to the Crown that the block came under the scope of the Crown purchasing regime. At that time, it was leased in two sections to Janet Richmond and Alice Fernie, whose leases were due to expire in 1928. On 24 January 1916, a proclamation under section 363 of the Native Land Act 1909 was issued prohibiting the alienation of the block to anyone but the Crown. The block was valued at £19,335.⁷³ Owing to numerous succession orders since 1870, by 1916 most of the 14 original shares had been considerably subdivided, some down as small as 1/22. A list of shares with their accompanying values was drawn up by the Native Department, and a meeting of owners was called for 14 July 1916 to consider the standard resolution that the Crown's offer to purchase at valuation be accepted. It should be remembered that the meeting of owners was called solely on one offer to sell, and that from a single owner who had a mere quarter of a share. The resolution was unanimously rejected by the 14 owners present; most were unwilling to sell at any price, though a few wanted a higher price (Ngawaka wanted £10 an acre). It was the sellers' voices that were heeded. The Native Department called a new meeting of owners on 21 December 1916, at which a formal offer at a new valuation of £21,631 was made.⁷⁴ Though the offer was rejected by eight owners, four others, including Ngawaka, agreed to sell. The department was not content just to buy their shares, and it set out to get the other shares as well, repeatedly extending the prohibition orders for five years to ensure that the non-sellers had no alternative but to sell to the Crown. Ballara and Scott have described orders such as these as 'a form of robbery':

The Crown's policy under its Treaty obligations should have been designed to protect the local community from landlessness and to discourage the individual from turning to land-selling to solve his economic problems. But instead the Crown did its best to force people to sell to it at the lowest possible price. It exploited their poverty. Its policies ensured that the only possible purchaser was the Crown by preventing the owners from getting the best possible price on the open market. Crown agents commonly . . . put undue pressure on individuals to sell even after clear indications had been given to them that the owners wished to retain the land.⁷⁵

There was undoubtedly a strong degree of coercion in the Crown's actions, and this was contrary to the Crown's obligation under the Treaty to respect Maori wishes to retain their land. We comment further on this below.

72. Document J29, p 113

73. Document 11(15), p 96

74. Document J29, p 116

75. Document 11(15), p 97

So far as Tatara o Te Rauhina was concerned, opposition to the sale was eroded when the Crown buying process got under way. By September 1917, the Native Department had acquired about three-quarters of the block. Since it seemed that the remaining owners would refuse to sell, the department contemplated seeking a partition, but before this could be effected, other non-sellers changed their minds, and one of the most stubborn of all, Hami Tutu, offered to sell if the price were increased. But the department was wary of Tutu's 'slickness' and refused to deal with him. Tutu then applied for a partition to have his interest cut out. However, no action was taken on this, and in 1921 Tutu was joined by the two other non-sellers, who had finally decided to sell, perhaps on the realisation that, if a partition were carried out, their survey costs might exceed the value of the land. The block was finally proclaimed Crown land on 16 October 1923.⁷⁶

9.10 TE KUTA

Te Kuta is a small coastal block of 1625 acres on the north-east edge of the Mohaka–Waikare district. Its northern boundary is the Waikare River, and its south-west boundary is the large Crown-purchased Moeangiangi block. The history of the Te Kuta block between 1870 and 1913 was not recorded by the claimants, and it is uncertain how many of the 35 persons named as owners in the 1870 agreement resided on the block in that period. However, according to Boast, eight owners wrote to the Native Minister on 21 July 1913 offering to sell the block to the Crown at valuation. It is not clear from Boast's account where the writers of the letter lived, but there was a postscript to the letter that read: 'The persons who instructed this letter to be written are at Petane and Tangoio. We have no time to take this document to them.'⁷⁷ This implies that, though the signatories of the letter were in residence on the land, absentees living at Petane and Tangoio also wanted the land to be sold. The block was later valued at £4340, with the improvements valued at £1350, which suggests that someone had been farming the land.⁷⁸ Indeed, when some of the owners began to resist the sale, it was disclosed that they were running sheep on the block.

On the receipt of the letter of 21 July, the normal Crown purchasing procedures were set in motion. The Valuation Department was asked to value the land. It divided the block into two pieces: one of about 150 acres, which was valued at £510, and one of, 1470 acres, which was valued at £3830. On 31 October 1913, Native Minister Herries signed a formal offer to buy the larger block at valuation. The Ikaroa District Maori Land Board was directed to call a meeting of owners to consider the offer, and the meeting was held on 9 December 1913. Only 29 of the 90 owners then in the title were present, but a resolution was passed agreeing to accept the

76. Document J29, p119

77. Ibid, p125

78. Ibid, p126

Crown's offer, subject to the interests of four owners being cut out. (These non-sellers were not signatories to the original offer of 21 July 1913.) The amended resolution was accepted by the Ikaroa board and by the Native Land Purchase Board. In January 1915, the Native Land Court investigated the title of Te Kuta and the Crown completed the purchase, apart from the interests of the four non-sellers. On 12 July 1915, the under-secretary of the Native Department wrote to the Department of Lands and Survey to partition out the Crown's interest. The under-secretary listed six non-sellers and noted that their shares were worth just over £600 (the two extras appear to be close relatives of the four who opposed the earlier resolution). The Native Land Court considered the partition proposal on 23 July 1915 and awarded the Crown 1470 acres and the non-sellers 155 acres. The non-sellers' land was to be taken beside the Waikare River near its outlet, where their kainga and urupa were located.⁷⁹ This seemed to indicate a smooth conclusion to the matter, though, as Boast indicates, one of the owners who was listed as a seller failed to uplift her payment and may not have been a seller after all. (In 1916, her son, who was farming sheep on the block, tried unsuccessfully to have her share cut out of the Crown block.) We have no information on the fate of the block retained by the non-sellers.

9.11 AWA O TOTARA

The 17,130-acre Awa o Totara block is bounded to the south by the Tutira and Tataro o Te Rauhina blocks, to the south-east by the Moeangiangi block, to the north-west by the Heru a Tureia block, and to the north by the Mohaka block, which was purchased in 1851. As we have said, at some point it subsumed the neighbouring Waikare block. Awa o Totara was one of the blocks that was surveyed for the proposed 1867 hearing of the Native Land Court, but it ended up being confiscated instead and vested in 39 owners by the 1870 agreement. By 1913, the number of owners had increased to 96.⁸⁰ As with other adjacent blocks, Awa o Totara was leased to Pakeha sheep farmers, including Guthrie-Smith. It too was likely to be bisected by the Napier to Gisborne railway. Once again, the owners, led by Ni Puna, proposed in 1913 to sell the portion of the block inland from the line of the railway while retaining the seaward portion – just as they had proposed for the Purahotangahia and Tutira blocks. However, HP Ratima and other owners lodged a petition opposing the sale. The Native Department chose to regard Ni Puna's proposal as an offer to sell the whole block, and so it put the Crown purchase machinery into motion. The block was valued at £29,342, and a meeting of owners was called to consider the standard resolution that the offer by the Crown to buy the block at valuation be accepted. The meeting was held at Tangoio on 9 December 1913, and most of the 29

79. Document J29, p127

80. Ibid, p23

owners present (out of the 96 then in the title) agreed to sell. Four opposed the sale, among them Waka Puna, who had sold his interests in other blocks and had raised £2000 to develop a family farm on part of Awa o Totara. The meeting resolved to sell the block, less the interest of Waka Puna and the other three non-sellers. However, those present at the meeting held only about half of the shares in the block, and the non-sellers there held only 3 $\frac{1}{6}$ shares. The absentees' views on the proposed sale were not known.⁸¹

The resolution to sell was confirmed by the Ikaroa District Maori Land Board on 16 December 1913 and by the Native Land Purchase Board on 30 March 1914. A purchase price of £30,000, less £1871 16s (the value of the non-sellers' shares) was agreed, and Native Department purchase officers proceeded to pay the sellers. Puna and the other non-sellers were asked to come to an arrangement with the commissioner of Crown lands to locate their portion of the block so that a partition could be carried out. In September 1915, Hami Tutu, whose shares were included in the sellers' block, wrote to the commissioner of Crown lands in Napier explaining that he was a 'dissident' and wanted his shares cut out. He likewise wrote to the Native Department the following month, but the department insisted in response that he had in fact agreed to sell his interests.⁸² Meanwhile, on 6 November 1915, the Native Land Court made a partition order. The non-sellers took their 935 acres on the eastern part of the block (now called Awa o Totara A), which adjoined the Napier to Wairoa road and the Waikare River. The remaining 16,195 acres (Awa o Totara B) had already been declared Crown land on 4 November 1914.⁸³

Attention then shifted to Awa o Totara A, which had been partitioned between the four owners in 1915. The land was then leased to the Bee brothers, who surrendered their lease in 1916. The block subsequently remained unoccupied until 1919, when Waka Puna took up his lease, but the land was difficult hill country and had deteriorated while it had been unoccupied, and Puna found it a struggle to farm. Around the time Puna died in 1921, the block was offered to the Crown. But Department of Lands and Survey staff considered the asking price of £4 an acre too high, and the offer was declined. In 1925, with the railway at last under construction and expected to pass through the block, the Crown decided to make a new offer for the land. A valuation, based on 1919 figures, of £1762 was obtained, and the two other owners, both resident elsewhere, sold their shares.⁸⁴ The trustees for Puna's heir, a minor, held out. Instead of persisting with attempts to buy Puna's land, the Crown obtained a partition. The Native Land Court awarded 490 acres to the Crown and 405 acres to Waka Puna junior. Some 40 acres between the two blocks were taken for road and railway works, and some of this land was used for the Putorino railway station.

81. Ibid, p 25

82. Ibid, p 26

83. Document 11(15), p 78

84. We presume that one of the three original non-sellers had died and their interests had passed to another.

The fate of Waka Puna junior's 405 acres is unknown. Eventually, Tutu won his case, and his share of the Awa o Totara B block, of unspecified acreage, was revested in him by crown Grant and, in 1938, was declared native freehold land.⁸⁵

9.12 HERU A TUREIA

The mountainous 8664-acre Heru a Tureia block lies to the north-west of Awa o Totara. One corner of the block touches the Tutira block, and some of it was leased for a time to Guthrie-Smith. Later, it seems to have been leased in two parts. According to Boast, the original proposal to sell the block is undocumented, since the Native Department file begins with the next stage of the process: a proclamation of 1 November 1911 prohibiting alienation for a year under section 363.⁸⁶ The block was valued at £7097, or around 16 shillings an acre.⁸⁷ Then, on the direction of the Native Minister, the Ikaroa District Maori Land Board called a meeting of owners to consider a resolution to accept the Crown's offer to purchase. The meeting was held at Petane on 22 February 1912. Of the 90 owners then listed on the title, only 20 were present, but they were almost unanimous in voting against the motion (though some expressed a willingness to have the land sold by tender or auction). Nevertheless, the Government did not lift the proclamation forbidding alienation of the land, and this was enough to prevent one of the lessees from renewing his lease, which had expired. The owners pleaded for the proclamation to be lifted so that they could re-lease the land. The Native Department refused to budge, and on 1 March 1913 the Ikaroa board was instructed to summon another meeting to consider the resolution to sell the block to the Crown. To assist the Crown's cause, the proclamation forbidding alienation was renewed for a year from 12 April 1913. Forty out of 90 owners attended the meeting, and although they remained opposed to selling the whole of the block, they did agree to sell the unleased portion, an area of 3990 acres, for £7250. This smaller portion was the most valuable part of the block.⁸⁸

The remainder of the block was poor quality land; it had pumice soil and was covered in manuka. The Land Purchase Board was in no hurry to purchase it, though some of the owners became willing to sell. On 15 May 1918, a group of them offered to sell the block to the Crown, which then initiated the usual purchase procedures. A meeting of owners was called at Tangoio on 22 August, where a resolution to sell the block to the Crown at valuation of £2900 – 12 shillings sixpence an acre – was accepted by a large majority. Hami Tutu and two

85. Document 11(15), pp 80, 83

86. Document J29, p 32

87. Document 11(15), p 90

88. Document J29, p 35. The purchased and unsold areas do not appear to have been given separate appellations: see 'Report from the Under-Secretary, Native Department, on the Working of Native Land Courts and Maori Land Boards', 23 June 1914, AJHR, 1914, G-9, p 10, and *New Zealand Gazette*, 1913, no 88, pp 2247–2248.

other owners present, who also represented several minors, refused to accept the sale. Tutu argued that the sale of the land would leave some of them landless. The Native Land Court was required to look into this claim. Judge Robert Jones found that the land was not of sufficient quality to support the non-sellers (though Tutu had offered to lease it) and that the Crown offer to buy was reasonable. The Native Land Purchase Board confirmed the terms, and the purchase went ahead, with the interests of the non-sellers being separated out. The block was partitioned into three: Heru a Tureia 1 and 3 (3553 acres) went to the Crown and were proclaimed Crown land on 27 June 1921; Heru a Tureia 2 (1121 acres) remained with the non-sellers. But, when Hami Tutu died, this latter block was also acquired and it was proclaimed Crown land on 16 October 1923. As Ballara and Scott put it, in summing up this purchase:

Although the tactics used by the Crown in its negotiations for the purchase of the Heru-a-Tureia block were similar to those used in other blocks, more than any other area Heru-a-Tureia demonstrated the fanatic determination of Government and its agents to acquire Maori land in the face of consistent demonstration by the owners that they wished to retain possession and control of it.⁸⁹

Heru a Tureia was also the name of a reserve in the 1851 Mohaka purchase, which we discuss in chapter 11, and the reserve should not be confused with the Heru a Tureia block.

9.13 LEGAL SUBMISSIONS ON THE RETURNED BLOCKS

9.13.1 Claimant submissions

The Wai 299 statement of claim stated that, ‘The Crown undertook a deliberate policy of purchasing land in the Mohaka–Waikare block in breach of the 1870 Agreement and the Treaty of Waitangi.’⁹⁰ This was elaborated on in the statement of claim as follows:

- ▶ The 1870 agreement provided that returned blocks were to be ‘inalienable as to sale’ and ‘held in trust’.
- ▶ In 1914, the Crown declared the Mohaka–Waikare lands to be Maori freehold land ‘in order to facilitate Crown purchasing’.
- ▶ Despite numerous petitions and protests, the Crown continued to purchase land, relying on the 1870 lists of owners.
- ▶ The scale of Crown purchases left hapu and whanau with an inadequate land base.
- ▶ The Crown pursued a ‘coercive approach’ to land purchasing by using proclamations prohibiting the alienation of land to private buyers and proceeding with purchases even

89. Document 11(15), p 94

90. Claim 1.22(e), para 5.1

though its offers had been rejected by meetings of owners, and through the activities of land purchase agents.⁹¹

Further particulars of these claims were provided in claimant counsel's opening submissions, which alleged that, contrary to the guarantees of the Treaty and the 1870 agreement, the Crown 'undertook a deliberate and coercive policy' of purchasing land between 1910 and 1931, acquiring just over 100,000 acres of the Mohaka–Waikare returned blocks.⁹² Examples of the Crown's 'coercive policy' included:

- ▶ the refusal of the Crown to bind itself to the prohibition on alienation laid down in section 5 of the Mohaka and Waikare District Act 1870;
- ▶ the provision in the Native Lands Amendment Act 1913 exempting the Crown from obtaining the approval of a meeting of owners for a purchase, as laid down in the Native Land Act 1909;
- ▶ the Crown's use of proclamations to prevent private purchases or leases while it was attempting to buy land; and
- ▶ the burdening of non-sellers with the costs of surveys.

As a consequence of the Crown's actions, the Maori people of the district suffered social and economic destabilisation and were 'forced into an ever increasing cycle of poverty and sense of desperation'.⁹³

These points were reiterated, and in some instances, elaborated on in counsel's closing submissions. There, it was said that the Crown had contravened the words and spirit of the 1870 agreement and the Mohaka and Waikare District Act 1870 by refusing to abide by the provisions prohibiting the alienation of land. The submission provided a long list of factors leading to sales of land to the Crown, including the various forms of coercion listed above. An additional grievance was the Crown's failure to issue Crown grants for any of the 'returned' blocks, apart from Kaiwaka.⁹⁴ This meant that Maori on the 1870 lists merely had an equitable undivided interest in what was technically Crown land, though these interests were sufficient to enable the Crown to purchase them. The position was simplified when the Crown provided in section 4 of the Native Land Claims Adjustment Act 1914 for the blocks to be regarded as Maori freehold land. This facilitated Crown purchasing, along with the use of proclamations prohibiting private purchases or leases and the exemption of the Crown from the provisions of the Native Land Act 1909 relating to meetings of owners. Further details were presented of the effects of the Crown's coercive practices, particularly the failure of the Crown to reserve or set aside sufficient land for the Maori communities. One result of this failure was that by 1931 there was insufficient land left for Ngata's land development schemes to be applied in the Mohaka–Waikare district. Finally, the submission asserted that

91. Claim 1.22(e), paras 5.1(a)–(e)

92. Document M11, p 26

93. Ibid, p 31

94. Document X39, p 62

the various acts and omissions of the Crown just described were in breach of the principles of the Treaty.⁹⁵

9.13.2 Crown submissions

The Crown's closing submission accepted Boast's account of the Crown purchase transactions for the returned blocks as being 'a generally fair reflection of the Maori Land Purchase Department files' and added that, 'On many of the points he raises, there is considerable common ground between the Crown and the claimants.'⁹⁶ Crown counsel did not accept that the prohibition on alienation laid down by the 1870 agreement and the Mohaka and Waikare District Act 1870 necessarily needed to operate for all time, especially since Boast admitted that there were some owners who did wish to sell (usually because they lived elsewhere and wanted the money for other purposes). Counsel argued that, for reasons of 'national importance' (such as the settlement of returned soldiers), the Crown had good cause to purchase the interests of willing sellers. However, Crown counsel accepted that the Crown had no right to place 'undue pressure on those who did not wish to sell'.⁹⁷ This 'undue pressure' included the indiscriminate use of proclamations under section 363 of the Native Land Act 1909 to prohibit private purchases, more especially when such proclamations, by preventing the renewal of leases, could starve the Maori owners of legitimate income. Crown counsel admitted: 'The use of the power in s363 to impose pressure upon owners who had manifested no wish to enter negotiations with the Crown was a serious departure from the standards of fair and reasonable dealing embodied in the Treaty.'⁹⁸ Crown counsel also accepted that this judgement could be applied to the Crown's refusal at times to abide by resolutions of owners opposing sales. Counsel further accepted that the Crown paid insufficient regard to the wishes of residents on the blocks who wanted to develop and farm the land themselves and instead paid too much regard to the preferences of absentees. Counsel admitted: 'The economic development of those who wished to remain was overlooked in this era.'⁹⁹ This applied particularly to the owners' proposals to sell parts of the Tutira, Purahotangahia, and Awa o Totara blocks and to develop the remainder with the proceeds. Counsel concluded:

In taking advantage of this willingness [to sell], the government acted in a manner that was at times unfair, or even oppressive, and with little regard for the maintenance of a viable Maori presence in the region. In these respects the Crown did not live up to the standards of good faith and fair dealing that found expression in the Treaty.¹⁰⁰

95. Ibid, pp 64–65

96. Document X51, p118

97. Ibid, p119

98. Ibid, p121

99. Ibid, p122

100. Ibid, p123

9.13.3 Claimant submissions in reply

Claimant counsel made no specific submissions in reply in relation to the returned blocks, though he did reiterate a series of Treaty breaches by the Crown, including that it ‘failed to govern properly and justly, and to apply and exercise its laws and powers properly, without any underlying desire of benefit, and without unfair discrimination between its pakeha and Maori subjects’.¹⁰¹

9.14 TRIBUNAL COMMENT

It is not possible to make definitive findings on all the issues discussed above. As we have noted, there are gaps in our narrative of the alienation of some of the seaward blocks in the Mohaka–Waikare district. Sometimes, as researchers have pointed out, this is because the official files no longer exist. To compound the problem, there is little other documentary evidence, and much of the period under investigation lies well beyond the memory of those kaumatua who presented oral evidence. This is so particularly in relation to the last three decades of the nineteenth century, but neither were we provided with much information on the fate of the small pockets of remaining Maori land after 1930, as we note below. There is little information for the earlier period on Maori who were included in the 1870 agreement lists for the various blocks and those who were left out. We have little information on where they were living and what they were doing to make a living. It seems that the Ngati Kahungunu hapu represented in the 1870 lists were concentrated mainly at Tangoio, Wharerangi, and Waiohiki. Few of those listed in 1870 appear to have been living on the blocks that were ostensibly returned to them; most of the land in the district was leased to Pakeha run-holders, either before or soon after the confiscation. Except for Guthrie-Smith of Tutira, little is known about the lessees and the terms of their leases. The original leases were informal arrangements with the customary owners, but before they could be legalised under the Native Lands Act 1865, the land was confiscated. Lessees on the blocks that were ‘returned’ to Maori could get legal leases under the Mohaka and Waikare District Act 1870 for a 21-year term, and most seem to have done so. Some lessees were able to convert their ‘Maori’ leases into Crown leases or freehold titles once the Crown had confiscated or later purchased all or parts of the ‘returned’ blocks from the Maori owners.

In one way or another, most of the returned land in the originally confiscated Mohaka–Waikare district was acquired by the Crown, and most of this was then onsold to Pakeha settlers. Although most Pakeha lessees appear to have renewed their leases after the expiry of the first 21-year term, their attempts to renew for another term were usually frustrated by the Crown, which imposed restrictions on further alienations, including by leasing, and

101. Document Y2, p32

began to pressure Maori owners into selling. This pressure intensified during the First World War, when the Crown was desperate to acquire land for returning servicemen. Most of the purchases were completed at this time or soon after, when the Crown either obtained the whole block or partitioned it to cut out the interests of non-sellers. Small areas remained with the non-sellers for most of the seaward blocks, but Boast's and Ballara and Scott's research usually ends with the partitions. There is little information on the various returned blocks after the 1930s, and it is not evident to us how much of this land remains in Maori ownership today. Map 30 provides a generalised indication of Maori freehold land in 2000. By 1931, as the summary of transactions in the table below indicates, of the 123,551 acres in the seaward blocks that were returned to Maori in the 1870 agreement, only 4531 acres remained in Maori ownership.

Block	Area (acres)	Owners in 1870	Date alienated	Area alienated to Crown (acres)	Area transferred to private ownership (acres)	Maori land in 1931 (acres)
Kaiwaka	30,765	1	1911	14,482	16,283*	0
Pakuratahi	3758	17	1918	2711		1047
Tangoio South	965	35	—	—		965
Arapaoanui	5117	37	1917	3835		1282
Purahotangahia	26,300	27	1915	26,300		0
Tutira	23,467	40	1931	22,790		677
Tatara o Te Rauhina	5760	14	1923	5760		0
Te Kuta	1625	35	1915	1470		155
Awa o Totara	17,130	39	1914	16,195 [†]		405
			1927	490		
				40 [‡]		
Heru a Tureia	8664	34	1913	3990		0
			1921	3553		
			1923	1121		
Totals	123,551	165[§]		102,737	16,283	4531

* This was the Kaiwaka 2B block that was converted to general title.

† This total is approximate only, because Hami Tutu's shares in the block sold to the Crown were later re-vested in him.

‡ Land taken for roading.

§ Note that a number of names appeared in more than one list of owners, hence the total of 165 names rather than 279. The 165 figure is Moorsom's; Boast counted 177. As Moorsom suggested, 'inevitably minor differences appear in reconciling the duplicate names': doc R3, p71.

Transactions in the seaward returned blocks

We noted in our previous chapter that the terms of the confiscation provided for the return to loyalists of their own land. The confiscation proclamation said this, as did the 1870 agreement, and section 2 of the Mohaka and Waikare District Act 1870 gave statutory effect to the promises of the latter, making them specifically 'binding on the Government of New Zealand'. We have already noted above that this assurance applied to land that was retained as

confiscated land, including the Tangoio North and Kaiwaka blocks. The nine seaward blocks that we have discussed here were returned in multiple ownership to those named in the schedule to the 1870 agreement. Those named were chosen by Tareha and others at hui preceding the signing of the 1870 agreement, though a few names were added afterwards. We have no way of determining how representative of the total population they were. There was no Compensation Court hearing to determine who were ‘rebels’ (and thus not entitled to compensation for confiscated land unless they had surrendered) and who, by implication, were ‘loyalists’ (and thus entitled to returned land).¹⁰² We can merely presume that those listed for the seaward blocks (and they included Tareha and other well-known loyalists) were indeed loyalists. But there may have been other loyalists who were left out of the lists, especially for those blocks bordering on Ngati Pahauwera territory. Customary rights to the returned seaward blocks were never investigated (in contrast to those to the inland Tarawera and Tataraa-kina blocks, which we report on in our next chapter). In 1882, the Native Land Court, acting on instructions from the Government, refused to investigate customary title to the returned blocks (much later, under section 4 of the Native Land Claims Adjustment Act 1914, all shares derived from ownership awarded in the 1870 agreement were deemed to have been equal). In 1882 and thereafter, the court restricted its inquiry to determining successors to those owners listed in the 1870 block schedules who had died. It did, however, revise the 1870 ownership lists of the Purahotangahia, Awa o Totara, and Te Kuta blocks (which had been referred to the court in March 1915), correcting mistakes and clarifying the Government’s intention.¹⁰³ This was in contrast to the inland blocks of Tarawera and Tataraa-kina, where the court was required by legislation to investigate customary entitlements, as we discuss in our next chapter. In our view, the Crown could have done this for the seaward blocks, and, as we said above, for the Kaiwaka block.

There is a further issue, one that has been discussed in the Tribunal’s reports on raupatu in Taranaki and the Bay of Plenty and has been touched on by us in our previous chapter. The original confiscation under the New Zealand Settlements Act 1863 had turned all land in the confiscation district into Crown land. It was the same with the land included in the Mohaka–Waikare confiscation proclamation. Any of that land ‘returned’ to Maori would be by way of individual Crown grants rather than in customary title. We reiterate the findings of the Taranaki and Ngati Awa Tribunals that this imposed change of tenure was in breach of the Treaty promise to protect Maori in their possession of their land and in their choices about their system of land tenure.¹⁰⁴

There was a further problem for those named in the 1870 schedules – their grants could not be issued before the land was surveyed. Although McLean claimed on introducing the

102. The provision for surrendered rebels was not in the New Zealand Settlements Act 1863 itself but was legislated for in section 4 of the Confiscated Lands Act 1867.

103. Document R3, p 145

104. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), pp 161–162; Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 128

Mohaka and Waikare District Bill that the blocks had been surveyed – in preparation for proposed Native Land Court sittings in 1866 – these surveys were inaccurate and incomplete. The inspector of surveys refused to accept them in 1870, and they were still incomplete when the Native Land Court sat in 1882 to consider issuing certificates of title to those named in the 1870 agreement. At that sitting, the names were read out from a copy of the 1870 agreement and entered in certificates as tenants in common, with legal estate ante-vested from 12 September 1870. But, even then, the certificates were not to be issued until a properly certified plan was sent to the court.¹⁰⁵ Since no surveys were carried out before the Crown began buying the interests of those named in the 1870 agreement (or their successors), no certificates were issued (apart from those for the Kaiwaka block, discussed above). The court named successors from time to time, usually when the Crown had started buying shares. In effect, therefore, the Mohaka–Waikare blocks were mostly ‘returned’ on paper, though these paper lists of owners were sufficient to enable the Crown to purchase the land. This also happened to ‘returned’ land in Taranaki and other confiscation districts. Some owners, of course, lived on and attempted to farm the land as we have indicated, and presumably their descendants have proper title today to the land that remains in Maori ownership.

In sum, therefore, we make the following conclusions:

- (a) For 30 or 40 years after the 1870 agreement, most of the land in the returned blocks was leased to Pakeha runholders. Although there is little information on these leases or on the relations between lessees and lessors, we do know that some lessees, such as Guthrie-Smith, remained on good terms with their Maori lessors. There were some mutual benefits, which included, for the Maori lessors, employment on the runs and access to traditional supplies of kai and rongoa. The first serious difficulties appear to have arisen as the leases became due for renewal. Although the Maori lessors were sometimes happy to renew the leases if the Pakeha lessees had performed well, some lessors wanted to resume and farm some or all of the leased holdings. Since they invariably lacked capital for development, the lessors had to either re-lease or sell other land. Under the usual lease terms, they did not have to pay for improvements, but they were then forced to resume land that had, as a result, been run down by the Pakeha lessees as the end of the lease terms approached (see chapter 13 for further discussion). Some owners who had interests in several blocks wanted to sell some of that land to concentrate development efforts on one block. However, instead of encouraging and assisting such endeavours, the Crown made every effort to frustrate and exploit them. There seems to have been a widespread Pakeha assumption, one shared by Crown officials, that land left in Maori ownership and control was a haven for noxious weeds and a danger to neighbouring Pakeha farms. This, as we elaborate on in chapter 19, overlooks the fact that the most dangerous noxious weed,

105. Document A31, pp 21–26

blackberry, was introduced by Pakeha and that its spread was enhanced by their frequent burning of manuka and tussock.

- (b) The Crown had a consistent land purchasing policy and procedure, and it was applied at much the same time (often to the same people) in block after block. Government departments (especially the Native Department, the Department of Lands and Survey, and the Valuation Department), Crown agencies such as the Ikaroa District Maori Land Board and the Native Land Purchase Board, and, finally, the Native Land Court all collaborated in one all-embracing objective: to acquire as much of the Mohaka–Waikare land as possible. The purchasing became particularly intensive in the second and third decades of the twentieth century, when the acquisition of Maori land for returning servicemen became of overweening importance to the Government. In this connection, we note that the Crown did not consider itself bound by the non-alienation condition imposed by section 5 of the Mohaka and Waikare District Act 1870, though section 363 of the Native Land Act 1909 was regularly enforced to stop Pakeha, including lessees, from acquiring land in competition with the Crown. We make a finding on these matters – and comment on the role of the Native Land Court judges – below.
- (c) The Crown purchasing procedure was usually initiated when it became known that leases were due to expire and that some owners were contemplating leasing the land themselves or selling it. Where there was a willingness to sell, the Crown agents would invariably take up the proposal, baulking only occasionally at the asking price or the blackberry. (In the case of the Tatarā o Te Rauhina block, an offer to sell by the owner of one-quarter of a share was sufficient to commence the procedure.) Then, the Crown would issue an Order in Council prohibiting the alienation of the land to anyone except the Crown for a year. The prohibition would apply to the renewal of existing leases and even to the leasing of the land by its owners. Since the Orders in Council were frequently renewed, the land could remain in a legal limbo for several years.¹⁰⁶ The owners could neither lease the land to themselves nor gain income from it by re-leasing it to the former lessees. All the while, the land would deteriorate, as introduced weeds such as blackberry resumed their remorseless progress. The owners had no practical alternative than to sell to the ever-pressing Crown agents. We believe that the Crown used Orders in Council prohibiting the alienation of land to create a monopoly to purchase that land, and that it exploited that monopoly in clear breach of both the prohibition on alienation in the 1870 Act and its fiduciary obligations under the Treaty. Instead of exploiting this position to acquire the land, the Crown should have been taking advantage of the expiry of the leases to assist Maori owners to settle and improve their own land. We note that Crown counsel

106. Document J29, p 39

accepted these points and conceded that the Crown's behaviour was in breach of its Treaty obligations.

- (d) The Ikaroa District Maori Land Board would act as a willing agent of the Crown in the next stage of a Crown purchase, usually by recommending the purchase to the Native Land Purchase Board after a perfunctory consultation with the land's owners. In the rare instances when the Ikaroa board approved the granting of a lease to Maori owners, the conditions imposed were so onerous – even more so than those placed on Pakeha lessees – that it was virtually inevitable that the Maori lessees would fail to meet them, as we noted in the case of the lease for part of the Tangoio South block.
- (e) Before a purchase recommendation went ahead, a valuation had to be obtained from the Valuation Department and the Department of Lands and Survey was asked to comment on the land's suitability for (European) settlement. Sometimes, valuations several years out of date were used, although if the Maori owners protested these were calculated anew. With land values rapidly inflating during the First World War, tempting prices were offered, and, in many cases, they were enough to persuade at least some of the owners to sell. But the procedures that the Crown applied to get the remaining owners to sell were in many instances coercive and in breach of its Treaty obligations.
- (f) Once the various Government bodies had approved a proposal, the next phase was to call a meeting of owners under the Native Land Act 1909, to approve a motion to sell the block concerned to the Crown. Under section 348 of the Act, any resolution passed by a meeting of owners could be confirmed, disallowed, or deferred by the district Maori land board, whose chairman was a Native Land Court judge. This raises the important question of the duality of roles of land court judges, who could be carrying out the judicial functions of the court at one moment and Executive functions for the Crown as a purchaser of Maori land at the next. (Robert Jones, who in the 1920s was both the chief judge of the Native Land Court and the under-secretary of the Native Department, was a case in point.) Section 343 of the 1909 Act stated that a motion to sell Maori land could be approved if those shareholders present who voted and voting in favour holding a 'larger aggregate share' than those present who opposed. Thus, there was no requirement for a majority of the shareholders (or even a majority of those present at a meeting) to vote in favour of the motion. This situation was made more invidious by there being no requirement for a quorum in terms of a minimum proportion of shares being represented at a meeting. The only quorum stipulated was that, under section 342(5), five owners needed to be present or represented – which in theory could have meant no actual owners needed to be physically present at all.

Though details are sketchy for most of the meetings of owners of the different blocks, we do have a more detailed account of the December 1913 meeting of owners

of the Purahotangahia block. This account was published in the *Hastings Tribune* and was quoted at length by Boast. We have quoted much of this information above and do not need to repeat more than the bare statistics here. There were 72 named owners for the block, 42 of whom attended the meeting. When a motion to sell the block to the Crown was put to the meeting, 12 of the named owners voted in favour and 11 voted against. The other 19 abstained. However, the chairman declared the motion passed, though it was supported by a mere one-sixth of the named owners. The Crown proceeded with the purchase on the assumption that the owners approved of it, though the evidence presented clearly showed that only had 12 specifically assented. Absence, silence, or abstention does not amount to approval. The Crown, in our view, had a Treaty-based obligation to ensure that all Maori who had rights in land specifically assented to any alienation of that land. This does not necessarily mean that the board acted illegally over the Purahotangahia transaction, since its treatment of the shares deriving from the 1870 agreement as equal may have been enough to comply with the requirements of section 343, and the resolution to sell the block could simply have been approved by the board under section 348. (Section 348 allowed the board to approve a resolution passed at a meeting of owners if it deemed that resolution to be in the interests of the owners and the public.) However, in our view, any legislative provision that allowed an alienation of land to proceed on the declaration of the board or according to the wishes of a clear minority of the owners was in breach of the Treaty.

Also in breach of the Treaty was the Crown's practice, which it followed in relation to several of the blocks, of ignoring a unanimous rejection (or a rejection by a large majority) of a resolution to sell, and proceeding to negotiate with any individuals who were prepared to sell. In due course, and for a variety of reasons (not the least being the continuance or renewal of Orders in Council prohibiting the alienation of the land, even by way of lease to the owners themselves), sellers usually appeared. While this practice became legal under section 109 of the Native Land Amendment Act 1913, any occurrence of it prior to that would have been illegal (we are unaware of any pre-1913 instance in the seaward Mohaka–Waikare blocks).

- (g) If some owners persisted in refusing to sell their shares, the Crown could apply to the Native Land Court to partition out its interests. However, it usually delayed taking this option, hoping in the meantime to pick up shares of non-sellers, while also maintaining the prohibition on alternative forms of alienation. For its part, the Native Land Court usually allowed the Crown to adjourn such applications while it tried to buy outstanding shares. But there were some instances where non-sellers lost patience and applied for a partition. Partitions as such were not in breach of the Treaty, since they ostensibly allowed non-sellers to retain their land.

- (h) Yet, even where there was a partition, the problems were seldom over, since there were often difficulties in allocating the land between the Crown and the non-sellers. The most imaginative partitions were those proposed by the owners of the Purahotangahia, Tutira, and Awa o Totara blocks, which were due to be bisected by the Napier to Gisborne railway. The owners wanted to sell the land to the west of the railway in order to obtain capital to develop the land to the east of the line, which they wanted to retain. Instead of going along with that progressive scheme, the Crown concocted owners' resolutions to sell the whole of each block, and thereafter it persisted until it had bought all or nearly all of the shares. At Tutira, a small but persistent group of non-sellers held out – not so much to retain the land but to try to control their precious eel fishery in Lake Tutira – but they were eventually forced to accept a partition of the lake and the loss of a large part of the fishery. The land left to Maori owners in partitions was usually burdened with debt, particularly from survey expenses. It seems that the Maori non-sellers were made to pay the whole cost of surveying any of their land partitioned from that acquired by the Crown, as well as paying for surveys arising from subsequent partitions between themselves. What land was left to Maori non-sellers after partitioning it was seldom of economic value, and was usually leased to neighbouring Pakeha farmers or, eventually, sold to the Crown.
- (i) By the time the Crown had finished its land buying in the 1920s, there was insufficient land left in Maori ownership in the returned seaward blocks of the Mohaka–Waikare district for the development schemes initiated elsewhere by Sir Apirana Ngata after 1929. Most of the land had in fact been 'returned' to the Crown, and from there it passed quickly into the ownership of European settlers, some of them original lessees, others hapless returned servicemen who were about to face enormous difficulties farming rugged country during a deepening depression. By about 1930, some 60 years after it had 'returned' the blocks to Maori owners (supposedly, on an inalienable basis), the Crown itself had purchased the greater part of that land, and in doing so had shown scant regard for its fiduciary obligations under the Treaty. All of the Crown's land purchases were made in the twentieth century, long after the acquisition of Maori land could be justified on the ground that the Maori population was declining. On the contrary, the Maori population increased from the beginning of the century, and there was an urgent need to develop land for Maori settlement. When Ngata began to apply that policy to Maori land in the 1930s, there was little Maori land left in the Mohaka–Waikare district, except in the remote and rugged interior. Until then, the ideology of colonisation had prevailed: it was the Crown's responsibility to acquire Maori land for 'settlement' (ie, for Pakeha settlement).
- (j) As Crown counsel has admitted, the Crown was obliged to live up to the standards of good faith and fair dealing that had found expression in the Treaty. He admitted that there were several instances, as detailed above, where the Crown had failed in this

respect. Those standards of good faith and fair dealing applied to the treatment of Maori as the Crown's Treaty partner. The Crown was obliged to deal with its Treaty partner at least as fairly as it did with its Pakeha subjects, but there were many instances, some detailed above, where the Crown did not treat Maori in the Mohaka–Waikare district as well as it treated Pakeha settlers, many of whom acquired land purchased by the Crown from Maori. This was particularly the case in relation to land development, but when, under Ngata, Maori began to get the type of assistance that the State had long provided for Pakeha settlers, it was too late for Maori in the seaward part of the Mohaka–Waikare district – the Crown had already acquired most of their readily developable land by one means or another. And, in the process, the Crown's obligations to Maori under the Treaty had been neglected.

9.15 FINDINGS

We find that the Crown, in its retention of the Tangoio and Maungaharuru blocks, its failure to overturn the awarding of title to the Kaiwaka block solely to Tareha, its refusal, generally, to allow an investigation into customary entitlements to the seaward returned blocks, and its purchasing of the bulk of the returned Mohaka–Waikare blocks, breached the principles of the Treaty of Waitangi. We find that the customary Maori owners of the seaward returned blocks and their descendants were prejudiced thereby.

More specifically, we find that:

- (a) The Crown did not have an adequate basis to retain the Tangoio and Maungaharuru blocks in terms of pre-confiscation part-payments. There was certainly no justification for retaining them under the New Zealand Settlements Act 1863 as sites for military settlement. In considering that it could retain these lands, the Crown breached its duties of active protection and good faith conduct.
- (b) The awarding of the Kaiwaka block in sole ownership to Tareha was not merely a breach of the confiscation proclamation and its accompanying legislation but also a breach both of the Treaty, which promised in article 2 to protect Maori in the possession of their land for so long as it was their desire to retain it, and of the duty of active protection. In failing to correct the situation by legislation, the Crown was also in breach of the principle of redress. Accordingly, the dispossessed families, represented in the various appeals to the Crown and the courts over the years, and in the Wai 299 claim before us, have been prejudiced.
- (c) In refusing to allow an investigation of customary entitlements to the seaward returned blocks and in treating the named owners in the flawed 1870 lists as having equal shares in the blocks, the Crown was in breach of its duty of active protection to

those thus disenfranchised. It was also generally in breach of the principle of options, under which the Crown had an obligation to respect Maori custom and law.

- (d) The official mindset, which was fixated on the acquisition of Maori land and was against assisting Maori to develop their land, was contrary to the Crown's duty of active protection. By the time development assistance to Maori owners of multiply owned land finally became available (the gulf in time between when it was made available to individual and corporate landowners and owners of land in multiple title being another breach, as we discuss in chapter 13), the Crown had acquired so much of the Mohaka–Waikare land that there was precious little left to develop. Thus, the Crown also breached the Maori right to development and the principle of mutual benefit.
- (e) The Crown used Orders in Council prohibiting alienation to create a monopoly over the purchasing of land, and it exploited that monopoly in clear breach of the prohibition on alienation contained in the 1870 Act, its fiduciary obligations under the Treaty, the principles of reciprocity and partnership, and the duty to act reasonably and in good faith.
- (f) The Crown's tactics to acquire the interests of non-sellers were often coercive and were also in breach of these obligations.
- (g) The Ikaroa District Maori Land Board, as an agent of the Crown, was acting contrary to the Crown's Treaty obligations in its perfunctory examination of proposed sales to the Crown and its imposition of tough leasing conditions on Maori lessees. The lack of any investigation of customary entitlements to the blocks meant that the board could barely comply with section 343 of the Native Land Act 1909, which deemed a resolution to be passed if those voting in favour of it held a 'larger aggregate share' than those voting against it. This provision, coupled with the absence of any requirement for a quorum (in terms of a minimum shareholding) to be present at a meeting of assembled owners where such resolutions were considered, was in flagrant breach of the article 2 rights of Maori and the Crown's duty of active protection.
- (h) Section 348 of the Native Land Act 1909 was also in breach of the duty of active protection and the right of Maori to retain their land under article 2 of the Treaty, in that it gave the district land board, rather than the owners, the right to declare that an alienation could proceed.
- (i) In persisting to pressure individual owners to sell their land despite a clear resolution of owners not to sell, the Crown was acting in breach of the principles of partnership and reciprocity (even after 1913, when such behaviour was legal).



Fig 19: The Waitara block. Photograph by Paul Hamer.

CHAPTER 10

THE AFTERMATH OF THE RAUPATU: THE INLAND BLOCKS

10.1 INTRODUCTION

We outlined our reasons for dividing the post-raupatu discussion of the Mohaka–Waikare blocks into seaward and inland blocks in our introduction to chapter 9. In this chapter, we discuss those blocks in the confiscation district inland from the line of the Maungaharuru Range (map 32). These include several blocks that were retained by the Crown as confiscated land, the remote Pakaututu and Te Matai blocks in the south-west corner of the district, which were allowed to pass through the Native Land Court, and the large Tarawera and Tataraaikina blocks, which were returned to those named in the schedule to the 1870 agreement. We begin with the confiscated blocks.

10.2 THE CONFISCATED BLOCKS

The blocks retained by the Crown included the large Waitara block on the western slopes of the Maungaharuru Range, and several smaller reserves in the Tarawera block: the Tarawera township, the AC Reserve, and the ferry landing reserve. Te Haroto was also retained as a native reserve but later vested in Maori owners.

10.2.1 Waitara

Although the Government made an advance payment of £100 for much of the 34,000-acre Waitara block on 3 April 1863, and apparently promised to set aside a 50-acre reserve around a burial ground, it ended up confiscating the land.¹ It is not clear why the block was retained as confiscated land, especially since it was neither strategically important nor suitable for settlement, though it may have been retained, as Crown counsel suggested, simply because the Government had paid a deposit on the block.² Despite appeals and petitions, the promised reserve was apparently not set aside.³ The claimants have not traced the tenure history of

1. Document J29, pp 165–166

2. Document X51, pp 91–92

3. Document R3, pp 106–110

10.2.2

the block since the confiscation, but during our site visit on 30 January 1997, they pointed out various areas under different forms of ownership and management. These included the northern sections of the block, which were still mainly in Crown ownership either as parts of the Esk Forest or as Landcorp farms, and conservation areas, which were managed by the Department of Conservation. We return to these areas in our recommendations in chapter 20. The southern section of the confiscated block is now mainly in private ownership and in pasture.

10.2.2 Te Haroto

Te Haroto is a small enclave in the returned Tarawera block. According to the 1870 agreement, 1000 acres, ‘more or less’, were to be confiscated at Te Haroto. The survey of the block was completed in 1873 and, along with the Tarawera township block, it was proclaimed ‘waste lands of the Crown’ by notice in the *New Zealand Gazette* on 26 July 1877 (map 33).⁴

Te Haroto was divided in half, with 500 acres set aside for the Armed Constabulary stockade and 500 acres for ‘Paora Hapi’s people to cultivate or such other purpose as Government may desire’.⁵ Hapi was from Ngati Rangiita, a hapu of Ngati Tuwharetoa of Taupo. He had fought on the Government side in the campaign against Te Kooti but was tragically shot dead during a ‘victory’ haka in 1870. Although his people were employed on the Te Haroto to Te Purupuru section of the Napier to Taupo road until 1873, they did not remain at Te Haroto. The reserve, later variously described as being 512 and 517 acres, was handed over to ‘Paora Toki’s people’, which seems to have been a reference to the diverse group of Ngati Hineuru, Ngati Tu, Ngati Kurumokihi, and Ngati Matepu who, having escaped from the Chathams with Te Kooti, had been living under Toki at Hauraki but had travelled to Napier and submitted to the Crown. They included such returnees from the Chathams as Petera Te Rangihiroa, who, as a 15-year-old, survived the ambush at Petane where his father was killed. Another of the group was Hape Nikora, whose father, Nikora Whakaunua, had been killed while fighting with Te Kooti at Nga Tapa. (Hape Nikora later became a leader in the twentieth century.) Since it was confiscated land, Te Haroto was technically Crown land, but the Ngati Hineuru people treated it as customary land, with a marae committee allocating parcels of land to different families. In the mid-1880s, they built a meeting house there, which Te Kooti, visiting around this time, named ‘Rongopai’.⁶

By 1900, there was a well-established village at Te Haroto, and the following year a native school was opened, with an enrolment of 36, on the school reserve of five acres (map 33). In 1906, in response to a letter from a Napier solicitor, TW Lewis, which set out the facts relating to the return of Paora Toki and his people to Te Haroto, the Native Department agreed that

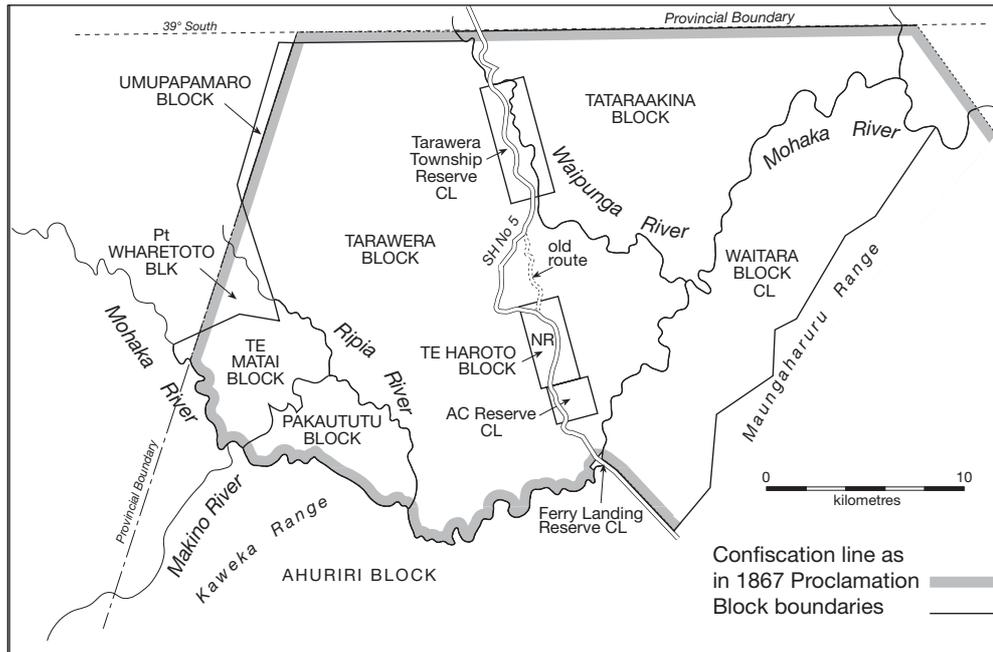
4. ‘Proclaiming Certain Lands in Hawke’s Bay to be Waste Lands of the Crown’, 21 July 1877, *New Zealand Gazette*, 1877, no 64, p 759 (doc J29, p 165)

5. Document J29, p 120

6. Document R3, pp 101–103; doc J29, p 120

THE AFTERMATH OF THE RAUPATU: THE INLAND BLOCKS

10.2.2



Map 32: The Mohaka-Waikare confiscation – the inland blocks

517 acres were to be set aside as a reserve. The Government was apparently willing to ‘return’ this land to Ngati Hineuru, though nothing was done for three years. Then, after prompting from Apirana Ngata, member of Parliament for Eastern Maori, the land was formally set apart under section 22(1) of the Lands Disposal and Public Bodies Empowering Act 1910. In addition, the Native Land Court was authorised to ascertain the beneficial owners of the reserve and the Governor-General was authorised to issue certificates of title to them under the Land Transfer Act 1908. In 1911, the Native Land Court sat in Hastings to consider the beneficial owners. It divided the reserve into two blocks:

- ▶ Te Haroto 2A, of 15 acres, which was awarded in 15 shares to nine descendants of Paora Hapi, even though they were no longer living there.
- ▶ Te Haroto 2B, of 480 acres, which was divided into 480 shares for 127 owners who were mainly Ngati Hineuru. Only 30 per cent of those listed had been placed on the Tarawera or Tataraa-kina lists under the 1870 agreement. However, more than half of the Tataraa-kina owners also gained ownership in Te Haroto 2B.⁷

In this rather odd fashion, half the original confiscated Te Haroto block was belatedly returned to Ngati Hineuru, though their titles were already overcrowded and they ended up with only about four acres per head – hardly a recipe for prosperity in a harsh environment. The other 500 acres around the Armed Constabulary camp remained Crown land, but we received no evidence about its subsequent tenure.

7. Document J29, pp 121–123; doc R3, p 105

10.2.3

10.2.3 Tarawera township

The Tarawera confiscated block, later known as the Tarawera township, was an enclave of 2000 acres lying along the valley of the middle Waipunga River and situated within the much larger returned Tarawera block. The Tarawera confiscated block was the site of an Armed Constabulary camp, one of several that were established on the Napier to Taupo road to meet the threat posed by Te Kooti. As the best level land in the Tarawera corridor, it had been the principal settlement and cultivation ground of Ngati Hineuru, who also highly prized the hot springs on the bank of the Waipunga River. But at no stage does the Government appear to have considered returning this land to Ngati Hineuru, as it did with some of the Te Haroto confiscated block. Instead, in 1873, part of the block was surveyed into urban and suburban lots, and these were put up for sale in 1877. At the same time, adjoining rural land in the block was offered for lease.⁸ The sections appear to have been in private ownership until the 1970s, when some of them were acquired by the Crown for a public works depot.

The Wai 299 claimants did not present evidence on the title history of the Tarawera township block after the confiscation and their counsel made no specific claim against the block. However, the Baker whanau claim (Wai 639) does relate to some land in the surveyed block, but that is a claim against the Crown for allegedly acquiring that land for a public works depot under the Public Works Act 1928. We review this claim in chapter 17.

10.2.4 The Mohaka River ferry landing site

Under the terms of the 1870 agreement, a 50-acre ferry landing site on the north bank of the Mohaka River on the Napier to Taupo road was retained by the Crown. We have not received any evidence on the subsequent history of the site.

10.2.5 Claimant submissions

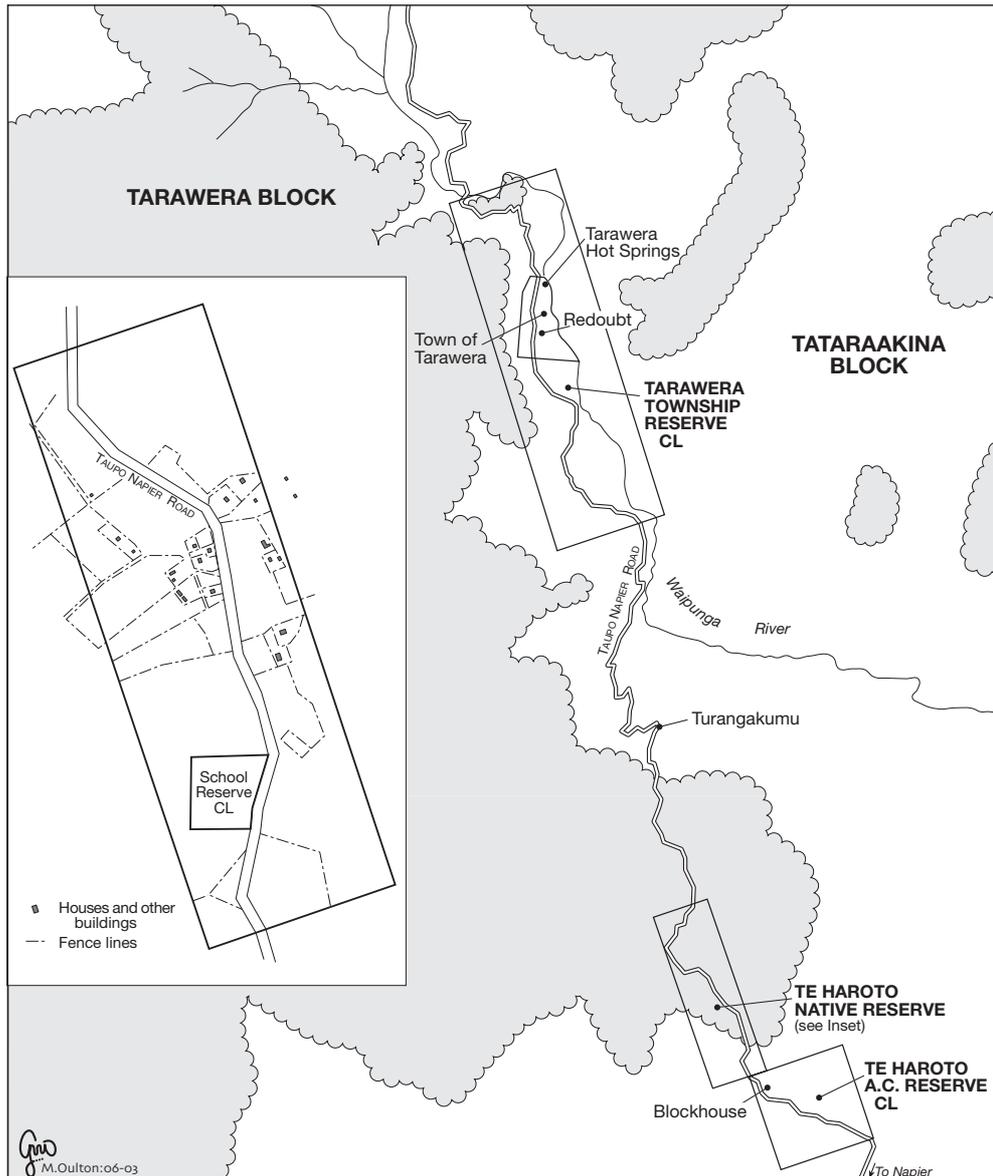
As discussed in the previous chapter, counsel for Wai 299, in opening, described the Crown's retention of the Waitara block (and the coastal Tangoio block) as being in breach both of the Treaty and of the promise of the confiscation proclamation to return all land belonging to original owners who were not engaged in rebellion.⁹ As noted, counsel did not refer to other blocks retained as confiscated land, and this was not followed up in closing submissions.

10.2.6 Crown submissions

In his submissions, Crown counsel described the small blocks, Te Haroto, the Tarawera township, and the Mohaka ferry landing site, as 'lands retained by the Crown for military

8. Document R3, pp 112–113

9. Document M11, p 23



Map 33: The Tarawera township and Te Haroto; *inset*, the Te Haroto reserve, circa 1928

and strategic reasons', though none of them was regarded as a site for any type of settlement, military or other, as required by the New Zealand Settlements Act 1863.¹⁰ Counsel did not discuss this requirement. As noted above, the Waitara block was also retained, Crown counsel suggested, because the Government had made a preliminary payment on it before the 1867 proclamation confiscating the Mohaka–Waikare district was issued.

10. Document x51, p 91

10.2.7 Tribunal comment

In chapter 8, we accepted the general argument that no confiscation of any kind should have occurred in Hawke's Bay, and we found that the retention by the Crown of certain confiscated blocks was therefore unjustified and in breach of article 2 guarantees to Maori. We note that no attempt was made to use any of the retained blocks inland as districts for settlement in terms of the New Zealand Settlements Act. Though Armed Constabulary camps were established at Te Haroto and Tarawera, they did not constitute settlements in terms of the Act. In addition, no attempt was made to settle the constabulary on the surrounding confiscated land – though any men still there in 1877 had the opportunity to bid for Tarawera township land when it was put on the market.

As we have said, it is not clear to us why the Crown retained the Waitara block. The retention of such a substantial block was the least justified of any of the blocks retained by the Crown on the basis of initial transactions, with barely one £100 payment having been made. The block should have been returned to Maori ownership, along with the neighbouring Tarawera and Tatarakina blocks. Equally bad, however, was the Crown's retention of the 2000 acres at Tarawera, since that appears to have comprised the principal area of settlements and cultivations for Ngati Hineuru. The loss of this land – the best in a mountainous district – together with the prized hot springs resource, represented a particular loss for Ngati Hineuru and a particular breach by the Crown of its responsibilities under the Treaty. At the very latest, the Tarawera township land should have been returned to Ngati Hineuru when the 500 acres at Te Haroto was handed over. With respect to the Te Haroto block, we note that, while half of it was eventually returned to the proper owners, that in itself was insufficient for their livelihood, especially since they were excluded from the title of the larger surrounding Tarawera block (at least until they were temporarily restored from 1924 to 1952, which we discuss below).

10.3 THE PAKAUTUTU AND TE MATAI BLOCKS (WAI 216)

As we noted in chapter 8, a large part of what became the Mohaka–Waikare confiscation district had already been occupied by European pastoralists before the confiscation. With the help of a small coterie of coastal chiefs, these runholders began to legalise their titles when the Native Lands Act was passed in 1865. Under that Act, the Native Land Court issued panui on 2 June and 8 November 1866 notifying intended hearings for various blocks in the district. The hearings started in December, and although those for the coastal Petane and Te Pahou blocks were completed, the hearings for the other blocks were abruptly halted when McLean decided to go ahead with the confiscation. Despite this, however, Native Land Court hearings were later allowed to proceed for two blocks in the interior of the confiscated district: Pakaututu and Te Matai. We discuss these in turn.

10.3.1 Pakaututu

The Pakaututu block and the adjoining Te Matai block are the subject of the Wai 216 claim, which was filed by the trustees of Te Matai 1 and 2. The trustees are principally Ngati Tute-mohuta (a hapu of Ngati Tuwharetoa), but are also affiliated to Ngati Hineuru and Ngati Kahutapere.¹¹ Our discussion of the fate of these two blocks is based mainly on the research report by Dean Cowie.¹²

The two blocks lie in the extreme south-west of the Mohaka–Waikare confiscation district and form a triangle bounded by the Hawke’s Bay provincial boundary to the west, the Mohaka River to the south, and its tributary, the Ripia River, to the north-east (map 34). The blocks are situated on the borderlands between hapu of the coastal Ngati Kahungunu, the inland Ngati Hineuru, and the Taupo-based Ngati Tuwharetoa. None of the hapu seems to have continuously occupied the blocks, although Ngati Maruwahine, a Ngati Tuwharetoa hapu, appear to have had a cultivation near the confluence of the Mohaka and Ripia Rivers in the 1860s.¹³ Nevertheless, all the competing hapu groups before the Native Land Court probably used the land and forests for seasonal hunting and gathering.

On 10 October 1867, Paora Torotoro, on behalf of the Ngai Tamawahine hapu of Ngati Kahungunu, applied to the Native Land Court for an investigation of title to the Pakaututu block (the area of which was found on survey to be 7606 acres). Then, on 10 January 1868, Paora Hapi applied for a hearing on behalf of the Ngati Rangiita hapu of Ngati Tuwharetoa. Both applications (along with applications for eight other blocks) were dismissed by Judge Monro at a hearing of the court on 17 August 1868. According to Cowie, this dismissal was ‘consistent with the 8 May 1868 agreement arrived at between loyal coastal chiefs and McLean to settle the confiscation issue’.¹⁴ At that time, Hapi and the coastal chiefs were engaged in the campaigns against Te Kooti, whose following included some of Ngati Hineuru. On 7 September 1869, Torotoro, Tareha, and Hapi submitted a joint Ngati Kahungunu–Ngati Rangiita application for the Native Land Court to investigate the title to Pakaututu. The hearing was held in Napier on 18 November 1869. Torotoro was the principal witness and the court accepted a list of owners compiled by him. The list included Torotoro, Te Waka Kawatini, Tareha, several others of Ngai Tamawahine, and at least two from Ngati Rangiita (one of these was Arapeta Hapi, who was standing in for his late father, Paora, who had recently been killed in the aforementioned firearms accident). Judge Monro accepted the list as being the basis for a certificate of title, to be issued once a survey was completed. Although Monro was aware that the block was within the confiscated district, he awarded title to it once he was informed that the Government had ‘abandoned all claim to the block’.¹⁵ (McLean had promised Paora Hapi that the Government would relinquish its claim on the block and that Monro would

11. Document x35, p1

12. Document s3

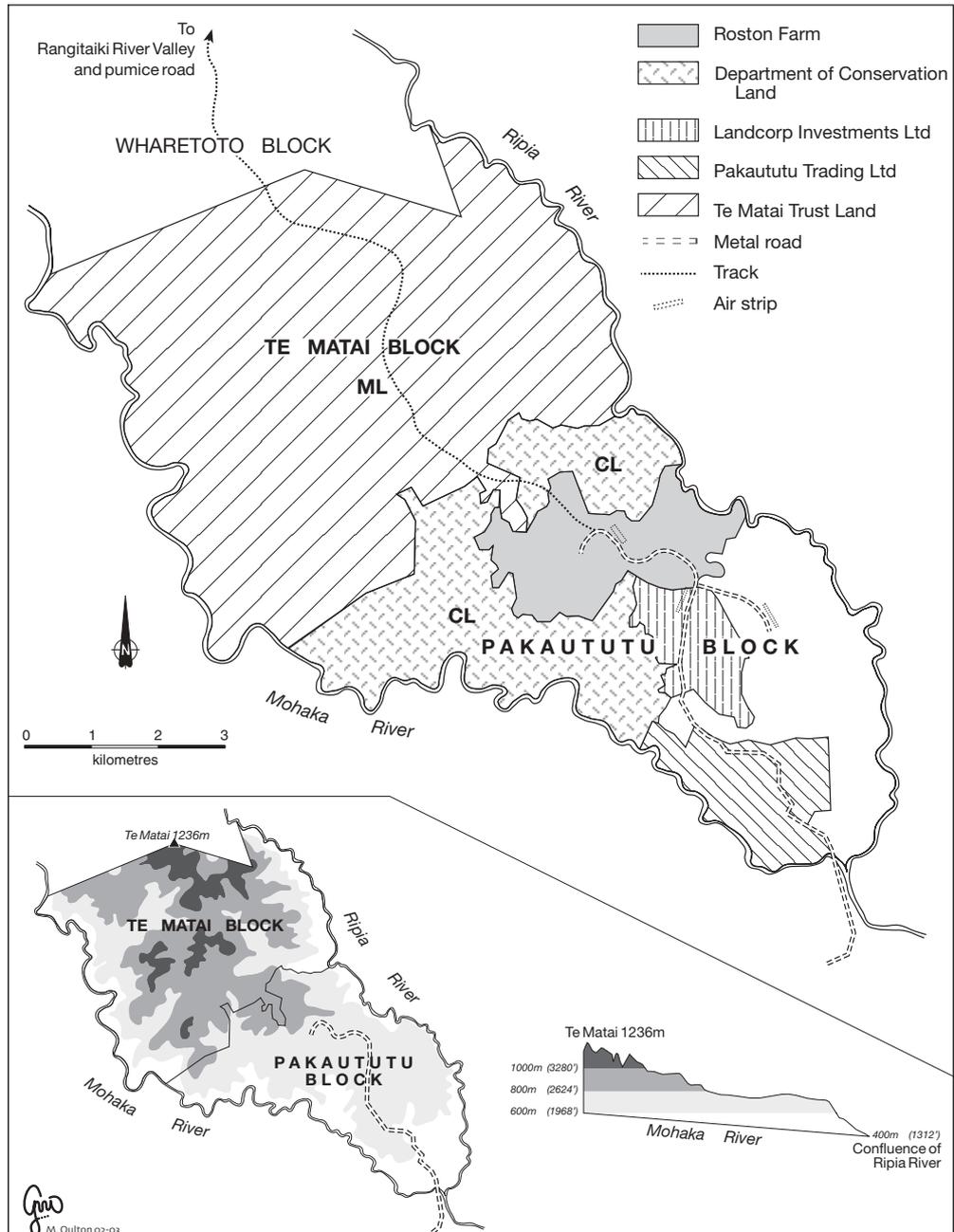
13. Document x51, p123

14. Document s3, p9

15. Fox to Ormond, [1869] (as quoted in doc s3, p14)

THE MOHAKA KI AHURIRI REPORT

10.3.1



Map 34: The Te Matai and Pakaututu blocks

proceed with the hearing once the Government had withdrawn its claim.¹⁶ As it turned out, Hapi's people did not occupy Pakaututu, but, as we noted above, they lived for some years on 500 acres of the confiscated block at Te Haroto.)

Cowie pointed out that the Native Land Court had no authority to hear Maori claims to confiscated land without enabling legislation or a proclamation removing Pakaututu from

16. McLean's promise was discussed by Ormond in a 17 November 1869 telegram to Fox (as quoted in doc s3, p14).

the confiscated district. Neither was provided.¹⁷ In other confiscation districts, the Native Land Court was excluded from investigating title, though it was occasionally allowed by special legislation to determine successions or even, as we note below in relation to the Tarawera and Tataraka blocks, customary ownership. As we noted in chapter 8, the New Zealand Settlements Act provided for a Compensation Court to hear claims to confiscated land from those who denied having been in rebellion, but no such court was ever established for the Mohaka–Waikare district. Despite its doubtful legality, Monro’s Native Land Court award for Pakaututu performed the same function. It rewarded loyalists, though not for their loyalty in the Omarunui affair, the ostensible cause of the Mohaka–Waikare confiscation, but for their pursuit of Te Kooti. They were rewarded with land that Ngati Hineuru could plausibly have claimed, had they attended the Native Land Court hearing. But most Ngati Hineuru were considered unsurrendered rebels and, even if they had been aware of the court hearing in Napier, they were in no position to attend it. By then, the Native Land Court was already set in its practice of granting title to those who attended hearings and persuaded the judges to accept their claims. Absentees missed out, no matter how worthy their claims may have been.

Confiscated land returned under section 5 of the Mohaka and Waikare District Act 1870 was to be inalienable, except for leases of up to 21 years, and could not be charged or encumbered. No such restrictions were placed on the titles of land adjudicated on by the Native Land Court and granted under the Native Lands Act 1865. Although section 21 of the Native Lands Act 1867 allowed the court to recommend restrictions on alienation, Judge Monro ordered that ‘no restriction’ should apply to the Pakaututu title.¹⁸ This was in keeping with the court’s practice in regard to other Hawke’s Bay blocks, many of which were also awarded to Totoro, Kawatini, Tareha, and other coastal chiefs, who quickly leased or sold them to pastoralists.

Pakaututu had become part of the pastoral frontier and was soon being targeted for alienation. On 8 April 1870, HM Hamlin, an interpreter and freelance land agent, asked Chief Judge Francis Fenton for the names of the Crown grantees in Pakaututu, ‘for the purpose of concluding a lease of the said land’.¹⁹ However, the Crown grant was not issued until 11 September 1872, though it was backdated to 3 February 1872.

Although much of the subsequent documentation on Pakaututu has been lost, Cowie traced the basic facts of its alienation. On 29 May 1874, the Auckland law firm Whitaker and Russell sent Fenton a conveyance of the block from Tareha and others to Carswell Robjohns and others – a subsequent note on the file said that the ‘all up price’ for the block was £1000 – and the registrar of deeds informed Fenton that a survey lien of £112 had been paid. While we have no information on the particular reasons why Tareha and the others sold Pakaututu, it seems likely from their transactions for other Hawke’s Bay land that they needed to sell the

17. Document s3, p16

18. Ibid, p 23

19. Hamlin to Chief Judge Fenton, 8 April 1870 (as quoted in doc s3, p 24)

10.3.2

block because they were overloaded with debt. After all, Pakaututu was not an area that the Maori grantees had occupied or had any strong claim to under Maori customary tenure.²⁰

We need not follow the subsequent history of European occupation of Pakaututu, except to note that the block was purchased by the Crown in 1962 for £50,000. A bit over half the land was to be used for the settlement of former soldiers, but when it was subdivided and balloted, no ex-servicemen applied. Five lots were, however, disposed of, and part of this area is now known as Roston Farm. Another portion of some 516 acres was registered with Landcorp Investments in 1998. Over a third of the original block was withheld from the settlement scheme and set aside for forestry: 2181 acres for the Kaweka State Forest Park (gazetted in 1979) and some 728 acres of native bush for the Pakaututu conservation area.²¹ These two areas are now administered by the Department of Conservation (map 34).

We shall return to Pakaututu when we discuss the question of access to the adjoining Te Matai block, the main issue in the Wai 216 claim.

10.3.2 Te Matai

The Te Matai block also came under the Native Land Court regime, whereby a court adjudication of title was likely to facilitate the alienation of a block. However, the pressures came from the Taupo direction rather than from Hawke's Bay, and from the Crown rather than from private purchasers. Although most of the 8580 acres of the Te Matai block lay within the confiscation district (as defined by the 1867 proclamation), some of it lay beyond the boundary. That boundary was ostensibly the boundary of Hawke's Bay province, but frequent mistakes in the definition of the provincial boundary meant that it was not clear just how much of Te Matai lay within or beyond the confiscated district.

Crown purchasing activity started in the late 1870s, when purchase agent Henry Mitchell made downpayments on several blocks east of Lake Taupo, including Te Matai. On 21 April 1879, Mitchell wrote to head office enclosing the 'boundaries of Te Matai and Umupapamaro for proclamation as under purchase by Government'.²² Early in May, Te Rangitahau and others applied to the Native Land Court for an investigation of title to Te Matai. Mitchell witnessed, and probably initiated, their letter, and, a month later, he paid them a deposit on the block, promising to pay them the balance when the survey and Native Land Court hearing were completed. A proclamation for Te Matai, preventing its alienation except to the Crown, was published on 5 June. Then, a survey of the two blocks was carried out, possibly by Mitchell, in preparation for a Native Land Court hearing.

The claims to the Te Matai block were heard by the Native Land Court at Tapuaeharuru, Taupo, in early December 1879. Te Rangitahau spoke on behalf of the applicants and Mitchell

20. Document s3, pp 27–28

21. Ibid, pp 34–36

22. Ibid, p 37

presented the 'Government claims'. Judge Symonds then asked any objectors to speak, and apparently only one did. This was Hori Te Tauri, who asked to be added to the list of owners prepared by the claimants. After some argument, this was done. Those who attended the hearing agreed to a list of 31 people, including several minors, and the court awarded them title. Under the Native Land Act 1873, the court then had to list all the approved claimants in a memorial of ownership. Once again, Ngati Hineuru, apparently not having been informed of the hearing, were absent and missed out on the title. Representatives of the Ngati Kahungunu coastal hapu were also absent, and they too missed out. At the end of the hearing, the court made out an order for the 31 owners of the block, but the following day a telegram arrived from the inspector of surveys at Napier pointing out that, with the exception of 1020 acres, the block was inside the confiscation district. The previous order was cancelled and a new one made out for the 1020 acres.²³

But this was not the end of the matter. It was subsequently found that the area outside the confiscation district comprised 254 acres, not 1020 acres, though the Native Land Court failed to amend its order to reflect the lesser amount. This area then became known as Te Matai 1, with the remainder of the block, that inside the confiscation boundary, known as Te Matai 2. According to Cowie, the 'correct delineation of the provincial boundary, and hence the confiscation boundary, meant that just 254 acres of Te Matai escaped the 1867 [confiscation] proclamation'.²⁴ However, the reduced area still due to the Crown on the completion of the purchase was not worth enough to cover the £270 7s 8d survey costs that had already been incurred over the whole 8580-acre block, and so it remained as a debt against the portion of Te Matai inside the confiscation district.

In subsequent years, various groups left out of the 1880 determination of title tried to get reinstated. In 1888, the Ngati Hineuru leader Hape Nikora, who was just beginning what became a life-long endeavour to get Ngati Hineuru's rights restored to other blocks, applied to the Native Land Court for an investigation of title to Te Matai 2, but he was foiled on the ground that the land had been confiscated.²⁵ Although there are gaps in the documentary record for some years after this, there is evidence of renewed interest in the Te Matai 2 title from 1922 onwards. At the same time, there was also a flurry of reinvestigation of titles elsewhere, especially those for Tarawera and Tatarakaia, as we note below. Between 1922 and 1924, five separate groups applied for admission to the title to Te Matai 2. On 28 August 1922, Paora Rokino of Ngati Tutemohuta, an original owner in Te Matai 1, applied for admission and was quickly supported by other surviving owners of Te Matai 1. Then, on 13 July 1923, Hape Nikora filed an application for Ngati Hineuru. On 25 February 1924, Te Roera Tareha applied on behalf of the coastal Ngati Kahungunu hapu. A day later, an application was filed on behalf of claimants at Moawhango. Finally, in May 1924, Kepa Ehau, representing Ngati

23. Ibid, pp 38-41

24. Ibid, p 46

25. Ibid, p 47

Rangiita, gave notice of an interest in the block. The court had already begun to hear the claims in February, though much of its time was taken up in argument over the status of the land and the boundary.

We need not follow the details of the several hearings that followed. Judge Gilfedder decided that it had been the Crown's intention to return Te Matai 2 to Maori ownership, provided Maori repaid Crown advances, survey costs, and other expenses of £712 10s 7d. Cowie questioned the justification for these charges, pointing out that the Crown was demanding repayment for an advance on (confiscated) land that it already owned; that it should not have been charging for a faulty survey of that confiscated land; and that it could have taken the Te Matai 1 block outside the confiscated district in settlement of the charges but did not do so.²⁶

The issue of title remained undecided and was referred to Robert Jones, the chief judge of the Native Land Court and the under-secretary of the Native Department. Jones decided that legally the land was Crown land since it had been confiscated. At that time, the Native Land Court had no jurisdiction to investigate customary titles that had been extinguished by the confiscation proclamation, and so Jones recommended that legislation be passed giving the court jurisdiction in this case. Under section 27 of the Native Land Amendment and Native Land Claims Adjustment Act 1924, which Jones himself drafted, Te Matai 2 was deemed to be Maori land, and, as a result, the Native Land Court was able to investigate title. Owing to various wrangles over the venue, the court did not hear the claims until February 1928, at which time those who had applied for a hearing between 1922 and 1924 presented their evidence. Judge Gilfedder decided that it was unnecessary to amend the 1880 decision of the court for Te Matai 1, since none of the counterclaimants had established that they had ever occupied Te Matai 2. Because the 1880 order had never been effected, Gilfedder decided that it should be amended to award all of Te Matai (1 and 2) to the 31 names listed in 1880 for Te Matai 1. But Gilfedder did not actually amend the 1880 order; he merely adjourned the case *sine die*.²⁷

The title to Te Matai 2 thus remained in limbo, despite petitions and complaints from various claimants. It was not reopened before the Maori Land Court until 1951, when representatives of six competing groups presented their claims.²⁸ At the hearing, the court had the benefit of an accurate resume of the history of previous investigations by a Maori Affairs officer, JM McEwen. Judge Arnold Whitehead made much use of it in his decision, which was not very different from previous decisions. He too decided that evidence from the various claimant groups regarding the occupation of the block was 'definitely inconclusive', and he therefore looked to previous decisions on Te Matai and adjoining blocks such as Pakaututu

26. Document s3, p 62

27. Ibid, pp 63–66

28. The six groups were: the original owner group, Te Hoeroa Tahau; a Ngati Hineuru group; the Tareha and Paora Torotoro group; the Te Tauri group; a mostly Ngati Rangiita group; and another Ngati Hineuru group. Cowie notes, however, that representatives for the groups 'changed considerably' through the hearing: doc s3, p 81.

for guidance.²⁹ Whitehead concluded that there was no good reason to upset the 1880 decision on Te Matai in favour of Ngati Tutemohuta. Though Whitehead was aware that they too had been unable to prove their occupation of the block, he assumed that the court in 1880 must have satisfied itself that the 31 people awarded title could have proved occupation. And he was satisfied too that the court must have been aware of competing claims from Ngati Rangiita and Ngati Hineuru (though the latter were absent) before dismissing them. However, Whitehead did award a share in the block to Te Raroa Matuahu Sullivan (hereafter referred to as Te Raroa Sullivan) of Ngati Hineuru, who had established a 'shadowy occupation'.³⁰ Though in 1952 the Maori Appellate Court upheld Whitehead's decision, it removed Sullivan and the other individuals that Whitehead had added to the title.³¹

Ngati Tutemohuta had thus won their long-running battle to retain Te Matai 2, but it was far from certain that they could keep the land. For a start, the Department of Lands had not given up its long-standing claim for a refund of the original purchase money, plus survey costs, fees, and interest. By November 1952, this amounted to £4866 19s 7d. However, the department got little sympathy from Whitehead, who did not think the claim was justified and declined to make an order for payment. After that, the department's claim was simply neglected by Maori Land Court and Department of Maori Affairs officials. It was eventually abandoned in 1957, when the department's legal officer admitted that it was probably legally impossible to recover the money advanced on the purchase of the block in 1879.³²

There were other dangers to Maori's ownership of the block. There were even proposals in the late 1950s and 1960s for the Crown to purchase the block, mainly to exploit the timber on it, but also to develop some of it for pastoral farming. Though the Maori owners had escaped the burden of accumulated debts from the previous Crown advances and survey costs, they found themselves presented with a new threat in 1965: demands for rural rates from the Hawke's Bay County Council. The owners gained a temporary respite when the block was exempted under section 104 of the Rating Act 1925 (on the ground that it had no access and was unoccupied), but the exemption was granted for only two years and, before it was renewed, the Department of Lands was offered a chance to buy the block. The department eventually declined the offer, recognising at last that the remote, inaccessible, and rugged block was unsuitable for development. In the end, it was the lack of access that saved Te Matai for its Maori owners, though that lack of access meant that they could not develop it either. On 16 March 1971, the block was vested in the Te Matai Trust under section 438 of the Maori Affairs Act 1953.³³ Though this secured the land, the trustees could not access or use it, and, in the meantime, it was being ravaged by possums, pigs, and deer.

29. Document s3, p 89

30. Ibid, p 90. Note that members of the Sullivan whanau also appear on the record using the transliteration of their surname, Harawene. For consistency and clarity, in this report we will use only Sullivan.

31. Ibid, pp 88–92

32. Ibid, p 98

33. Ibid, pp 102, 105–106

10.3.3 The Te Matai access issue

In our discussion of Te Matai above, we briefly noted the loss of access to Te Matai. According to Cowie, the lack of access to Te Matai was noted by the chief surveyor in Napier in 1940. In 1956, Judge Gerald O'Malley of the Maori Land Court ordered a roadway to be established along the route of an existing old track from State Highway 5 at Rangitaiki through the Wharetoto block to Te Matai. However, as Cowie pointed out, the difficult terrain 'never made this a viable proposition'.³⁴ Gaining access through Pakaututu was a better option. But when the Crown purchased Pakaututu in 1962 and subsequently alienated most of it by ballot for Pakeha settlement, it made no provision for access through the balloted farms to Te Matai. As claimant witness Peter Eden told the Tribunal, it was 'strange that roading access was not provided to Te Matai when Pakaututu was subdivided into smaller farm lots and access and a bridge was provided for these farms, even though Te Matai remained one of the largest parcels of land'.³⁵ All that was required was a three-kilometre extension of the existing Pakaututu road through an already formed four-wheel drive track on Roston Farm and across some Department of Conservation land. The Te Matai trustees asked for access to be provided by this route but were told that this would have to be agreed by 'all affected parties'; namely, 'Hawke's Bay County Council, Commissioner of Crown Lands, any person with an interest in the land affected, and the consent of Roston Farm'.³⁶ The then owner of Roston, a Mr JH Strawbridge, refused his consent in September 1973.

For nearly 30 years, the subsequent owners of Roston have refused consent. For this reason, the matter has come before us. We cannot discuss in great detail what has become a long-running, complex, and at times acrimonious dispute. The claimants argue that the owners of Roston Farm have in recent years used it as a base for hunting and that their hunters have frequently trespassed onto Te Matai, where the hunting is better.³⁷ The claimants also say that their attempts to use Te Matai for Conservation Corps and Maori Youth Development training programmes have been hindered by conditions that Roston Farm has placed on access and by the participants being intimidated by hunters.³⁸ We have not heard Roston Farm's owners' side of the access story, though it is evident that they have been intent on placing stringent conditions on access, as we indicate below. The trustees of Te Matai have also had difficulty with local authorities, which have levied rates on Te Matai despite the lack of road access, which the claimants contend proves the land is not income generating. The trustees are now faced with a liability for rates owed to the Hastings District Council and the Hawke's Bay Regional Council, which in 1998 had reached some \$130,000.³⁹ Lastly, we note that the

34. Document s3, p 106

35. Document s13, p 2

36. Document s3, p 106

37. For example, doc s13, p 2; doc s14, p 6

38. Document s14, p 6

39. Cross-examination of Nigel Baker, eighth hearing, 30 July 1998, tape 7

trustees also had access problems with the Department of Conservation. Concern about conservation measures culminated in the negotiation of a Nga Whenua Rahui Kawenata, a covenant whereby the Government financially assists Maori landowners who preserve native bush on their land. This covenant was concluded in 1997. We now discuss each of these matters in turn.

In trying to resolve their access dispute with Roston Farm, the trustees of Te Matai have been forced into costly litigation. In 1975, they applied to the Maori Land Court for a road to be laid across Roston Farm under the Maori Affairs Act 1953, but their application was refused on the ground that the Act required them to gain the permission of the farm's owners. The court persuaded the trustees to withdraw their application and to try to negotiate an agreement with the owners of Roston Farm. That agreement was not forthcoming, so in 1996 the trustees went to the High Court to seek an order granting reasonable access. But that court also refused to issue an order and adjourned the case *sine die* to allow the two sides to negotiate, though it did grant either party leave to return to the court if need be. At the time of our hearing in July 1998, the parties had not returned to the court, having managed to negotiate an agreement of a kind. Under this agreement, signed in October 1996, Roston Farm promised to allow the trustees of Te Matai access across their farm for a trial period until August 1998. But strict conditions were imposed, including that Roston was to be notified by phone or fax at least 24 hours in advance of any access; that access was to be by card only, with each of the seven trustees and five other owners holding one card; that only the 12 cardholders and their invitees were to be allowed access; that the cards were to be displayed on the windows of vehicles crossing the farm; that only five vehicles per week were to be allowed access; and that access was to be allowed only from one hour after sunrise to one hour before sunset.⁴⁰ But, according to claimant counsel, even this very restrictive agreement was not properly implemented, since access was denied for long periods of time, allegedly because of farming operations (such as lambing) or the state of the access track.⁴¹ Though the agreement was obviously unsatisfactory to the claimants, it was still in force at the time of our hearing in July 1998.

The issue of the outstanding rates, which the trustees have refused to pay on the ground that they have no road access to Te Matai, has been complicated by the Nga Whenua Rahui covenant signed with the Department of Conservation in 1997. We received conflicting evidence on this issue at our hearing. Nigel Baker told us that, when the trustees negotiated the covenant with the department, they were informed that it would excuse them from paying rates, including any rates owing.⁴² On the other hand, Mike Mohi, the executive officer for the Nga Whenua Rahui fund at the Department of Conservation, told us that he did not give such

40. Document s14(b)

41. Document s8, p 23

42. Cross-examination of Nigel Baker, eighth hearing, 30 July 1998, tape 7

10.3.4

an assurance during the negotiations, though he did tell the trustees that the covenant might go some way to 'satisfying some of the criteria set by the councils in this regard'.⁴³ Minutes of the trustee meeting (taken by the owners) do not support Mr Baker's version: they merely state that 'In respect of rate relief, it was advised [by Mr Mohi] that the trust should approach councils to have these remitted permanently.'⁴⁴ Nor does the covenant itself help, since it makes no reference to the question of rates.⁴⁵ The issue remains unresolved, though as Mr Mohi explained, the covenant does provide some grounds for the claimants to appeal to the councils to remit rates, as he had been attempting to do on behalf of the trustees. He noted that, in other cases where such covenants have been signed, reductions on rates have been negotiated with councils. However, Mr Mohi explained that one of the criteria for this consideration was that a balance sheet needed to be provided 'to ascertain whether blocks were getting any form of income'. Mr Mohi said that he understood that there 'was some income from the [Te Matai] block, albeit very small, but those accounts, possibly, had not been shown to the council'.⁴⁶

Finally, we note in relation to the access issue that the claimants connected this with access to the Mohaka and Ripia Rivers, which are adjacent to Te Matai. They were concerned not just with access to the rivers but also with their care and their resources. The claimants were particularly concerned that commercial interests had been able to exploit the river resources, and they wanted both the authority to grant licences and compensation for their loss of control over the rivers.⁴⁷ However, we were presented with insufficient evidence to allow us to make a finding on this issue.

10.3.4 Claimant submissions

Wai 216, which was submitted by Mr Baker and the Te Matai Lands Trust, relates to the Pakaututu and Te Matai blocks. It claims that the two blocks were wrongfully confiscated and wrongfully separated into two. The statement of claim also contends that Pakaututu was wrongfully sold and that the Crown mismanaged Te Matai by:

- ▶ failing to provide access;
- ▶ commissioning surveys that proved to be inaccurate and then charging them against the land;
- ▶ failing to identify the correct owners;
- ▶ taking part of Te Matai 2 to provide access to adjoining land owned by the Department of Conservation;

43. Document w7, p 2

44. Document T5, p 4

45. Document s14(a)

46. Cross-examination of Mike Mohi by claimant counsel, twelfth hearing, 27 July 1999, tape 9

47. Document s8, p 28

- ▶ permitting the commercial exploitation of the Mohaka River; and
- ▶ allowing the land to incur debt and be subject to commercial exploitation.

Lastly, the claimants stated that Crown action and inaction has diminished the value of the land as a traditional food source and discouraged or prevented their occupation.⁴⁸

In elaborating on these issues, claimant counsel noted first that the members of the trust are affiliated principally to Ngati Tutemohuta, a hapu of Ngati Tuwharetoa, but also to Ngati Hineuru and Ngati Kahutapere. Relying largely on the report by Cowie that we have also used in our description above, counsel argued that most of Te Matai was confiscated because of the Omarunui engagement. However, counsel submitted that there was ‘no true rebellion’ and that Ngati Tutemohuta, ‘the rightful and lawful owners of the whole of the Te Matai block’, were ‘not involved in the incident or purported rebellion in any way whatsoever’.⁴⁹ Further, he contended that Pakaututu was separated from the original Te Matai block as a result of ‘Crown collusion’ with Ngati Kahungunu chiefs who had no rightful claim to the land. He argued that Pakaututu was cut out because it was suitable for pastoral farming, while the remainder of Te Matai was steep and inaccessible. Counsel claimed that this separation was ‘wrongful’, that it was in ‘direct contravention of the Treaty of Waitangi’, and that, ultimately, it allowed the alienation of Pakaututu.⁵⁰ Counsel emphasised Cowie’s comment that the war against Te Kooti influenced the determination of titles: ‘the hearing was adjourned twice to give Ngati Kahungunu applicants time to return from war. But the Lake Taupo residents were given no such respite.’⁵¹ Counsel saw this collusion as providing the main reason for the inclusion of Ngati Kahungunu names in the Pakaututu title to the exclusion of Ngati Tutemohuta and, to a lesser extent, Ngati Hineuru.⁵² Those who were named very quickly alienated the land to settler ownership. Counsel saw Treaty breaches in the way that the land was divided and alienated and in the failure to determine the rightful ownership of the block, though these so-called breaches were not elaborated on.⁵³

Counsel submitted that, while there were ‘significant difficulties’ over the determination of owners in Te Matai, the land had never been alienated and remained ‘principally in the ownership of Tutemohuta descendants’.⁵⁴ In regard to the access issue, counsel submitted that the claimants had ‘amply demonstrated’ that the Crown had ‘prevented access by owners to the land’, despite the owners’ various attempts to acquire access (which included taking High Court action).⁵⁵ Counsel did not make submissions on the issue of the rates arrears.

48. Claim 1.21, pp 1–3

49. Document x35, p 5

50. Ibid, p 6

51. Document s3, p 20 (doc x35, p 8)

52. Document x35, p 8

53. Ibid, p 14

54. Ibid, p 9

55. Ibid, p 11

10.3.5 Crown submissions

The Crown did not comment on the reason for the separation of the Te Matai block from the Pakaututu block, focusing instead on customary interests in the area and the awarding of title. The Crown did add some useful detail to Cowie's analysis of the Pakaututu adjudication of title and the block's subsequent purchase. Crown counsel suggested, among other things, that Paora Hapi was interested in leasing the land to one William Gisborne. Counsel also argued that 'direct evidence of a contemporary Ngati Hineuru claim upon the block is lacking', though he did note that Ngati Hineuru individuals may have acquired 'an interest in the block through groups represented on the title', since some Ngati Hineuru refugees lived with Hapi. He agreed that the various groups associated with the region, including Ngai Tamawahine, Ngati Maruwahine, Ngati Tutemohuta, and Ngati Hineuru, 'appear to have been close'.⁵⁶ Overall, counsel concluded that there was 'no record of controversy concerning the sale of Pakaututu in 1874 and no solid evidence to impugn the propriety of the transaction'.⁵⁷

Crown counsel conceded that the 'tenurial uncertainty' of Te Matai and the Crown's delay in determining these interests reflected badly on it.⁵⁸ On the Te Matai access issue, counsel argued that there was a legal remedy and that therefore the Tribunal was not required to resolve it. This was a reference to the High Court proceedings noted above, which, though adjourned, could be resumed if the two sides were unable to reach agreement. The Crown also noted a proposed amendment to the Te Ture Whenua Maori Act 1993 which would provide for access to landlocked land without requiring the assent of adjoining landowners.⁵⁹ This amendment has now been passed, and we discuss it further below.

With regard to the rating issue, Crown counsel asked that the Tribunal 'dispose of allegations that misleading assurances . . . were given by the Crown', since Mr Mohi's evidence suggested otherwise and the relevant local authority had not given evidence at the Tribunal hearing. The Crown suggested that avenues were still open for the discussion of the rating issue between the local authority and the claimants, but that the onus was on the landowners to follow this through.⁶⁰

10.3.6 Claimant submissions in reply

In reply, claimant counsel reiterated that Te Matai and Pakaututu were originally one block of land and that the principal group with interests in the land was Ngati Tutemohuta. In response to Crown counsel's statement that there was no record of controversy concerning the sale of Pakaututu, he referred to the 'evidence that the block was previously one block' and the 'confusion over Land Court hearings being held in different towns and well away from

56. Document x51, p 126

57. Ibid, p 127

58. Ibid, p 129

59. Document x52, p 4

60. Ibid, p 6

the land and the place of residence of the claimant owners and the, on the face of it, quite indefinite and imprecise evidence as to occupation'.⁶¹

Claimant counsel also submitted that it was the Crown that created the 'landlocked nature' of the Te Matai block and that it was the Crown's responsibility to unlock it. In regard to the proposed amendment to the Te Ture Whenua Maori Act, counsel noted that it might not affect European land, which the relevant parts of Pakaututu now were. Counsel asked the Tribunal to consider making a binding recommendation on the Crown 'so that access can be provided'.⁶² Again, claimant counsel made no submissions on the rating issue.

10.3.7 Tribunal comment

We believe that there was collusion, not so much in the court allowing two separate blocks to be created and investigated, but rather in the Crown failing to insist that the ownership of Te Matai and Pakaututu be assessed in a Compensation Court, as should have been the case with confiscated land. Had this happened, it would have allowed Ngati Hineuru, at the very least, to assert their claims to the land in court. Thus, there appears to have been a degree of complicity between the Crown and the Ngati Kahungunu chiefs, who were assured of the Pakaututu title because Ngati Hineuru and the others with claims to the block did not attend the hearing. This act of complicity meant that title was awarded to a coterie of chiefs, mainly from the coast, who had very insubstantial claims to Pakaututu, and in turn this led to the block's ultimate alienation into European ownership. Indeed, Pakaututu was a classic case of the operation of the '10-owner rule' that has been much criticised elsewhere and was examined in our discussion of Petane and Te Pahou in chapter 6. We note that the principal instigator of Native Land Court hearings for both Petane and Pakaututu was Paora Torotoro, who also arranged the 10-owner lists and was the prime agent in the alienation of both of the blocks. Taupo-based Ngati Tutemohuta, who were not in any sense 'rebels', and Ngati Hineuru, who were regarded as 'rebels' (though wrongly so in our view), were disadvantaged. The proceedings over Pakaututu had much in common with those over Petane. However, issues relating to the 10-owner rule were not raised by the claimants or their counsel in relation to Pakaututu and Te Matai, so we take the matter no further.

On the Te Matai access issue, we believe that the Crown was negligent in failing to provide legal access to Te Matai on the subdivision and alienation of the adjoining Pakaututu block. The claimants asked us to issue a binding recommendation requiring the Crown to acquire land that provides access to Te Matai.⁶³ A portion of that accessway is Crown land, administered by the Department of Conservation, and the claimants would have to negotiate with the department for it, since there is no section 27 memorial on titles to conservation lands on

61. Document 77, p 22

62. Ibid, p 24

63. Ibid

which to base a binding recommendation. The remainder of the land concerned is in private ownership – it belongs to Roston Farm – and the Tribunal is prevented by the 1993 amendment to its principal Act in section 4(a) of the Treaty of Waitangi Act 1975 from making recommendations for the return to Maori of land in private ownership (or the acquisition by the Crown of such land). We also have the discretion under section 7(1)(c) of the 1975 Act not to inquire further into a claim if there is an alternative ‘adequate remedy or right of appeal’ which it would be reasonable for the claimant to pursue. In the Te Matai case, section 326(b) of the Te Ture Whenua Maori Amendment Act 2002 now provides that ‘owners of landlocked land may apply at any time to the Court for an order’. Having regard to a number of conditions (including that attempts have been made by the applicant to ‘negotiate reasonable access’), for the purpose of providing access to landlocked land, the court may vest in the owners of that land ‘the legal estate in fee simple in any other piece of land’ or it may make an easement over any other piece of land. We note that this order can be made over Maori and general land.

The Wai 216 request for a remission of rates arrears is an issue of more complexity than might at first appear. As we have said, the Crown bears the ultimate responsibility for the block being landlocked, but it is the local authorities who levy the rates. The rates issue has become further complicated by the Nga Whenua Rahui kawenata. As Mr Mohi explained in evidence, while the trustees of the Te Matai block may have signed the covenant in the hope that, through it, they might receive rates remissions, the Nga Whenua Rahui committee – which signs the covenants with owners and makes its recommendations to the Minister of Conservation – does not have the authority to demand such remissions of a local body. Mr Mohi explained that the committee may provide information as to the ecological values of an area and it may submit a plan of that area to the relevant local body (which may assist in a re-evaluation of the rates levied on an area), but it may not negotiate on behalf of landowners.⁶⁴ Further, we recall Mr Mohi’s point that there may be an issue surrounding the potential commercial gain (however small) to be made from the area. We merely make the observation that local authorities are more likely to remit rates if they are confident that all the criteria for such a remission are being met. We also note that the Local Government (Rating) Act 2002, which was passed after the conclusion of our inquiry, provides for local bodies to adopt a policy on rates relief for Maori freehold land in certain circumstances.

10.4 THE RETURNED BLOCKS

The tenure history of the two inland returned blocks, Tarawera (of approximately 76,700 acres) and Tatarakaikina (of approximately 37,000 acres), differs from that of the returned

64. Cross-examination of Mike Mohi by claimant counsel, twelfth hearing, 27 July 1999, tape 9

seaward blocks in a number of ways.⁶⁵ As Boast reminded us, these remote and rugged lands, bisected by the Napier to Taupo road, share an unusual common history: they were the only two blocks for which the Native Land Court reinvestigated the lists of owners in the 1870 agreement, though this had often been requested for other blocks in the Mohaka–Waikare confiscation district.⁶⁶ This new inquiry was provided for by the Native Land Amendment and Native Land Claims Adjustment Act 1924. Also, the two blocks largely survived the ravages of the Crown's purchasing activities, which saw most of the other returned blocks pass into Crown ownership in the second and third decades of the twentieth century.

Tarawera and Tatarakaia are also the subject of the generic raupatu claim, Wai 299, and numerous whanau claims before us. We next discuss each of the blocks at some length, beginning with Tarawera. Our narrative of the history of both the blocks relies largely on research reports prepared by Boast for the claimants and Moorsom for the Tribunal.⁶⁷

10.4.1 Tarawera

As we noted above, several small blocks within Tarawera – the Tarawera township, Te Haroto, and the ferry landing site – were retained as Crown land when the rest of the block was returned. The Tarawera block was in the rohe of Ngati Hineuru, who were regarded as 'rebels'. When Ngati Hineuru, who had been detained after Omarunui and Petane or dispersed in the subsequent campaign against them, returned to Te Haroto, they found that they had been dispossessed of most of their land. It had been 'returned' under the 1870 agreement to a group that was predominantly Ngati Kahutapere, a hapu of the coastal Ngati Kahungunu. Some Ngati Hineuru were also put into the title, but that did not resolve the disputes. According to several of the witnesses who gave evidence to Judge Gilfedder's inquiry into the petition of Pererika Sullivan (who was also referred to as Frederick Sullivan) and Te Raroa Sullivan in 1924, some 'loyalists' were left out of the title and some 'rebels' were even put in on Tareha's instigation.⁶⁸

In 1871, Tarawera (and Tatarakaia and other adjoining blocks) were leased to Alfred Cox for 21 years. Cox's holding was known as Te Haroto Station and was subsequently leased for 30 years to William Royce and John Anderson. The lease was renewed periodically and finally expired in 1915.⁶⁹ Though the lessees were running as many as 24,000 sheep on the station, little of the land was cleared and fenced – the lessees were content with a 'slash and burn' economy.⁷⁰

65. Document J29, pp 69–70

66. *Ibid*, p 62

67. Documents J28, J29, R3, R9

68. Document J29, pp 77–81; doc 11(15), pp 123–130

69. Document R3, pp 110–111

70. *Ibid*, p 112

(1) Pleas for the reinvestigation of titles

On 19 August 1909, the Ngati Hineuru leader Hape Nikora and 83 others lodged a petition with the Government objecting to any partition of the Tarawera and Tatarakina blocks on the basis of the existing certificates of title. They asked for a Native Land Court investigation of ancestral rights and for the removal of restrictions so that the land could be brought into use. It was not clear what restrictions they were referring to. However, as an owner of both Tatarakina and, since 1900 by succession, Tarawera, and as a substantial sheep owner himself, Nikora may have wanted to develop the run once Anderson's lease expired. No action was taken on the petition, so in 1912 Nikora went back to the Government and asked specifically for a reinvestigation of the titles of the two blocks *de novo*. He explained that his people had repeatedly appealed for a title investigation into these blocks since the court had adjourned its inquiry in 1866 (see ch 6). Another Native Land Court sitting had been scheduled for 1889 but did not eventuate, and Nikora also mentioned that his earlier petition of 1909 had not been acted upon.⁷¹ No action appears to have been taken on the 1912 petition either. Then, on 4 April 1913, Paora Rokino, aware that Anderson's lease was soon to expire, wrote to the Native Minister asking that the Government not become involved in purchasing the Tarawera block (as it had done when leases were about to expire on other blocks). He too requested an inquiry into the titles by the Native Land Court. Ngati Kahutapere, represented by Ngahere Te Pohe, also then asked for a reinvestigation, but they merely wanted to ascertain the relative interests of the owners named in 1870. Writing on behalf of families who had tried to make a living off the land since 1870, Pohe wanted to reduce the interests of the absentee owners. A third group, Hurinui Nikora and 17 others, wrote to the Native Minister in March 1913 asking that no sales of the two blocks be allowed and requesting, yet again, a reinvestigation of the 1870 title, 'so that those who are not already in the title may get into it'.⁷² Again, it was made clear that on the expiry of the lease the people themselves wanted to farm the land, not sell it. In August 1913, a fourth group, HP Ratima of Ahuriri and 41 others, petitioned for a reinvestigation into the titles of Tarawera, Tatarakina, and other blocks. Since there were now numerous petitions asking for the titles of various Mohaka-Waikare blocks to be reinvestigated, the Government decided to ask the Solicitor-General for an opinion. Like the judges in the Native Land Court and the Native Department officials, he advised against a reinvestigation.

During the First World War, more petitions seeking a reinvestigation were lodged. Commenting on one from 1916, the under-secretary of the Native Department reminded the chairman of the Native Affairs Committee that considerable portions of the Mohaka-Waikare blocks had by then been sold to the Crown, both on the basis of the 1870 lists and on the assumption that those named owners all had equal interests. Moreover, at that time there were signs that some of the named owners for Tarawera wanted to sell their shares. European

71. Document J29, pp 64-65

72. *Ibid*, p 67

interest groups in Hawke's Bay were pressing the Government to set aside scenic reserves along the Napier to Taupo corridor and to purchase the rest of the land for the settlement of returned soldiers.⁷³ However, the Native Land Purchase Board thought in January 1916 that, according to 'reports that were before the Board', Tarawera was too remote and its soil too poor for European settlement.⁷⁴ But pressures for a reinvestigation of title and for acquisition continued, with George Donnelly, whose late wife's family had interests in Tarawera, being one of the leading advocates of Government acquisition. That same month, the Native Land Purchase Board decided that the acquisition of Tarawera and Tatarakina should await another inquiry from the Department of Lands as to the blocks' 'suitability for settlement'.⁷⁵ This time, the district surveyor produced a rather more sanguine report, describing Tarawera as 'good healthy sheep country, steep and broken with some flats and terraces'. Though there was a good deal of poor land, he thought that the block could be cut up into grazing runs of 2000 to 5000 acres, and he valued the land at 16s 6d an acre. But once again nothing came of this report. In 1918, the board reconsidered Tarawera and decided that no action should be taken on its acquisition in view of the various petitions seeking a reinvestigation of the title.⁷⁶

(2) *The Gilfedder inquiry, 1920*

In 1918, Hape Nikora filed another petition, although this time he merely requested that a number of individuals, whose rights to the land he and the other owners had never denied, be added to the title. Since this petition was less controversial, the Native Affairs Committee referred it to the Government for inquiry. An inquiry was carried out by Judge Gilfedder of the Native Land Court in 1920. Boast described Gilfedder's historical survey of the Mohaka–Waikare lands as 'replete with errors and questionable assumptions'.⁷⁷ These included his incorrect assumption that the confiscation was a consequence of 'a large body of Natives in the north of Hawkes Bay' joining Te Kooti in the 'Hau Hau rebellion', and his belief that Tarawera and Tatarakina were not included in the Mohaka–Waikare confiscation.⁷⁸ The latter error, Boast added, may have influenced the Native Affairs Committee when it considered yet another petition from Nikora in 1924. (We discuss this below.) However, when Gilfedder went on to consider the substantive issue of the names from the 1870 agreement that were omitted from the 1882 Native Land Court certificates, he found four: Hoani Ngarangi, Rahera Te Hautai, Horianana Hinehou, and Wirihana Poromai. But he got this wrong, since none of the four was on the 1870 list for Tarawera, though three of them were on the Tatarakina list.⁷⁹

73. Document R3, pp 122–125

74. Herries to Minister of Lands, 21 January 1916 (as quoted in doc R3, p 125)

75. Under-Secretary, Native Department, to Native Minister, 25 January 1916 (as quoted in doc J29, p 69)

76. Document J29, p 70

77. Document J29, p 71

78. Judge Gilfedder, 'Report Relative to the Ownership of Tarawera and Tatarakina Blocks', 9 August 1920, AJHR, 1920, G-6L, p 1 (doc J29, p 71)

79. 'Mohaka–Waikare agreement, 1870' (doc J2, app 3). On the Tatarakina list were Hoani Ngarangi, Rahera Te Hautai, and Wirihana Poromai.

10.4.1(3)

Gilfedder said that the four names should be added to the Tarawera and Tataraka lists and that, after that, applications should be made to the Native Land Court to declare successors to them. The addition of these names, he added, 'should not prejudice any steps taken for the alienation of these two blocks'.⁸⁰ When Gilfedder reported in 1924 on yet another petition, this time from Pererika Sullivan and Te Raroa Sullivan, who claimed to have been loyalists who were left out of the 1870 agreement schedule, he declined to recommend their inclusion.⁸¹

(3) *The 1922–23 partitions*

In the early 1920s, some of Ngati Kahutapere wanted to sell their interests in the Tarawera block. With so many divisions among both the Ngati Kahutapere and the Ngati Hineuru owners, and with the Crown hoping to facilitate the purchasing of the block, a partition of Tarawera was agreed on in 1918. In 1922, Tarawera was split into 13 blocks, in the process incurring what Boast called 'a fearsome debt' on the owners for survey expenses.⁸² Further partitions in 1923 raised the number of blocks to 23.⁸³ One consequence of the partitions was that the majority Ngati Kahutapere owners could be separated from the minority of Ngati Hineuru. The latter were put into the titles of Tarawera 3, 4, 5, and 10c, while the Baker whanau was put into 5A, and Ngati Kahutapere got the remaining blocks (map 35). One Ngati Hineuru claimant who was not in the title, Te Raroa Sullivan, was also in occupation of some Tarawera land, though his house was in Te Haroto. Hoera Mai Maihi, one of the owners, appealed to the Native Land Court, and Gilfedder granted him an injunction against Sullivan.⁸⁴

(4) *The 1923 Crown purchases*

In February 1923, the Native Department intervened and imposed a prohibition on all forms of alienation (including leases to titleholders) – usually, the first stage in Crown acquisition. This in turn upset the Baker whanau, who had title to two of the partitioned blocks and who had developed a successful farm. They applied to the department to remove the prohibition on alienation but the department refused; instead, the proclamation was extended for six months.

In June 1923, the Native Land Purchase Board authorised the Crown purchase of the whole of the Tarawera block. Over the remainder of 1923 and during 1924, the Crown purchased Tarawera 2 (2740 acres) from Ahere and Pera Hohepa and Tarawera 10A (3105 acres) and 10B (3650 acres) from Roera and Kurupo Tareha (though in fact Tarawera 10B had been vested in 10 people in 1922).⁸⁵ The sellers were all Ngati Kahutapere and most of them were absentees.

80. Judge Gilfedder, p 2 (doc J29, p 73)

81. Document J29, p 81

82. Ibid, p 76

83. Document R3, p 151

84. Ibid, pp 157–158

85. Ibid, pp 130–131

The purchased blocks are outlined in map 35. They adjoined the confiscated Te Haroto and Tarawera blocks, and were handy to the Napier to Taupo highway. The prices paid – on average, 12 shillings sixpence per acre – were at the bottom end of unimproved values for such land, and made no allowance for any millable timber present. Moreover, substantial deductions were made on the purchase prices for survey liens and unpaid rates, ranging from 16.4 per cent to 18.5 per cent of the total payments for the three blocks.⁸⁶

(5) *The 1927 private purchases*

Although the Crown then withdrew from purchasing any further Tarawera land, it issued a final prohibition on alienation on 10 May 1927. On the expiry of that in May 1928, Tarawera owners were at last free to deal with their land as they chose.⁸⁷ Some were prepared to do so, especially as by then they were aware that some of the heavily forested land would bring good prices for its millable timber. Te Raroa Sullivan sold the 1136-acre Tarawera 8 block to the Taupo milling firm Gardner and McLeod in July 1927 for £3692 and 3664 acres of Tarawera x in December 1927 for £11,908.⁸⁸ But these were the last sales of Tarawera land for timber milling, though timber-cutting rights were leased on other blocks. The payments went largely to meet Ngati Hineuru's crippling burden of survey costs.⁸⁹ This was also the end of Crown and private purchasing in the Tarawera block. Almost a fifth of the block (14,295 acres) had been sold, but four-fifths (a little over 62,000 acres) remained in Maori ownership and control.

(6) *The Native Land Court investigation of title, 1925*

Further Crown purchases had already been hindered by two more petitions from Hape Nikora. The main petition, signed by Nikora and 70 others, relied on Judge Gilfedder's mistaken assumption that Tarawera and Tatarakaia lay outside the confiscation district, and it therefore appealed for legislation to be passed enabling the Native Land Court to investigate the title anew, according to Maori custom. On the strength of this appeal, the Native Affairs Committee referred the petition to the Government 'for favourable consideration'.⁹⁰ As a result, an inquiry by the Native Land Court was authorised by section 38 of the Native Land Amendment and Native Land Claims Adjustment Act 1924. This provision allowed the court to determine which persons, other than those already admitted, ought to be included in the Tarawera and Tatarakaia titles. In doing so, the court was not to be bound by the 1870 agreement or section 4 of the Native Land Claims Adjustment Act 1914, which required the court to treat all named owners as entitled to equal shares. With the court no longer bound by the equal-share rule, existing owners were to remain in the title, though probably with a reduced portion of the block. Partitioned blocks already purchased by the Crown were excluded,

86. Ibid, p 137

87. Ibid, pp 196–199

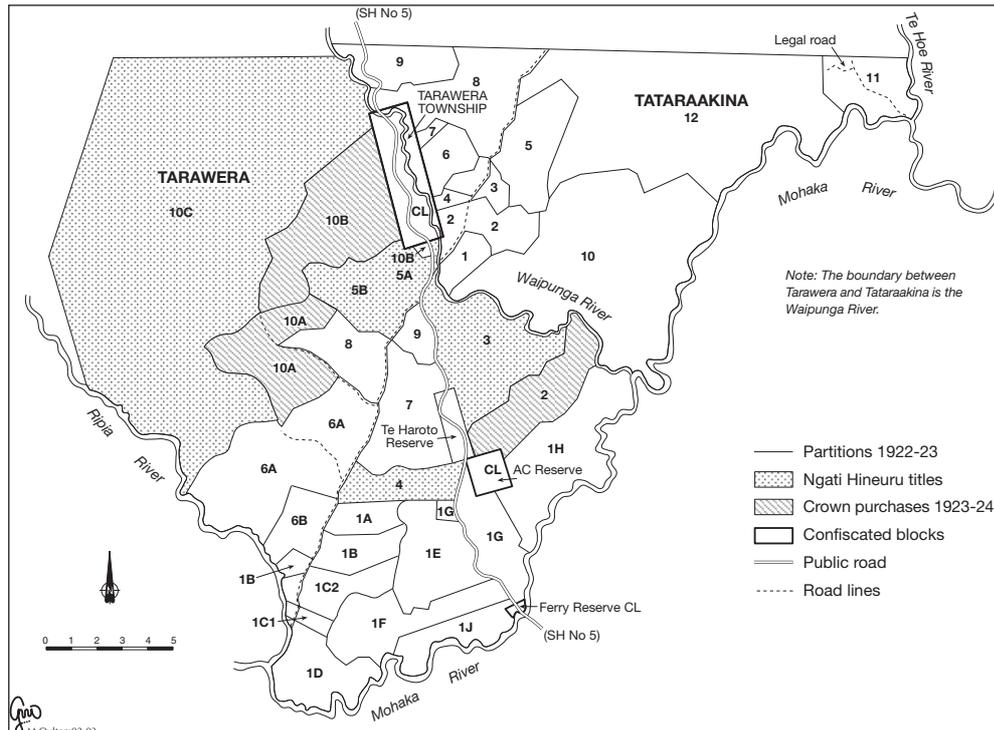
88. Ibid, pp 200, 204–205. Tarawera x was a notional block made up of the former blocks 6A1, 7A, and 9.

89. Ibid, p 204

90. Document J29, p 84

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Map 35: The Tarawera and Tataraka blocks, 1924

though the court could cancel other partitions. However, if it did so, any survey liens in favour of the Crown were to be protected.⁹¹ These reservations meant that any adjustment of the relative interests of Ngati Kahutapere and Ngati Hineuru in the Tarawera and Tataraka blocks had to come out of their existing shares in the blocks. By thus providing for new winners and losers, the Act laid the basis for prolonged disputes. Instead of excepting the recently purchased Crown land from the operation of the Act, the Government should have made this land available for readjusting the respective interests of Ngati Kahutapere and Ngati Hineuru.

It might seem strange that the reinvestigation was confined to the two blocks, since there had been requests to reinvestigate of the titles of other Mohaka–Waikare blocks. In part, this was probably due to Hape Nikora's persistence. But probably more important was the fact that his petition took up the point made in error in Gilfedder's 1920 report: that Tarawera and Tataraka were not included in the Mohaka–Waikare confiscation. Had this been correct, Tarawera and Tataraka would not have become Crown land, and it would have been appropriate for the Native Land Court to investigate what would have been customary titles.

The hearing began at Napier on 23 June 1925, when Chief Judge Jones gave an interim ruling that the court would 'proceed as near as may be as if the Native customary rights of the parties still existed'.⁹² Jones decided not to take into account whether any of the claimants

91. Document J29, pp 85–86

92. Ibid, p 87

or their ancestors had been deemed rebels. When he did consider the customary rights, he concluded that the owners of Tarawera were Ngati Kurapoto, Ngati Maruwahine, and Ngati Hineuru (though he usually referred to them collectively as Ngati Hineuru). Jones regarded Ngati Kahutapere, a hapu of Ngati Kahungunu, as being quite distinct from Ngati Hineuru and as having no customary entitlement to Tarawera. But, in view of the fact that Ngati Kahutapere had been in the title for 55 years, he concluded that ‘substantial justice’ would be achieved if they were awarded 15,000 shares, with the other 50,057 shares being awarded to Ngati Hineuru. Jones justified his decision to award a third of the block to Ngati Kahutapere on the ground that, under section 38(2) of the Native Land Amendment and Native Land Claims Adjustment Act 1924, if he found that other owners were entitled to be admitted to the title, he was required to redefine and readjust the relative interests of both as he thought just.⁹³

(7) *The 1926 revision of titles*

It is hardly surprising that Ngati Kahutapere did not think that Jones’s allocation was just at all. Before the judge made his final order, Waha Pango petitioned Parliament on behalf of Ngati Kahutapere, seeking the repeal of section 38 of the Native Land Amendment and Native Land Claims Adjustment Act 1924, thus restoring the previous status quo. The petition argued that the 1870 allocation had been fairly made, that the ‘rebels’ had had ample time to surrender and to receive a grant of land (a claim which Boast doubted), and that, if it were now considered that the rebels had a valid claim, it should be satisfied out of Crown land within the Mohaka–Waikare district.⁹⁴ The petition was forwarded to the Native Department for comment. The under-secretary, who was none other than Robert Jones – the same Robert Jones who had just heard the case as chief judge – informed the Native Affairs Committee that the Tarawera case was still pending. Then, as chief judge, Jones issued the final orders of the court on 3 August 1926, cancelling the former partitions of Tarawera. These final orders made some adjustments to Jones’s interim ruling, adding some names from lists passed during the hearing and amending some of the partition orders to cut out a section for Ngati Kahutapere owners. In doing so, Ngati Kahutapere’s award was reduced from 15,000 to 7025 acres,⁹⁵ though, since the award was based on the value of the land and Ngati Kahutapere were awarded their land along the main road, the reduction in area was not necessarily to their disadvantage.⁹⁶ (Their award is set out in map 36.) By then, the two months allowed for appeals had passed.

93. Document R3, p 175

94. Document J29, pp 89–91

95. As can be seen, there is some inconsistency in the historical record (and thus in our report) between ‘acres’ and ‘shares’. In document R3, Moorsom (whose figures we use) explained at page 185 that ‘The various documents recording the allocations reveal many inconsistencies in the treatment of land areas and values. The term most commonly used was “share”, but frequently an area of land was taken to be a share despite the large variations in land values. The same number is sometimes an area, at other times a share.’

96. Document R3, p 175

(8) *The 1929 rearrangement of titles*

Nevertheless, not all of Ngati Hineuru were satisfied. The inveterate petitioner, Hape Nikora, who had been absent when the Native Land Court made its final orders, objected to those orders, complaining that they had been unfair: Ngati Kahutapere had got too much land and the scheme used to allocate land to Ngati Hineuru was 'unfair and inequitable'. Once more, legislative provision was made – this time, by section 46 of the Native Land Amendment and Native Land Claims Adjustment Act 1928 – for a partial reopening of the Tarawera titles. This section allowed 'any person interested' to apply to the Native Land Court, within six months, for a rehearing of the titles to the block awarded to Ngati Hineuru. A rehearing was held, and on 5 October 1929, a redefinition of various interests was suggested, though it was not finalised until June 1935. This in effect wiped out the special consideration given to the Baker and Utiera whanau in 1925 and greatly diminished the areas granted to them. The Te Pohe whanau were also affected, though through reallocation rather than through loss of shares. These whanau then lodged petitions against the decision, and a further inquiry was sanctioned by section 16 of the Maori Purposes Act 1937.⁹⁹

Moorsom pointed out that, as the new title orders resulting from Jones's decision came into force, 'a tidal wave of repartitioning swept across both blocks [Tarawera and Tatarakaia]'.¹⁰⁰ On top of a three-way partition of Tarawera in 1922, no fewer than 41 partition orders for that block alone went through the Native Land Court between May 1926 and April 1927. The surveys were ruinously expensive, with the most expensive being those of the more rugged and less valuable land. Since many more owners had to be included in the titles, some blocks became overburdened with owners who could not possibly get an economic unit. By 1928, Tarawera had an ownership list of around 700, and three-quarters of those owners were congregated in Tarawera 10c.¹⁰¹ Although attempts were made to concentrate shares in contiguous blocks, some of the whanau holdings, including those of the Baker and Utiera whanau, were scattered over several, separated blocks. There was uncertainty both because of confused decisions and poorly drafted minutes and orders and because individuals' acreages were being translated into 'shares', sometimes on the ratio of two acres for one share and sometimes one acre for two shares.¹⁰²

Moorsom has summarised the outcome of the title revision in Tarawera under section 38 of the 1924 Act as follows (see map 36):

- ▶ 6.4 per cent of the total area (Tarawera 8 and x blocks) was sold to meet expenses, raising the area alienated (including the Crown purchases at this time) to 19.2 per cent (14,295 acres).

99. Ibid, pp 94–96

100. Document R3, p 180

101. Ibid, p 181

102. Ibid, pp 184–185; see also n 96 above

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- ▶ 13.7 per cent of the shares went to Ngati Kahutapere and Ngati Tuwharetoa, though in terms of land values the Ngati Kahutapere award of 7025 acres was worth around 20 per cent of the block. Ngati Tuwharetoa interests were awarded in the Tarawera 10C1B block (6013 acres).
- ▶ 10 per cent of the shares went to the Baker, Utiera, and Te Pohe whanau, though on land value their allocation was probably nearer 15 per cent. In addition, the Baker and Utiera whanau received 3.5 per cent of the Ngati Hineuru award.
- ▶ 57 per cent of the shares went to Ngati Hineuru as a whole, but on land values this was probably worth less than 40 per cent, being mainly located in the mountain forests of the Tarawera 10C block.¹⁰³

Yet, as indicated above, dissatisfaction with the 1929 rearrangement of the titles of the Baker, Te Pohe, and Utiera whanau led to a new round of petitioning in the 1930s and, as a consequence, a new Native Land Court inquiry. A common feature of the petitions, and of one from the Tareha brothers on the Tataraka titles, was the stress that was placed on the petitioners' 'loyalist' past and their desire to have their rights under the 1870 agreement restored.¹⁰⁴

(9) *The Browne–Carr inquiry, 1939*

The new Native Land Court inquiry was carried out by Judges Browne and Carr and was presented to Parliament in 1939. Boast described the Browne–Carr report as 'extremely forthright and able'. The inquiry included a petition from the Baker whanau, and Boast outlined their claims in considerable detail.¹⁰⁵ Though we cannot repeat all of that here, we do note that the whanau had acquired and developed a considerable area of land in what became known as Tarawera 5A. The whanau was descended from one Thomas Baker, a member of the Armed Constabulary, who first leased the land in 1876. Four of Baker's children (Robert, William, Henry, and Mary) gained shares through his second wife, Rihi Nene of Ngati Hineuru.¹⁰⁶ When Baker's son William died in 1928, two of William's sons, William and David, inherited his interest in Tarawera 5A. Their land was the most improved part of the Tarawera block, with some 450 acres in permanent grass, several miles of fencing, and five cottages, where the different members of the whanau lived. At the 1929 rehearing, William and David Baker received 472 shares (each representing one acre), due to them from interests elsewhere in Tarawera that they had inherited from Rihi Nene. The Baker brothers believed that this 472 acres was in addition to Tarawera 5A, a block of 726 acres, which they owned. But, when the

103. Document R3, p186

104. Ibid, pp 215–216

105. Document J29, p 96

106. Judges James W Browne and H Carr, 'Report and Recommendation on Petition No 66 of 1936, of W Baker and Others, Petition No 262 of 1936, of Kaperiera Te Pohe and Others, and Petition No 301 of 1936, of Matewai Utiera and Others, re Tarawera Block', 21 September 1939, AJHR, 1939, G-6A. Boast only mentions interests left to three children (Robert, William, and Mary).

final orders were issued in 1934, they discovered that their interest in Tarawera 5A had been reduced to some 90 acres by the 1928 determination.¹⁰⁷

The Pohe and Utiera whanau were also disadvantaged by the 1929 orders, though it was not until 1936 that they became aware of this. All were victims of the 1924 decision to reinvestigate the titles and the resulting reduction of land awarded by the 1870 agreement to the original owners. Browne and Carr laid the blame for reopening the titles firmly on the Legislature, not the Native Land Court, which they said had merely been carrying out the instructions of the legislation. They also said that the problem should have been resolved by awarding to the left-out claimants land that the Crown had acquired elsewhere in the Mohaka–Waikare district. As Waha Pango had put it in his 1925 petition, ‘dispossessing after so many years, of those to whom such lands had been granted by the Crown for all time was inequitable and unjust’.¹⁰⁸ Browne and Carr then made a significant comparison with the Kaiwaka block which, they pointed out, had been awarded in sole title to Tareha, a title which had been upheld in litigation all the way to the Privy Council. In contrast, the titles of the 24 persons named in the 1870 agreement for Tarawera had been overthrown by the Legislature. Browne and Carr could not understand why a distinction should have been drawn between Kaiwaka and Tarawera. ‘The twenty-four persons in the agreement were as much entitled to Tarawera absolutely as Tareha was to Kaiwaka.’¹⁰⁹ (We note that Tareha had been one of the 24 in the Tarawera title but that his sons had sold their interests to the Crown before the 1924 rearrangement.)

Browne and Carr made yet another attempt to resolve the problem and recommended that:

- ▶ the partition orders and the order of 1929 be annulled;
- ▶ a special award be made of the Crown-purchased sections of Tarawera 3 and 10, or their ‘equivalent in value’, for any of the 28 grantees who had not already sold their interests; and
- ▶ the balance of the land be divided between the persons found to be entitled to land by the Native Land Court in 1925 and 1929.¹¹⁰

There were two errors in this recommendation. The Crown had purchased Tarawera 2, not 3, and there were 24, not 28, names in the 1870 list for Tarawera. Browne and Carr had hoped that interests could be grouped around existing holdings, but their recommendations were not implemented. Boast suggested a possible explanation by quoting Chief Judge Jones’s advice on their recommendations to the Native Minister: that he could ‘see no justification for granting compensation . . . out of Crown lands’.¹¹¹ We believe that this advice was wrong. Indeed, we believe that it is still not too late to provide compensation in the form of Crown

107. Document J29, pp 96–97

108. *Ibid*, p 98

109. *Ibid*, p 99

110. Document J29, p 100

111. RN Jones, Native Minister, in Browne and Carr, p 2 (doc J29, p 100)

land in the block or nearby. Despite the chief judge's lukewarm support for the Browne–Carr report, the Native Affairs Committee recommended it for 'favourable consideration'.¹¹²

(10) *The royal commission inquiry, 1951*

Although the Native Department favoured using Crown land for compensation, the Treasury opposed that solution and argued instead for another inquiry (if one were required), followed by repartition of the existing Maori holdings in Tarawera. But, with the Second World War then in progress, nothing more was done. After the war, the proposal for a new inquiry was taken up again. In 1951, a royal commission was appointed to inquire into various Maori grievances, including those related to the Tarawera and Tatarakaakina blocks.

As Moorsom pointed out, that commission made only a perfunctory inquiry into the Tarawera and Tatarakaakina land grievances. There was only one day of hearings, and that was dominated by counsel representing the various petitioners. The commissioners did not visit the blocks, though the secretary to the commission made an inspection, mainly from the Napier to Taupo road. According to Moorsom, the commission was unduly influenced by the counsel who was appointed to assist it; indeed, that counsel was 'also playing the Crown's hand, and shaping it too'.¹¹³

Nevertheless, the commission's report was, in Moorsom's view, 'by far the most detailed review to date of the Tarawera and Tatarakaakina title issue'.¹¹⁴ It began with 'a potted history' of the case that was based largely on a summary of the files prepared by the commission's lawyer. It accepted what was then still current orthodoxy: that the confiscation resulted from rebellion; that the 1870 agreement was fairly made; and that the 1924 legislation abandoned a binding contract with the owners named in the 1870 agreement. The commission recommended that the pre-1924 owners be fully reinstated, but it ruled out using Crown land to compensate those who would be dispossessed. Instead, it recommended monetary compensation based on 1931 land values, which, when survey liens were deducted and without taking timber into account, amounted to one shilling ninepence per acre for Tarawera.¹¹⁵

According to the commission, only one post-1924 owner was living on Tarawera (and only one on Tatarakaakina). As Boast pointed out, this was a misleading assumption, because a good many others who had acquired rights to Tarawera since 1924 were still living at Te Haroto. However, they were too overburdened with debts (mainly survey liens) and lacked the capital to develop their land.¹¹⁶ Indeed, the main compensation issue related to millable timber, which had recently increased in value; the commission saw no reason why the 'newcomers' should profit from this increase at the expense of the 'rightful owners'.¹¹⁷

112. Document R3, p 222

113. Ibid, p 233

114. Ibid, p 234

115. Ibid, pp 234–240. The 1931 valuation did not take into account the standing timber on the block: see Dalglish, Christie, and Ormsby, p 27.

116. Document J29, p 107

117. Dalglish, Christie, and Ormsby, p 24 (doc J29, p 106)

The commission recommended that legislation be passed to undo the effects of the 1924 and 1928 Acts, to cancel all partitions, and to provide for a hearing of the Native Land Court to establish two new lists of owners. One list was to be based on the 1870 agreement, with the court required to find descendants of those named in the 1870 list; the other was to include current occupiers who wished to stay on the land with their shares adjusted as appropriate. Those occupiers who did not want to stay were to be compensated from purchase moneys held by the Maori Trustee, or from general funds. These recommendations were given effect to by section 13(2) of the Maori Purposes Act 1952.¹¹⁸

(11) *The Whitehead inquiry, 1952*

Under the authority of section 13(2), Judge Whitehead conducted a hearing and finalised a revised ownership list. The effect of the new court orders was a dramatic reduction in the total number of owners – from 812 to 214 in Tarawera and from 285 to 205 in Tatarakaia – and a reshuffling of the size of individual interests. The total shares in Tarawera were calculated at 55,451. Six applications for occupation rights were approved, including those from the Baker and Te Pohe whanau, who reclaimed shares equivalent to their former partitions. On 27 November 1953, two occupiers who had been removed from the Tarawera title were allowed to partition out the land they occupied: Te Raroa Sullivan got 200 acres around his house in Tarawera A, in what had been part of the former Tarawera 1F, and Te Hura Wano Taungakore got 302 acres in Tarawera B, part of the former Tarawera 1G. The remainder of Tarawera, now designated Tarawera C, was vested in the restored list of owners (map 37). Finally, compensation was awarded to those owners who were removed from the title or had their shares reduced, but that compensation was a mere £2256.¹¹⁹

(12) *Survey debts*

We make further comment here on the enormous costs for which Tarawera owners became liable, particularly as a result of litigation and the surveying of partitions that were later cancelled. The first partition survey of Tarawera was begun in 1918 and completed in 1922. It was very expensive since it had to cover rugged bushclad country, and it worked out at 1.134 shillings per acre. Later, this was recalculated at 1.307 shillings per acre, a total of £4870 for the whole block. At the low land values then prevailing – and they were further reduced during the depths of the Depression in 1931 – survey liens over various Tarawera blocks amounted to from 31 to 76 per cent of the total value of the land.¹²⁰ The costs of the survey became a debt owed to the Crown and carried interest at a statutory rate of 5 per cent. Such costs were deducted from the prices paid by the Crown for blocks it subsequently purchased. For instance, when the Tareha brothers sold Tarawera 10A to the Crown in 1924 for £970 6s 3d,

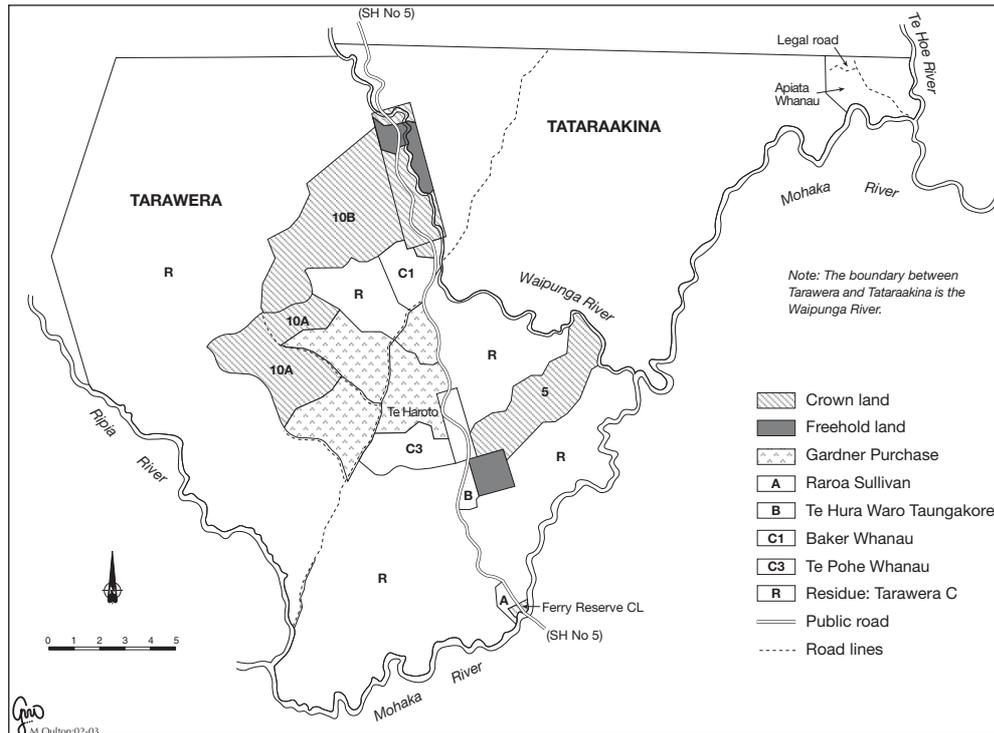
118. Document J29, p107

119. Document R3, pp 242–243; doc R9, pp 1–9

120. Document R3, p244

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Map 37: The Tarawera and Tataraaikina blocks, 1953

they had £166 7s 11d deducted for survey expenses, and other deductions were made for court fees and rates. But the Tarawera blocks still in Maori ownership remained liable for survey charges. Then, as partitions were cancelled after 1924 and new ones were made, the existing charges remained and new ones were added. In 1927, the Native Land Court allocated 4800 special shares in Tarawera to Te Raroa Sullivan, who held them in trust until he sold them to defray survey expenses. The shares were in Tarawera 8 and Tarawera x. The latter block was sold to mill owner Harold Gardner for £11,908 (map 36), and the money was used to defray survey expenses and rates arrears of £1175, nearly 8 per cent of the purchase price.¹²¹ In addition, heavy legal expenses incurred by Ngati Hineuru in prosecuting their claims were also deducted from the proceeds of the purchase. According to Moorsom, some 61 per cent of the Tarawera x and Tarawera 8 blocks purchase money went towards Ngati Hineuru's expenses.¹²²

Despite this payment, survey liens remained over other blocks. In 1933, Hape Nikora applied to have survey charges and accumulated interest remitted on the Ngati Hineuru award. By that time, the charges had mounted to £4829, which was equivalent to 39 per cent of the value of the remaining Maori land in Tarawera.¹²³ But, since the 1931 earthquake destroyed

121. Document R3, p 248

122. Ibid, p 256

123. Ibid, p 249

all the survey data, the surveys were useless for title purposes.¹²⁴ In our view, the survey charges should have been remitted there and then. Though the Native Department appears to have been ready to remit the charges for extra surveys required by the loss of records for other blocks of Maori land, it did not do this for Tarawera and Tatarakaia.¹²⁵

Nothing came of Nikora's appeal, and the debts on the various Tarawera awards (and Tatarakaia) continued to rise. By March 1951, liens and interest debts had exceeded the 1949 valuation of the land in the remaining partitions of Tarawera and Tatarakaia. In September 1953, the Maori Trustee applied to the Maori Land Court for the remission of the outstanding survey liens. In doing this, the trustee had the endorsement of the chief surveyor of the Department of Lands and Survey. In November 1953, the registrar paid off the principal due: £722 14s 11d for Tarawera and £3171 3s for Tatarakaia. Presumably, these payments were made from timber royalties held by the Maori Trustee. A court order was obtained remitting the interest on all the outstanding liens in Tarawera and Tatarakaia. The Minister of Lands accepted the remittance of interest, and the chief surveyor withdrew the caveats. As Moorsom noted, 'For the first time in 30 years, the Tarawera and Tatarakaia titles were entirely clear of survey charges.'¹²⁶ By then, however, the scrapping of all the previous orders (a consequence of the royal commission's report) rendered the previous partitions scheme void, though the Maori owners, through the Department of Maori Affairs, had already paid the principal, if not the interest, owing on the survey liens.¹²⁷ In our view, they should not have been charged the principal either.

(13) Post-1953 developments

The post-1953 history of the Tarawera block has been discussed in considerable detail in Moorsom's supplementary report.¹²⁸ We do not need to examine this period in detail, but we shall briefly note some of the salient points. Moorsom reviewed the partitioning and alienation of the Tarawera block until 1981 (map 38). In that period, 4524 acres were partitioned from the main block, mainly for the occupiers recognised in 1953, but fewer than 1000 acres of this were alienated from Maori ownership. The Crown acquired 377.8 acres, of which 352.2 acres were used for scenic reserves along the Napier to Taupo highway, while the remaining 25.6 acres were used for a small recreation reserve on the Mohaka River. The Crown also took another 134.2 acres for public works, mainly roading. This left 55,215 acres in the parent block, now designated Tarawera C9.¹²⁹ Since the owners showed a steady determination to retain this land, and Government departments were by then sympathetic to the retention of land in

124. Ibid, p 253

125. Ibid, p 254

126. Ibid, p 252

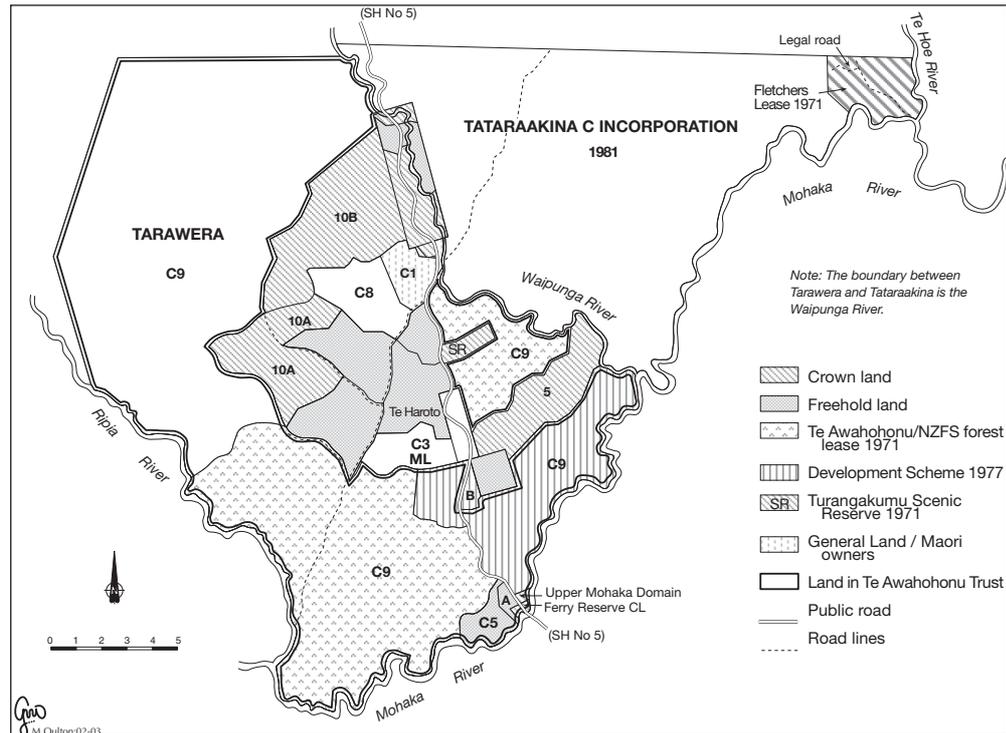
127. Ibid, p 253

128. Document R9

129. Ibid, p 95

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Map 38: The Tarawera and Tatarakaikina blocks, 1981

Maori ownership, attention was focused on the best means of developing it. Likewise, the Forest Service, hitherto content to facilitate the cutting of native timbers, now sought to preserve the remnants of native bush and began to promote the planting of exotic pines. By 1950, private logging companies such as Gardner and Sons were coming to the end of their operations on Tarawera, though logging was to continue for some years in the Tatarakaikina and Te Haroto Forests.¹³⁰ Though owners received royalties for the timber, none of this money was put into the development of exotic forests or farming. The consolidation, incorporation, and development schemes initiated by Sir Apirana Ngata when he was Native Minister passed Tarawera and Tatarakaikina by, and an attempt to form an incorporation for Tarawera in 1957 failed, largely because of disputes between the Baker whanau and other owners.¹³¹

In the 1970s, several family groups, such as the Te Pohe whanau, established section 438 trusts, and this device was used for the parent c9 block, which was put under the control of the Te Awahohonu Forest Trust in 1971. The trust controlled some 50,000 acres, which were leased to the Forest Service to establish an exotic plantation. The remaining 5652 acres of Tarawera c9 were devoted to a land development scheme managed by the Department of Lands and Survey. Most of the area was to be turned into pasture, farmed as a sheep and cattle station until the development costs had been recovered, and then subdivided into 10

130. Document R9, pp 28–38

131. Ibid, pp 68–70

individual holdings. Although the scheme initially made steady progress and was marginally profitable, it ran into difficulties in the 1980s in the form of a succession of natural disasters and then, from 1984, the removal of farm subsidies and protections by the Labour Government. With debts accumulating, the Board of Maori Affairs decided to hand the farm back to the trustees, and it was returned to the Te Awahohonu Forest Trust on 4 July 1987, along with a mountain of debt. Since then, the land has been farmed as a station administered by the trust.¹³² We understand that the debt has now been paid. In 1992, all the trust lands were put under the Tarawera C9 title.

Our long and somewhat tortuous narrative of the vexed issues relating to the Tarawera titles was necessary as a background to considering claimant and Crown submissions. Since claimant and Crown counsel have combined their discussions of the Tarawera and Tataraa-kina blocks, we shall consider their submissions and our findings after our discussion of Tataraa-kina, which follows.

10.4.2 Tataraa-kina

The fate of the Tataraa-kina block after 1870 is similar in many ways to that of the Tarawera block, but it is difficult for us to provide a distinct narrative of it, since many of the sources merge its history with the story of Tarawera.

The 37,000-acre Tataraa-kina block lies to the north-east of the Tarawera block (the two being separated by the Waipunga River) and to the north-west of the confiscated Waitara block (the Mohaka River separating them). Under the 1870 agreement, Tataraa-kina was 'returned' to 22 owners, five of whom were in the titles of other blocks. The five included Tareha, who was also included in the list for Tarawera (and six other blocks). According to Paora Rokino, who gave evidence before Judge Gilfedder's 1924 inquiry into Pererika Sullivan's petition, more 'Hauhaus' got into the Tarawera and Tataraa-kina titles than 'loyalists', and all except Tareha in the Tataraa-kina list were Ngati Hineuru. As already noted, Moorsom concluded that all but three of the list were of Ngati Hineuru descent.¹³³

Little is known about Tataraa-kina in the three decades from 1870, though the runholder John Anderson had a 30-year lease over the block, as he did over Tarawera and other blocks. This was due to expire on 1 January 1916. Though Anderson was said to have been running as many as 20,000 sheep at the peak of his operations, he does not appear to have done much to improve the land. His lease did not exclude the owners from occupying the land or hunting and gathering within the block, but there appears to have been only one whanau that occupied land there for any length of time.¹³⁴ Others with rights in the block lived at Te Haroto, or elsewhere, and were sometimes employed by Anderson as shearers and farm labourers.

132. *Ibid*, pp 123–128

133. Document R3, p 75

134. *Ibid*, p 237

(1) *Pleas for the reinvestigation of titles*

Along with Tarawera, the Tataraka block was the subject of Hape Nikora's petitions of 1909 and 1912, which sought a Native Land Court investigation of customary rights to the two blocks. As noted, repeated requests for court determinations since 1866 had been postponed or declined, most recently by Judge McCormick at Hastings in 1909. In fact, as McCormick and other judges before him had said, the court had no jurisdiction to inquire *ab initio* into the customary titles. Since awards had been made to individuals under the 1870 Mohaka–Waikare agreement, the court could become involved only in decisions about the relative shares of those individuals and successions to them. This opinion was confirmed by the Solicitor-General in 1913. Nevertheless, Nikora and others kept up the pressure for a reinvestigation. Some of them wanted a secure title to develop the land themselves, others wanted to sell it to the Government. But, despite its vigorous purchasing of other Mohaka–Waikare blocks during the First World War, the Native Land Purchase Board showed even less interest in the Tataraka block than Tarawera. In 1916, the district surveyor valued Tataraka at 12 shillings sixpence an acre, compared with 16 shillings sixpence an acre for Tarawera.¹³⁵

(2) *The Gilfedder inquiry, 1920*

The next stage in the Nikora saga resulted from his 1918 petition: the Government authorised an inquiry by the Native Land Court to determine whether any individuals listed in the 1870 agreement had been omitted from the Tarawera and Tataraka titles. Judge Gilfedder conducted the inquiry. He reported that, when it issued orders for certificates of title in 1882, the Native Land Court did leave out four who were named in 1870. As we have mentioned, he named these persons as Hoani Ngarangi, Rahera Te Hautai, Horiana Hinehou, and Wirihana Poromai and said that they should be added to the lists for both blocks. But just how he reached this conclusion is a mystery, since, as we noted, Ngarangi, Te Hautai, and Poromai were named on the list for Tataraka but not on the one for Tarawera, and Horiana Hinehou was not on either (see sec 10.4.1(2)).

(3) *The Native Land Court investigation of titles, 1927*

As we pointed out in our section on Tarawera, Gilfedder made another error in assuming that Tarawera and Tataraka were not part of the Mohaka–Waikare confiscation. It was this error which paved the way for a further inquiry when Nikora once more petitioned in 1924 for a reinvestigation of the customary titles to the two blocks. The investigation was provided for in section 38 of the Native Land Amendment and Native Land Claims Adjustment Act 1924. It was on the strength of this that the Native Land Court cancelled the ownership lists based on the 1870 agreement and restored the blocks to owners determined according to customary law. The court dealt first with Tarawera and then reinvestigated Tataraka,

135. Document J29, p 70

making a decision on 11 May 1927. The Ngati Kahutapere interest in Tataraaikina was confined to three descendants of Tareha, though their shares were severely reduced by Chief Judge Jones – to six, five, and five acres.¹³⁶ There was some conflict between rival Ngati Hineuru claimants. Moorsom described this as a ‘contest of traditional histories led by Raroa Harawene [Te Raroa Sullivan] and Hape Nikora respectively’. Jones ruled in favour of the former, and though he was critical of both cases, he split the block at the Mokomokonui Stream between the two rival sets of claimants (see map 35).¹³⁷ (Paora Rokino and others later appealed the decision to the Native Appellate Court, which declined to interfere with it.) Jones also reallocated some of the lands of various whanau. The Baker whanau lost some 400 acres in Tataraaikina 4A, across the road from their farm, and were relocated in the distant block 5, along with other successors to the shares of Pane Te Kanga (see chapter 17 for a fuller discussion of the relationship between the Baker whanau and Te Kanga). Likewise, the Utiera whanau were removed from their 1351-acre block in Tataraaikina 9 and lumped in with the backcountry residue of Tataraaikina 12.¹³⁸ The Te Pohe whanau lost their 901 acres in Tataraaikina 6, opposite the Tarawera township block, and were relocated in Tataraaikina 12.¹³⁹ Then, Rangihiroa Te Hura and others petitioned Parliament, alleging gross bias in favour of the descendants of an unnamed ancestor, but the Native Affairs Committee made no recommendation on this petition.¹⁴⁰

(4) Partitions and survey debts

Tataraaikina did not suffer the extensive partitioning that Tarawera did following the title revision. Nevertheless, the block was partitioned into nine smaller blocks, and the survey costs were even higher than they had been for Tarawera. By 1931, accumulated survey charges had risen to £2017 10s 3d, with the charges varying from 26.2 per cent to a massive 102.3 per cent of the total valuations of the various partitions.¹⁴¹ By June 1934, the principal and interest had risen to a massive 78 per cent of the 1931 valuation of Tataraaikina.¹⁴² By 1949, the principal had increased to £3171 3s, and with interest was 119 per cent of the land valuation of that year. Yet, since the survey plans and data had been destroyed in the 1931 earthquake and the partition titles had never been completed, a new survey was required before title could be issued. Although the survey liens over Tataraaikina 6 were cleared from the proceeds of a timber sale, they remained over other Tataraaikina blocks. Then, after the report of the 1951 royal commission, the principal owing on the rest of the Tataraaikina blocks – £3171 3s – was paid by the Maori Land Court registrar and the caveats against the titles were withdrawn.¹⁴³

136. Document R3, p 179

137. *Ibid*

138. *Ibid*, pp 182–183

139. *Ibid*, p 184

140. *Ibid*, p 180

141. *Ibid*, p 208

142. *Ibid*, p 251

143. *Ibid*, p 252

(5) *The 1951 royal commission inquiry and subsequent events*

It was the 1951 royal commission that finally dealt with the complaints against Jones's 1927 decision, more especially the Tareha brothers' 1936 petition for the restoration of their pre-1927 holding of 12,170 acres in Tatarakaikina.¹⁴⁴ The commission recommended that legislation be passed to restore the titles of both blocks on the basis of the 1870 lists. Under section 13(2)(a) of the Maori Purposes Act 1952, the Maori Land Court was directed to reinvestigate the Tarawera and Tatarakaikina titles yet again, and to prepare two lists for each block, one of the present owners, the other of successors to the original (1870) owners. The current occupiers were given the option of remaining on the land, possibly with a reduced holding, or of leaving and receiving compensation. It appears that, although the court approved lists as required for Tatarakaikina, only three occupiers opted to remain on the block, and two of these needed to have their shares increased.¹⁴⁵ Several whanau had occupation rights in Tatarakaikina, but only two appear to have continued farming there: Morehu Apiata Taungakore and Putiputi Parerohi. Taungakore, of the Apiata whanau, farmed for years in the remote north-east corner of Tatarakaikina, but he died in 1953, just months before his occupation right was confirmed, while Parerohi, of the Te Pohe whanau, had farmed part of Tatarakaikina 1 since the First World War, though by 1962 the whanau had still not received an occupation certificate.¹⁴⁶ A total of £1696 was paid out in compensation to those who lost their titles or occupation rights in Tatarakaikina.¹⁴⁷

Because of its remoteness and its difficult terrain, Tatarakaikina was even less of a prospect for development than Tarawera. However, that remoteness meant that the milling of the block's native forests lasted longer – right through to the end of the 1960s. Those physical factors also meant that there was less demand from private parties or the Crown to purchase the land. Although there were a few inquiries, no Tatarakaikina land was sold after 1953. In 1971, a small area on the north-eastern corner, the former Apiata farm, was leased for 10 years to Fletcher Industries Limited (Fletchers), which operated it for several years as a pastoral run adjoining Ngatapa Station. It was as a consequence of that lease that the owners decided in 1972 to form a section 438 trust covering the remainder of Tatarakaikina. The trust was not formalised until 1978, and it was only then that the owners could consider development schemes. Though the Forest Service did not become involved, in 1982 996 hectares in the north-eastern corner of Tatarakaikina were leased on a longer term to Forest Investments Limited, a Fletcher Challenge subsidiary. Fletchers had already planted the adjoining Ngatapa Station in pine trees and the land at Te Hoe was to be added to it.

In the meantime, in 1981, the Board of Maori Affairs had hurriedly embarked on a land development scheme over a 762-hectare portion of Tatarakaikina bordering the Tarawera township block. But the scheme was a disaster from the beginning: much of the land proved

144. Dalglish, Christie, and Ormsby (discussed in doc 11(15), pp 139–144)

145. Document R9, pp 1–2

146. Ibid, pp 16–17, 21–23

147. Document R3, pp 241–243

unsuitable for pastoral farming, a vital communication route was lost when the bridge over the Waipunga River was washed away in a flood in 1985, and Labour Government policies from 1984 severely depressed pastoral farming. As it had done with Tarawera, the department eventually offloaded the scheme to the local trust in 1992, though on this occasion the accumulated debt of \$589,781 was written off.¹⁴⁸

10.4.3 Legal submissions

In this section, we have reviewed the historical issues arising out of the Mohaka–Waikare confiscation and the subsequent transactions concerning the Tarawera and Tatarakainga blocks. Other twentieth-century issues, including public works takings and the installation of power lines, are reviewed in chapters 16 and 17. We turn now to a consideration of the submissions made for the several claims on these two blocks.

(1) *The Wai 299 claim*

The Wai 299 statement of claim asserted that the Crown ‘acted in breach of the Treaty by failing to re-investigate the lists of owners in the 1870 agreement. When it did take action, 54 years later, it did so in a way which created further injustice, loss, social dislocation and costs for the claimants.’¹⁴⁹ The claimants alleged that the 1924 reinvestigation ‘resulted largely in the dispossession of the previous owners without full compensation for land and improvements and the substitution of a new list of owners’ and that the costs of litigation resulted in the loss of a block of 4800 acres (we take this to refer to the special allocation to Te Raroa Sullivan of 4800 shares in Tarawera 8 and x – see section 10.4.1(12)). They noted that the 1939 Native Land Court inquiry had found that the Crown should have compensated Ngati Hineuru out of Crown lands rather than dispossessing owners who had acquired title from the 1870 agreement, but the Crown had ignored that recommendation. Finally, the claimants noted that, though the 1951 royal commission had recommended the restoration of the pre-1924 title position, this was implemented without full compensation being paid to those persons who had been entered into the title by the Native Land Court from 1924 and had since been removed.¹⁵⁰

Wai 299 claimant counsel elaborated on the statement of claim in his closing submissions, in which he laid particular stress on the disadvantages suffered by Ngati Hineuru but argued that ‘the net outcome [of the title revisions] was complete confusion and expense to the detriment of both Ngati Hineuru and Ngati Kahutapere’.¹⁵¹ As claimant counsel saw it, ‘neither [tribal] group should be disadvantaged’ – Ngati Hineuru should be restored to an adequate tribal endowment, preferably based on their customary lands, and Ngati Kahutapere should

148. Document R9, pp 130–138

149. Claim 1.22(e), para 6.1

150. Ibid, para 6.1(b)

151. Document X39, p 84

10.4.3(2)

be restored to the position they were in prior to 1924. To the extent that these two objects could not be achieved, compensation should be paid, 'based on land in current Crown ownership'.¹⁵² But, at no stage in the long and tortuous history of the titles, was the Crown prepared to 'compensate either group out of the lands that it had acquired in Mohaka-Waikare district'.¹⁵³

(2) *The Wai 318 claim*

The Wai 318 claim was submitted by Mereana Amor and, on her death, was promoted by her husband, Colin George Amor. Mrs Amor claimed interests in Tarawera 10C4A and Tataraaikina 12, and in various other blocks outside our inquiry district. Her interest in the two blocks was obtained from her grandmother, Heeni Waretini, who had received 'aroha' shares that Rere Nicholson had been granted by the Native Land Court in 1929. These shares had been gifted to Nicholson by Ngati Hineuru in recognition of the financial assistance he had given them in their attempts to retain title to their land.¹⁵⁴ Waretini also received aroha shares from Mamati Hukiki. According to Georgina Roberts, who researched the matter for the Tribunal, Waretini had received 92.45 shares (out of a total of 36,773 shares) in Tataraaikina and 57.25 shares in Tarawera.¹⁵⁵ These shares were cancelled as a result of the report of the 1951 royal commission.¹⁵⁶ Roberts pointed out, and claimant counsel in closing submissions admitted, that there were gaps in the evidence concerning Mrs Amor's ancestral connections to the two blocks.¹⁵⁷ However, it is accepted that she inherited the aroha shares listed above, and was therefore in a similar position to others who had been granted titles following the Native Land Court's title revisions from 1924 only to lose them after the royal commission's report in 1951.

(3) *The Wai 599 and Wai 600 claims*

The Wai 599 and Wai 600 claims were submitted by Te Tuhuiāo Kahukiwa on behalf of the Te Pohe Whanau Trust in relation to Tarawera 7, and by Te Rina and Reg Sullivan on behalf of the Tarawera 1F beneficiaries. Both claims referred to prejudice suffered as a result of the loss of title or the cancellation of partition orders under the Native Land Amendment and Native Land Claims Adjustment Acts of 1924 and 1928.¹⁵⁸ In his opening submissions, counsel for the Wai 600 claimants said that the claim was based on the same evidence and principles as the Wai 599 and Wai 638 claims.¹⁵⁹ There was no opening submission filed for Wai 599. Nor were there closing submissions for either Wai 599 or Wai 600, though counsel for Wai 638 asked

152. Document x39, p 93

153. *Ibid*, p 84

154. Document M8, p 8

155. *Ibid*, p 14

156. Claim 1.48(b), para 11

157. Document M8, pp 7–8

158. Claims 1.43, 1.44

159. Document R29, p 1

that his final submissions be extended to cover those two claims, 'given their similar historical, legal and evidential backgrounds'.¹⁶⁰

(4) *The Wai 638 claim*

The Wai 638 claim, submitted by Nigel Baker on behalf of the Tatarakina c block claimants, was an amalgamation of several previous claims by individuals or whanau trusts relating to Tatarakina c. These previous claims were: Wai 598 by the Matawhero Whanau Trust; Wai 601 by Winfred Kupa and others; Wai 602 by the Utiera whanau; Wai 608 by Lyndhurst O'Donnell; and Wai 627 by Albert Eden. We do not specify the details of each claim here, but we do note their general features. According to the amended Wai 638 statement of claim, all claimants 'represent the tipuna and rightful successors of those people of Ngati Hineuru who were the tangata whenua and exercised rangatiratanga over . . . the Tatarakina block'.¹⁶¹ As counsel stated, 'all the claims have similar roots'.¹⁶² The claimants stated that they had been prejudiced by:

- ▶ the original confiscation of the block;
- ▶ the failure of the Crown to recognise the 'correct' owners under the 1870 agreement;
- ▶ the failure of the Crown to provide land as compensation to those who were disadvantaged by the subsequent reinvestigation of titles and redistribution of Tatarakina c; and
- ▶ the loss of title or cancellation of partition orders in respect of Tatarakina c as a consequence of the 1951 royal commission's report.

The claimant submissions were presented to the Tribunal at its Te Haroto hearing from 14 to 17 April 1998, along with two Tribunal-commissioned reports by Moorsom.¹⁶³ These reports were the main source for counsel's opening submissions. Counsel summarised the tenurial history of the two blocks that we have recounted above, placing particular emphasis on the fate of the holdings of the principal claimants: the Apiata, Baker, Utiera, Wano, and Haukore whanau. Counsel noted that the original Baker whanau claim, Wai 147, which related to Tarawera 5A, had been settled by negotiation with the Crown on 20 December 1995, though their claims on other blocks, including Tatarakina c, remained to be considered. Crown counsel, however, submitted that the 1995 deed of agreement had settled all the Baker whanau claims, including those raised in Wai 601, Wai 638, Wai 639, and Wai 640.¹⁶⁴ (See chapter 17 for further discussion.) In addition to the losses suffered by the different whanau from the frequent title revisions and partitions, claimant counsel noted that the whanau had suffered

160. Document x36, para 1.9

161. Claim 1.51(a), para 1.2

162. Document x36, p 43

163. Documents R3, R9

164. As we note in chapter 17, however, Crown counsel added that the Baker whanau would still be able to participate in or benefit from a settlement of all the claims of the hapu participating in this inquiry'. See also document x52, p 8.

10.4.3(5)

additional expenses, and sometimes the loss of land or timber, in order to pay for survey liens and legal advice. They had also suffered economic loss, social deprivation, poor health, and population decline.¹⁶⁵ These claims were supported by the evidence of several of the claimants, including Nigel Baker. They recalled both the difficulties that had arisen for their families from the frequent revisions of title and repartitioning and resettlement of holdings and how these difficulties had profoundly disturbed their farming operations. Most of the families eventually abandoned their farms and became dependent instead on work in timber mills, roads, and other labouring occupations. When these jobs in turn ran out, most of them left the district.¹⁶⁶

These points were reiterated by claimant counsel in his final submissions. He briefly summarised the grievances of each claimant group, but added that those claimants ‘always saw themselves as representing Ngati Hineuru generally and as presenting evidence on behalf of the tribe’.¹⁶⁷ However, he also admitted that some whanau of Ngati Hineuru descent, including the Te Pohe whanau (Wai 599) and the Sullivan whanau (Wai 600), remained outside the Wai 638 comprehensive claim.¹⁶⁸ As we noted above, Wai 638 claimant counsel, though not having a brief to represent the Wai 599 and Wai 600 claimants, asked that his submissions be extended to cover their claims, given their similarity.

(5) Crown submissions

The Crown presented a helpful submission on both the Tarawera and the Tataraka blocks. Although admitting that the majority of persons put in the Tarawera title by the 1870 agreement were Ngati Kahutapere, Crown counsel argued that they were not there ‘without colour of right’.¹⁶⁹ Though this did not amount to rights from occupation, Ngati Kahutapere had some claims based on seasonal occupation and marriage with Ngati Hineuru. Despite this, counsel suggested that the first principle against which the history of the inland blocks should be measured was ‘the need to make sufficient provision for Ngati Hineuru to re-establish themselves as a community following the troubles of the 1860s and 70s’.¹⁷⁰ Counsel admitted, however, that the Crown’s dealing with Ngati Hineuru was ‘a story of missed opportunities’, because of its failure to make better provision for them in the confiscated portions of Tarawera and Te Haroto (where they belatedly got title to some 500 acres in 1911) and in the returned Tarawera and Tataraka blocks.¹⁷¹

We note that the Crown accepted the relevant chapters of the Moorsom reports as being ‘generally accurate’, and in line with research previously carried out by the Crown for the

165. Document R12

166. Documents R13, R14, R16

167. Document x36, p 3

168. Ibid, pp 2–3

169. Document x51, p 98

170. Ibid, p 99

171. Ibid, p 100

Baker whanau claims in 1995. Having said that, the Crown's submission went on to review briefly the various revisions of title. Crown counsel admitted that the question of entitlement to the blocks was 'poorly handled':

Basic errors were made and confusions about the nature of the agreement reached in 1870 resulted in some ill-informed decisions about the merits of certain petitions and pleadings in litigation. As Mr Moorsom fairly points out, the 1924 legislation involved the radical overturning of previous policy, and the absence of scrutiny by officials or the Native Affairs Committee was remarkable.

After 'three decades of further wrangling', the result for Ngati Hineuru was 'highly unsatisfactory' and 'costly'. Crown counsel conceded that this failure to address the question of entitlement in an informed and thorough manner was also a failure 'to satisfy the Treaty's promise of order'.¹⁷²

Crown counsel conceded that the root of the problems in the twentieth century was the Crown's omission to follow through on its obligation, recognised in 1868, to:

make proper provision for those who were then expected [to] return to Tarawera. With the gradual reformation of the Ngati Hineuru community towards the end of the nineteenth century, the need to address this obligation ought to have been apparent before the initial phases of partition and purchase began.

Counsel noted that, as a consequence of this omission, the attempts to increase Ngati Hineuru holdings reduced the interests of those who owned land by virtue of the 1870 agreement, including the land holdings of some families of Ngati Hineuru descent.¹⁷³

However, Crown counsel submitted that this led to the second principle for assessing the later history of the Tarawera and Tataraka blocks. He contended that the Crown had 'accepted the 1870 lists in good faith as a fair arrangement in the circumstances and embodied them in legislation'. He submitted that this showed that the Crown believed that the agreement had integrity and that, in light of this, 'those who received the benefit of [the] agreement ought not to have had their rights tampered with unless there was good cause'. If there was an imbalance of Ngati Kahutapere owners in the division of interests, he said, this should have been addressed at an early stage. Because no investigation was carried out until much later:

the property rights of the 1870 owners were entitled to respect. As the Browne/Carr report intimated in 1939, if Parliament had wished to make provision for those excluded from the lists, the 'fair and equitable way to have shown them this consideration would have been to have awarded them interests out of the confiscated lands or other Crown lands in the locality'.¹⁷⁴

172. Ibid, pp 102–103

173. Ibid, p 103

174. Ibid, pp 103–104

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In other words, Crown counsel admitted that ‘the failure to provide’ for Ngati Hineuru led to conflicts over title which could have been avoided had the Crown provided land from its acquisitions for those Ngati Hineuru living at Tarawera. Counsel admitted that, ‘In view of the number of people involved, the task of making adequate provision should not have been onerous. Had this been done, there was a good chance of achieving an equitable settlement of Ngati Hineuru’s legitimate needs without undue disruption of the “original” owners.’

In reducing the interests of the owners defined in the 1870 agreement in order to accommodate the ‘new’ Ngati Hineuru owners, the Crown admitted that one hardship was ‘partially cured . . . by inflicting another’, and that this ‘paved the way for the second upheaval in ownership after the Royal Commission’s investigations in 1951’. As counsel concluded, the Ngati Hineuru community had ‘major hurdles to confront upon its return’ to Tarawera and Te Haroto. It needed:

a degree of stability and a platform from which the economic challenges of the region might be faced. It did not need – and ought to have been spared – a costly, disruptive and socially divisive contest over ownership that was dragged out over more than three decades.¹⁷⁵

(6) Claimant submissions in reply

Claimant submissions in reply were not extensive. Counsel for Wai 299 made none particular to Tarawera and Tatarakina. Counsel for Wai 638 and other claims was concerned to articulate these whanau claims as being separate but equal, collectively, in status to Wai 299. He submitted that these claimants sought compensation for their displacement from their customary lands and that it would be ‘unfair for such compensation . . . to be paid to a global body’ with no attempt made to settle directly with whanau groups.¹⁷⁶

10.5 TRIBUNAL COMMENT

We note that the Crown has made a number of important concessions about the fate of the Tarawera and Tatarakina blocks. We particularly agree with Crown counsel’s criticism that Crown land was not used to settle the interests of those who missed out in 1870, something that he suggested should not have been an onerous task. Manifestly, two wrongs do not make a right, but by its attempts in 1924 to compensate those who had missed out in 1870, the Crown was attempting to do just that. Such action only exacerbated the situation, which began with the earlier injustice of the manner in which the land was returned in 1870. Then, in 1951, injustice was effectively compounded upon injustice with a return to the pre-1924 status quo.

175. Document x51, p 104

176. Document v7, p 28

Where we might differ from Crown counsel is in his defence, in passing, of the 1870 lists, which he said might be described as a ‘reasonable reflection of the circumstances at that time’.¹⁷⁷ We have already argued in chapter 8 that the 1870 agreement had fundamental and obvious flaws, not the least of which was the sole award of the Kaiwaka block to Tareha. There were doubtless flaws in the Tarawera and Tatarakaakina titles as well. We agree with Crown counsel that the ‘original’ rights to Tarawera would have been unclear, but this did not lead counsel to the obvious conclusion that, had the Compensation Court sat, it may have helped to resolve the uncertainty. More to the point, in our view the whole problem goes further back than the omission of certain names or the wrongful inclusion of others in Tarawera and Tatarakaakina in 1870. In other words, it is impossible to regard the turmoil occasioned by the decisions of 1924 and 1951 as being solely due to the failure to use Crown land in settlement, or to the omission of names in 1870, or even to changing circumstances (namely, a growing Ngati Hineuru population at Tarawera), as Crown counsel suggested.¹⁷⁸ Rather, the root of the problem lies in the Crown’s confiscation of the land in the first place.

We made a number of criticisms of the Crown’s treatment of the returned seaward blocks in the previous chapter. Although a great proportion of the inland blocks were retained in Maori ownership, we consider that a number of those comments have equal application to Tarawera and Tatarakaakina. We do not propose to reiterate those criticisms in full here, but we do make the following observations, which should be read in conjunction with the points made in chapter 9. For a start, the confiscation turned all land in the district into Crown land. Thus, land ‘returned’ to Maori was handed back by way of individual Crown grants, not in customary title. The numerous partitions that followed bogged the owners down in ruinously expensive survey charges, which were only exacerbated by the title revisions and new partitions occasioned by the legislation. Then, despite the prohibition on alienation in section 5 of the Mohaka and Waikare District Act 1870, the Crown purchased Tarawera land in the 1920s from absentee Ngati Kahutapere owners and imposed alienation restrictions to facilitate its acquisition. The Crown also allowed private purchases of the Tarawera block in 1927. By then, the Crown should have been assisting Maori to develop their land rather than purchasing more of it. As we noted, the development schemes instigated by Sir Apirana Ngata passed Tarawera and Tatarakaakina by, and it was not until the 1970s and 1980s that similar schemes were initiated for these blocks, albeit with very limited success. The establishment of pine plantations in the 1970s on land leased both to private interests and to the Forest Service proved a more productive form of land use.

In conclusion, we should note that the whanau claims before us are just a sample of others of the kind that could have been presented had other surviving relatives been able to organise claims, as was noted by Wai 638 counsel in his closing submissions.¹⁷⁹ We believe that any

177. Document x51, p 99

178. Ibid, p 99

179. Document x36, p 2

settlement of the claims before us will need to be on a broad basis that will allow individuals and whanau who have not submitted claims but have genuine rights based on ancestry to the blocks to be included.

We also believe that there is no accurate means of measuring claimant losses of either land, or other resources, and there is therefore no effective way of recommending fair and adequate compensation for individuals or whanau. We cannot be sure what the Baker whanau, for instance, has lost, as compared with the Te Pohe or Utiera whanau; and what Ngati Hineuru have lost compared with Ngati Kahutapere. All we can be sure of is that the various whanau, hapu, and iwi lost out at one time or another as the Crown apportioned and reapportioned titles from 1870 to 1951.

10.6 FINDINGS

We find that the Crown, in its retention of several confiscated blocks, its treatment of the remaining inland blocks after their 'return' in 1870, and its handling of Te Matai and Pakaututu, breached the principles of the Treaty of Waitangi. We find that the customary Maori owners of the inland blocks were prejudiced thereby.

More specifically, we find that:

- (a) There was no justification for the Crown to retain certain blocks out of the confiscation. As we pointed out in chapter 8, the land was not used for military settlements as the New Zealand Settlements Act 1863 required. Furthermore, the small deposit previously paid on the large Waitara block was insufficient to warrant its retention, and the loss of the location of Ngati Hineuru's principal cultivations and settlements at Tarawera alongside the Waipunga River was a serious blow to the viability and maintenance of that community. We find that the Crown was thus in breach of the principles of reciprocity and partnership and its duties of active protection and good faith conduct.
- (b) Despite an absence of enabling legislation, the Crown permitted the Native Land Court to investigate the title of Pakaututu, which was confiscated land. This obviously suited the Crown's Ngati Kahungunu allies such as Paora Torotoro, who were able to obtain title to the block and subsequently sell it. The Crown should have required the Compensation Court to consider claims to the block, rather than allow Ngati Tutemohuta and Ngati Hineuru to be disenfranchised at a court sitting in Napier. The Crown thus breached the principle of equal treatment, as well as its duties to act reasonably and in good faith and to actively protect the interests of Ngati Tutemohuta and Ngati Hineuru.
- (c) The Te Matai block has remained in Maori ownership, despite the delay in resolving the 'tenurial uncertainty', which Crown counsel conceded reflected 'badly on the

- Crown'. However, the Crown's failure to ensure satisfactory access to the block has infringed the owners' right to the 'undisturbed possession' of their land, as article 2 of the Treaty guaranteed, and has severely hampered their Treaty-based right to develop the land if they so choose, or to visit, enjoy, and make use of it in its undeveloped state.
- (d) With respect to the Tarawera and Tatarakaakina blocks, the Crown was obliged under the Treaty to protect Maori in the possession of their lands. But, having wrongly dispossessed the customary owners, who were largely Ngati Hineuru, by confiscation (as we found in chapter 8), the Crown wrongly granted title to those in the 1870 agreement, who were largely Ngati Kahutapere. The land was also returned under a new form of tenure rather than in customary ownership, thus breaching the principle of options, which required that Maori have the right to retain land according to their preferred system.
 - (e) Having granted title to those listed in the 1870 agreement, the Crown was bound to respect the property rights so granted. Since their rights as British subjects were affirmed by article 3 of the Treaty, and since those rights included the security of a Crown-granted title, it was a breach of the Crown's obligations of good faith and fair dealing to take away those rights, even by legislation.
 - (f) In accordance with the principle of redress, the Crown was obliged to compensate those dispossessed by the 1870 agreement awards with Crown land elsewhere, or with other resources. Instead, the Crown passed legislation in 1924 that, on the Native Land Court's investigation of customary titles, allowed those dispossessed in 1870 or their descendants to get land already awarded to the 1870 grantees. In our view, the Crown could not under the Treaty put one group of Maori in possession of land at the expense of another group; it could not resolve the grievance of one group by creating a grievance for another group.
 - (g) Attempting to reverse that mistake, as the Crown did in 1951, further compounded the breach of the Treaty. Each reversal of titles caused expense, anguish, and prejudice to one group or another. One breach of the principles of the Treaty does not deserve another.
 - (h) As the titles were revised, the ensuing loss of land suffered by the various groups was further compounded by the cost of litigation and the surveying of partitions. These expenses in turn led to further land losses. That Maori from one side or the other should have been required to pay the costs of the Crown's mistakes (such as its belief that Tarawera and Tatarakaakina were outside the confiscation area – an error which, even though it originated from a judge, inspired the 1924 legislation) was a further breach of the Crown's duties of active protection and good faith conduct.
 - (i) Despite the financial assistance available to individual or corporate landowners to develop their land from the 1890s, and to owners of Maori land from the 1930s, no such schemes were initiated on the Tarawera and Tatarakaakina blocks until the 1970s.

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10.6

It would have been better if the development of farms and exotic forests had occurred in tandem with the exhaustion of the millable native timber, rather than as an after-thought. The Crown thus breached the principle of mutual benefit and the Maori right to development.

PART IV

NGATI PAHAUWERA CLAIMS (WAI 119 AND OTHERS)

In this part, we review the several claims (Wai 119 and others) in the northern portion of the Mohaka ki Ahuriri inquiry area within the rohe of the confederation of related hapu known as Ngati Pahauwera. In chapter 11, we review McLean's Mohaka purchase of 1851, and another Crown purchase of Waihua in 1865. In chapter 12, we consider issues surrounding Te Kooti's attack on Mohaka in 1869 and the operation of the Native Land Court in respect of Ngati Pahauwera lands from 1868 to 1910. In chapter 13, we review twentieth-century transactions on these lands as well as the Kupa Whanau claim (Wai 731). In chapter 14, we review the Ngai Tane claim (Wai 436).

'Ngati Pahauwera' is used to refer to a number of hapu living in the area surrounding the Mohaka River downstream of the confluence of the Te Hoe River (see map 39). The name 'Pahauwera', meaning 'burnt beard', is not that of an ancestor but commemorates an event, namely the singeing of the whiskers of the tipuna Te Kahu o Te Rangi when his head was being cured in about 1824.¹ Henceforth, his descendants came to be known as Ngati Pahauwera. They were one of a number of hapu who lived together around the area at the mouth of the Mohaka River. Most took refuge at Mahia during the musket warfare of the 1820s, and returned to resettle their lands in the late 1830s and 1840s. The prominent chief of the grouping at the time of the Mohaka transaction in 1851 was Paora Rerepu, who was a member of the Ngati Pahauwera hapu. Increasingly, because of Paora Rerepu's mana and status, the confederation came to be known by Pakeha observers simply as Ngati Pahauwera. This was not true of McLean, who referred only to the 'Mohaka natives' or 'Waikare natives', but was more the case by the turn of the century. Despite this, as can be seen in the minutes of the 1903 Native Land Court investigation into the Mohaka block, for example, the term 'Pahauwera' continued to be applied to the single hapu on occasion rather than the confederation (see s 12.4). Today, it is usually used to refer to the confederation, although we do not believe that the concept of Ngati Pahauwera as a single hapu within the confederation has ever died out amongst the people. For our purposes, it can be understood that whenever we use the term Ngati Pahauwera we refer to the confederation, except where the context (of competing hapu in the Native Land Court, for example) makes it obvious that this is not the case.

We also make reference to the Tribunal's *Mohaka River Report 1992*, which stated in conclusion:

1. Document J21, p 33

THE MOHAKA KI AHURIRI REPORT

Unfortunately it has been necessary to hear this claim and to prepare this report as a matter of urgency in order that it may be considered by government, together with the report of the Planning Tribunal, before a decision is reached on what if any water conservation order should be made. The necessity for urgency has regrettably meant that the Mohaka river claim has been severed from the Mohaka land claims which will be dealt with as part of the Wairoa ki Wairarapa land claims. The separate hearing and reporting of the river from the land claims has compartmentalised subjects of inquiry which are closely related and which, from Ngati Pahauwera's perspective, are one and indivisible.²

We concur with the view that this division was regrettable. We are, however, a separate Tribunal with a separate purpose of inquiry into land claims, and the two reports should be seen as complementary. For example, there was claim and counter-claim before us as to whether the 1851 Mohaka transaction could be considered a 'sale' (see ch11), but the 1992 Tribunal examined that purchase essentially in order to ascertain 'whether or not Ngati Pahauwera disposed of any of their customary and Treaty rights in the river when they sold land on the south bank to the Crown in December 1851'.³ The same applies to riparian lands sold on the north bank of the river (see ch12). Therefore, despite the language of 'sale' employed to describe the Mohaka transactions in the 1992 report, we do not consider that Tribunal was in any way pre-judging argument over the nature of these land transactions.⁴

As discussed in chapter 1, there was some disagreement in 1997 between the Wai 299 and the Wai 119 claimants about the extent to which Ngati Pahauwera could claim interests in the Mohaka–Waikare confiscation district. This was amicably resolved and a joint memorandum issued in November 1998 confirmed Ngati Pahauwera interests in the confiscation area. These were characterised as 'whanaungatanga and whakapapa connections and . . . direct interests held by specific Ngati Pahauwera whanau in specific blocks between the Waikare and Esk Rivers'.⁵ However, at no time have Ngati Pahauwera specified the confiscated blocks in which they particularly claim customary interests. Furthermore, an attempt on our part to match individuals from the lists of names attached to the 1870 agreement for the Te Kuta, Awa o Totara and Te Heru a Tureia blocks with the 121 names registered on the title for the Mohaka block north of the Mohaka River (which passed the Native Land Court in 1868), shows little cross-over.

In any event, as we note in chapter 20, Ballara and Scott observed that the area between the Waihua River and Tangoio and in land to the upper Mohaka River (thus covering most of the

2. Waitangi Tribunal, *Mohaka River Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 79

3. Ibid, p 23

4. The same applies of course to the Tribunal in its *Te Whanganui-a-Orotu Report 1995* (Wellington: Brooker's Ltd, 1995), p 79.

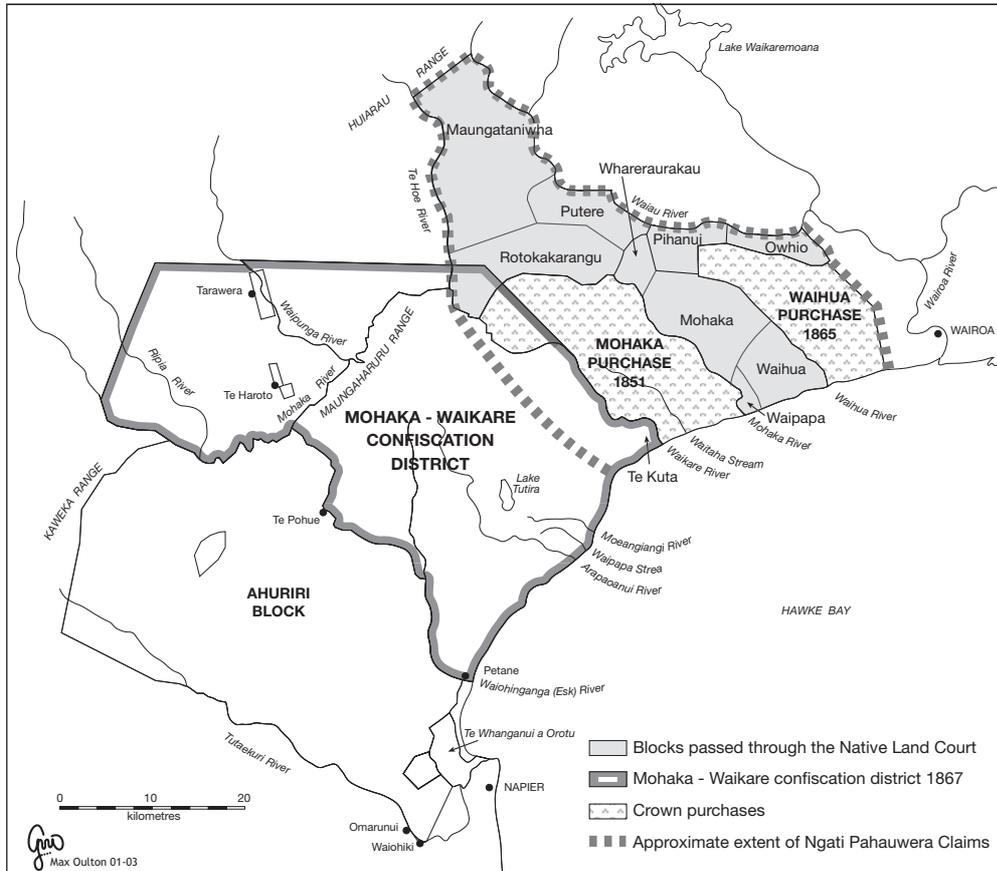
5. Paper 2.297

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confiscation district) was 'dominated in the mid eighteenth century and later by the major tribe, Ngati Pahauwera'.⁶

That said, it has not been possible for us to clarify the exact extent of the prejudice suffered by Ngati Pahauwera as a result of the confiscation. What we can clarify is that the only people claiming in relation to the Mohaka transaction were those calling themselves Ngati Pahauwera (as well as the Wai 436 cross-claimants). There was no claim to Mohaka, for example, from those based further south at Tangoio (unless they claimed as part of Ngati Pahauwera). In any event, in this part of the report we deal only with the fate of lands to the north and east of the confiscation district (with the obvious exception of those parts of the Mohaka and Rotokakarangu blocks included within the confiscation boundary but not treated as confiscated land).

6. Document 11(15), p 3. Ballara and Scott noted that, in the Native Land Court, Ngati Pahauwera were 'found to have interests in blocks from Waihua to Moeangiangi'.



Map 39: Ngati Pahauwera claims

CHAPTER 11

THE MOHAKA AND WAIHUA TRANSACTIONS

11.1 INTRODUCTION

In this chapter, we review in detail Donald McLean's 1851 Mohaka transaction. We also review the Waihua Crown purchase, which was begun by McLean in 1864 and completed by Samuel Locke the following year.

11.2 THE MOHAKA TRANSACTION

While at Ahuriri in January 1851, McLean was visited by Mohaka chief Paora Rerepu, who offered him land for sale and was 'anxious that I should visit his place'. McLean thought it 'satisfactory to find the Chiefs coming in from such distances to see and consult with me about their land and their confidence in me should prompt me at all times to watch over their interests as if they were mine own'.¹ Rerepu was accompanied on his visit to Ahuriri by his whanaunga, Te Hapuku, who had offered to assist McLean in his purchase activities. As noted in chapter 4, only a few days after Rerepu's approach, McLean observed that Te Hapuku was acting 'precisely as I have directed him' by arranging the sale of more lands.²

Rerepu's offer was not the first occasion on which individuals from Ngati Pahauwera had made an approach to the Crown about their land. In April 1849, three Waikare chiefs, Te Poihipi, Hou, and Hoani Waikari had written to Governor Grey offering land and stating that they had long wished 'to have White people, some Cows, some Sheep, some Horses, and some Goats'. The chiefs called on the Governor to 'let your [payments] be large, and let also the Number of White Men be large'.³

11.2.1 McLean's arrival and preliminary discussions

On 27 January 1851, McLean left Ahuriri to travel northward to Turanga. The next day, he arrived at Mohaka, where Paora Rerepu and his assembled people once more offered to sell

1. McLean, journal, 7 January 1851 (doc C4, p 9)

2. McLean, journal (typescript), 16 January 1851 (as quoted in doc J10, p 126)

3. Te Poihipi and others to Governor Grey, 12 April 1849 (as quoted in doc C4, p 5)

Mohaka ‘if it was worth accepting’. McLean wrote that he told them that ‘as the interior of the river was sold the freshets would soon reach the Sea which they construed as a partial assent on my part to purchase’.⁴ Both Stephanie McHugh for the Crown (at the Mohaka River inquiry) and Dr Donald Loveridge for the claimants interpreted McLean’s metaphorical comment as a reference to his negotiations for the purchase of the Ahuriri block, which was bounded by an up-river section of the Mohaka River.⁵ McLean went on to note that the land at Mohaka was ‘rich hills and wooded along the banks of the river with occasional flats of fern’.⁶

From Mohaka, McLean continued up the coast to Wairoa and on to Turanga to investigate the possibility of purchasing land in those districts. He returned to Mohaka from Wairoa on 5 March 1851, when once again he was offered land on the right (or south) bank of the Mohaka River as far as the Waitaha Stream. In his diary entry for that day, McLean recorded that he ‘agreed to purchase the Mohaka’.⁷ The following day, however, ‘the Natives of Waikare’ arrived and offered to sell land between the Waitaha Stream and the Moeangiāngi River. When he was taken to Waikare to be shown a reserve of 10 acres the local Maori wanted on the north bank of the river there, a chief named Toha offered to extend the purchase boundary south to the Waipapa Stream.⁸

McLean must have been greatly encouraged by these offers. In January 1851, as he made his way to Hawke’s Bay, he privately recorded his ambition to ‘make progress in the acquisition of the whole of this country’.⁹ As we have already described (in chapter 4), at Ahuriri in January 1851 McLean had enthusiastically remarked upon the ‘great anxiety being manifested by all the tribes and sub tribes to sell their several districts of land extending north and south from this place’.¹⁰ Now, as he travelled southward from Mohaka, each new community he met seemed prepared to offer him land. He may well have been disappointed, therefore, when Rerepu wrote to him on 1 April 1851 advising him that the final area of the Mohaka block to be sold would fall between the Mohaka and Waikare Rivers but would not include the land south of the Waikare. (The Waikare and Moeangiāngi Maori appear to have decided not to sell that land, or they at least wanted to sell it separately – see below.)

We received different interpretations of these final boundaries from Crown and claimant historians. McHugh implied that the owners had considered McLean’s advice to them to ‘fix the price and boundaries of the block’ (which she interpreted as advice to ‘retain sufficient land for their own purposes’) and had therefore decided not to sell any land to the north of the Mohaka or to the south of the Waikare. This, she said, meant that both the Mohaka and

4. McLean, journal, 28 January 1851 (doc J30, p 19)

5. Document C4, p 12; doc J30, p 19

6. McLean, journal, 28 January 1851 (doc J30, p 19)

7. McLean, journal, 5 March 1851 (doc C4, p 14)

8. McLean, journal, 6–7 March 1851 (doc J30, p 20)

9. McLean, journal, 16 January 1851 (as quoted in doc 11(1), p 89)

10. McLean, journal, 13 January 1851 (as quoted in doc C4, p 9)



Fig 21: Paora Rerepu, 1884.
 Photograph by Samuel Carnell.
 Reproduced courtesy of Alexander
 Turnbull Library, Wellington, New Zealand
 (S Carnell collection, G-22028-¼).

the Waikare hapu ‘would continue to own a significant area of land’.¹¹ Loveridge, however, made the point that McLean had certainly wished to buy land south of the Waikare and he had not done so only because the offer to sell was rescinded. Loveridge stressed McLean’s stated intention of January 1851 to buy ‘as great an extent of land . . . as it is possible for me to purchase’. Furthermore, he argued that McLean was more than happy to leave the block’s northern boundary at the Mohaka River simply because it was convenient to do so. Indeed, while writing to Governor Grey in another context on 14 March 1851, McLean recorded that he had ‘obtained an extension of the Ahuriri block towards the Mohaka river, including several thousand acres of land, which, from being bounded by the Mohaka river, will save a great expense in surveying’.¹²

Loveridge’s assessment of the circumstances surrounding the location of the boundaries of the Mohaka block seems more likely than McHugh’s. Tribunal staff researcher Dean Cowie also noted that on 6 December 1851 – the day after the Mohaka deed of purchase was signed – McLean accepted the offer to sell him land south of the Mohaka block between Waikare and Moeangiangi as a separate purchase.¹³ (If McHugh’s interpretation is correct, this was the land that was supposedly to have provided for the ongoing needs of the Waikare hapu.)

11. McLean, journal, 29 January 1851 (doc c4, p 19); and commentary (doc c4, pp 19–20)

12. McLean to Grey, 14 March 1851, AJHR, 1862, C-1, pp 309–310 (doc j30, p 23)

13. Document j12, p 30

11.2.2 Reserves and purchase price

On 14 April 1851, McLean wrote to the Colonial Secretary saying that he proposed to dispatch Robert Park to survey the 'external boundaries and reserves' of the Mohaka block.¹⁴ This indicates that, at some stage during his visits to Mohaka and Waikare in early March, McLean may well have discussed with Ngati Pahauwera the setting aside of some reserves in addition to the 10 acres on the north bank of the Waikare already mentioned. As it transpired, however, only one reserve (not the 10-acre section at Waikare) was eventually referred to in the deed, and there appears to have been no official mention of any others. The survey itself was done by Park relatively quickly, between 3 and 25 May 1851, because coastline and rivers made up a great proportion of the block's boundaries. No record remains of McLean's instructions to Park, but Park surveyed only the external boundaries and did not mark out any reserves (map 40). McLean, meanwhile, occupied himself with the negotiations for the purchase of the Waipukurau and Ahuriri blocks. He left Hawke's Bay for Wellington on 6 May 1851.

On 4 June 1851, Te Hapuku wrote to McLean to inform him that the Mohaka vendors had requested a reserve known as Te Heru o Tureia (as we noted at section 9.12, this is a different area from the Heru a Tureia block). This letter has particular significance for other reasons, however, since it appears to be the first recorded mention of a possible purchase price for the Mohaka block (it is also perhaps an account of the only discussion of a purchase price before the swiftly concluded purchase negotiations of December 1851). The letter was translated for the Crown Law Office by Maaka Jones as follows:

This is my message to you that the place of Paora that you mentioned that I declare the payments of eight hundred pounds of the payments of Mohaka that was declared by me and Paka [Park] right through to Waikari going onto Mohaka, Te Heru o Tureia declared by Paora and Te Herewini [Poututu] to leave their ancestral lands, you have either side, only a small piece in the middle, the elevation rising on to the hill – that is the place that Te Herewini said to leave this barrier – Do not even have a thought for Paora after the eight hundred pounds as he had called that three long periods as he said to you perhaps that the payments are to exceed for his place – Paka will be caught with that rising. However that is what is said about this place Mohaka . . .¹⁵

McHugh and Loveridge were both of the view that the sense of the letter was unclear but differed in their interpretations of it. McHugh believed that Te Hapuku was advising McLean to pay £800 for the Mohaka block while adding that Paora Rerepu would ask for more. She also speculated that Te Hapuku may in fact have been relaying Ngati Pahauwera's own asking price for the block and offering his assessment of it.¹⁶ Loveridge, however, suggested that it was much more likely that Te Hapuku had relayed an offer from McLean to Rerepu for £800

14. McLean to Domett, 14 April 1851 (doc J30, p 25)

15. Te Hapuku et al to McLean, 14 June 1851 (doc J30, p 27)

16. Document c4, p 22

to be paid in three instalments and that, in response, Rerepu and Te Herewini Poututu had insisted on a reserve known as Te Heru o Tureia and Rerepu had objected to the size of the payment or the spacing of the instalments, or both.¹⁷ As far as Loveridge was concerned, the letter showed that Ngati Pahauwera rejected rather than accepted McLean's terms.¹⁸ Nevertheless, McLean wrote to the Colonial Secretary on 9 July 1851 outlining the terms that he said Mohaka Maori would 'agree to accept': £800 in four annual instalments of £200, which, he somewhat ambiguously added, 'will be a sufficient payment'.¹⁹ McHugh conceded that there was actually 'no clear evidence' that Ngati Pahauwera had agreed to this sum at that stage.²⁰

Park reported back to McLean on his survey on 7 June 1851. He said that the Mohaka block contained from 80,000 to 90,000 acres and had good soil, lots of timber, some unbroken plains, and a favourable climate. He concluded: 'Altogether it is a very pretty little purchase.'²¹ He made no mention of any reserves. It seems that circumstances may have changed since McLean's earlier remark to the Colonial Secretary that Park would survey the 'external boundaries and reserves'. Loveridge speculated that McLean may have become irritated by Ngati Pahauwera's withdrawal of land from the proposed purchase and decided that there would be no reserves at all within the block. This is impossible to substantiate now, but Loveridge made the point that the Crown was far from proactive in setting aside reserves for Maori within the block.²²

McHugh took a more charitable view of the eventual paucity of reserves by noting that the retention by the Mohaka and Waikare people of 'an extensive area of land to the north and south of the area sold' would have given McLean reason to believe that 'adequate provision had been made for the continuing needs of both groups of Maori'.²³ But, as Loveridge pointed out, McLean had expressed the intention of purchasing as much land as he could, and he was also soon to be instructed by the Colonial Secretary to go on to buy 'the districts intervening between and lying at the backs of' the proposed purchases of Waipukurau, Ahuriri, and Mohaka. Loveridge wondered just how, 'in the context of these plans, Ngati Pahauwera were to retain sufficient lands for their own use'.²⁴

In any event, a relevant comment was made during a 1903 Native Land Court hearing of a partition application for the Mohaka block north of the Mohaka River (which should not be confused with the block purchased by the Crown in 1851). Rewi Poukupu commented:

Pahauwera . . . foolishly did not reserve any portion [of the Mohaka block] but sold all on the South side. . . . It was said that they reserved some little pieces but I am not clear about it.

17. Document J30, pp 27–28

18. Ibid, p 28

19. McLean to Domett, 9 July 1851 (as quoted in doc J30, p 28)

20. Document c4, p 26

21. Park to McLean, 7 June 1851 (as quoted in doc c4, p 24)

22. Document J30, pp 26, 30

23. Document c4, p 39

24. Domett to McLean, 29 September 1851 (as quoted in doc c4, p 27); doc J30, p 30

It is known that they were so anxious for *pakeha* to live near them that they even sold their *kainga & pa*. [Emphasis in original.]²⁵

We are not altogether clear on the extent to which Ngati Pahauwera sold 'kainga & pa' on the south bank of the Mohaka, given the indication from the historical record that they were mostly congregated together on the north bank of the river mouth at the time. Poukupenga's statement, however, casts an element of doubt on the argument that the real 'reserve' lay north and south of the purchase block. In our view, the vendors should have at least had a sufficiency of land reserved to cover their traditional use of the block, even if no places of 'permanent residence' existed on it.

The £800 purchase price for a block of approximately 85,700 acres equates to twopence farthing per acre for land described quite favourably by the surveyor, Park. McLean made the point himself, in his July 1851 report to the Colonial Secretary, that, while the initial payment for Mohaka 'may at first sight appear large, when divided among the several claimants it will scarcely amount to Eighteen Shillings 18/- each, while the average price of the [three Hawke's Bay] purchases inclusive of Natives' reserves will be under Twopence halfpenny 2½d per acre'.²⁶

There was still no clear indication that Ngati Pahauwera had agreed to the £800 price for the Mohaka block. But it was in keeping with instructions the Colonial Secretary had given McLean in April 1851, after the latter had reported the willingness of Mohaka Maori to sell land, to ascertain 'the lowest price which the Natives will take'.²⁷ The New Munster Executive Council approved the payment of £800 in four annual £200 instalments on 14 August 1851, and on 29 September the Colonial Secretary instructed McLean to proceed to Hawke's Bay 'with as little delay as possible' and to distribute the money 'to the Natives to whom it is due'.²⁸

11.2.3 The signing of the Mohaka deed

McLean left Wellington for Hawke's Bay on 30 September 1851 and initially negotiated the signing of the Waipukurau and Ahuriri deeds of purchase. He left Ahuriri for Mohaka on 29 November, spending the night of 2 December at Waikare, where 150 Maori had assembled to meet him. At Mohaka, he recorded in his journal on 3 December that Maori were 'collecting from different places' and, on the following day, he wrote that they were 'gathering in considerable numbers from the interior of the Mohaka'.²⁹ At the least, this demonstrates that Maori settlement was certainly not confined to the north bank of the river mouth, but it also probably shows that the signing is likely to have been attended by a good number of those holding

25. Statement by R Poukupenga, Wairoa Land Court minute book, 12, 31 Mar 1903, p 41 (doc C4, p 87).

26. McLean to Domett, 9 July 1851 (as quoted in doc J30, p 29)

27. Domett to McLean, 14 April 1851 (as quoted in doc J30, p 27)

28. Domett to McLean, 29 September 1851 (as quoted in doc C4, p 27)

29. McLean, journal, 4 December 1851 (as quoted in doc C4, pp 30-31)

rights within the Mohaka block. That evening, according to McLean's account, the Mohaka teacher, Honi, read out the deed and Paora Rerepu handed around a map of the block and 'fully explained' the boundaries to those assembled.³⁰ The deed now made provision for a 100-acre reserve at Te Heru o Tureia, although its boundaries were not marked on the plan (map 40). At this point, McLean spoke to them about 'the cession of their land the payments for it and the reasons for extending it over so many years and the advantages to them of such a system'.³¹ If Mohaka Maori did have any objections to the system of instalments, or indeed to the overall purchase price, however, there was little scope for any meaningful negotiation, since McLean had no authority to offer them any more. Moreover, he had brought only £200 with him.

McLean did not record any dissatisfaction with the purchase arrangements at the time, and he even told an assembly of Mohaka and Waikare chiefs (including Rerepu, Te Teira Te Paea, and Pikai Tohutohu) four years later: 'If an objection had been made in the first instance a remedy could easily have been obtained as I would not purchase the land unless they were satisfied with the price.'³² It is unlikely that McLean could have obtained a remedy quite as easily as he implied, given that the transaction had already been virtually set in stone from the Crown's perspective. As it happened, however, there was some disquiet over the method of payment. William Colenso recorded in his journal on 9 December 1851 that Te Moananui had:

returned from Mohaka, whither he had accompanied Mr McLean & others, to see the *first* instalment paid for that block. He says, that the Natives there were greatly discontented at not having the whole sum (£800) [paid to them] at once. [Emphasis in original.]³³

McHugh made the point that Ngati Pahauwera could have chosen not to accept the £200 first instalment and sign the deed but to 'defer the sale and re-negotiate the terms'. She implied that they must have fully consented to McLean's terms by virtue of the fact that the following day McLean arranged for the distribution of the £200 among the Mohaka and Waikare people.³⁴ Loveridge felt there was 'little choice in the matter'.³⁵ This latter interpretation appears to us to be more convincing, because the vendors were impatient for Europeans to settle on their lands and, given the Crown's monopoly over the purchasing of land, they were in no position to go elsewhere to command a higher price.

McLean recorded the transaction on 5 December 1851, the day the deed was signed:

30. Document J30, p 31

31. McLean, journal, 4 December 1851 (as quoted in doc J30, p 31)

32. McLean, journal, 6 April 1855 (as quoted in doc J30, p 32)

33. Colenso, journal, 9 December 1851 (doc J30, p 32)

34. Document C4, p 32

35. Document J30, p 32

I called the Chiefs together to day and asked them how they wished the money divided. they all agreed to have £100 for Waikari and 100 for Mohaka. the Waikari hapus, 20 in number, were handed in by te Poihipi and 197 hapus of Mohaka by Paora Rerepu. I told the Chiefs that giving equal portions of £2 [to] each hapu would amount to £199 leaving £1 of the £200 over. or that they Waikari people would have £5 each hapu by dividing £100 among them – which was agreed to and Paora agreed to divide £100 among his tribe of Mohaka as far as it goes.³⁶

McLean's account of the division of the money is somewhat confusing, and the total he gives of 217 Mohaka and Waikare 'hapu' is especially so (there were only 297 signatories to the deed).³⁷ Perhaps he used 'hapu' to mean family or even heads of family. After this discussion of the division of the money, the deed was duly signed by McLean and 297 'Chiefs and all the people of Mohaka of Waikare and of other places now assembled at this meeting' and witnessed by seven European settlers and two prominent Maori chiefs (Wi Tako and Te Moananui).³⁸ McLean recorded that, after this, the money was handed over and 'the Natives dispersed some dissatisfied some quite happy and on the whole matters are concluded as well as could be expected'.³⁹ It was no wonder some left dissatisfied – Cowie pointed out that £5 was about enough to buy 'the hind-quarters of a horse'.⁴⁰

The second instalment for the block was in fact £300 and was paid in about January 1853. A final instalment of another £300 was paid over by McLean in April 1855. On that visit, McLean handed over £200 to the Mohaka people on 4 April 1855 and then rode south to Waikare to pay the remaining £100. On his journey, he was accompanied by, among others, Pikai Tohutohu, who remarked to McLean how small the payment was for such a 'large country'. McLean commented in his diary:

No doubt to a New Zealander the small handful of gold he receives were it not attended with any other contingent advantage for his land appears very inadequate in his ideas for the sacrifice he makes in transferring the extensive tracts of his country the land of his ancestors to foreigners who have no feelings in common with him.⁴¹

36. McLean, journal, 5 December 1851 (doc c4, pp 32–33)

37. McLean may have meant 'whanau' instead of 'hapu', but it is still confusing given his calculation that 197 shares of £2 would amount to £199. His figure of 197 Mohaka hapu may have been a mistake. This was despite his knowledge of the Maori language, as Ngati Pahauwera claimant Toro Waaka pointed out. Alternatively, Waaka suggested that McLean's intention may instead have been 'to mislead his superiors as to the extent of his consultation': doc J21, p 113. In the Waipukurau transaction, McLean divided the money amongst 191 'hapu'. That deed was signed by 377 Maori: doc J12, p 32.

38. H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printers, 1878), vol 2, pp 492–495

39. McLean, journal, 5 December 1851 (doc J30, p 32)

40. Document J12, p 33

41. McLean, journal, 6 April 1855 (doc c4, p 56)

McLean also recorded that, when he made over the £100 payment to the Waikare people on 6 April 1855, they had ‘some murmuring about the small utu they received for their share of the land’. McLean then commented that any objection should have been made at the time that the deed was signed when a solution could easily have been found. He wrote that the problem seemed to be between the Mohaka and Waikare people and that, if the latter were upset, they should tell the Mohaka Maori and:

not complain to me after matters were finally closed now the land was the Europeans as everything had been fulfilled in accordance with the first treaty [ie, the December 1851 deed] and this was not the time for being dissatisfied. if the payment was considered small by them they had Europeans coming among them to give their produce increased value and I trusted that they would treat them with kindness and attention.

McLean also wrote that Te Teira Te Paea and Tohutohu relented and agreed with him, acknowledging that their grievance was really with the Mohaka people. After the payment had been made, McLean recorded that the Waikare people dispersed ‘satisfied that the land was for ever the Queen’s and begging me permission to plant a small piece or two of it in the interior’.⁴²

11.2.4 Ambiguities in the transaction

Exactly when the Mohaka deed was drawn up remains unclear, but Loveridge provided several scenarios. McLean may have simply drawn up the deed in Wellington before leaving for Hawke’s Bay in late September and presented it at Mohaka on 4 December 1851. A remote possibility is that he held some form of negotiations with Ngati Pahauwera during October and November of which no record survives. Alternatively, he may have prepared the deed in Mohaka itself. This latter option, however, would have left little time to negotiate with the assembled owners, given that he first met with the Mohaka people on the morning of 4 December (after his arrival in Mohaka the previous day) and the teacher read out the deed after prayers that very same evening. Finally, Loveridge speculated that McLean may well have brought a draft of the deed with him to Mohaka that had no provision for reserves, and that he then inserted the section about the Te Heru o Tureia reserve on 4 December. (Loveridge based this on the passage’s curious placement in the deed as an apparent afterthought.) Loveridge felt that this raised ‘the possibility that on December 4th Pahauwera refused to sign McLean’s deed unless land within the purchase-block was reserved’.⁴³ McHugh did not offer an opinion on exactly when the deed was drawn up other than to say that its details were ‘finalised on 4 December 1851’.⁴⁴

42. McLean, journal, 6 April 1855 (doc c4, pp 57–58)

43. Document J30, pp 32–34

44. Document c4, p 31

The published version of the provision for the Te Heru o Tureia reserve in Turton's Hawke's Bay deed is:

Kotahi tonu te wahi e wakatapua mo matou kei roto i enei rohe kua oti nei te tuku ko te wahi i tanumia ai a te Kohu-o-te-rangi me etahi atu tupuna o matou kei runga i Tu Heru-o-tureia kotahi pea rau 100 o nga eka ko nga kuri ano ia o nga pakeha e haere no atu ki runga o taua wahi ki te mea kahore e taeapatia.

Heoi rawa nga wahi e wakatapuna ana mo matou.

One portion only has been reserved for ourselves within the boundaries of the land now sold where Kohu-o-te-Rangi and other of our ancestors are interred at Tu Heru-o-tureia about one hundred 100 acres in extent but the cattle of the Europeans may graze upon it if it is not fenced. There are no other portions of reserve for us.⁴⁵

In McLean's own translation of the deed, the one reserve was described as:

the place where the Kohu o te rangi and other ancestors of ours were buried on the top of the te Heruotureia about 100 acres but the cattle of the Europeans are to roam freely on this spot if not fenced. This is the only place to be reserved for us.⁴⁶

This translation, however, differs significantly in terms of both sense and detail from a translation carried out for the Crown Law Office by Maaka Jones, which reads:

There is only one place that we have made sacred for ourselves in these boundaries that have been given is the place that Kahu-o-te-Rangi and other ancestors of ours on Te Heru-o-tureia. One hundred 100 of the acres of that place and the dogs of the Pakeha that go onto that place because it is not fenced.

However there are places made sacred for us.⁴⁷

McHugh acknowledged that the last sentence may suggest that an additional area had also been reserved from sale.⁴⁸ Loveridge pointed out that Ngati Pahauwera are known to have mentioned at least two, and possibly more, areas that they wished set aside. He emphasised that the deed's wording made no provision for Te Heru o Tureia (or any other reserve) to be formally identified after the signing, and he recalled McLean's original instruction that it was 'essential' that any reserves 'be clearly defined in number, position and extent and be marked out distinctly upon the ground'.⁴⁹ In conclusion, Loveridge made what seemed to us the quite reasonable assertion that 'The reserve or reserves made in the Mohaka Deed met none of

45. Turton, vol 2, pp 492, 495

46. Document C4, p 40

47. Ibid, p 40

48. Ibid

49. Colonial Secretary to H T Kemp, 12 Oct 1848 (doc J30, pp 34-35)

these sensible requirements.⁵⁰ There is also no explanation as to why the Maori words ‘nga kuri’, the dogs, were translated as ‘the cattle’.

McLean returned to Wellington on 23 December 1851 and met with Governor Grey the following day. As we have already related in chapter 4, his subsequent report claimed that all three Hawke’s Bay purchases – and the surrounding issues of payments, reserves, boundaries, and so forth – had been ‘so frequently and fully discussed’ that they were ‘easily understood’ and ‘fully comprehended’.⁵¹ However, Loveridge argued that ‘a significant number’ of Ngati Pahauwera continued to make use of the land after its sale. While McLean was in the district in 1855 to hand over the final instalment of the purchase money, he noted that some Waikare people were still running their stock on the northern side of the Waikare River, despite that land having been sold. Several Waikare chiefs also sought his approval at this time to their planting ‘a small piece or two’ in the Mohaka block, as we have noted.⁵² McLean did not record his response to this. Loveridge suggested this as being a clear indication that Ngati Pahauwera ‘did not see the sale as prohibiting their future use of lands within the Mohaka block’.⁵³

The Tribunal in the *Mohaka River Report 1992* has already found that the Mohaka deed was ambiguous in whether it placed the boundary in or at the side of the Mohaka River. The Tribunal said that the wording of the deed was capable of bearing differing interpretations in its reference to the river and that the resultant ambiguity should be resolved in favour of Ngati Pahauwera so as to exclude the river from sale.⁵⁴

11.2.5 The purchase of Te Heru o Tureia

In 1859, barely eight years after the Mohaka purchase was completed, the Crown purchased the Te Heru o Tureia reserve. The reserve had never been surveyed. Cordry Huata suggested that it included both the peaks of Te Heru o Tureia and Patuwahine (another wahi tapu) and Tauwitikoko Pa, as we have shown in map 41, but we have found no other evidence to substantiate this suggestion.⁵⁵ As discussed, according to McLean’s translation of the Mohaka deed, ‘the cattle of the Europeans’ were ‘to roam freely on this spot if not fenced’. Ms Jones’s translation, however, suggests that this aspect of the deed could have been interpreted differently: ‘the dogs of the Pakeha . . . go onto that place *because* it is not fenced’ (our emphasis). This latter interpretation implies an existing state of affairs rather than a future scenario. In any event, it was the use made of the reserve by a Pakeha runholder that led to the dispute with its Maori owners and that, in turn, precipitated the block’s alienation.

50. Document J30, p 35

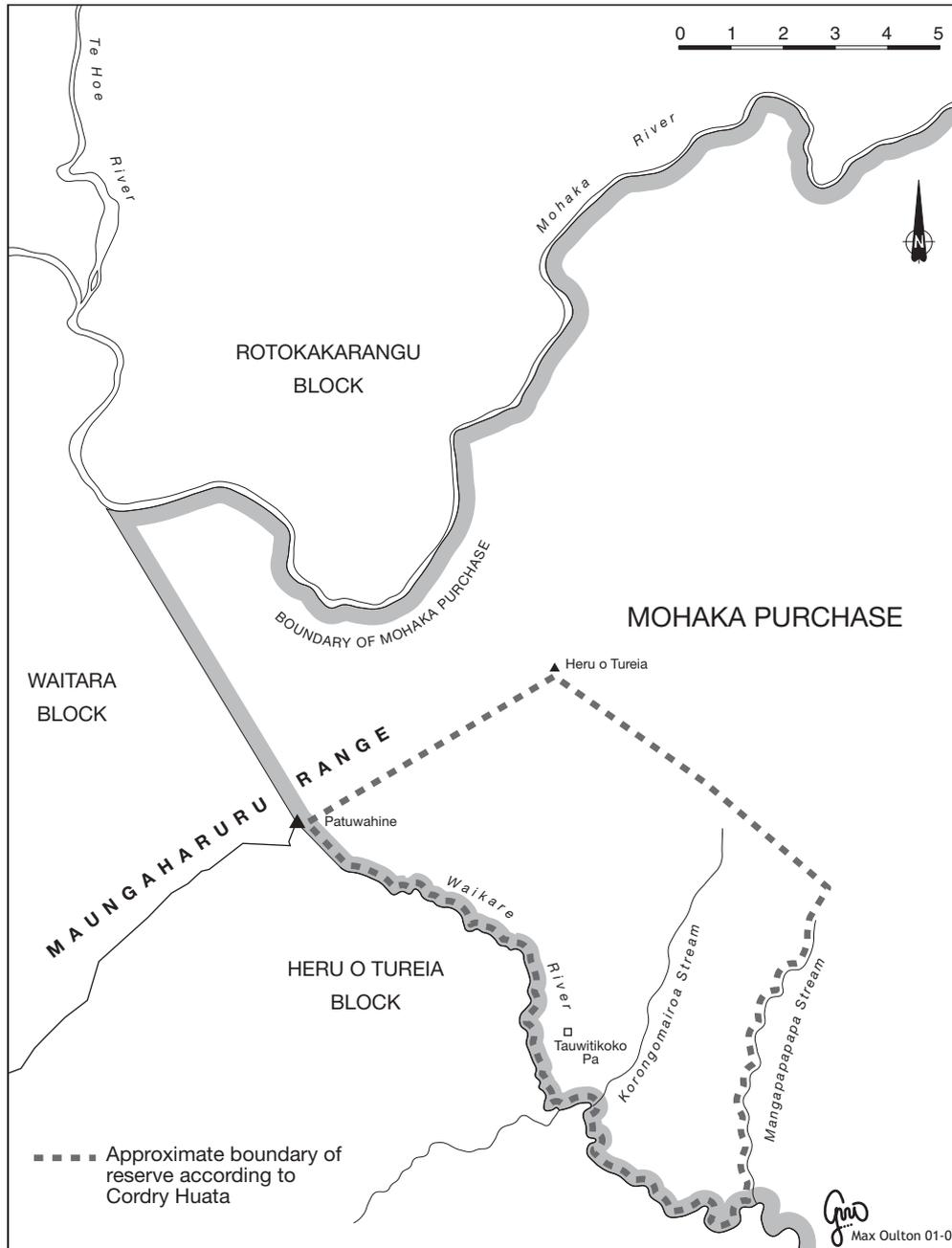
51. McLean to Colonial Secretary, 29 December 1851, AJHR, 1862, C-1, p 316

52. McLean, journal, 6 April 1855 (as quoted in doc J30, p 35)

53. Document J30, p 35

54. Waitangi Tribunal, *Mohaka River Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 78

55. Document A14, p 44



Map 41: The Heru o Tureia reserve

In 1859, a settler named Philip Dolbel secured a pastoral lease from the Crown for a section of the Mohaka block which included the Te Heru o Tureia reserve and, apparently, an occupied 'Pah'.⁵⁶ The Maori residents of the pa attempted to charge Dolbel rent for grazing his horse on the reserve, but he 'pleaded that their reserve was unknown' to him. Dolbel

56. As described in the petition of Philip Dolbel to House of Representatives, September 1860 (as quoted in doc c4, p 61). Loveridge speculates this pa was probably Tauwitekoko (doc J30, p 35).

subsequently followed the matter up with McLean in Napier, and the latter instructed George Cooper to provide Dolbel with a copy of the relevant section of the Mohaka deed. The 'Cooper translation' affirmed that Te Heru o Tureia had been reserved but that European stock were free to roam over it until it was fenced. Dolbel felt that the Maori at Te Heru o Tureia were 'perfectly aware that they had no right to interfere with me on account of my horse running on their land, so long as it remained unfenced'. Dolbel wrote to the press that he had met 'Peki, the head chief of their tribes'.⁵⁷ Dolbel told him that:

I had received a copy of the deed of sale of the Mohaka Block, and explained to him how wrong they were to try to impose on me for payment for grass which they had no right to do, and that I would not try to keep my horse from that land, and, moreover would very soon drive cattle at Maungaharuru, and would let them run over any land that would be unfenced within my boundary.⁵⁸

According to Dolbel, 'Peki' conceded that the reserve was of 'little use' to the Maori living there and that they 'would never attempt to fence it'. Dolbel then added that McLean 'knew the position of the reserve, and was well aware that, while it would remain in the hands of the natives, there would never be any peace between them and myself'. McLean, he said, was 'very anxious' to buy the reserve, which, 'by his great influence, he succeeded in doing'.⁵⁹

The deed of purchase for Te Heru o Tureia was signed on 5 July 1859. This indicates that McLean acted very swiftly, since Cooper's translation of the relevant section of the Mohaka deed for Dolbel was dated 28 June 1859. The propriety of McLean's expeditious acquisition of the reserve is brought further into question by the fact that only 11 people signed the deed. Despite the signatures of three important chiefs – Pikai Tohutohu, Te Teira Te Paea, and Paora Rerepu – on the deed, the 11 names are but a small fraction of the 297 who signed the Mohaka purchase deed, and for whom, theoretically, the Te Heru o Tureia reserve had been set aside. The Maori version of the Te Heru o Tureia deed stated:

heoi ekore matou e hoki atu ki runga ki tenei wahi ake tonu atu heoi ano hoki te wahi i whakatapua mo maotu i mua i roto i tenei hokonga. Kua oti nei i a matou te tuku kia mutu ai te raruraru mo nga rawa o nga pakeha e haere ana ki runga o taua wahi, kotahi te rau o nga eka, otira na to matou mahara i nui ake taua wahi.

The English version read:

57. Cordry Huata speculated that 'Peki' may have been Pehi, who gave evidence to an 1896 Native Land Court hearing on the Heru a Tureia block, which lay to the south of the Waikare River: see doc A14, p 49. However, we note the lapse of almost 40 years between 1859 and 1896. McHugh, on the other hand, thought that 'Peki' may have been Pikai Tohutohu, who signed the deed receipt for the purchase of the Te Heru o Tureia reserve: see doc C4, pp 62–63.

58. Dolbel to *Hawke's Bay Herald*, 10 January 1862 (as quoted in doc C4, p 62).

59. *Ibid*, p 63

We will never go back upon this place it was the only place reserved for us formerly out of this sale and we now cede it in order to put an end to the disputes respecting the stock of the Europeans running on that place there are one hundred acres but we estimate it at more.⁶⁰

The Crown paid £100 for the reserve and, a month or so later, an additional £10 to another claimant. Loveridge pointed out that ‘the Crown in effect increased the payment for the Mohaka Block by more than one-eighth without apparently consulting most of the original vendors or attempting to purchase their rights in the reserve’.⁶¹ He went on to cite the following comment made by Commissioner Christopher Richmond in 1873 concerning another reserve (at Moeangiangi) in which Ngati Pahauwera may have had interests:

Where a reserve has been made on a sale of a block, the probability is that a whole community is interested and attaches a peculiar value, or regards with a special affection, the excepted land. It is the common interest of both races that the alienation of lands in this position should be watched over by some department of the State with particular vigilance – not to say jealousy; and the official guardians of such reserves should at least have special notice of proceedings affecting the same.⁶²

On 6 July 1859, McLean wrote to Dolbel to say that ‘the only reserve set apart for the natives in the Mohaka block’ had been acquired. He assured the settler that he now need not ‘be annoyed by any claim of the natives’.⁶³ But Dolbel’s problems did not dissipate with the sale. Instead of leaving the reserve, as he asked them to, the Maori residing there planted new crops. Dolbel resorted to buying 40 acres of the land outright in the hope that this would force the Government to assist him in expelling the Maori residents. Yet, they continued, he complained, to ‘express their intention of retaining possession’. Relations worsened when dogs from the pa attacked his sheep and one of the dogs was shot. In seeking compensation for the loss of the dog, Dolbel’s neighbours helped themselves to goods from his property, whereupon he threatened to burn the bush around their pa and they, in turn, apparently threatened to ‘kill every man upon [Dolbel’s] station’. At one point in meeting with local Maori, Dolbel reported: ‘After a korero among themselves, an old fellow came forward and delivered a speech with great eloquence to the effect that the Mohaka Block had been sold; they had not seen the colour of the money; there they had lived and there would they die.’⁶⁴

McHugh partly interpreted the problems between Dolbel and the Maori living near him as a result of dissatisfaction among Maungaharuru Maori at their non-receipt of Crown

60. Turton, vol 2, p 591

61. Document J30, p 36

62. C W Richmond, ‘Report on Case No x’ 31 July 1873, AJHR, 1873, G-7, p 16. The reserve in question was that set aside from the Moeangiangi purchase: doc J30, p 36.

63. McLean to Dolbel, 6 July 1859, included by Dolbel in the text of his letter to the *Hawke’s Bay Herald* of 4 June 1862 (as quoted in doc C4, p 67).

64. Dolbel to *Hawke’s Bay Herald*, 10 January 1862 (as quoted in doc J30, p 37)



Fig 22: Mohaka–Te Hoe junction. Photograph by Evelyn Stokes.

purchase moneys for the Mohaka land. She also observed, in response to a 1946 petition from Mohaka Maori that was full of disbelief that their tipuna would have willingly sold an important urupa, that the Maori owners of the reserve appear to have essentially objected to Dolbel's stock because he would not pay them rent, not because of the particularly tapu nature of the land. She stated that the reserve 'appears to have assumed a more tapu nature in the eyes of later generations'.⁶⁵

It is impossible from the historical record to know exactly why some members of Ngati Pahauwera sold the Te Heru o Tureia reserve. There may have been some who felt that they had not received a sufficient amount from the original Mohaka transaction and thus wished to sell it. There is some precedent for this interpretation: Colenso recorded that Toha, Te Teira Te Paea, and other chiefs had offered to sell McLean land between Waikare and Moeangiangi the day after the Mohaka deed had been signed 'in consequence of their being vexed at not getting more money for the land at Mohaka'.⁶⁶

Alternatively, the sellers of the reserve – or those who were Dolbel's neighbours, for they may not have been one and the same – may have genuinely believed that the sale would continue to afford them rights over the land. Both Loveridge and researcher George Thomson (the latter in evidence for the claimants produced for the Mohaka River inquiry) argued that some other Maori actions after the sale also suggested this as a possibility. For example,

65. Document c4, pp 66–67

66. Colenso, journal, 12 December 1851 (as quoted in doc c4, p 48)

a neighbour of Dolbel's named Curtis was fined £5 by the local runanga for taking an old musket he had found on his own property.⁶⁷ Loveridge argued that this 'attempt to exercise authority over settlers in the Mohaka Block was not an isolated incident',⁶⁸ while Thomson suggested that it was an example of the exercise of Ngati Pahauwera's ongoing rangatiratanga over the Mohaka block.⁶⁹

McHugh speculated that the piece of land on which Dolbel's neighbour Curtis found the gun – which Maori told Curtis 'had been reserved by them' – may well have been one of the two areas that in 1855 Waikare Maori had asked McLean for permission to use as cultivation sites. While we do not know McLean's response to the request, McHugh felt that these areas may have 'assumed the status of reserves in Maori eyes'.⁷⁰ Fergus Sinclair (in evidence for the Crown before the Mohaka River Tribunal) felt that there was 'little that can be said about these events, except perhaps to observe that Curtis may have unwittingly breached some tapu'. Nevertheless, he concluded that Mohaka was an 'unruly community' at the time and that the runanga was understandably attempting to impose some order. There was nothing inconsistent there, he stated, 'with the overriding authority of the Crown'.⁷¹

We do not know how the dispute between Dolbel and his Maori neighbours was resolved, although Dolbel continued to experience some difficulties. He was apparently 'twice burnt out by Hauhau when running a sheep station at Maungaharuru, and had several narrow escapes',⁷² but these incidents may have been unconnected to his earlier troubles involving the Te Heru o Tureia reserve. As we recount later, Te Kooti burned down Dolbel's woolshed in 1872. A petition seeking compensation for losses 'occasioned by natives on his run' was made to Parliament on Dolbel's behalf by Colenso in 1863.⁷³ We have no information as to the outcome.

11.2.6 Protests and petitions

From 1891 onwards, a number of petitions were presented to Parliament concerning aspects of the Mohaka transaction. These were detailed by McHugh. Aside from the problems reported by Dolbel, McHugh said that she had found no record of protest concerning the transaction in the decades prior to this.⁷⁴ In 1891, Wepiha Te Wainohu petitioned Parliament, claiming that 'certain portions of land [out of the Mohaka block] were promised to be

67. Dolbel to *Hawke's Bay Herald*, 10 January 1862 (as quoted in doc 130, p 38)

68. Document 130, p 38

69. Document A29, app A, p 9

70. Document C4, p 71

71. Document C5, pp 22–23

72. G H Scholefield, ed, *A Dictionary of New Zealand Biography*, 2 vols (Wellington: Department of Internal Affairs, 1940), vol 1, p 214 (doc C4, p 69)

73. 'Abstract of Petitions Presented to the House of Representatives', 1863, AJHR, 1863, p xv (doc C4, p 70)

74. Document C4, p 78

returned to their people by Sir Donald McLean'. McHugh thought it possible that this referred to the two cultivation sites sought in 1855.⁷⁵ The Government's response was to inform Te Wainohu that the deed had been examined and there were no reserves left to be made.⁷⁶

In 1946, a petition was presented to Parliament to which was appended a typescript copy of an 1891 petition. The 1946 petitioners claimed that this petition had been presented to the House in 1891, but McHugh could find no evidence to substantiate this and concluded that the claim could 'not be taken at face value'.⁷⁷ The alleged 1891 petitioners had claimed that the Mohaka purchase had caused them 'hardship' and had been wrongful because the block had not been surveyed and no court order determining title had been issued. They also argued that the purchase price (which they claimed was to be £8000) had not been paid and that a promised reserve had not been set aside. McHugh, however, argued that the petition was undermined by the fact that Paora Rerepu was the chief petitioner. Because Rerepu had played such a prominent part in negotiating the original purchase with McLean, and had been in such regular contact with him at various times thereafter, McHugh felt that it made no sense for him to make these claims 40 years after the event. Furthermore, references to the Native Land Court and the like gave McHugh the impression that 'these grievances arose in the 1880s–1890s, rather than the 1850s'.⁷⁸ She cited a statement by Wharekauri Kaimoana, a witness before the 1950 royal commission into the Mohaka purchase, as confirmation:

There was a meeting at the time I refer to [circa 1891], a discussion of the petition with the people there. . . . I cannot say what was actually incorporated in the petitions – but from the discussions on the marae there were three matters mentioned; firstly, the consideration being inadequate, and that there were people as signatories who had no right to sell the land, and another matter which was mentioned quite frequently during those discussions was the question of no provision being made for reserves out of the land for the occupation of the people.⁷⁹

Whereas McHugh was right to point out the various anomalies and inconsistencies in the petition, it is perhaps understandable for the petitioners to have related their contemporary situation to the inadequacies of the purchase some 40 years before, even if they erred in matters of detail, such as the actual price for the block. If Rerepu was unhappy about the Mohaka purchase in 1891, after having been prominent in its negotiation decades before, he may have finally decided that his expectations had not been fulfilled and that his people had received little of the benefits envisaged in 1851.

75. 'Report of the Native Affairs Committee', 22 September 1891, AJHR, 1891, I-3, p 25 (doc c4, p 71)

76. Morpeth to Wepiha Te Wainohu, 26 October 1891 (as quoted in doc c4, p 81)

77. Document c4, p 85

78. Ibid, pp 82–84

79. Statement by Wharekauri Kaimoana before the 1950 royal commission (as quoted in doc c4, p 85)

A further petition was presented to Parliament in 1898 which claimed that a group of Maori had been excluded from the 1851 sale because they had been absent in Port Lyttelton at the time, and that subsequent approaches to McLean on the subject had been ignored. McHugh said that she had been unable to establish how this petition was dealt with.⁸⁰

Two petitions were presented to Parliament in 1899 on behalf of Wi Te Kahu and others. The first asked that the Mohaka deed be examined to determine whether any money remained to be paid for the block. The Native Affairs Committee made no recommendation with respect to that petition. The second requested that a list of owners be drawn up for the Te Heru o Tureia reserve. This perhaps indicated that the petitioners believed the land to be still in Maori possession. In 1901, the Under-Secretary for Justice reported that the reserve had in fact been sold.⁸¹

In 1925, another petition was presented. This one was signed by 153 people and complained about the price paid for the Mohaka land, the inclusion of minors among the sellers, and the lack of reserves. The Native Minister directed that the claim be inquired into by the Sim commission, which heard evidence at Wairoa in 1927. Counsel for the petitioners said that his clients had 'no dispute about the validity of the deed and no question as to the payment of the purchase money' but felt that the price paid had been 'ridiculously inadequate'.⁸² The 1927 commission did not, however, find in favour of the claim. This was largely because of its reliance on an erroneous 1926 report by the under-secretary of the Native Department, which stated that, in the 75 years since the block's sale, there had been no complaints about the purchase other than one petition in 1900 concerning the Te Heru o Tureia reserve. The commission observed that 'this is the first claim of its kind made regarding the Mohaka Block' and argued that the Maori vendors had been satisfied at the time of the sale. The commission concluded: 'Seeing that it was bush and scrub land, in a very warlike district, with no access, it was probably not worth more than what was paid for it. The petitioners have not made out, we think, any case for relief.'⁸³ It is a moot point, of course, whether the commission would have concluded differently had it been aware of the various other protests and petitions.

The petition presented in 1946 was the most fully documented and thorough received up till then, and it contained copies of past petitions, the 1851 deed, and the Treaty of Waitangi. It stated that the Crown's purchase of the Mohaka block had been completed in 'very suspicious circumstances' and was not in accordance with 'equity and good conscience'.⁸⁴ Eventually, the Minister of Maori Affairs agreed to authorise a royal commission to inquire formally into the petition, following a guarantee from Mohaka Maori that they would accept the

80. Petition of Riria Te Owaina et al, 9 June 1898 (as quoted in doc c4, p 86)

81. Document c4, pp 86–87

82. Ibid, p 88

83. William Alexander Sim, Vernon Herbert Reed and William Cooper, 'Report of the Royal Commission to Inquire into Confiscation of Native Lands and Other Grievances Alleged by Natives', 29 June 1927, AJHR, 1928, C-7, pp 28–29 (doc c4, pp 89–90)

84. Document c4, p 90

commission's decision as final. In 1949, a commission was appointed under Sir Michael Myers.⁸⁵ It was directed to determine:

Whether, due regard being had to the method generally employed in the conduct of transactions with the Maoris for the cession of land to the Crown at the time when the said Mohaka Block was acquired by the Crown, any injustice has been or would be done to the former Maori owners of the said Block or their descendants or representatives, or any of them, in asserting or maintaining the Crown's title to the said Mohaka Block, or any of such portions thereof as are now Crown lands;

(i) If it be reported that any injustice has been done or would be done as aforesaid, then to recommend whether . . . any portion of the said Mohaka Block [should be] returned to them, or whether compensation in money or money's worth should now be granted to such former owners or their descendants or representatives, or any of them;

(ii) If it be reported that compensation should be so granted, then to recommend what the extent of such compensation should be.⁸⁶

Once again, however, the result was not in the petitioners' favour, although at least on this occasion – unlike in 1927 – the commission had examined the contemporary documentation. In 1950, it concluded that the claim had not been proven and that 'no injustice' had been done.⁸⁷ However, it had not been asked to consider whether the purchase conformed at all with the Treaty of Waitangi, even though the petitioners had appended a copy of it to their submission.

11.3 LEGAL SUBMISSIONS ON THE MOHAKA TRANSACTION

The Mohaka transaction in 1851 and the subsequent sale of the unsurveyed Te Heru o Tureia reserve in 1859 are a major component in the Ngati Pahauwera claim (Wai 119). At this point, we outline the argument relating specifically to the Mohaka transaction.

11.3.1 Claimant submissions

With respect to the Mohaka transaction, the claimants' arguments were very similar to those of counsel in Wai 400, the Ahuriri block claim, which we outlined in chapter 5. Counsel argued that, because the Mohaka transaction took in such a large amount of Ngati Pahauwera's most valuable land, it needed to be viewed within a much broader context. This context

85. As well as Myers, Hubert Christie and Richard Ormsby were appointed to the commission. Myers died in 1950 and was replaced on the commission by Douglas Dalglish.

86. Schedule, 6 December 1949, *New Zealand Gazette*, no 76, 15 December 1949, p 2808 (doc c4, pp 91–92)

87. 'Report of Royal Commission Appointed to Inquire into and Report upon Claims Preferred by Certain Maori Claimants Concerning the Mohaka Block', 17 July 1951, AJHR, 1951, G-4 (as quoted in doc c4, p 93)

included Ngati Pahauwera's return in the 1840s from exile at Nukutaurua – where they had retreated in the 1820s in search of security from the raiding parties from Taupo and the Waikato – and their acceptance of the promise of order ushered in by the Treaty of Waitangi. To that end, counsel quoted from the Tribunal's *Mohaka River Report 1992* as follows:

After their return to Mohaka, Ngati Pahauwera, in order to obtain the benefits of peace, trade and Christianity, aligned themselves with the land selling tribes who cooperated with the colonial government. From their perspective, the Treaty laid the foundation for the peaceful co-existence of two peoples, each with its own system of authority.⁸⁸

Counsel argued that, although Ngati Pahauwera had not signed the Treaty, nor had any formal dealings with the Crown, their desire for security made it sensible for them to embrace an alliance with the Crown when the opportunity arose. They also sought the benefits of development that they knew contact with Pakeha could bring, given their trade with whalers during their time at Mahia.⁸⁹ Thus, it was in these circumstances that Paora Rerepu made the offer of land to McLean in January 1851. Despite this, counsel maintained that Ngati Pahauwera were inexperienced in European land transactions and that 'both the concept and practical consequences of sale would have been unknown to them'.⁹⁰

Therefore, counsel argued, the Mohaka transaction was much more than a 'simple conveyance of land'. Other circumstances to bear in mind, counsel contended, were:

- ▶ Government officers Bell and Kemp – and, later, McLean – had made promises of the advantages that would accrue to Ngati Kahungunu, which included their economic development, in exchange for selling their land.
- ▶ Price was not an issue in the negotiations until relatively late in the piece; this shows that it was not the primary consideration for Ngati Pahauwera.
- ▶ Given their isolation, there was no reason for Ngati Pahauwera to be operating under anything other than their own cultural assumptions.
- ▶ The deed was prepared by McLean alone and thus had little relevance to Ngati Pahauwera's understanding of the transaction.⁹¹

Counsel concluded that 'an unconditional alienation of land was the last thing on the mind of Ngati Pahauwera', and he cited the finding in the Tribunal's *Muriwhenua Land Report* that there was no mutual understanding of land sales in the Far North right up to 1865. This, said counsel, was despite the many old land claims in the north. If the Tribunal could make such findings about Muriwhenua, he argued, 'It is simply inconceivable that from the beginning Ngati Pahauwera would have understood that the transaction they were concluding with McLean amounted to a complete alienation of their land.'⁹²

88. Waitangi Tribunal, *Mohaka River Report 1992*, p 21 (doc x30, p 21)

89. Document x30, pp 21–22

90. Ibid, p 22

91. Ibid, pp 31–32

92. Ibid, pp 32–33

Counsel suggested that the transaction was not just a simple conveyance but also the start of an ongoing relationship between Maori and the Crown, and he cited the following specific matters in support:

- ▶ The deed used the term ‘tuku’ rather than ‘hoko’. ‘Hoko’ had been coined as the term for ‘sale’, but ‘tuku’ was capable of carrying connotations which went well beyond straight-forward sale.
- ▶ Ngati Pahauwera asked for settlers to be placed on their land, which shows that their primary focus was on reaping the benefits of having Europeans settle amongst them.
- ▶ One member of Ngati Pahauwera, Poututu, wished McLean to keep returning to Mohaka after the final payment had been made.
- ▶ At Waikare in 1855, McLean attempted to pacify Ngati Pahauwera, who were disgruntled about the purchase price, by stating that having Europeans settling amongst them would raise the value of their produce.
- ▶ A pa at the Te Heru o Tureia reserve was occupied seven years after its ‘sale’, in accordance with customary Maori practice.
- ▶ Subsequent Maori protests, while focusing on matters such as the reserves and the consideration, were consistent with what occurred in Muriwhenua.⁹³

Counsel said that the evidence clearly showed the transaction was not a sale, and this then raised the question of how it could be described. Counsel’s explanation was that the Mohaka transaction was ‘like the Treaty of Waitangi in nature, a relationship in the nature of an alliance’. He said that the Crown was fully aware that Maori saw the development that a new settler population would bring as being part of the bargain, as evidenced by the disinterest that Wairarapa Maori showed in a sale once the Canterbury settlement was no longer to proceed.⁹⁴ In sum, said counsel, ‘The Crown created the impression that Maori and Pakeha would share the land and become prosperous together on it.’⁹⁵

Counsel added that, even if the Tribunal were to find the transaction to have been a sale, its terms were ‘grossly unfair’. The price, he said, was ‘deliberately miserly’ and represented nothing like the ‘real value of the land’. Counsel alleged that, in paying such a low price, the Crown breached its duties of active protection and good faith in the following ways:

- ▶ the abolition of the protectorate office had left Ngati Pahauwera with no governmental watchdog over their interests;
- ▶ the prohibition on leasing left Ngati Pahauwera with no option but to sell;
- ▶ McLean’s offer was made on a ‘take it or leave it’ basis; and
- ▶ Ngati Pahauwera’s inexperience afforded them no understanding of the cash value of their land.⁹⁶

93. Document x30, pp 34–37

94. Ibid, pp 38–39

95. Ibid, p 41

96. Ibid, pp 39–40

As it had in Muriwhenua, said counsel, the Crown acted as ‘a judge in its own cause as to how its monopoly over purchasing might be exercised’. The result was an insufficiency of both reserves and price.⁹⁷

11.3.2 Crown submissions

Crown counsel began by charting the history of the Wai 119 claim and its various amendments since it was first filed in January 1990. His essential point was that the scope of the claim had been progressively broadened by these changes, but that the last version – that of 9 April 1997 – raised ‘significantly’ different allegations from the earlier statements, in that it now asked the Tribunal to find that ‘the early sales of land by Ngati Pahauwera to the Crown were not in fact sales’. Counsel ascribed these ‘very recent attacks on the mutuality of the 1851 Mohaka sale and the 1864 Waihua sale’ to the publication of the Tribunal’s *Muriwhenua Land Report* in March 1997.⁹⁸ He argued that Loveridge had made very little of the ‘no sale’ theory in his main report, which preceded the Muriwhenua report’s publication, but had then attempted to make much of it in his summary, which was presented to the Tribunal in November 1997.⁹⁹

Crown counsel said that the sudden adoption of the ‘no sale’ theory meant that Ngati Pahauwera had either been labouring under a false understanding for approximately 146 years about what their actions in 1851 meant or been unwilling to communicate to the Crown the views now ascribed to them. He added that, if the ‘no sale’ theory had had currency at the time of the 1992 Mohaka River hearings, ‘this knowledge was not shared with the Waitangi Tribunal at that time’.¹⁰⁰ He submitted that Ngati Pahauwera had always regarded the Mohaka transaction as a sale, and to this end he disputed that Ngati Pahauwera were isolated from and ignorant of Pakeha cultural practices at the time of the transaction in 1851. He said that there had been a great volume of trading activity between Maori (including Ngati Pahauwera) in exile at Mahia and Pakeha whalers and traders, and that this had carried on once Ngati Pahauwera had resettled around the mouth of the Mohaka River in the 1840s. Ngati Pahauwera were very aware of the ‘new possibilities arising from having Europeans and the state coming to Hawke’s Bay’, he argued, and it was therefore ‘unsurprising that Mohaka Maori wanted to exploit these possibilities by selling land’.¹⁰¹

Crown counsel further submitted that the 1851 Mohaka sale could not be described as ‘rushed’, given the 11-month gap between the first meeting in Mohaka in January 1851 and the signing of the deed the following December. For example, the area to be sold was progressively refined according to Ngati Pahauwera’s wishes. Crown counsel submitted that ‘This

97. Ibid, pp 40–41

98. Document X55, pp 4–8, 13

99. Ibid, p 13

100. Ibid, p 14

101. Ibid, pp 10–11, 20



Fig 23: The mouth of the Mohaka River. Photograph by Evelyn Stokes.

respect for the preferences of the vendors is an important indication of the true mutuality of the agreement.¹⁰² Counsel contended that there was little evidence as to how the extent of the reserves and the purchase price were determined, but he argued that it was reasonable to assume that, by December 1851, Ngati Pahauwera had decided to accept £800 for the block. The only remaining dispute, he said, related to the method of payment and the division of the proceeds amongst the sellers. He rejected the idea that Poututu's invitation to McLean in 1855 to keep returning to Mohaka after the final payment in any way showed that Ngati Pahauwera viewed the transaction as being incomplete.¹⁰³

In a similar vein to the Crown's arguments in the Ahuriri block claim, counsel submitted that 'The real area reserved from the sale in practical terms was the land of Ngati Pahauwera not included in the sale.' He said that any analysis of the amount of land reserved within the Mohaka transaction that ignored this, missed the 'bigger picture'. He said that the loss of use of the Mohaka block did not greatly affect Ngati Pahauwera at the time, because they were concentrated on the north bank of the Mohaka River. Counsel did concede, however, that the deed was at fault for not precisely locating the Te Heru o Tureia reserve (he called this 'a weakness in the Mohaka purchase'), and that McLean appeared to have 'underestimated the importance of the site'. That a dispute arose with respect to this reserve in 1859, he said, 'and

102. Document x55, pp 15, 17

103. Ibid, pp 17-19

that it was addressed by purchase of the land rather than direct resolution of the problem reflects badly on the Crown'.¹⁰⁴

Crown counsel advised us that, with respect to the arguments concerning the adequacy of the price paid for the Mohaka block, he had adopted the Crown's submissions made in the Ahuriri block claim. In that case, Crown counsel had argued that pre-emption was not designed to allow the Crown to profiteer from land dealings but rather reflected the Crown's need to on-sell land at a rate sufficient to enable it to establish services and build the colony's infrastructure. Counsel argued that Maori understood this and that they themselves often benefited from it through being employed on public works projects. Moreover, Maori knew that the price was relatively unimportant, because it was the subsequent influx of Pakeha settlers that would serve most to enrich them.¹⁰⁵ In the Mohaka transaction, counsel submitted that it was, therefore, very difficult to draw any meaningful conclusions about the 'adequacy' of the price paid for the first block sold in the district.¹⁰⁶

Counsel also advised us that he further adopted the Crown's submissions in the Ahuriri block claim in respect to the issues of leasing and the overall nature of the Mohaka transaction. In sum, these were, first, that pre-emption was necessary to control relations between settlers and Maori on the frontier, and thus it was fully in accord with Treaty principles; and, secondly, that, while the sale was a 'stepping stone into the modern world' rather than an 'arm's length' transaction, it was no guarantor of Maori prosperity (see sec 5.9.3).

11.3.3 Claimant submissions in reply

Claimant counsel rejected the Crown's linking of the claimants' stance on the transaction to the publication of the *Muriwhenua Land Report*, arguing that the only matter of relevance was whether there was sufficient evidence to support that stance. He maintained that there was. He also argued that Crown counsel contradicted himself by at once depicting the transaction as a simple land conveyance while at the same time endorsing his fellow Crown counsel's acknowledgement in his pleadings on the Wai 400 Ahuriri block claim that such transactions were not purely 'arm's length commercial arrangements'. He criticised Crown counsel for ignoring context and circumstances and relying 'selectively' on Ngati Pahauwera's focus in later petitions on matters such as the purchase price. The reality was, he said, that Ngati Pahauwera had disputed the fairness of the Mohaka transaction almost since 1851. The later focus on the monetary consideration, he argued, could still be understood in terms of a dissatisfaction with the 'failure to deliver upon the promises of development'.¹⁰⁷

104. Ibid, pp 20–22

105. Document x54, pp 65–68

106. Document x55, pp 21–22

107. Document v6, pp 2–3, 5–6

Counsel submitted that it was a ‘massive leap’ to move from saying that an understanding of a ‘sale’ had been acquired by Ngati Pahauwera during their exile at Mahia to arguing that the offer of land at Mohaka was ‘in the form of a sale’. He asserted that this again contrasted with a pronouncement elsewhere in the Crown’s closing submissions to the effect that, around 1850, Ngati Kahungunu were faced with a choice similar to that Maori faced at Waitangi in 1840: namely, ‘go it alone, and attempt to make their own terms with the new order of things’ or ‘accept the authority of the Governor and his promise of protection and orderly settlement’.¹⁰⁸ Counsel criticised Crown counsel for ignoring this ‘wider context’ of ‘the inducements documented as part of the Crown purchase policy’. In sum, he contended, Crown counsel had offered up a ‘narrow hypothesis’ and had constructed an ‘artificial and misleading argument which is in the end ultimately unconvincing’.¹⁰⁹

11.4 TRIBUNAL COMMENT

Just as the arguments of counsel for both parties were similar to those adopted in relation to the Ahuriri transaction, so too are our comments on the nature of the Mohaka transaction. There were important differences between the Ahuriri and Mohaka transactions, of course, but we consider that our conclusions with respect to the Ahuriri transaction are broadly applicable in this case.

Perhaps the fundamental point of difference between Ahuriri and Mohaka was that McLean did not promise a town at Mohaka, and indeed, in general fewer assurances were given about future benefits and advantages than at Ahuriri. This is not to say that assurances about the collateral advantages of selling were not made – they certainly were, and, as with Ahuriri, we consider that they formed part of the bargain. But at Mohaka there was no immediate prospect of a town, and no promises of schools, a hospital, or a marketplace. We therefore do not consider that the assurances held out to Ngati Pahauwera were on a scale comparable to those offered to the Ahuriri vendors.

Moreover, the very absence of plans for a town makes it unsurprising that the Crown made fewer assurances at Mohaka. Given its proximity to Mahia, which had been a significant area of trade between Maori and Pakeha for more than two decades, Mohaka was by no means isolated when compared with Ahuriri in 1851. However, its lack of both a harbour and a substantial hinterland ideal for farming meant that the Crown and Pakeha settlers were always likely to overlook it in favour of Ahuriri. Mohaka and Ahuriri sellers wanted essentially similar things from the 1851 transactions, but McLean was much less inclined to offer Ngati Pahauwera the same inducements to part with their lands as he was the Ahuriri hapu.

108. Document x56, p 8

109. Document y6, pp 6–8

Nevertheless, the Mohaka transaction was a similar political compact to Ahuriri. Ngati Pahauwera had not signed the Treaty of Waitangi, but in 1851, upon their first real engagement with the Crown, 297 of them had signed an agreement with McLean. The political significance of this for Ngati Pahauwera cannot be underestimated. Again, however, we do not think that the transaction was a 'treaty' in its own right, even if McLean referred to it as such.¹¹⁰ We think that, like the Ahuriri transaction, it was an endorsement of, rather than a substitute for, the Treaty of Waitangi. As the Mohaka River Tribunal suggested, Ngati Pahauwera were attracted by the Treaty's promise of peaceful coexistence and the security of the Crown's protection. In that sense, they were not starting from scratch but building on a framework that already existed.

We commend the Crown for its acknowledgement that Mohaka – like Ahuriri – was no 'arm's length' arrangement. The Crown carried a duty to assist in Ngati Pahauwera's development in the years following the transaction and to accord them the security that they sought. It is implicit in the Crown's own description of the nature of the transaction that a failure to carry out these obligations would negate the very intent behind it. While we do not support the idea that the transaction could be repudiated by the sellers in time if sufficient benefits and advantages were not forthcoming, we certainly believe that the spirit behind the arrangement should be used as a frame of reference in judging later Crown actions. To quote from the Crown's closing submissions in the Ahuriri block claim once more, Maori should not have had 'their opportunities to pursue the material benefits of modernity unreasonably shut down by acts or omissions of the Crown. In that situation, the Crown would have responsibilities to Maori regardless of whether the sale is properly construed as a treaty'.¹¹¹

Essentially, after entering into the Mohaka transaction, Ngati Pahauwera had legitimate expectations that the Crown would help them to develop their lands and to participate in the new economy. They had no reason to believe that the Crown would leave them without the means to benefit from the influx of settlers and without the protection of law and order. (We discuss whether their expectations were eventually met in chapter 13.)

This brings us again to the parallel drawn with the Muriwhenua situation, where the Tribunal found that as late as 1865 there was little or no mutuality between the Crown and Maori concerning land transactions in the Far North. We do not agree with claimant counsel that the fact that the Muriwhenua Tribunal made this finding, in spite of the number of old land claims in the Far North, means that the Mohaka transaction – as the first major transaction in the area – was a traditional *tuku whenua* on the part of Ngati Pahauwera. The crucial difference, as we see it, is that the Mohaka transaction was a major political event and quite

110. See McLean's 1855 reference (quoted above) to the signing of the Mohaka deed as the 'first treaty' (as opposed to the later instalments of the purchase money). Land transactions were often referred to at the time as 'treaties', meaning agreements, but this reflects the contemporary parlance rather than a notion that they had a status similar to that of the Treaty of Waitangi. In the same way, purchases were often referred to as 'bargains', in the sense that 'bargaining' had taken place rather than that the Crown had secured itself a particularly cheap deal.

111. Document x54, p 36

unlike the small-scale Muriwhenua transactions. Furthermore, if Ngati Pahauwera did initially see it as a *tuku*, they would have quickly realised that it was not, since settlers soon arrived to take up 21-year pastoral leases, along with smaller amounts of freehold land. We reach this conclusion despite there not being the same extent of settlement at Mohaka as at Ahuriri, and even allowing for Te Kooti's raid in 1869, which retarded the development of the area. By contrast, land purchases in Muriwhenua were frequently not followed up by the actual occupation of the land at all.

The claimants laid much emphasis on the continued occupation of the Te Heru o Tureia reserve after its 1859 alienation to show that Ngati Pahauwera thought that they would continue to have rights over lands that they had sold. With respect, we do not believe that the example is very useful. For a start, it seems quite likely that those who continued to use the land and who squabbled with Dolbel were not those who sold the reserve. They certainly did not include Paora Rerepu, for example, whose assent to the sale the Crown would have seen as vital for it to be effected. The impression we have is of an inland group residing on the land having it sold out from under their feet. Ignorance of the fact of the sale, or rejection of it, are much more likely to have been the reason for the disputes and the ongoing use than a belief that a sale gave rise to continued rights of occupation.

We are much more inclined to agree with the claimants on matters relating to the adequacy of both the reserves and the purchase price. The setting aside of only one reserve strikes us as being an inadequate response. The argument could be raised that this was all the owners sought at the time, other than a small area on the north bank of the Waikare River, which was not reserved. However, we think that care should have been taken to set aside a range of areas that would have enabled Ngati Pahauwera to share more easily in the developing economy, as well as allow them to continue to access the block for traditional uses. Setting aside little more than one per cent of the block was unlikely to achieve either of those valid objectives. The rejoinder to this is that the real reserves lay to the north and south of the area purchased in 1851. This is manifestly so, but the argument is rendered meaningless by the Crown's later actions in buying or confiscating much of that 'reserve'. We discuss this in chapter 13, but it will suffice to say here that the Crown clearly wished to buy a great deal of the 'real reserve' at the time anyway. With such an object in mind, the Crown purchase officers should have been active in ensuring a sufficiency for future Maori needs was retained out of every block sold.

The circumstances of the alienation of the Te Heru o Tureia reserve in 1859, as Crown counsel has conceded, do not reflect well on the Crown. The land was a small area of highly *tapu* importance, being as it was the burial place of Te Kahu o Te Rangi. When a dispute arose over its use by a Pakeha settler, the Crown's response was simply to resolve any ownership and use-right questions by purchasing it. In doing so, however, the Crown bought it from only a small number of the reserve's owners, none of whom seem to have been living on the land itself, and the local dispute was in no way ended. The Crown's apparent failure to treat with those Maori actually residing on the reserve seems both lazy and irresponsible. So too does

purchasing all of a tapu area in order to resolve a dispute. We know little about the negotiations for the block's purchase but share something of the 1946 petitioners' disbelief that such a tapu area would have been sold so readily. Paora Rerepu – undoubtedly the most important signatory to the Te Heru o Tureia deed – was, we understand, Te Kahu o Te Rangi's grandson. We think it likely that there was more to the story than was revealed in the evidence.

With respect to the price paid for the Mohaka block, we have already observed that it was low. McLean boasted as much to his superior in Wellington, the Colonial Secretary. We conclude that Ngati Pahauwera were conscious of the fact that the payment they received for their land was small but that they were convinced that their real enrichment would come with the industrious settler population that the sale would bring. McLean himself reminded them of this equation when paying over the last instalment in 1855. The adequacy of the price, therefore, can properly be assessed only in the light of what happened after the block was sold. Moreover, the £800 purchase price was presented by McLean as a *fait accompli*, and the sellers may well have felt that they had little choice but to accept it. As we have also already noted, there is no clear evidence that Ngati Pahauwera had agreed to accept the sum of £800 when McLean made his way to Mohaka in December 1851 carrying only the £200 first instalment of the purchase money.

Our findings on the Mohaka transaction are at section 11.8.

11.5 NGATI PAHAUWERA IN THE 1850S AND EARLY 1860S

In the 1850s and into the 1860s, most of Ngati Pahauwera were congregated in neighbouring settlements on the north bank of the Mohaka River, on what was to become the Waipapa block, under the leadership of Paora Rerepu and Hone Te Wainohu. Security was probably an important factor in motivating these two chiefs to gather their people together, but Fergus Sinclair also suggested that Rerepu and Te Wainohu wished all their people to be near a church, for Ngati Pahauwera had embraced Christianity.¹¹² The tribal population at that time was perhaps some 300 people.¹¹³

During this period, the Crown seems to have concentrated on purchasing the lands south of the Waikare River that Ngati Pahauwera had initially offered to McLean in 1851 as extensions to the Mohaka transaction (the Moeangiangi purchase of 1859 was an example of this – see chapter 6). As already noted, the Colonial Secretary had instructed McLean in September 1851 to purchase the 'districts intervening between and lying at the backs of' the Ahuriri and Mohaka blocks.¹¹⁴ For the time being, therefore, the Crown's attention was diverted from the northern Hawke's Bay lands to the left bank of the Mohaka River, which remained under

112. Document c5, pp 6–8

113. *Ibid*, p 5

114. Domett to McLean, 29 September 1851 (as quoted in doc c4, p 27)

Ngati Pahauwera control. Moreover, Ngati Pahauwera would have continued to make use of the Mohaka purchase land, as Loveridge suggested. It was probably not until Pakeha settlers became more numerous, and more contiguous lands had been sold, that this situation would have changed. James Belich distinguishes between these two periods following a sale:

The vast tracts of land sold did not turn wholly white instantly. Like empire itself, land sales could be myths on maps. Nominal alienation took place the day the deed was signed; *substantive* alienation took place the day customary Maori use ceased, and the gap between the two could be decades long. [Emphasis in original.]¹¹⁵

Some settlers indeed came to live on the Mohaka purchase block in the years after its sale, although perhaps not as many as the three chiefs – who had offered land for sale in 1849 and had called for the Governor to send many Europeans in return – had hoped for. In early 1855, the missionary James Hamlin wrote that ‘a few whites’ were resident on the southern bank of the Mohaka, but he added that the river ‘affords so few facilities for trade and the difficulties in shipping and landing [are] so many that it is not likely many whites will settle on it for sometime to come’.¹¹⁶

Soon after this, the Pakeha population began to increase more steadily, with four families taking up residency along the Waikare River and 10 new settlers moving into the Mohaka River valley by the end of 1855.¹¹⁷ However, Sinclair argued that the Mohaka district ‘laboured under the twin handicaps of isolation from markets and other centres of population, and the rugged, infertile nature of its hinterland’.¹¹⁸ Because of this, he implied, the region was never destined for true prosperity. The character of some of the settlers also left something to be desired; one early resident complained to McLean in 1854 that the locality had been colonised by ‘parties who congregate here for no other reason that I can find out but that they have been driven from every other part of the bay for bad character’.¹¹⁹ Perhaps the most socially disruptive settler was the publican and storekeeper John Sim, who effectively introduced drunkenness to the locals, both settlers and Maori. Despite numerous complaints from the likes of Hone Te Wainohu about Sim’s activities, and the sympathetic responses of officials such as McLean, he continued to sell alcohol. By 1875, there were two public houses at Mohaka.¹²⁰

In spite of these economic and geographical disadvantages, which as Sinclair said were ‘more than the good will of the Crown or the enterprise of Ngati Pahauwera could reasonably be expected to nullify’, Ngati Pahauwera did their best to engage with the new cash

115. James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Penguin Books Ltd, 1996), p 226

116. Hamlin to secretary, Church Missionary Society, 31 March 1855 (as quoted in doc c4, p 54)

117. Electoral roll for Wellington Province, ‘Wairarapa and Hawke’s Bay Districts’, in the *Wellington Provincial Gazette*, 1855, pp 90–95 (as cited in doc c4, p 55)

118. Document c5, p 4

119. Snodgrass to McLean, September 1854 (as quoted in doc c5, p 16)

120. See doc c5, pp 16–22

economy.¹²¹ While at Mahia, Ngati Pahauwera had had much involvement with whalers, and by 1851 there was a whaling station at Mohaka, the viability of which seems to have depended on Maori labour. But, by 1854, Ngati Pahauwera had given up whaling – one settler informed McLean that they had found that ‘cultivating their land pays much better’.¹²² Trading opportunities must have continued to increase throughout the 1850s, to the extent that by the early 1860s Ngati Pahauwera had purchased a small trading vessel and were selling considerable amounts of produce at the rapidly growing township of Napier.¹²³

The resumption of fighting in other parts of the island in 1863 cast a shadow over Hawke’s Bay and Ngati Kahungunu generally, with schisms developing between ‘loyal’ and Kingite Maori. These tensions were particularly acute in northern Hawke’s Bay. McLean, by then the superintendent of Hawke’s Bay province, soon identified the need for the creation of a ‘buffer zone’ between the ‘loyal’ Ngati Kahungunu and those of Te Tai Rawhiti and the Urewera who had supported the King’s forces in the Waikato War in 1863 and 1864. To this end, he visited the Wairoa district in October and November 1864 and negotiated the purchase of several blocks in the area, including the Mahia Peninsula. In early November, McLean negotiated the Waihua purchase from Ngati Pahauwera when he passed through there on his way back to Napier.

The Crown’s purpose in acquiring Waihua and the other blocks in the Wairoa district in 1864 and 1865 is evident in Samuel Locke’s May 1865 statement that the purchases ‘tendered much towards the safety of this Province; through giving the Government a hold on that end of the district, by which means we were enabled to occupy the country for defensive and other purposes, without reference to the native population’. Locke felt that the point of his purchase operations was to prevent the Wairoa district from becoming ‘another Taranaki’ by organising ‘all the natives at that end of the province, into a strong, loyal party, making the Wairoa the centre’. He concluded by claiming that ‘more land of an excellent quality has been bought, and nearly all the natives of any consequence have come over to the Government’ and that ‘no fear need be held for the safety of the Wairoa District due to the foresight of Mr McLean in purchasing the land’.¹²⁴

For their part, Ngati Pahauwera were motivated to sell, according to Loveridge, in order to confirm their position as ‘firm allies of the Crown against the rising tide of Hauhau insurgence’.¹²⁵ As he put it, the Crown perhaps represented the ally that Ngati Pahauwera had not had during the musket warfare of the 1820s and 1830s.¹²⁶ But, from December 1863, the threat of land confiscation may have hung over them none the less, for non-sellers were often equated with ‘rebels’. For example, in January 1864, the then Civil Commissioner for Wairoa,

121. Document c5, p 3

122. Snodgrass to McLean, September 1854 (as quoted in doc c5, p 7)

123. Document J30, p 51

124. Document A29, p 11

125. Document J30, p 60

126. *Ibid*, p 55

Colonel Whitmore, said that he was confident that it was then quite possible to ‘keep the whole Ngatikahungunu tribe on the best terms with the Europeans, partly through their run leases, partly through their old feuds with the Waikatos, and partly by fear of losing their lands’.¹²⁷ Ngati Pahauwera probably saw Pakeha settlement as being synonymous with both security and economic opportunity. A newspaper report of McLean’s activities in October 1864 suggested that northern Hawke’s Bay Maori were ‘strongly in favor of having white settlers amongst them; they had nothing but ‘derision’ for the Maori King and ‘Nothing will go down now but *towns, towns, pakeha towns*. It is to be hoped that the Government will gratify them in this matter.’ (Emphasis in original.)¹²⁸

11.6 THE WAIHUA TRANSACTION

In November 1864, Paora Rerepu and others offered McLean a block of roughly 12,000 acres north of the Waihua River which extended to the southern-most block that he had purchased at Wairoa. The interior boundary of this block was left indeterminate at this stage. McLean’s offer of £800 drew a negative response, but it was finally arranged that, ‘if the extent of the land when properly examined should warrant it, something more should be given’.¹²⁹ McLean also undertook to set aside a reserve of two acres for Toha Rahurahu at a place called Tarere.¹³⁰

McLean left the completion of the transaction in the hands of Locke, the land purchase officer based in Wairoa. Locke walked over the block in February or March 1865 with Rerepu and 20 others. They added about 7000 acres to the 14,000 that had already been traced (but not properly surveyed) by a surveyor named Fitzgerald. Locke reported that the addition of the extra land had led to the negotiation of a new price of £1250 for the block.¹³¹ (He had negotiated this with ‘all the leading men in the neighbourhood’, including Teira Te Paea and Toha.) Locke seemed content with the price given the ‘very good block of totara’ he had acquired. In all, 72 Maori signed the Waihua deed on 7 March 1865. Oddly, there was no mention of Toha’s reserve in the deed, nor was it labelled on the deed map (map 42). Locke also reported that, at the conclusion of the business, he was offered a large expanse of territory further inland by ‘Moakena’ and his people but had been unable to pursue the matter.¹³² Loveridge calculated that this offer included all of what later became the Owhio, Putere, Pihanui, Whareraurakau, Rotokakarangu, and Maungataniwha blocks.¹³³

127. Document A29, p 7

128. *Hawke’s Bay Herald*, 31 October 1864 (doc c5, p 11)

129. *Hawke’s Bay Herald*, 26 November 1864 (as quoted in doc J30, p 56)

130. *Ibid*, pp 56–57

131. This final amount followed the intervening rise of the price to £1000 when the block was found, upon Fitzgerald’s initial survey work, to contain around 14,000 acres instead of 12,000. The £1000 had been agreed upon before Locke had gone to Waihua: see doc J30, p 26.

132. Locke to McLean, 7 March 1865 (as quoted in doc M5, p 4)

133. Document J30, p 60



Fig 25: The beach at the mouth of the Waihua River. Photograph by Paul Hamer.

No area was stated in the Waihua deed or the attached plan. The surveyor, Fitzgerald, had estimated the total area at 21,000 acres, but this was calculated on the basis of his 1865 sketch plan, not on a proper survey on the ground. There does not appear to have been any later review of the total area, probably because subsequent surveys were done piecemeal by other surveyors. In the result, Fitzgerald's figure significantly underestimated the total, because the block appears to have been at least several thousand acres larger, not including an additional 1152 acres south of the Waihua River claimed by the Crown. We discuss this discrepancy below.

11.6.1 Toha's reserve

Crown researcher Brent Parker provided the most particular details about the fate of Toha's reserve. Toha had previously written to the superintendent of Hawke's Bay province in April 1861 seeking assistance to pay for a ferryman for the Waihua River, since no Maori resided there permanently to offer that service.¹³⁴ McLean subsequently promised Toha a reserve of two or three acres during his purchase negotiations of November 1864, and a report to this effect appeared in a local newspaper.¹³⁵ The reserve was also noted by Fitzgerald, the surveyor

¹³⁴. Document w4, p 2; see also doc c5, pp 24–25

¹³⁵. Document w4, p 2; see *Hawke's Bay Herald*, 26 November 1864

who completed the initial tracing of the block before its final boundaries had been determined. He reported on 22 November 1864: 'Toha pointed out his Reserve and I have marked it on the tracing, it is in the way of a Ferry Reserve which I would propose to be made there say 20 acres.'¹³⁶ This report appears to imply that Fitzgerald made no connection between Toha's reserve and the ferry reserve that he felt was needed at the very same location. In any event, the deed made no mention of Toha's reserve, but this was an oversight – it probably slipped through because the transaction was concluded by Locke, not by McLean, who had made the initial undertaking. The error was eventually noticed and corrected.

In August 1867, a settler named James Hamshaw applied for permission to establish an accommodation house alongside the Waihua River on the Government reserve that had been created there. This was the ferry reserve proposed by Fitzgerald, which had in fact been made 100 acres. According to Parker, the reserve appears to have completely surrounded the smaller reserve offered to Toha, as both were marked on a plan. In December of that same year, Hamshaw wrote to the superintendent of Hawke's Bay province to complain that Toha was claiming a three-acre section that he (Hamshaw) was using as a paddock. He wrote again in March 1869 to complain about Toha's claim over the three acres and to ask for an investigation into whether there was any truth to the matter. McLean instructed that Hamshaw be told that Toha's claim was correct and that the latter's consent would be required for the use of the land. In December 1869, Locke confirmed to the commissioner of Crown lands in Napier that a reserve had indeed been promised to Toha but had never been recorded in the deed. He advised the commissioner that he had persuaded Toha to exchange his interest for a section within the township of Clyde (Wairoa) but that this exchange had not yet been effected.¹³⁷

It is not entirely clear what happened from this point, but the commissioner of Crown lands did not favour an exchange. It seems that some attempt may have been made to secure Toha's reserve for him, since it was included in an 1870 schedule of Hawke's Bay native reserves by Charles Heaphy, as 'Waihua Ferry Reserve (3 acres) reserved for Toha and his family'.¹³⁸ A Crown grant for the three acres was issued to Toha on 3 December 1875, but it was backdated to 14 January 1873. However, Locke himself reported in 1873 that the reserve had been 'purchased by a European'.¹³⁹ In 1888, Locke, by then retired, said that he had 'no recollection of any reserve' in the Waihua block, but this is belied by other evidence.¹⁴⁰ The subsequent title records were destroyed in the Napier earthquake, but it is possible that a retrospective Crown grant was issued to enable a transfer to a European purchaser.

136. Fitzgerald to superintendent, 22 November 1864 (as quoted in doc w4, p 3)

137. Document w4, pp 4–5

138. Ibid, pp 5–6; and see Charles Heaphy, 'Reports from the Commissioner of Native Reserves', AJHR, 1870, D-16, p14

139. Document J30, p 58; doc w4, p 6

140. Document J30, p 58

11.6.2 The south-western boundary of the Waihua block

Both the Waihua purchase deed and the deed plan show the land contained within the Waihua transaction to be solely to the north of the Waihua River, not to the south. However, by 1874 the Crown's survey of the block had taken in what Loveridge called a 'substantial slice' of land on the southern side of the river.¹⁴¹ The area involved was 1152 acres (see map 42). Researcher David Alexander (who presented a series of reports for the claimants) related how, in 1886, the Crown had subdivided the western part of the Waihua block and advertised the sections for lease as small grazing runs. Some of this land was south of the Waihua River and was thus at odds with the Waihua deed yet in conformity with the eastern boundary of the Mohaka 2 block, as defined by the Native Land Court.¹⁴²

In July 1888, Toha wrote a letter of complaint to the Native Department, explaining how a European had crossed the Waihua River armed with a plan and claiming that the land was owned by the Government. Captain George Preece, the resident magistrate, was consequently asked to investigate. On 11 August 1888, he reported to the under-secretary of the Native Department that the survey line for the Waihua block at one point departed from the river itself and went in a straight line to the river's source, rather than following the course of the river all the way up as the deed stated. He said that he had always understood that the river formed the entire south-western boundary of the Waihua block, and he speculated that there 'may have been some subsequent arrangement with the natives, but I can scarcely think this could be the case or Mr Locke would have made some note of it'.¹⁴³

The under-secretary of the Native Department recommended to the Native Minister that the matter be carefully investigated by the Survey Department. The district surveyor in Gisborne in turn wrote to Locke, by then retired and living in Auckland, to ask him whether the land in question had in fact been purchased.¹⁴⁴ Locke's reply was that he thought that Toha was correct and that 'the Government [lands] do not cross the Waihua River'.¹⁴⁵ The Surveyor-General then wrote to the chief surveyor in Napier, asking him to find out from the surveyor in question what had in fact happened with the boundary. The Surveyor-General also had in mind finding out 'the best way of arranging the matter should there have really been an overlap'.¹⁴⁶ The chief surveyor replied that there was nothing in his records of surveys done on the south-western Waihua subdivisions or Mohaka to indicate that 'the Waihua River was ever intended to be the boundary'. However, he added that the land in question was then 'at the absolute disposal of government', because the lessee's occupation had recently been terminated for 'breach of conditions' and the land had not been re-leased.¹⁴⁷

141. *Ibid*, p 59

142. Document M5, pp 6–7

143. *Ibid*; Preece to under-secretary, Native Department, 11 August 1888 (as quoted in doc M5, p 8)

144. District surveyor, Gisborne, to Locke, 13 September 1888 (as quoted in doc M5, pp 8–9)

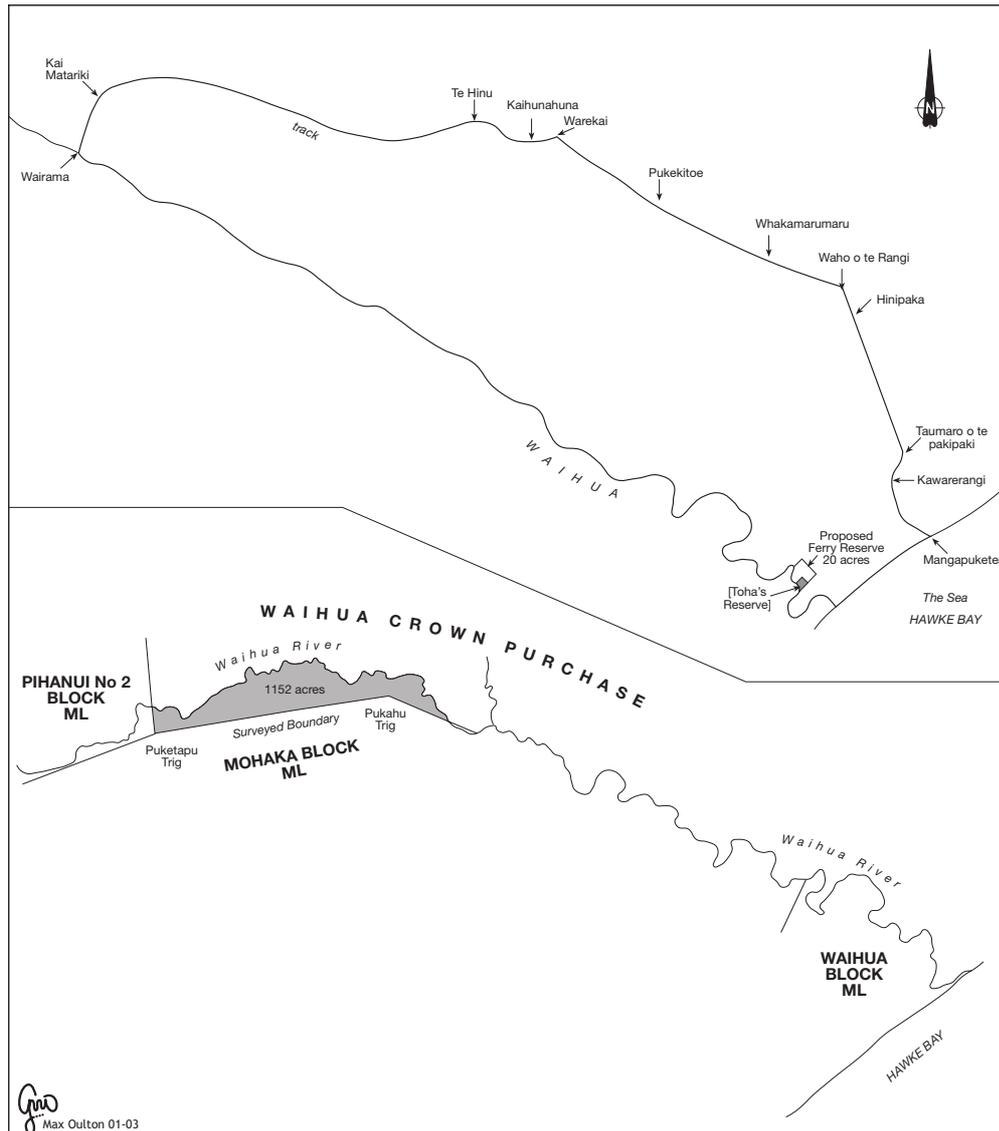
145. Locke, memorandum, 20 September 1888 (as quoted in doc M5, p 9)

146. Surveyor-General to chief surveyor, Napier, 5 October 1888 (as quoted in doc M5, p 10)

147. Chief surveyor, Napier, to Surveyor-General, 9 October 1888 (as quoted in doc M5, p 10)

THE MOHAKA KI AHURIRI REPORT

11.6.2



Map 42: The Waihua purchase, 1865; top deed plan 1865; bottom, the southern boundary after survey 1874

The Surveyor-General, in turn, instructed the chief surveyor on 1 November 1888 ‘not to deal with the land in dispute on south side of Waihua River. Further inquiry may elucidate how the boundary of Waihua Block was marked as on survey.’¹⁴⁸ According to Alexander, however, no record exists of any further inquiries into the matter by the Crown, which eventually sold the land into private ownership, only to reacquire part of it later. The part that the Crown holds today is part of the Mohaka Forest.¹⁴⁹ An opportunity therefore existed in 1888 for the

148. Surveyor-General to chief surveyor, Napier, 1 November 1888 (as quoted in doc M5, p 11)

149. Document M5, p 11

Crown to acknowledge what was apparently a clear error and for it to return the land to Ngati Pahauwera ownership. But nothing was done. Alexander commented that the failure to return the land was 'a clear and accepted abuse of power by the Crown'.¹⁵⁰

Parker was able to ascertain how the boundary south of the Waihua River was derived. Fitzgerald had created an initial tracing of the block boundaries in 1864 for the deed plan, but a proper survey was not carried out until one George Burton did so in 1865. In September 1865, the chief provincial surveyor, CH Webber, instructed Burton to traverse the Waihua River 'from its mouth upwards'.¹⁵¹ Burton reported on 2 November 1865:

The traverse of Waihua has been extraordinary [*sic*] rough so much so that the last three miles I could not chain the River goes through a rocky gorge the depth is from 150 to 250 feet. I made small base lines and calculated the distances and sketched the hills as accurately as possible. . . . Mr Faiching [?] has left the party on account of his not being strong enough to go through the rough country, I had to do the hard work myself and that not give me any chance [?] I found that I was not able to do it any longer.¹⁵²

In other words, Burton could not complete the final three miles of the survey of the Waihua River owing to the impassable terrain. Instead, he fixed the boundary as straight lines on the nearby hills, and thereby secured for the Crown an additional 1152 acres.

11.6.3 Protests and petitions

In 1899, two petitions concerning the Waihua purchase were sent to Parliament. One, from Winiata Te Rito and one other, concerned a burial place and a reserve on the block. The other petition, from Wi Te Kahu and others, sought the payment of further moneys owed on the purchase. These two petitions obviously closely resembled the two 1899 petitions of Wi Te Kahu concerning the Mohaka purchase, which we have outlined above. Te Kahu's complaint about the non-payment of purchase moneys was identical in each instance. The Government's response to Te Rito's petition was that no reserves had been promised in the purchase deed. Locke's erroneous 1888 recollection that no reserves had been promised was also relied upon. The Government's response to Te Kahu's petition was that there was no basis to suggest that the land was not fully paid for. The Native Affairs Committee had no recommendation to make on either petition.¹⁵³

A further petition was received in 1920 from Heremia Maihi and 109 others asking for an inquiry into a block they called Hahanui Rakautihia. The boundaries of this land apparently

150. Transcript 4.23, p 6

151. Weber to Burton, 12 September 1865 (as quoted in doc w4, p 7)

152. Burton to Weber, 2 November 1865 (as quoted in doc w4, p 8)

153. Document M5, pp 11–12

included the Waihua block. The Government's response was that all land within Hahanui Rakautihia had in fact been purchased by the Crown in 1864 and 1865. No further inquiries were made after the petitioners withdrew their petition.¹⁵⁴

In 1940, a petition was filed by Te Rauna Hape and 139 others concerning the prices paid for blocks purchased by McLean and Locke in northern Hawke's Bay in 1864 and 1865. The petitioners argued that, among other things, the price paid for Waihua, '1/5d an acre', was particularly low. They pointed to the 'very large differences between what the Government paid the Maoris, and what, within a short space of time afterwards, the Government sold these lands [for], [to] show that the Maoris did not get anything near a fair deal'. Finally, the petitioners pointed to Normanby's instructions to Hobson to treat with Maori in 'good faith', to obtain 'fair and equal contracts', and to ensure Maori land sellers did not become the 'ignorant and unintentional authors of injuries to themselves'. They claimed that all these instructions had been breached in the 1864 and 1865 purchases.¹⁵⁵

The chief surveyor in Napier reported that the figure of one shilling fivepence per acre in fact compared quite favourably with other Hawke's Bay purchases of the 1860s and 1870s. He also commented:

(1) that in 1864 these lands possessed only a nominal value, and the original owners were paid in accordance with the values fixed at that time. (2) The Government took the responsibility of the disposal of these lands, and the sales extended over a number of years. (3) The Government bore a large share of the cost in the development of a district which at that time was only in a pioneering condition . . .

The chief surveyor concluded that there was 'nothing to show that the Government violated either the letter or the spirit of Lord Normanby's instructions as claimed in . . . [the] petition'.¹⁵⁶

The Native Affairs Committee referred the petition to the Native Minister for his consideration. His department prepared a report for him on the matter, which reiterated the chief surveyor's comments. It also included a quotation from the report of Judge Maning, one of the members of the 1873 Hawke's Bay Native Lands Alienation Commission, which said that, so long as a transaction was clearly understood and agreed:

. . . I do not think the seller should be given any exceptional advantage in endeavouring now, after years have passed, during which the purchaser has been in undisturbed possession, to shake the title of the purchaser of the land merely because he, the seller, now thinks he might have made a better bargain . . .

The Minister decided that no action should be taken.¹⁵⁷

154. Document M5, pp 12–13

155. Petition of Te Rauna Hape and 139 others, 15 January 1941 (as quoted in doc M5, pp 13–14)

156. Chief surveyor, Napier, to Under-Secretary for Lands, 30 June 1941 (as quoted in doc M5, pp 14–15)

157. Document M5, p 16. Maning's full statement appears at AJHR, 1873, G-7, p 43.

In 1945, a similar petition was sent to Parliament by Te Rauna Hape and 52 others. The Native Affairs Committee referred it to the Government for consideration. The Native Department reported to its Minister that the petition was the same as the previous one, but added that it could possibly be ‘considered for reference to the proposed Commission’. Alexander said that he did not know what happened subsequently, nor what the proposed commission was.¹⁵⁸ It seems unlikely that it was the royal commission appointed to inquire into the 1946 petition concerning the Mohaka block, because that petition was received some months after the Crown’s consideration of the 1945 Waihua petition. In any case, there was no further inquiry into the Waihua transaction.

11.7 LEGAL SUBMISSIONS ON THE WAIHUA TRANSACTION

11.7.1 Claimant submissions

Claimant counsel argued that, like the Mohaka transaction in 1851, the Waihua transaction was not a sale. He maintained that Ngati Pahauwera sold the Waihua block in 1865 as ‘a gesture confirming its loyalty to the Crown and its ongoing relationship or alliance’. However, he was critical of the Crown in the following respects:

- ▶ only one small reserve was provided, and it was alienated in 1873;
- ▶ the Crown wrongly included 1152 acres within the block to the south of the Waihua River; and
- ▶ when Ngati Pahauwera protested about this error, and the Crown identified the anomaly, it did nothing to rectify the matter.

In light of all this, said counsel, Loveridge was quite correct to describe the transaction as an ‘expensive gesture’ on the part of Ngati Pahauwera.¹⁵⁹

11.7.2 Crown submissions

Crown counsel contended that there was no evidence to suggest that the Waihua transaction of 1865 was anything other than a straightforward sale. The petitions lodged afterwards, for example, were concerned only with the adequacy of the price. Overall, counsel said, the sale process was not rushed and the price and the area to be sold were refined and agreed to. The limiting of reserves to one small section was consistent, he said, with the evidence suggesting that the block did not contain any permanent settlement areas.

Crown counsel did concede, however, that there were ‘problems’ with the south-western boundary and Toha’s reserve. With respect to the former, counsel admitted that the erroneous survey was ‘a departure from the standards of behaviour required of the Crown under the

158. Document M5, pp 16–17

159. Document X30, pp 43–46

11.7.3

Treaty – albeit an unintentional rather than malicious lapse’. On the limited evidence available, counsel also agreed that, when the occasion arose to rectify the matter, the Crown failed to do so, and that such an omission was a breach of the principles of the Treaty. However, counsel made no such concession with respect to Toha’s reserve, noting that the Crown set out to provide land for Toha once it became aware that the promised reserve had not been made.¹⁶⁰

11.7.3 Claimant submissions in reply

Claimant counsel submitted that similar criticisms could be made of the Crown’s analysis of the Waihua transaction to those made of its analysis of the Mohaka purchase. In the Waihua case, he said, there had again been no consideration by Crown counsel of the wider context of Ngati Pahauwera’s pursuit of security as a motive for entering into the transaction. Counsel also claimed that Crown counsel had failed to address the claimants’ argument in respect of Toha’s reserve; namely, that the Crown was responsible for the problems in its granting and ‘ultimately facilitated its alienation’.¹⁶¹

11.8 TRIBUNAL COMMENT

We consider that the Waihua transaction was more than a simple land transfer, in that it was undoubtedly designed to confirm Ngati Pahauwera’s loyalty to the Crown at a time when Tuhoe, for example, had joined the Kingitanga in fighting against the Crown in the Waikato. There is a quantum leap from this point, however, to describe the transaction as either a *tuku* or a treaty. As with the Mohaka transaction, we do not believe that the Waihua vendors considered that the sale could later be repudiated if its ‘conditions’ (such as ensuring Ngati Pahauwera’s security) were not met. Claimant counsel seemed to concede as much in describing the transaction as an ‘expensive gesture’, the implication being that repudiation was not an option. Furthermore, the Waihua transaction was not a political compact in the way that the Mohaka purchase was; the deed was signed by only a quarter of the number who had signed the Mohaka deed, and the transaction took place well after Ngati Pahauwera’s first major engagement with the Crown in 1851.

Despite this, the context of the transaction is once again important when judging subsequent Crown actions. The sale clearly affiliated Ngati Pahauwera to the Crown at a time of war and conflict and was thus more demonstrably a sign of ‘alliance’ (in the military sense) than either the Ahuriri or the Mohaka transaction. Claimant counsel was right, we believe, to highlight as background the fact that the Crown was seeking clear expressions of ‘loyalty’ in

160. Document x55, pp 24–25

161. Document y6, p 8

northern Hawke's Bay through a series of land purchases around Wairoa. What it meant, we believe, is that the Crown had made an even greater commitment to safeguard Ngati Pahauwera in the use and enjoyment of their remaining lands.

With respect to the terms and conditions of the Waihua transaction itself, we have a similar view to that expressed regarding the reserves in the Mohaka transaction: that is to say, reserving one small ferry reserve of three acres for Toha out of a block of some 21,000 acres (and failing even to do that properly) was not sufficiently protective of Ngati Pahauwera's interests. Regardless of whether or not permanently occupied kainga existed on the block, the reservation of sufficient areas to enable the sellers to participate in the growing colonial economy should have been an object in the minds of the purchase officials. What it meant was that the Crown had purchased over 100,000 acres from Ngati Pahauwera in two separate transactions in 1851 and 1865 and had reserved to the vendors little more than 100 acres, all of which was quickly alienated in turn. Ngati Pahauwera would have greatly benefited in the years to come from having reserved lands to reoccupy within the large area purchased by the Crown. We are not saying that officials should have been able to predict the future – only that they should have been much more proactive in safeguarding Ngati Pahauwera's interests.

The Crown's failure to ensure that the survey of the Waihua block's south-western boundary complied with the description in the deed is inexcusable. Crown counsel conceded that the survey error was a departure from the standards of behaviour required from the Crown under the Treaty but stressed that the error was inadvertent. We are less inclined to be so generous in our interpretation. In fixing the boundary on nearby hills as he did, the surveyor would have known that the boundary line was at odds with that agreed upon in the deed. He dutifully reported the situation to his superiors and thus, in 1865, an opportunity for remedial action already existed. That nothing was done at the time by way of further survey work or consultation with Ngati Pahauwera is unacceptable. In 1888, as Crown counsel further conceded, another opportunity existed to correct the situation, but nothing was done.

We note that Toro Waaka, on behalf of Ngati Pahauwera, recently applied to the Maori Land Court for such land within that 1152 acres that is now Crown land to be made Maori freehold land. Judge Patrick Savage dismissed the application for the technical reason that title to the land has been through such a 'chain of ownership' that it could not now be made Maori freehold land. The Crown reserved its position in regard to the block because it argued that the matter would be settled as part of the larger claims. Judge Savage reminded the Crown, however, that 'to fail to settle what appears to be an obvious Treaty breach in a timely way can itself be a breach of the principles of the Treaty of Waitangi'.¹⁶²

Finally, we need briefly to note once more that the 21,000-acre estimate of the block's size was very low. We acknowledge that nineteenth-century survey estimates were often rough calculations and produced indicative acreages only. However, it is noteworthy in this case

162. Rotorua Maori Land Court minute book 271, 25 March 2003, pp 234–236

because McLean promised the Waihua vendors more than the initial offer of £800 for approximately 12,000 acres, 'if the extent of the land *when properly examined* should warrant it' (emphasis added). It is a moot point whether this 'proper' examination took place.

11.9 FINDINGS

We find that the Crown, in its dealings over the Mohaka and Waihua blocks and their reserves, breached the principles of the Treaty of Waitangi. We find that Ngati Pahauwera were prejudiced thereby.

More specifically, and with respect to the Mohaka transaction, we find that:

- (a) As with the Ahuriri and other transactions, the Crown impressed upon the Mohaka sellers the advantages to be gained from the sale of land for Pakeha settlement. And, also as at Ahuriri, the transaction was a major political compact for Ngati Pahauwera. However, no town was promised, and on the whole these assurances of future benefits were on a much lesser scale than those made by McLean at Ahuriri.
- (b) The Crown, for its part, was not bonded to ensure Ngati Pahauwera prosperity as a result of the transaction. As Crown counsel acknowledged, however, the Crown carried obligations to Ngati Pahauwera as a result of the transaction, regardless of how it is viewed. We consider that later Crown acts and omissions with respect to Ngati Pahauwera can and should be judged by the standards envisaged in the Mohaka transaction. Where the Crown failed to act in Ngati Pahauwera's interests, it breached not only the Treaty guarantee of protection but also the spirit of the original compact.
- (c) As we said with regard to Ahuriri, inadequate areas were reserved for Maori use and occupation at Mohaka, irrespective of arguments about the 'real reserve' lying to the north and south of the purchased area. This is particularly so because the Crown already fully intended to acquire as much of this 'real reserve' as possible. Indeed, only one small reserve was set aside, and a request for another was not acted upon. The lack of reserves within the block eventually impacted upon the vendors' ability to share in and prosper from the new economy. In this regard, the Crown was in breach of the duty of active protection, the principle of mutual benefit, and the Maori right to development.
- (d) No protection mechanism was put in place to ensure Ngati Pahauwera's continuing use and control of their one small reserve. While the Te Heru o Tureia reserve was provided for in the 1851 deed, it was never even surveyed. When it was included in a Crown pastoral lease to Philip Dolbel, friction between him and the Maori occupants of the reserve was resolved by the Crown purchasing it for £100 in 1859 from only 11 people (compared with 297 signatories to the Mohaka deed). This was done apparently without consultation with the actual Maori occupants of the reserve itself. This

was a singular failure of the Crown to protect Ngati Pahauwera's interests and their wahi tapu. As Crown counsel conceded, the way the matter was handled reflected badly on the Crown. We find that the Crown thus breached the duties of consultation and active protection.

- (e) The price paid for the Mohaka block was also low. At the time, the Crown justified this by saying that, if the sellers considered the payment low, they should bear in mind the economic advantages that having Pakeha settlers in their midst would bring. But, as we shall see, Ngati Pahauwera did not receive these advantages, and with hindsight they evidently felt aggrieved that they had not enjoyed many benefits from Pakeha settlement. McLean took advantage of Ngati Pahauwera's strong desire to have Pakeha settlers come to Mohaka and presented the purchase price as a fait accompli. This was a clear breach of the duty to act reasonably and in good faith.

With respect to the Waihua transaction, we find that:

- (a) The purchase was more than a simple transfer of land because it was negotiated in the context of war and divided loyalties, and Ngati Pahauwera were anxious to demonstrate their loyalty to the Crown. The transfer itself was not contested, but some aspects of the transaction were disputed.
- (b) There may be room for doubt that the price was fair since the block's estimated size was clearly too low and McLean had promised a payment that reflected the acreage revealed upon a proper survey. Dissatisfaction over the price was certainly demonstrated in later petitions. While nineteenth-century surveys were often inaccurate, the Crown now has the information before it to make amends by way of compensation.
- (c) The Crown assumed title to 1152 acres without making payments to, or obtaining the agreement of, the owners, and it did nothing to rectify matters when twice presented with the opportunity to do so. The Crown's failure to remedy this injustice is inexcusable and is a serious breach of the principles of good faith and redress embodied in the Treaty. Well over a century later, the Crown has the opportunity now to rectify this matter and restore its honour.
- (d) No reserves were provided for in the Waihua deed. Although McLean promised to grant Toha a three-acre ferry reserve, no such reserve was ever formally set aside. Instead, the land was occupied by a Pakeha settler, and Toha was persuaded to exchange his interest for a town section in Wairoa. The Crown's failure to secure title to Toha's reserve and its failure to provide any other reserves for Maori use and occupation are breaches of the Crown's Treaty obligation to protect Maori interests and to facilitate the Maori right to development.

CHAPTER 12

THE NATIVE LAND COURT AT MOHAKA, 1868–1910

12.1 INTRODUCTION

When the Native Land Court began its investigation of title to the remaining Mohaka lands in 1868, most of Ngati Pahauwera were clustered in kainga on the flats bordering the north bank of the Mohaka River between Raupunga and the river mouth. There were a few outlying kainga, but the leading chief, Paora Rerepu, had encouraged his people to cluster together for security in the unsettled period of warfare in the 1860s. There was also an Anglican church there, because Ngati Pahauwera had long since embraced Christianity.

This chapter provides an outline of Native Land Court operations on Mohaka lands. The first hearings were held at Wairoa in September 1868, but the inland blocks were not investigated before 1875 (map 43). While the initial Native Land Court hearings were apparently amicable, later court proceedings became increasingly contentious. We outline in the several block histories the arguments, the rehearings, and the numerous partitions that led to the leasing or sale of some blocks and the fragmentation of titles and ownership of the lands still in Ngati Pahauwera ownership in 1910.

The Native Land Court began its operations against the background of warfare on the East Coast of the North Island, triggered, according to James Belich, by the killing of the missionary Carl Völkner at Opotiki on 2 March 1865 and the arrival of Pai Marire emissaries at around the same time. Belich described the fighting not so much as a war but as a ‘complicated series of intersecting conflicts’.¹ Outbreaks occurred north of Gisborne, where Ngati Porou fought a civil war between June and October 1865, and the eastern Bay of Plenty, where colonial units and pro-Government Te Arawa and Whanganui Maori attacked Pai Marire adherents and anyone thought to be implicated in the killings of Völkner and Fulloon. The fighting spread to Poverty Bay in November 1865, where the ‘Hauhau rebels’ of the Rongowhakaata and Aitanga-a-Mahaki tribes soon surrendered to the colonial and pro-Government Ngati Porou forces. Amongst those exiled to the Chathams for their part in this ‘rebellion’ was, as we related in chapter 7, Te Kooti Arikirangi Te Turuki of Rongowhakaata.

Again, to repeat events narrated in chapter 7, the fighting in turn spread to Wairoa in northern Hawke’s Bay in December 1865 and January 1866. There the Pai Marire adherents, led by

1. James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland: Auckland University Press, 1986), p 208



Fig 26: The lower Mohaka Valley. Photograph by Evelyn Stokes.

Te Waru Tamatea, fought against Ngati Kahungunu, including Ngati Pahauwera, led by Kopu Parapara and Ihaka Whanga, who were loyal to the Government. The kawatanga forces, assisted by colonial troops and Ngati Porou, prevailed.² This fighting led directly to the Wairoa land confiscation, when lands were placed under the East Coast Land Titles Investigation Act 1866 and Maori were awarded title to them by the Native Land Court once it was satisfied that they had not engaged in ‘rebellion’. Lands placed under the Act included Ngati Pahauwera lands north of 39° south latitude.³ However, because Ngati Pahauwera had obviously demonstrated that they were not in rebellion, their lands were not affected by this Act. From 1868 on, the titles to their remaining lands were investigated by the Native Land Court. Ngati Pahauwera were also affected by the Mohaka–Waikare confiscation of 12 January 1867, which took in lands in which they had some interests to the south (see p 359).

In 1868, Te Kooti escaped from the Chathams, and in April 1869, he led a force that attacked both Ngati Pahauwera and Pakeha settlers at Mohaka, killing over 60 people, as we shall see.

2. Belich, p 210; doc J30, p 61

3. Document J30, pp 61–63



12.2 THE NATIVE LAND COURT HEARINGS, 1868

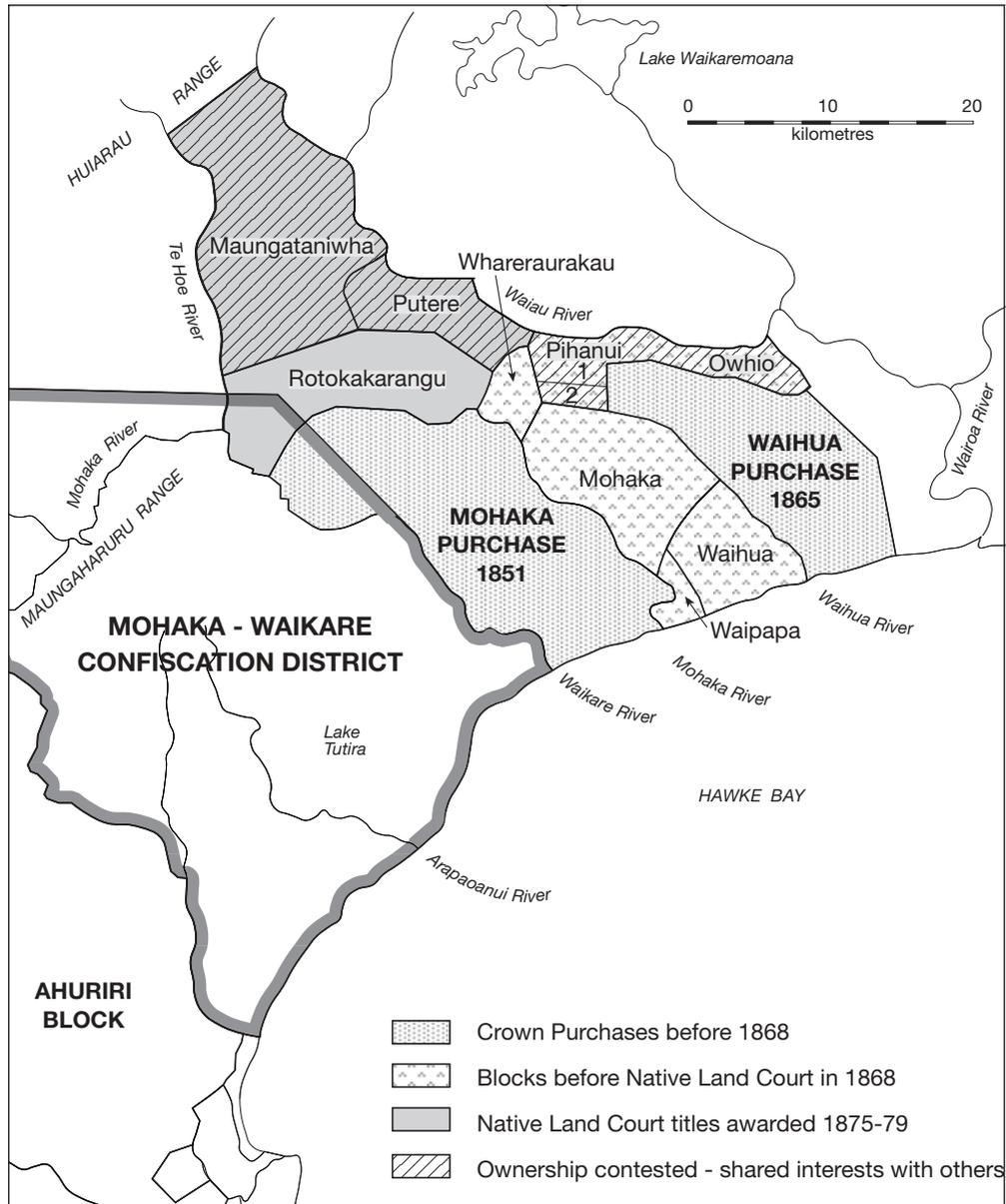
Over a few days in September 1868, the Native Land Court at Wairoa, with Judge Monro sitting, investigated titles for eight blocks between the Mohaka and Waiau Rivers:

Date title created	Block	Minute book reference
17 September	Mohaka	Wairoa minute book 1/45–50
	Waipapa	Wairoa minute book 1/51
	Waihua 1	
19 September	Waihua 2	Wairoa minute book 1/52–56
	Whareraurakau	Wairoa minute book 1/56–58
	Pihanui 1	Wairoa minute book 1/63–65
	Pihanui 2	Wairoa minute book 1/65–67
21 September	Owhio	Wairoa minute book 1/72–73

Details of titles for eight blocks between the Mohaka and Waiau Rivers

The short time span and the small space given to recording the evidence and lists of owners in the court's minute book suggest that the investigation was cursory.⁴

4. See also transcript 4.23, p 5



Map 43: Ngati Pahauwera's lands in the Native Land Court

The first blocks to be dealt with by the court were Mohaka, Waipapa, Waihua, and Whareraurakau, which had been surveyed in preparation for the hearings. For each block, not only was Rerepu the applicant, but he also conducted the case and was the principal witness. He claimed all four blocks for Ngati Pahauwera by descent from Kahungunu. As George Thomson pointed out, this 'avoided the question of the relative interests of those descending from Kahutapere, Tureia, Kaunohoana and Kurahikakawa, in the fifth generation from Kahungunu'. Thomson argued that this very avoidance may have led to the 'later

wrangling' when the relative interests of the blocks' owners came to be determined in court.⁵ Fergus Sinclair, however, thought that Rerepu's choice of Kahungunu as 'an ancestor common to all the owners' was probably an 'act of diplomacy', which carefully left the 'divisive issue of which hapu owned pieces of the block' for another occasion.⁶ David Alexander also saw it as an 'inclusive' gesture.⁷

Monro's awards of title – made the same day the evidence was heard – were straightforward endorsements, without inquiry, of those 10 'owners' put forward by Rerepu for Crown grants. While title was not disputed in court, and Rerepu had informed the judge that the people had arranged among themselves the names of the grantees and the registered owners, Loveridge described the adjudication as 'superficial' and Sinclair observed that it was 'a simple affair'.⁸ All the blocks, except for Waipapa, were leased to Pakeha runholders in the 1870s.

Rerepu had also applied for an investigation of title to the Pihanui block, on behalf of Ngati Pahauwera, but another application was lodged on behalf of fellow Ngati Kahungunu hapu from Wairoa. The matter was settled out of court and an agreement was reached that there would be a division of the land: Pihanui 1 would be for the Wairoa people, Pihanui 2 for Ngati Pahauwera. The applicant for the Owhio block was Toha Rahurahu, on behalf of the Pakatote hapu. Again, the court did not investigate any evidence of other interests in the blocks. By 1870, one John Kinross had bought Owhio and Pihanui 1 outright and had purchased seven of the nine shares in Pihanui 2 (the final two being acquired in 1882).⁹

In summary, the eight blocks were awarded in September 1868 under the Native Lands Act 1867:

Block	Area (acres)	Number of owners in title	Memorial*	Date of lease	Date of sale
Mohaka	24,507	10	121 names	1873	—
Waipapa	1290	10	11 hapu	—	—
Waihua 1	6820	10	8 hapu	1870	—
Waihua 2	2400	10	9 hapu	1870	—
Whareraurakau	3310	10	2 hapu	1879	—
Pihanui 1	6061	10	—	—	1870
Pihanui 2	1331	9	—	—	1870
Owhio	5983	5	—	—	1869

* Under section 17 Native Lands Act 1867

Blocks awarded in September 1868 under the Native Lands Act 1867

5. Document A29, p 32

6. Document C5, p 36

7. Transcript 4.23, p 5

8. Document J30, p 77; doc C5, p 34

9. Document J30, pp 88–89

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12.2

All these titles were issued under the ‘10-owner rule’, which we have already commented on in chapter 6, in regard to the Te Pahou and Petane blocks. Under section 17 of the Native Lands Act 1867, the Native Land Court was required to list the names of ‘all the persons interested’ in a memorial, which was to be held with the court title awarding the land to 10 or fewer ‘owners’. The 121 persons on the memorial for the Mohaka block were duly listed in the Wairoa minute book. No other ‘persons interested’ were listed for the Pihanui and Owaho blocks (although no doubt there were some), presumably because there was already some agreement that these blocks were to be sold.

In the memorials for the Waipapa, Waihua 1 and 2, and Whareraurakau blocks, no individual names were listed but a number of hapu were:

Hapu	Waipapa	Waihua 1	Waihua 2	Whareraurakau
Ngati Pahauwera	x	x	x	x
Ngati Kura	x	x	—	—
Ngati Ruakohatu	x	x	x	—
Ngati Paekea	x	—	—	—
Ngati Kapukapu	x	x	—	—
Ngati Te Huki	x	x	—	—
Ngati Paroa	x	—	—	—
Ngati Matengahuru	x	—	—	—
Ngati Kapekape	x	—	—	—
Ngati Purua	x	—	—	—
Ngati Hineku	x	—	—	—
Ngai Taumau	—	x	—	—
Ngai Te Honomokai	—	x	x	—
Ngai Tahirao	—	x	—	—
Ngati Rahui	—	—	x	—
Ngati Popoio	—	—	x	—
Ngati Irirangi	—	—	x	—
Ngati Rangihaerekau	—	—	x	—
Ngati Hinekino	—	—	x	—
Ngati Hinekete	—	—	x	—
Ngai Te Iriwhata	—	—	—	x
Total	11	8	9	2

Hapu listed in memorials for the Waipapa, Waihua 1 and 2, and Whareraurakau blocks

The inclusion of some hapu to the exclusion of others was subsequently contested. The court did not record any evidence on how these names were decided – it simply accepted the statement of Rerepu. It is clear, however, that listing the hapu only in a memorial did not fully comply with the requirements of section 17. We outline the subsequent protests, petitions, and Native Land Court actions on these blocks under their respective headings later. Meanwhile, the Mohaka community, Maori and Pakeha alike, were caught up in the military campaigns in pursuit of Te Kooti.

12.3 TE KOOTI'S ATTACK ON MOHAKA, 1869

As noted above, in 1865 Te Kooti was taken prisoner and sent to the Chatham Islands. However, in July 1868, he captured a supply ship and, along with the other prisoners from the East Coast fighting and the captives from Omarunui (see ch7), sailed it back to the mainland. Upon his return, the colonial forces, which included a contingent of Ngati Pahauwera, attempted to stop him reaching the fastness of the Urewera. They were unsuccessful, and, in November 1868, Te Kooti retaliated for both his pursuit and his earlier treatment, raiding Poverty Bay and killing around 50 Maori and 30 Europeans. He then retreated into the hinterland and took up a defensive position at Ngatapa Pa. Ngati Pahauwera mobilised all their available men to take part in his pursuit, with FE Hamlin – on McLean's instruction – organising a contingent of 65 men to join those Ngati Pahauwera already in the field.¹⁰ Such was Ngati Pahauwera's commitment to the cause, however, that they left their own kainga vulnerable to a surprise attack. McLean wrote to Major Charles Lambert at Wairoa on 30 November 1868:

In the event of any attack being attempted by the enemy on our frontier, I consider the Mohaka just as likely to be the first point of assault as the Wairoa. Therefore it will be desirable not to remove any natives from that quarter, without first intimating to me, the cause or necessity for such a step, except in case of great emergency, when immediate intimation is to be forwarded here.

A few days later, on 4 December, McLean drew Lambert's attention to 'the very small force at Mohaka'. After observing that not more than half of the Maori were armed, McLean reported that, 'Should the enemy decide upon attacking weak positions, I have been informed that the Mohaka would be one of the first.' McLean therefore thought it 'scarcely prudent' to allow Hamlin's 65 recruits to leave, at least for the time being.¹¹

Ngatapa was captured by Whitmore and his forces in January 1869, but Te Kooti and his remaining followers escaped, retreating deep into the Urewera. At that point, a general relaxation of defensive precautions ensued, with the early-warning picket line along the Mohaka River being abandoned by the end of the month. However, Ngati Pahauwera remained in the field at Wairoa, and the large Government ammunition reserve stored under a house at Te Huki Pa in Mohaka was guarded by only a few able-bodied men. This was to be the enticement for Te Kooti, who was by now short of arms and ammunition.¹² Revenge was also undoubtedly part of his motivation, given the role Ngati Kahungunu had played in the campaign against him in 1868. Furthermore, amongst his party were a significant number of Tuhoe and Ngati Hineuru, who had old scores to settle with Ngati Pahauwera.¹³

10. Document J30, p 67

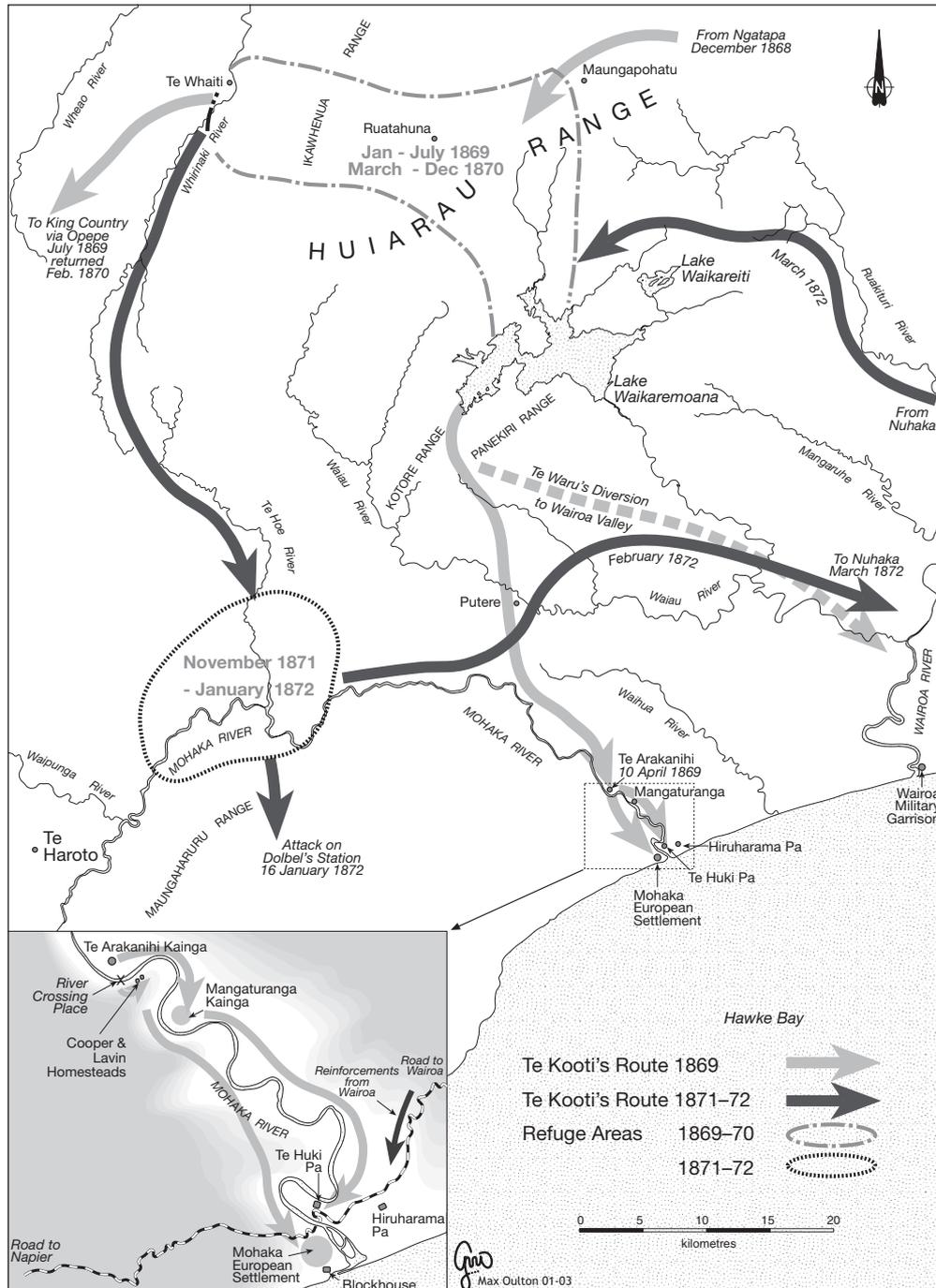
11. McLean papers, 30 November, 4 December 1868 (as quoted in doc A29, p 20)

12. Document J30, p 68

13. Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki* (Auckland: Auckland University Press, 1995), pp 160, 162

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12.3



Map 44: Te Kooti's attack on Mohaka

Te Kooti's movements following his retreat from Ngatapa are shown in map 44. In early April 1869, Te Waru Tamatea led a raid on the upper Wairoa. The Ngati Kahungunu contingent there, which included some Ngati Pahauwera, responded in force. This raid was, however, simply a diversion, and while it attracted all the attention, Te Kooti took his opportunity

and descended from the Urewera mountains to Te Arakanihi, a kainga by the crossing place on the Mohaka River near Raupunga. On 10 April, Te Kooti's force attacked the kainga, killing at least 31 Ngati Pahauwera, including many women and children. The attackers then swept down both banks of the river, killing more Ngati Pahauwera at Mangaturanga and a number of Europeans at the Mohaka settlement on the south bank of the river mouth. The Ngati Pahauwera survivors were driven into two pa, Te Huki and Hiruharama. There, they were besieged over night but were offered the chance of being spared if they surrendered in the morning. Despite some serious misgivings, the decision was made to surrender. However, for some unknown reason, when the gates at Te Huki were opened, Heta Te Wainohu of Ngati Pahauwera fired upon Te Kooti's men, who returned fire and killed another 26 people, mainly women and children. Te Kooti also secured enough ammunition from the pa to attack Hiruharama, where he believed the main ammunition reserve was located.¹⁴

Te Kooti then attacked Hiruharama, but he made his retreat as Ngati Pahauwera reinforcements began to arrive from Wairoa in response to an urgent message. The sudden explosion of the buried ammunition reserve at Te Huki, when the house above it caught fire, rendered any further attack on Hiruharama pointless. In all, nearly 60 Maori and seven Europeans were killed in the attack. As Loveridge pointed out, many more must have been wounded, and the majority of Ngati Pahauwera's stock was looted and their crops destroyed.¹⁵ Te Kooti regrouped his forces, now replenished with some ammunition and supplies, at Mangaturanga on 12 April, and they retreated to Waikaremoana along the same route that they had come in on. In May 1869, Government forces invaded the Urewera in pursuit of Te Kooti, who retreated further west to Te Whaiti before heading south to Heruiwi, west across the Kaingaroa Plains to Opepe, and south of Lake Taupo to the King Country.

After the attack at Mohaka, the Wairoa district military commander, Captain Harvey Spiller, wrote to Lambert saying that he had in fact warned against just such a diversion and attack:

At the time the late expedition left the Wairoa to attack Te Waru, I informed you that I had written to Mr Worgan, requesting him to direct the chiefs in command to use every precaution by placing scouts well in rear, taking advantage of commanding positions, as it was likely that Te Waru would make a false stand at Tukarangi or Te Kiwi, in order to afford Te Kooti an opportunity of advancing unobserved on one of our settlements. It is strange that this prediction should have turned out correct. Knowing that our Native allies were the only people we had to call upon for assistance if required, I took every precaution, and directed Mr Worgan on no account to allow all the Natives to accompany the expedition to Waikari-Moana.¹⁶

14. Document J30, pp 68–69; see also Binney, pp 160–161

15. Document J30, p 69

16. Harvey Spiller to Lambert, 14 April 1869, AJHR, 1869, A-3(c), p 11

12.3.1 The aftermath of the raid

Ngati Pahauwera were in a parlous state after the raid by Te Kooti, which the claimants referred to as the ‘Mohaka massacre’. But the Crown’s treatment of them in their plight was described by Loveridge as ‘not exactly overwhelming in its generosity’, and by Thomson as ‘worse than cautious’.¹⁷ The Government agent in Napier, Henry Russell, told the Defence Minister, Colonel Theodore Haultain, that Ngati Pahauwera urgently needed food and clothing ‘as they have literally lost everything’. He forwarded a list of items recommended for them by Captains Tanner and Towgood, ‘who saw the havoc with their own eyes’.¹⁸ Haultain agreed, gruffly adding, however, that ‘neither boots nor tweed shirts are necessities’. He went on: ‘You can also issue them some food, but do not let Natives suppose we can compensate them for all losses; theirs is considered a special case.’¹⁹ Six months later, Locke reported:

At Mohaka I found the Natives at work endeavouring to repair as far as possible the fearful damages done by the Hau Haus, as the enemy destroyed all their crops; they have nothing to eat, and are obliged to borrow seeds from other tribes for this year’s planting. I told them I should ask the Government to send them a few potatoes for seed, which I trust will be allowed.²⁰

At the start of 1870, surveyor George Worgan reported that Te Kooti’s attack had ‘disorganised and scattered the Natives belonging to that District’. Not only that, but it had also ‘completely put a stop to the progress of European settlement’.²¹ According to Lambert, all the Europeans’ houses at Mohaka had been razed to the ground.²² In 1871, Ngati Pahauwera were apparently occupying and cultivating only a small area of land around the river mouth, and Worgan described their condition as ‘little removed from that of paupers’.²³

As for Te Kooti, early in 1870, he returned to the Urewera and, for the next two years, he remained on the run. In October 1871, he moved from Te Whaiti into the upper Mohaka and remained in the area around Te Hoe through November until January 1872. In a raid on Dolbel’s sheep station at Maungaharuru on 16 January 1872, Te Kooti took supplies, arms, and ammunition and burnt a house and the woolshed.²⁴ All the time, he was pursued by Government forces but eluded capture. In April 1872, having sought food supplies north of Nuhaka, Te Kooti again retreated, via Ruatahuna and Heruiwi, to the King Country, where he remained with Ngati Maniapoto until he was pardoned in 1883.

17. Document 130, p 69; doc A29, p 20

18. Russell to Haultain, 19 April 1869, AJHR, 1869, A-3(c), p 12

19. Haultain to Russell, 19 April 1869, AJHR, 1869, A-3(c), p 13

20. Locke to Ormond, October 1869 (as quoted in doc A29, p 21)

21. Worgan to chief judge, Native Land Court, 17 January 1870 (as quoted in doc M3, p 7)

22. Lambert to Haultain, 15 April 1869, AJHR, 1869, A-3(c), p 11

23. Still unpaid for his survey of the Mohaka block two years previously, Worgan was now opportunistically hoping to arrange the sale of land around Te Arakanihi, figuring that it was ‘land which by native custom would never be occupied again by the same tribe’: see doc C5, pp 42–44.

24. Binney, p 262

Loveridge stressed the financial cost to Ngati Pahauwera of the war against Te Kooti. He pointed to evidence that those involved in the expedition against Te Waru in May 1869 may not always have been paid and, if they were, that their pay was low and they were poorly rationed. What is clear, however, is that, in spite of their impoverishment after the Mohaka attack, Ngati Pahauwera launched themselves into pursuing Te Kooti with even more vigour than before. McLean wrote in March 1870 that he was ‘gratified to find that the Mohaka Natives display so much zeal in the present movements against Te Kooti’.²⁵ This was hardly surprising, since at that time Ngati Pahauwera had a greater vendetta against Te Kooti than they ever had before. But this undoubtedly put yet more financial strain upon them, particularly at a time when they were facing the costs of putting their lands through the Native Land Court and rebuilding their shattered existence.²⁶

12.3.2 Claimant submissions

Claimant counsel submitted that the responsibility for the Mohaka attack ‘must rest entirely with the Crown’. After all, he said, Ngati Pahauwera had placed their forces at the Crown’s disposal, and thus the Crown was liable for ascertaining that ‘all reasonable steps were taken to ensure the safety of Ngati Pahauwera, and indeed the fledgling [European] settlements that Ngati Pahauwera were encouraging’. Counsel submitted that the tragedy had been allowed to occur even after McLean had delivered his frank warning to the military commander in Wairoa pointing out Mohaka’s vulnerability. After the raid, the assistance the Crown gave to Ngati Pahauwera was niggardly, and the setback to the Mohaka settler community was an example of the Crown’s ‘continued non fulfillment of the promise of development’. All in all, counsel contended, the Crown had been ‘clearly in breach of its duties to Ngati Pahauwera and must be held accountable’.²⁷

12.3.3 Crown submissions

Crown counsel essentially (although not explicitly) acknowledged the Crown’s culpability in the Mohaka tragedy when he conceded that the incident ‘could probably have been avoided if earlier levels of defence preparedness had remained in place’. He also said that ‘McLean’s warning to not leave Mohaka vulnerable appears not to have been heeded by military decision-makers.’ Counsel was quick to add, however, that ‘the result could have been considerably worse’ but for the ‘quick action’ taken by the Government forces in coming to the aid of ‘the besieged people at Mohaka’. He further disputed the suggestion that Ngati Pahauwera

25. McLean to Ormond, 19 March 1870 (as quoted in doc J30, p 70)

26. Document J30, p 70; see also doc A29, p 21

27. Document x30, pp 49–51

12.3.4

were not being paid for their military service to the Crown at the time. With respect to the aftermath of the attack, counsel submitted that the Crown ‘immediately’ provided the survivors with rations and then followed this up with a further grant of food and clothing.²⁸

12.3.4 Claimant submissions in reply

Counsel for the claimants welcomed Crown counsel’s concession that the loss of life at Mohaka was avoidable but noted that, in an oral comment not contained within his written closing submissions, Crown counsel had attempted to make the point that Te Kooti himself was ultimately responsible for the deaths. Claimant counsel submitted that Te Kooti’s role should not cloud the issue of the Crown’s responsibility. The threat posed by Te Kooti was well known, he said, and ‘the massacre’ would not have occurred but for ‘the Crown’s failure to protect Ngati Pahauwera’.²⁹

12.3.5 Tribunal comment

It is probably fair to say that military incompetence was more to blame for the loss of life at Mohaka than any callous indifference of the colonial officials or the military. However, the lack of an adequate defence accorded the community (both Maori and Pakeha) was unacceptable when there is evidence that military commanders were well aware of the potential dangers and such a large ammunition reserve was stored at Te Huki Pa.

After the attack, the Government offered Ngati Pahauwera minimal assistance and, when asked for supplies to assist the desperate survivors, Haultain’s response was grudging. There was an element of condescension in such reactions. Haultain seems to have implied that Ngati Pahauwera would try to profit from the situation, and he insisted that there were limits as to what the Crown would give them by way of compensation. We consider that such a response reflected poorly on the Crown’s sense of its obligations toward its loyal Ngati Pahauwera subjects.

We are in no doubt that the raid was singularly devastating for Ngati Pahauwera, not only because so many of their people were killed but also because their crops and stock were destroyed and their Pakeha neighbours were killed or driven away. Our findings on the raid come at section 12.13. The remnant Ngati Pahauwera clustered together on papakainga land in the Waipapa block while their remaining lands were alienated by way of sales or leases through the 1870s. We now consider each of these blocks.

28. Document x55, pp 29–30

29. Document y6, pp 9–10

12.4 THE MOHAKA BLOCK

On 7 January 1868, Paora Rerepu lodged an application for an investigation of title for the Mohaka block by the Native Land Court on behalf of Ngati Pahauwera, Ngati Paroa, Ngati Kapekape, and some unnamed others. The block, which lay to the north of the Mohaka River, was found upon initial survey to contain 22,355 acres, but a later survey done for a subdivision in 1884 recalculated the total area at 24,507 acres.³⁰ Since 1866, Rerepu had been leasing the land to John Sim, the Mohaka publican, for £70 per annum.³¹ However, this arrangement was opposed by Henare Pakura and others, and so it was agreed that the block should be surveyed in order to ascertain each faction's share.³² The survey was carried out by George Worgan, who charged £230. According to Rewi Poukupenga's recollection in 1896, once the survey had been completed Rerepu suggested that the land be brought before the Native Land Court.³³ This was done, and 10 grantees were put in the Mohaka title by Judge Monro, with another 121 individuals listed in a memorial under section 17 of the Native Lands Act 1867.

It seems that the disruption caused by Te Kooti's raid in 1869 prevented the negotiation of a new lease of the block to Sim. However, in 1872 the whole of the block was leased to John Sutherland for 21 years, with Sutherland paying Worgan the still outstanding survey charge of £230.³⁴ In 1896, Wepiha Te Wainohu told the Native Land Court that the land had been let to Sutherland, 'to pay for the survey'.³⁵ Under the terms of the lease, Sutherland was to pay £100 per annum for the first 10 years and £150 per annum for the following 11 years.

In 1873, the Hawke's Bay Native Lands Alienation Commission received two complaints from persons desiring 'a share in the grant'.³⁶ One was from Karaitiana Taungakore and Renata Tupuna, neither of whom was among the 10 grantees who had signed the leasing agreement for the block. While the commission did not investigate this complaint, it is likely that Tupuna's grievance related to an application he had made in 1875 for a subdivision of the block. In that application, he said that 'we have no power over our portions of the land'.³⁷ Sinclair commented that Taungakore's and Tupuna's concerns 'may well have been related to the distribution of the rent'.³⁸ Sutherland himself testified in 1896 that he 'paid all rent to Paora Rerepu' and that 'During the period of my lease no one came forward to object to my payments to Paora only'.³⁹

30. Document M3, p 14. This block should not to be confused with the area purchased by the Crown south of the Mohaka River in 1851.

31. Ibid, p 3

32. Document C5, pp 30–31; doc M3, pp 3–4

33. Document M3, p 6

34. Ibid, p 8

35. Ibid p 9; doc A29, p 33

36. C W Richmond, 'Report of the Hawke's Bay Native Lands Alienation Commission', 31 July 1873, AJHR, 1873, G-7, p 13 (cited in doc A29, p 34)

37. Document A29, p 34

38. Document C5, pp 54–55

39. Document M3, p 10

Tupuna's 1875 application had a sequel a year later, in October 1876. The Native Land Court, which was sitting at Mahia, received a list of 40 names for the 8000-acre western portion of the block, which was to be known as Mohaka 1. (The larger eastern section was to become Mohaka 2.) Rihimona (one of the 10 original grantees, none of whom was among the 40 names on the list) informed the court that the grantees had approved of the subdivision and that it was 'a just thing for all parties concerned'. As Rihimona put it, 'The ten grantees have had the handling of the rent hitherto, and now the registered owners should have their right recognised.' The court agreed to the subdivision and granted ownership of Mohaka 1 to Karaitiana Taungakore, Toha Rahurahu, and 39 others.⁴⁰ However, because only 15 of the 40 individuals had been named on the list of owners in 1868, the judge declined to sign the order, and the matter remained unresolved.⁴¹

In 1884, further attempts to partition the block succeeded, with the court agreeing to split the block into the 7807-acre Mohaka 1 block (the inland part), which had 57 owners, and the 16,700-acre 'Mohaka' block (later known as Mohaka 2), which had 113 owners. Sutherland's rent was divided on a proportional basis between the two blocks, both of which remained inalienable by sale.⁴² The survey of the subdivision led to a combined lien against Mohaka 1 and 2 of £169.⁴³

In 1889, Toha applied to the Native Land Court for a partition of the interest to which he had succeeded in Mohaka 2. No objection to his evidence was made, and he was awarded Mohaka 2A of 160 acres, with the remaining 16,540 acres to be known as Mohaka 2B.⁴⁴ However, the court was bound by law to determine the relative interests of each owner of every block brought before it, and thus the relative interests of all the owners of Mohaka 2B were determined, despite their overwhelming absence from court.⁴⁵ (It seems that Toha himself advised the court of the relative interests.⁴⁶) The majority of the owners were surprised to find that this had happened, and in 1894 Wepiha Wainohu and 52 others petitioned Parliament on the basis that the 1889 subdivision:

was heard before the Native Land Court at Wairoa, upon the application of a single individual, without due notice to the persons permanently resident (proper owners) upon the Block, all of whom knew nothing of the action of the said individual, which action would according to Maori law or custom have been regarded as having been taken with intent to defraud.

The said individual's permanent residence is at Wairoa and he owed his inclusion in the Mohaka Block to the rightful owners of Mohaka.

40. Document M3, pp 10–12

41. *Ibid*, p 13

42. Document A29, p 34; doc C5, p 56; doc M3, pp 17–19

43. Document M3, p 14

44. *Ibid*, p 32

45. Apparently only Toha and two others attended the subdivision application: see doc A29, p 36.

46. This is stated in Wi Te Kahu's petition of 1899: see doc M3, pp 41–42.

If our land had been near Wairoa we would no doubt have found out what this person was doing.

What he did was to reduce the shares of the principal owners in the Block to about half, and he did many other objectionable things besides.

The petitioners requested a rehearing. They explained that they had not appealed within the requisite three months because they had only just learnt of the effect of the 1889 subdivision. They added that ‘The person who has caused all this trouble is Toha Rahurahu.’⁴⁷

The matter was reported on by Judge Walter Gudgeon in November 1894:

The simple fact appears to be this, that in March 1889 the Mohaka people did not know that it was compulsory upon the Court to define relative interests in every block brought before it, and for this reason they remained away and have probably suffered in consequence.

Gudgeon added that there was a chance that Toha had misled the other owners, for there was ‘no doubt that he acted in a very similar manner in the Putere case’ (see below). All in all, and notwithstanding the ‘extraordinary want of veracity which is characteristic of the Maori’, Gudgeon concluded that ‘in this case it seems to me that they have suffered injury’.⁴⁸ The chief judge reported to the Government that the matter was probably as Gudgeon had said, but he observed that legislation would first be needed for the matter to be reopened.⁴⁹

Inaction on the Government’s part led to further petitions in 1896 and 1899. Finally, section 32 of the Native Land Claims Adjustment and Laws Amendment Act 1901 invalidated all the previous partitions of the block and allowed for a rehearing into the relative interests of the owners, thus effectively returning the title of the Mohaka block to the state it was in after the original investigation of title in 1868. Section 32 required any new orders to be ‘final and conclusive, and not subject to review by the Appellate Court’.⁵⁰

In 1896, the Native Land Court agreed to the partition of Mohaka 1 amongst several hapu after a contested hearing. The decision was unsuccessfully appealed by Rewi Poukupaenga in 1899. However, as Sinclair noted, these events were relatively inconsequential, since the partition was never carried into effect and was soon rendered void by the 1901 legislation.⁵¹

A panel of two judges eventually held a long and complex inquiry into the Mohaka block title in 1903. Sinclair argued that, by the turn of the century, the satisfactory subdivision of land had become a matter of paramount importance, because sheep farming ‘had become the great desideratum’ and required a more defined form of land ownership. He cited Wepiha Te Wainohu’s statement to the Native Land Court that ‘It was in consequence of people putting

47. ‘Petition of Wepiha Wainohu and 52 Others’, 1 October 1894 (as quoted in doc M3, p 38, and in doc A29, p 36)

48. Judge Gudgeon, Wairoa, to chief judge, Native Land Court, 2 November 1894 (as quoted in doc M3, pp 39–40)

49. As cited in doc M3, p 40

50. Document M3, p 42

51. Document C5, pp 57–59

sheep on the land that the hapu assembled to fix the boundaries.' Several witnesses thought that the subdivisions should follow ancestral boundary lines between the hapu, but as Sinclair put it, Wi Te Kahu was concerned that attempts were being made to 'clothe these putative boundaries with an aura of antiquity' merely for the sake of the sheep runs.⁵²

In its judgment, the Native Land Court noted the 'very lengthy' and contradictory evidence presented, which it ascribed to the way in which the owners (who were all related) had formed nine separate parties for the proceedings. By way of example, the judges mentioned that 'the brothers Wepiha Te Wainohu and Pitiera, the sisters Mihi Te Rina and Mere Peka, and the cousins Wi Te Kahu and Itereama Te Whareroa, are all in different cases and apparently working against each other!' In these circumstances, the court felt compelled, 'in defining the interest of each individual owner, to rely chiefly on recent occupation and the relative positions of the owners'.⁵³ It decided to allocate the 190 owners 3390 shares worth 7¹/₇ acres each.⁵⁴

The effect of the 1903 rehearing was the partitioning of the Mohaka block into a total of 55 subdivisions, but the resulting blocks were not finally surveyed until 1910. According to Thomson, the final cost of these subdivisional surveys was £1300.⁵⁵

12.5 THE WAIPAPA BLOCK

The Waipapa block (1290 acres) was also awarded in 1868 to 10 grantees, but instead of listing the names of 'all the persons interested', as had happened with the Mohaka block, the names of 11 hapu were listed in the memorial as having interests under section 17 of the Native Lands Act 1867. Given the further requirement under section 17 for a majority of those persons to give approval for subdivisions and sales, this determination necessarily led to significant complications in the years ahead.

Sinclair conceded that the Native Land Court had 'erred' in failing to record the owners' names for Waipapa, but he speculated that this 'may, in fact, have been how the Mohaka people wished the grant to be arranged'. He noted that Waipapa was the centre of trade and the location of the church, and it was thus the land on which Paora Rerepu had drawn all his people together to live.⁵⁶ Indeed, Rerepu asked the court to make the land inalienable by sale, explaining that 'it is our residence and our cultivations and school'.⁵⁷ In the circumstances, Sinclair suggested, it may have been 'inadvisable to debate the proprietary rights of each group'. 'Disharmony over such questions would have jeopardised Paora's vision of his

52. See doc c5, pp 60–63

53. Document M4, p 7

54. *Ibid*, p 8

55. Document A29, p 85; see also doc M4, pp 7–8; doc J30 pp 81–82

56. Document c5, pp 93–94

57. Document J30, p 77



Fig 28: Round meeting house near the Hiruharama Pa, Mohaka, circa 1870. Photographer unknown. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (Williams collection, F-29587-½).

people's future.'⁵⁸ Indeed, much of the later acrimony over the ownership of the Waipapa block seems to have been related to the relative rights of, on the one hand, the customary owners and, on the other, those who had congregated there in more recent times.

Rerepu was able to prevent the subdivision of the block during his lifetime, but after he died its disputed partition became inevitable. Thomas Lambert described Rerepu as having held 'absolute sway over the lives, liberties and property' of both his people and the Europeans resident in the district.⁵⁹ A witness told the court in 1899 that Rerepu was 'a man of great knowledge and mana and dealt fairly by his hapu' and that he 'kept his people round him till he died'.⁶⁰ This was in spite of the tragedies that struck Rerepu – his son was amongst those killed at Te Huki Pa, and Lambert wrote that 'the massacre of his people . . . turned his brain'.⁶¹ In 1873, Rerepu was described by Samuel Locke as 'quite mad', and he was taken to Napier to recover.⁶² In 1885, however, he was charged with 'lunacy' and committed to the Napier Asylum.⁶³ Rerepu died in the mid-1890s.

58. Document C5, p 94

59. Thomas Lambert, *The Story of Old Wairoa and the East Coast District, North Island New Zealand* (Auckland: Reed Books, 1998) (fp 1925), p 153

60. Document C5, p 88

61. Lambert, p 564

62. See doc C5, p 42

63. *Hawke's Bay Herald*, 5, 10 February 1885 (<http://homepages.paradise.net.nz/barbreg/hb1885.html>, downloaded 8 April 2004)

In 1876, a partition was sought subdividing the block into about 700 acres for Ngati Kura and 500 acres for Ngati Pahauwera, but nothing came of it.⁶⁴ According to a witness before the court in 1899, Rerepu was ‘angry when he heard of it [the dividing line]’.⁶⁵ In 1896, however, the partitioning of the block was again before the court, which decided to ascertain who exactly were ‘all the members of these [11] hapus who are entitled to this land’. The court stressed the difficulty it faced in determining ownership 28 years after the original investigation of title, and it noted that a list of owners would have been produced had ‘the Native Land Court done its duty’ under section 17 of the Act of 1867.⁶⁶

The 1896 decision was appealed. It was reheard in 1899, when the Native Appellate Court drew up a new list of owners and defined their relative interests. A further appeal in 1903 was unsuccessful. Upon application in 1906, the Native Land Court partitioned the block into numerous sections. The applicants stated: ‘We shall ask for numerous subdivisions, so that each man or family will know his own piece. We especially need this as we are being summoned under the Noxious Weeds Act. Some 200 Natives live on this land.’⁶⁷ The outcome was that the block was divided into 171 lots, and these lots were surveyed in 1913.⁶⁸

12.6 THE WAIHUA BLOCK

The Waihua block was divided by the Native Land Court into two titles in 1868: Waihua 1 (6820 acres) and Waihua 2 (2400 acres).⁶⁹ Both blocks were dealt with in much the same way as the Waipapa block, with each having 10 grantees on the title. The memorial for Waihua 1 listed eight hapu as having interests and that for Waihua 2 listed nine. Rerepu told the court that a dispute had existed with Ngati Kura but that this had been resolved. Three hapu were put into both titles: Ngati Pahauwera, Ngati Ruakohatu, and Ngai Te Honomokai.⁷⁰

Both blocks were leased to Henderson Twigg in 1870 for 21 years, Waihua 1 for £75 per annum and Waihua 2 for £30 per annum. The owners were allowed to reside on and cultivate ‘small portions’ of Waihua 2.⁷¹ The lease was taken over in about 1875 by one James Hassell, but a dispute arose between him and the owners over payment for the improvements to the property. In 1885, Hassell sold the lease to a John Glendinning, and in 1886 Glendinning

64. See doc A29, pp 47, 49

65. Document A29, p 47

66. *Ibid*, p 49

67. *Ibid*, pp 49–50

68. *Ibid*, p 50

69. Document M5, pp 18, 52. This Waihua block should not be confused with the block of the same name already purchased by the Crown.

70. *Ibid*, pp 18–19, 52

71. In document M5, p 21, the rental figure for Waihua 1 is £25. However, and while a copy of the lease was not provided in supporting papers by either witness, we think that, circumstantially, Mr Thomson’s figure seems more probable: doc A29, p 39.

agreed with the owners to waive any payment for improvements at the expiration of the lease in exchange for the lease being extended for a further 21 years. It seems that the annual rental paid by Glendinning was £53 for each block.⁷²

Under the Native Lands Frauds Prevention Act 1870, trust commissioners were appointed to scrutinise the alienation (by both sale and lease) of Maori land to ensure that no fraud was perpetrated on the land's owners. The commissioners also had to be satisfied that the vendors or lessors had sufficient other land with which to support themselves. In 1886, when Glendinning's lease came before him, trust commissioner Captain George Preece certified it but decided to withhold the payment of rental income until the blocks had been subdivided. Unaware of this, Rerepu wrote to Preece in 1890 asking why the owners had received no money for the lease. Preece replied that the Public Trustee held the money and would do so until the Native Land Court had subdivided the land, at which time the rental would be paid out to 'those the money belongs to'.⁷³

Rerepu in turn wrote a letter of protest to the Native Minister, stating that the lease to Glendinning would never have been made if it had been known that 'the blocks in question had to be subdivided before any rent would be paid over to us'. He characterised Preece's actions in withholding the money as 'neither more nor less than intimidation', and said they were 'quite impossible for any Maori to fathom'. He also argued that Preece should not have endorsed the lease if there was anything improper about it.⁷⁴ As a result of Rerepu's complaint, the under-secretary of the Native Department sought a full report from Preece on the matter.

Preece explained that, when the lease came before him in 1886, he had established that the 10 grantees held the land on behalf of several hapu. He wrote: 'The ten Grantees having always received the rent under the old lease and spent it themselves, I considered it advisable that this should continue no longer.' He had therefore granted the certificate on the condition that the lessee pay the money directly to the Public Trustee, who would hold it until the blocks' owners had been determined. Preece added that this determination had already taken place but that an appeal had meant that the matter had to be reheard. He noted that he had in fact paid one year's rent – £106 – to several of the grantees to cover their expenses in putting the matter before the court.⁷⁵

Several attempts were made to have the blocks subdivided. Toha's application to partition both Waihua 1 and Waihua 2 in 1876 was granted, but the court order seems to have lapsed. A number of other applications to partition the blocks between 1875 and 1884 were dismissed. In 1888, subdivision applications for both blocks were heard, with Toha acting as a conductor for the applicants. The court agreed to partition Waihua 1 into four parts and Waihua 2 into

72. Document A29, pp 39, 42; see also Paora Rerepu to Native Minister, 7 April 1890 (as quoted in doc M5, pp 24–25)

73. Standing magistrate to Paora Rerepu, 19 March 1890 (as quoted in doc M5, pp 23–24)

74. Paora Rerepu to Native Minister, 7 April 1890 (as quoted in doc M5, pp 24–25)

75. Resident magistrate, Napier, to under-secretary, Native Department, 28 April 1890 (as quoted in doc M5, pp 25–26)

three, to be shared variously amongst individuals of the hapu named on the 1868 title.⁷⁶ The divisions were objected to strenuously by Eparaima Purei, however, who sought a rehearing for Waihua 1. Wepiha Te Wainohu did likewise, citing the wrongful inclusion of owners with no ancestral links to the block and inadequate notice of the hearing (this being the reason he did not attend). A rehearing was agreed to and took place in September 1890, at which Waihua 1 was repartitioned into eight lots and new names were added to the titles. Toha also sought a rehearing of Waihua 2, and this was also held in September 1890. In that case, the court did not alter the subdivisions, although it did amend the lists of owners.⁷⁷

In theory, this should have meant that the accrued rental moneys – which totalled £459 by April 1891⁷⁸ – could now be paid over to the owners. The matter was passed to the resident magistrate in Gisborne, James Booth, because Preece had left his position in Napier. Booth requested compensation from the Government to cover his expenses in travelling to Mohaka to distribute the money, but this was rejected. Instead, the Public Trustee told him that, in the Native Minister's opinion, 'if it were known you had the money in hand, the natives would very soon find their way to you'.⁷⁹ Booth therefore decided that 'they [the owners] must come to me for it when I visit Wairoa',⁸⁰ but a year later he had still not paid out any money. In explanation, he told the Public Trustee that he had:

Repeatedly made endeavours to pay this money without success, the original grantees, who signed the lease, considering themselves entitled to the money, and the other owners being in their power are afraid to come forward and take their money.⁸¹

He explained to the Public Trustee that, though he had 'Repeatedly made endeavours to pay this money', the owners felt intimidated by the original grantees (who considered themselves entitled to the money) and were 'afraid to come forward and take [it]'.⁸²

Further attempts to pay out the accrued rental were unsuccessful. Toha, for one, opposed the transfer of any moneys, since he first wanted to have the lists of owners altered.⁸²

In 1898, Wepiha Te Wainohu and 98 others petitioned Parliament about the lease. The petitioners argued that it had been drawn up before the passage of the Native Equitable Owners Act 1886 and, therefore, before 'the inclusion of the whole of the people in the titles'. As a result of the money needing to be shared more widely, they seemed to imply, the total rent of £106 per annum was 'most inadequate'. Furthermore, they emphasised that they had 'never yet proceeded to draw any of the rent money'.⁸³ The Under-Secretary for Justice commented

76. Document M5, pp 22–23, 37–41, 56–60

77. Ibid, pp 42–44, 60

78. Ibid, p 28

79. Public Trustee to resident magistrate, Gisborne, 24 October 1891 (as quoted in doc M5, pp 29–30)

80. Resident magistrate, Gisborne, to clerk, Resident Magistrate's Court, Wairoa, 5 November 1891 (as quoted in doc M5, p 30)

81. Resident magistrate, Gisborne, to Public Trustee, 30 September 1892 (as quoted in doc M5, p 31)

82. See doc M5, p 32

83. Petition 248/1898 of Wepiha Te Wainohu and 98 others (as quoted in doc M5, pp 33–34)

that the grievance appeared to be that the rent was inadequate but that, since the lease had been willingly entered into and approved by the trust commissioner, there was little that could be done.⁸⁴ By 1900, the accumulated rentals had grown to £1300, and the Native Minister favoured the resolution of the issue through legislation.⁸⁵ Finally, in September 1902, an official from the Public Trust Office paid over some £1500 to about 400 owners in Wairoa.⁸⁶

This was far from the end of the complications in the Waihua block, for the issue of ownership was shortly to be turned on its head. The determination of owners and the partitioning of the blocks in 1890 had not stemmed the flow of applications for the matter to be revisited. In 1894, for example, Toha asked for a reconsideration of the Waihua 2 case, despite having been a successful applicant in the 1890 hearing. The chief judge pronounced himself ‘at a loss’ to understand Toha’s request.⁸⁷ Three other applications to partition ‘Waihua’ and ‘Waihua 1’ (neither of which then existed) were dismissed between 1893 and 1902. In 1903, however, Arapeta Hapuku and 42 others petitioned Parliament asking that all previous partitions of Waihua 1 and 2 be cancelled and that the matter be reopened by the Native Land Court. It seems that the substance of the petitioners’ grievance was that in 1888 and 1890 the court had not properly established the names of the members of the hapu listed on the memorials. In 1904, the Native Affairs Committee recommended that the Government introduce legislation to allow the court to investigate the ownership afresh.⁸⁸

Under section 11 of the Maori Land Claims Adjustment and Laws Amendment Act 1904, a royal commission was appointed to report on Hapuku’s petition and other grievances. The commission felt that the court had done its best in 1888 and 1890 but that ‘the action of the Natives themselves’ had led to considerable confusion. It recommended that, as had occurred with the Mohaka block, the clock effectively be turned back to 1868, with the Native Land Court determining the names of the owners and ruling on partitions from scratch.⁸⁹ Parliament subsequently gave effect to this advice in section 6 of the Maori Land Claims Adjustment and Laws Amendment Act 1906.

By 1908, the investigation of the ownership of the Waihua blocks had still not taken place, and the Glendinning lease – which had expired in 1907 – could not therefore be renewed. Commissioners Stout and Ngata wrote to the Native Minister in February 1908 asking him to expedite the matter.⁹⁰ The hearing finally took place in August and September 1908 and lasted for six successive weeks. In short, the Native Land Court first had to determine the relative interests of the listed hapu. It then had to determine which families from the hapu were

84. Under-Secretary for Justice to chairman, Native Affairs Committee, 7 September 1898 (as quoted in doc M5, p 34)

85. As cited in doc M5, p 35

86. *New Zealand Times*, 25 September 1902 (as quoted in doc A29, p 44)

87. Chief Judge, Native Land Court, to Under-Secretary for Justice, 13 September 1894 (as quoted in doc M5, p 61)

88. Document M5, pp 47–49

89. George Davy, David Scannell, and Apirana Ngata, ‘Report of the Royal Commission Appointed Under Section 11 of the Maori Land Claims and Laws Amendment Act, 1904’, AJHR, 1905, G-1, p 7 (doc M5, p 50)

90. Commissioners Stout and Ngata to Native Minister, 8 February 1908 (as cited in doc M5, p 66)

entitled to the blocks in 1868. The relative interests of those families could then be determined by ascertaining the number of adults who were alive in 1868, because that would provide a basis for the allocation of shares to successors.⁹¹

The main point of dispute with regard to Waihua 1, the court observed, was between the 'N'Pahauwera hapu and its branches on the one side, and the N'Kura hapu and its branches on the other'. The court felt that Ngati Pahauwera was the predominant hapu, that its influence extended over all the blocks, and that Rerepu, its chief, was a man of 'very great' mana and the 'tino rangatira of all the hapus'. However, the court found that Ngati Kura had been the chief occupiers of the Waihua block, and that Ngati Pahauwera's occupation had been principally confined to the Mohaka and Waipapa blocks. Weighing all these factors up, the court determined the Ngati Pahauwera hapu interest in Waihua 1 to be less than a third.⁹² In Waihua 2, the nine registered hapu were effectively split into three separate parties, and the court determined varying interests for each of them.⁹³

Perhaps predictably, given the litigious history attaching to the Waihua blocks, the Native Land Court rulings were quickly followed by seven appeals. All were to be heard at Wairoa in June 1910. Some were dismissed, but others were not ready to proceed and were adjourned to a hearing in Hastings later the same month. In the end, one modification of the titles was allowed, whereby the Ngati Kura party ceded 440 acres of Waihua 1 and 160 acres of Waihua 2 to the Ngati Pahauwera party, in recognition of the mana of Paora Rerepu.⁹⁴ Once the owners of the Waihua blocks had finally been determined, the court ordered that they be paid back rent totalling almost £3200, less 'reasonable expenses' for the parties' lawyers.⁹⁵ In the years ahead, of course, the subdivisions had to be surveyed, with the owners incurring hundreds of pounds in costs.⁹⁶

12.7 THE WHARERAURAKAU BLOCK

The Whareraurakau block (3310 acres) was determined by the Native Land Court in September 1868 in much the same manner as the other blocks. And, as in the other cases, Rerepu said that there were houses and cultivations on the land, and that its ownership was not in dispute. Once more the court made an order in favour of 10 grantees, and the two hapu named by Rerepu, Ngati Pahauwera, and Ngai Te Iriwhata, were listed on the memorial. The court stated that the grantees would hold the land 'in trust' for these hapu. Curiously, four of the grantees belonged to neither hapu on the title.⁹⁷

91. Document M5, pp 68–69

92. Ibid, pp 74–76

93. Ibid, pp 78–79

94. Ibid, pp 80–88

95. Document A29, p 45

96. Ibid, p 86

97. Document C5, p 89; doc A29, p 51; doc M6, p 53

It seems that the block was intended to be sold to John Kinross, and by January 1870, a transaction to this effect had been completed. However, the sale fell through, and the block was eventually leased in 1879 for 21 years to a John Sutherland, at £30 per annum. Shortly thereafter, Sutherland sublet Whareraurakau and 8000 acres of his Mohaka lease to William Balfour, charging him a £700 premium in the process.⁹⁸ In 1885, Sutherland then claimed that he had bought Whareraurakau from the 10 grantees, who, he understood, were ‘sole owners’, since ‘every member of the two hapus were extinct through Te Kooti’s raid’.⁹⁹ The chief judge was sceptical as to ‘whether or not Te Kooti made such a clean sweep as to leave neither owners or relatives to be their successors where dead’.¹⁰⁰ In the end nothing came of this ‘purchase’. Thomson thought Sutherland’s statement showed him to be either naïve or fraudulent.¹⁰¹

In 1894, Toha, one of the grantees, offered Whareraurakau for sale to the Crown. The fact that the title had two hapu listed rather than all the individual owners meant that the sale could not proceed. Officials therefore encouraged Toha to apply to the Native Land Court for a ruling under section 14(10) of the Native Land Act 1894 as to whether the grantees were sole owners or trustees for a larger body of owners. Misunderstandings and Toha’s death meant that nothing happened until mid-1899, when Arapeta Takahi applied to the court for a ruling.¹⁰²

The Native Land Court finally conducted its inquiry in 1903. It was soon told that four of the original grantees belonged to neither Ngati Pahauwera nor Ngai Te Iriwhata and that the evidence Rerepu had given the court in 1868 as to the hapu rightfully entitled to the block was not correct. But the court’s jurisdiction did not extend beyond ascertaining which members of those two hapu should have been included in the title in 1868. The court felt ‘satisfied’ that other hapu had been wronged by the 1868 decision but did not see how it could act without enabling legislation. However, the Ngati Pahauwera and Ngai Te Iriwhata owners agreed to accommodate the other interests, and the court therefore awarded each of the other four grantees (or their descendants) a minor shareholding in the block.¹⁰³

12.8 THE PIHANUI 1 AND 2 AND OWHIO BLOCKS

The titles to three other blocks in which Ngati Pahauwera had interests – Pihanui 1 and 2 and Owihio – were determined by the Native Land Court in September 1868. The history of these blocks is quite different from that of the four blocks just discussed because no additional

98. Document M6, pp 54–55; doc A29, p 51

99. John Sutherland, Gisborne, to registrar, Native Land Court, Gisborne, 22 May 1885 (as quoted in doc M6, p 55)

100. Chief judge, Native Land Court, to registrar, Native Land Court, Gisborne, 8 June 1885 (as quoted in doc M6, p 56)

101. Document A29, p 51

102. Document, M6, pp 57–59

103. Ibid, pp 59–62; doc A29, pp 51–52

names were listed in memorials. All the titles were issued to 10 or fewer owners, probably because there was already some agreement about the sale of these lands.

12.8.1 The Pihanui blocks

Before the Pihanui blocks were before the Native Land Court, an ownership dispute arose between Ngati Pahauwera and the Wairoa hapu Ngai Te Kapuamototoro. An agreement was reached whereby Ngati Pahauwera would receive the smaller section of the block, Pihanui 2 (1331 acres), and Ngai Te Kapuamototoro the larger area, Pihanui 1 (6061 acres). The court duly made orders in favour of 10 members of Ngai Te Kapuamototoro for Pihanui 1 and nine members of Ngati Pahauwera for Pihanui 2.¹⁰⁴

Surveyor George Worgan then busied himself gaining the signatures of these owners on deeds of sale to John Kinross of Napier. By September 1870, Worgan had gathered the signatures of all 10 owners of Pihanui 1. They agreed to sell the block for the sum of £400, but the sale was not approved by the trust commissioner, Hanson Turton, until 1876, and not registered with the Land Registry until December 1881.¹⁰⁵ For Pihanui 2, Worgan gathered seven signatures on a deed of sale in December 1869 and January 1870. These owners all agreed to sell the block to Kinross for a total of £100. The shares of the remaining two owners were purchased in 1882 for £125 each.¹⁰⁶

12.8.2 The Owio block

Title to the Owio block (found on survey to be 5983 acres) was determined by the Native Land Court on 21 September 1868, two days after it did the same for the Pihanui blocks.¹⁰⁷ This title was also granted without restrictions, with the claimants explaining (as they had for Pihanui 1) that they had sufficient other land to occupy and cultivate. The block was awarded to five individuals, who seem mainly to have been connected to the Ngati Hinemura hapu from the Wairoa area, although Thomson noted that the 'ever present' Toha also made the list.¹⁰⁸

Four owners sold their interests in the block to Kinross in December 1869. A fifth person also signed the deed, but he was in fact the son of one of the owners, his father having died since the block had passed through the court. However, the son's succession was not confirmed until 1884, and it would seem that, at the time of the sale, he had no legal authority to sign the deed.¹⁰⁹

104. Document M7, pp 297–299, 303–305

105. Ibid, pp 300–302

106. Ibid, pp 306–307

107. Ibid, pp 308–310

108. Document A29, p 69. Toha was certainly Ngati Pahauwera, although he may have had strong connections to Wairoa hapu. He lived at Wairoa.

109. Document M7, pp 310–311

12.9 BLOCKS INVESTIGATED UNDER THE NATIVE LAND ACT 1873

The remaining three blocks in which Ngati Pahauwera had interests were all inland hill country. Titles were determined by the Native Land Court under the Native Land Act 1873, which had removed the 10-owner rule and required all persons found to have interests to be listed on the title:

Block	Area (acres)	NLC title	Number of owners	Lease	Sale
Rotokakarangu	19,972	3 November 1875	41	1873	1880
Putere	17,065	5 November 1875	26	1875	—
Maungataniwha	36,140	1 July 1879	7	1879	1883

Blocks investigated under the Native Land Act 1873

The Native Land Court investigation of title in 1875 of both Rotokakarangu and Putere was cursory, with only three pages for each recorded in the minute book.¹¹⁰ There is slightly more space accorded to Maungataniwha, but only seven owners were determined, no doubt because a sale of the block was contemplated.¹¹¹ It is impossible to determine now whether all the interests really were included in the titles.

On 29 October 1875, shortly before Rotokakarangu and Putere passed through the court, large numbers of Tuhoe and Ngati Kahungunu (including some Ngati Pahauwera), along with Crown representatives Locke and Josiah Hamlin, met to discuss some inland blocks that were disputed by the two tribes. The discussion touched upon Rotokakarangu and Putere, although the focus was essentially on four blocks in the upper Wairoa–Waikaremoana district; namely Ruakituri, Taramarama, Tukurangi, and Waiau.¹¹² The Crown wanted to purchase these blocks to defuse the dispute and to facilitate European settlement on Tuhoe borders, thereby promoting greater security in the region. The heated meeting could not reach a compromise and left the matter to the Native Land Court to determine. Subsequently, Tuhoe accepted the £1250 offered by Locke and withdrew their claims.¹¹³

12.9.1 Rotokakarangu

In February 1873, land at Rotokakarangu had already been leased for £100 per annum to Captain Alexander Kennedy, who had been interested in the ‘valuable timber’ there. Kennedy told McLean in November 1874 that he would surrender his lease to the Crown for suitable compensation, which he named as £1000 (the lease allowed for timber-cutting rights, and was

110. Napier Native Land Court minute book 4, 3 October 1875, pp 59–61 (Rotokakarangu), 61–63 (Te Putere)

111. Wairoa Native Land Court minute book 1, 28 June 1879, pp 161–165, 167–168, 197

112. These four blocks lie outside our inquiry boundary.

113. See Anita Miles, *Te Urewera*, Waitangi Tribunal Rangahau Whanui series (working paper: first release), March 1999, pp 208–217; Joy Hippolite, *Wairoa*, Waitangi Tribunal Rangahau Whanui series (working paper: first release), November 1996, pp 40–41; doc c5, p 47

renewable under the same terms once the land had passed through the Native Land Court). Crown purchase agent Samuel Locke professed that he had little knowledge of the block, which he first thought to be as large as 40,000 acres. He recommended that the Government acquire the freehold of the land rather than just Kennedy's leasehold, with Kennedy being compensated for his expenses and paid a commission. McLean approved this course of action in December 1874, and Kennedy agreed to it the following month, eventually naming the sum he would accept as £755 (comprising £555 for his expenses, including rent, and £200 as a payment for himself).¹¹⁴

A survey was then commenced for the purpose of putting the land through the Native Land Court. Kennedy advised the Native Minister in early May 1875 that some of the land's owners had recently offered to sell him the block, and he was confident that 'the purchase could easily be made on low terms'. Locke reported shortly afterwards that the block appeared to contain 30,000 acres, of which 25,000 acres were covered in forest. All in all, he concluded that Kennedy's offer was a good one, and Kennedy was duly paid on 13 May.¹¹⁵ The block was later found on survey to be 19,792 acres.

The Native Land Court inquiry into Rotokakarangu took place on 3 November 1875. While the block was not directly subject to the 'settlement' that Locke reached with Tuhoe, Loveridge pointed out that the resolution of that matter undoubtedly influenced the timing of the block's passage through the court. After minimal inquiry, and with no objection from Tuhoe, the block was awarded to Karaitiana Taungakore's list of 41 owners, which included six minors. A year later, in preparation for the block's sale, the court partitioned 151 acres on the north-eastern boundary of the block for the six minors. This land was called Rotokakarangu 1. The rest of the block, comprising 19,641 acres, remained known as Rotokakarangu.¹¹⁶ Loveridge drew attention to what he described as the inequity of the minors receiving 25 acres each while the 35 adults received 560 acres each.¹¹⁷

With the title confirmed by the court, Crown purchase agent Josiah Hamlin set about collecting signatures on a deed of sale for the block, for which he had offered £2000. Hamlin obtained most signatures in May 1877, and by 1880 only five owners had not signed. In one case, the original owner had died and been succeeded in 1879 by a minor. With the remaining owners unwilling to sell, the Native Minister applied to the Native Land Court in March 1880 for the Crown's share to be awarded and partitioned out. The court sat at Gisborne in August 1880 to hear the application, but since none of the block's grantees was in attendance, land purchase agent Captain Thomas Porter (who had taken over from Hamlin) sought an adjournment, 'to avoid complaint of injustice being done'. At the rescheduled hearing, two of

114. Document C5, pp 45–46; doc M6, pp 6–9

115. Document C5, p 46; doc M6, pp 9–11

116. Document M6, pp 11–12; doc A29, p 54

117. Document J30, p 91

the four adult non-sellers were present, but they sought a further adjournment so that the other two could attend. The court refused and, after hearing evidence that the proposed location of the non-seller block (at the eastern corner) was the best land on the block, it awarded Rotokakarangu 2 (2805 acres) to the five non-sellers. The remaining 16,684 acres were awarded to the Crown.¹¹⁸

In his telegraphed report on the proceedings, Porter wrote that the ‘Rotokakarangu purchase was closed in the NL court yesterday against considerable obstructive opposition of dissentients who attended from Napier to stop case’.¹¹⁹ Because the non-sellers retained a sixth of the block, Hamlin’s original purchase price of £2000 was proportionately reduced to £1746.¹²⁰ The block contained no reserves, although the owners at one point had sought to have an area reserved for them out of their lease to Kennedy.¹²¹ Hamlin was questioned about the lack of reserves by an official in Wellington in September 1876, but his explanation was simply that ‘There are no reserves for Natives in Rotokakarangu block’.¹²² As Alexander put it, ‘this seems to have been a sufficient explanation for the Government officials’.¹²³

12.9.2 Putere

The Native Land Court’s investigation of the Putere block occurred on 5 November 1875, two days after the adjoining Rotokakarangu block was dealt with. Toha handed in a list of owners for the block, which included both members of Ngai Taraparoa (an upper Waiiau hapu with affiliations to Ngati Kahungunu and Tuhoe) and at least eight persons with obvious Mohaka affiliations.¹²⁴ The court awarded title to the 24 owners on Toha’s list, and with the consent of the parties, two others were added during the hearing. After a further survey, the size of the block was shown to be 17,065 acres.¹²⁵

Shortly thereafter, the entire block was leased to Hugh McLean, although the exact terms of the lease are not known.¹²⁶ What followed, according to Loveridge, ‘can only be described as a conspiracy to defraud most of the owners of their property’.¹²⁷ In June 1882, a number of the owners signed a deed that purported to sell the block to McLean for £8625. Using this

118. Document M6, pp 15–18

119. Land purchase officer Porter, Gisborne, to under-secretary, Native Land Purchase Department, 26 September 1880 (as quoted in doc M6, p 19)

120. Document C5, p 49

121. Document M6, pp 7–8

122. Telegram J Hamlin, Napier, to under-secretary, Native Department, 27 September 1876 (doc C5(a), p 713)

123. Document M6, p 15

124. Document J20, p 41. According to Lambert, Elsdon Best listed ‘Ngai-taraparo’ as a hapu of Tuhoe: Lambert, p 82. However, Paora Puketapu told the court in the investigation of title to the Maungataniwha block in 1879 that ‘I belong to Taraparoa hapu of N.Kahungunu tribe’: see doc M7(a), fol G7.

125. Document M7, pp 4–5

126. Mr Alexander was unable to locate it in the course of his research: doc M7, p 6.

127. Document J30 p 91

document, McLean went straight to the Native Land Court to have his interests in the land cut out. His interpreter, Josiah Hamlin, confirmed that he ‘witnessed all the signatures and thoroughly explained it to the Natives’. ‘They understood they were absolutely parting with their interest. The purchase money was paid to them, £8,625.’ Toha confirmed this, stating: ‘I am one of the parties to the deed. I understood all about the deed and we were absolutely parting with our interest in the land. All the purchase money has been paid.’ As a consequence of this testimony, the court split the block into the 4264-acre Putere 1 for the non-sellers and the 12,801-acre Putere for the 19 sellers.¹²⁸

The ‘sale’, however, was little more than a fiction, and Hamlin and Toha had perjured themselves, for no money had been paid over at all. It transpired that what had been signed by the owners was an agreement for McLean to run sheep on the block in partnership with them. Recalling the signing in 1892, Mihaere Puketapu said that the owners had agreed to the partnership proposal because Hamlin had stressed that ‘no evil result would come to us by signing the papers he had. Everything would be for our benefit and the benefit of the pakeha. We agreed as the talk was so nice.’¹²⁹ To make matters worse, Judge Brookfield had allowed the partition in the absence of an actual application for subdivision, and he did not allow for the usual three-month period in which applications for rehearing could be made. These matters were brought to the attention of the chief judge, who nevertheless concluded that Brookfield had been entitled to act in the way that he did.¹³⁰

The ‘deed of purchase’ came before trust commissioner Preece for scrutiny. Preece was told by the owners that this was the first they had heard of the ‘sale’. They advised him that no sale had taken place and that they had never received any money. Preece refused to allow the transaction, and McLean abandoned his claim to have purchased the land. According to Mihaere Puketapu, McLean then went ‘completely mad, going round the town like a lunatic, and he became bankrupt through this’. Indeed, in 1883, McLean had defaulted on a mortgage and his leasehold was purchased at auction by one Murray Roberts, who in 1884 negotiated a new 21-year lease with some of the owners (for Putere only, not Putere 1). Roberts’ terms were £125 per annum for the first 12 years and £200 per annum for the remainder of the lease. Despite these events, the block remained partitioned.¹³¹

Various unsuccessful applications to subdivide the Putere block were made from 1883 to 1886. In 1887, Toha offered to sell his share of the block to the Crown, but his offer was declined. The following year, Toha applied to have the block partitioned, and he was successful in having three blocks of 1743 acres each cut off for himself, Heremia Whakatoko, and Nutana Te Kawe (with each of them to have a third of the shares in each block). These blocks were called Putere B, C, and D, and the balance of 7572 acres (Putere A) was awarded to the

128. Document M7, pp 6–8

129. Ibid, p7

130. Ibid, pp 9–10

131. Ibid, pp 13–15, 17

other owners.¹³² Toha had also succeeded to an interest in the ‘non-seller’ block Putere 1, and at the same time he managed to have 656 acres cut out for himself as Putere 1A.¹³³

The other owners of Putere quickly objected to Toha’s actions. Apirana Taketake, Mihaere Puketapu, and Raharii Puketapu told the Native Land Court that ‘they had been deceived by Toha Rahurahu and others, who had made an arrangement with them and then broken it on coming to court’.¹³⁴ Hoani Te Wainohu and nine others wrote to the court along similar lines.¹³⁵ Paora Puketapu wrote:

We were absent from the hearing of that subdivision as we had discussed the matter and had come to an arrangement, but the arrangement was departed from by Toha Rahurahu and Heremia Whakaatoko, and they alone went to the Court and seized the land.¹³⁶

Judge Wilson reported, a little unsympathetically, that Te Wainohu ‘would not have been deceived’ had he ‘attended to his business’ and been present at the hearing.¹³⁷

The chief judge subsequently ordered a rehearing, which took place in September 1890 at Wairoa. The owners divided into three parties and settled the allocation amongst themselves outside the court. The previous subdivisions were annulled and the block was divided into Putere A (9432 acres at the eastern end) and Putere B (3368 acres). The former was to be shared among 14 owners, the latter among five owners, and all the owners’ shares were equal in size. Two applications for a further rehearing were turned down.¹³⁸

Putere 1, Putere A, and Putere B were further partitioned in the years that followed, and while various blocks were leased, no land was sold until the second decade of the twentieth century.¹³⁹ Many of the subdivisions were contested, and one example might be mentioned here to illustrate Toha’s dealings. In 1894, Toha sought to partition Putere A, and this led to a further dispute between himself and Paora Puketapu, whose rights to the block Toha denied. The Native Land Court found in favour of Puketapu. In doing so, it slated the testimony of Toha and Heremia Whakatoko as ‘utterly unreliable’ and ‘absurd’ and observed that Puketapu was one of the real owners of the block and that those who opposed him had ‘very little claim if any’. Most of Puketapu’s opponents, the court continued, ‘have not lived on the land for two generations and are simply hanging on to the skirts of Nutana [Te Kawe] and others who have a right’.¹⁴⁰

132. *Ibid*, pp 17–18

133. *Ibid*, pp 208–209

134. *Ibid*, p 19

135. Hoani Te Wainohu et al to chief judge, 28 February 1889 (as quoted in doc M7, p 19)

136. Paora Puketapu et al to chief judge, 27 March 1889 (as quoted in doc M7, p 20)

137. Judge JA Wilson to chief judge, 4 April 1889 (as quoted in doc M7, p 21)

138. Document M7, pp 21–24. Upon survey of the partitions, and taking into account deductions for the road that had been formed through the block, the areas of Putere A and B became 9217 and 3314 acres respectively: doc M7, pp 24–27.

139. Document J30, p 92

140. Document M7, p 31

Despite this particular setback, Toha had great success in furthering his claims in the Native Land Court. He was included in almost all of Ngati Pahauwera's land titles, and he acquired many more interests through succeeding to the rights of other owners. He was also able to get himself into the title of several of the seaward blocks returned from the Mohaka–Waikare confiscation district (see sec 8.4). We already know of Toha's efforts to acquire a ferry reserve on the Waihua River (see the previous chapter), but at various times he also worked as a bowman on a whaleboat at Mahia, was the harbour pilot at Wairoa heads, worked as a Native Land Court assessor, and had a small sheep run at Whakamahia.¹⁴¹ According to Thomson, in 1864 District Court clerk James Grindell reported that Toha was 'a very intelligent young man possessing considerable influence among the natives generally in the district. He had some three or four hundred sheep grazing upon the land [near Wairoa]. Grindell also recorded that 'This young man keeps a European shepherd and pays him a regular yearly salary.'¹⁴²

Toha clearly understood the Native Land Court system, and his dealings raised the considerable ire of his relations in both the Mohaka and the Putere blocks. Doubtless a shrewd operator in the court, he was also a Crown ally and a participant in many land transactions, ranging from the sale of Moeangiangi in 1859 through to his attempts to sell Whareraurakau to the Crown in 1894. Thomson drew attention to Toha's activities, as he explained, not to portray him as a 'villain' but to highlight the potential abuses allowed by the Native Land Court system.¹⁴³ Toha's actions in 1888 and 1889, in seeking the subdivision of Putere and Mohaka 2, show the pitfalls of the court's requirement that individual landowners appear and prove their title in court or forfeit their claim.

12.9.3 The Maungataniwha Block

In 1879, the 36,140-acre Maungataniwha block was the last of Ngati Pahauwera's lands to pass through the Native Land Court. Lying between the Te Hoe and Waiiau Rivers north of the Rotokakarangu and Putere blocks, Maungataniwha was the northernmost of their interests. The application for investigation of title was made in 1878 by Toha, who seems to have brought the land before the court because of the intention to lease it to Albert Walker. At the hearing in June 1879, the ownership of the block was disputed once again by Toha and Puketapu. On this occasion, however, Puketapu and Ngai Taraparoa were omitted from the ownership list for the block. Only seven owners were awarded title, among them Toha, Paora Rerepu, Karaitiana Taungakore, Rakena Wi Kaitaia, and Renata Tupuna. The court's decision

141. Lambert, p 371

142. *Hawke's Bay Herald*, 26 November 1864 (as quoted in doc A29, p 80)

143. Document A29, p 81

was objected to at the time by Hare Poututu, but no actual appeal was lodged.¹⁴⁴ In 1890, Mihaera Puketapu sought a reinvestigation of title, but by then it was much too late.¹⁴⁵

The land was duly leased to Walker from September 1879, but soon afterwards Walker informed the court that he had gained an agreement for the sale and purchase of the block. When the sale had not gained the necessary approval by 1881, it was called off. However, in 1882 a sale was arranged to one Robert Macalister, a Wellington accountant, and Walker arranged to transfer his lease to Macalister for £650. The sale was finalised in June and July of 1883. The payment for the block was £2400, of which Toha and Rakena Wi Kaitaia were to receive £700 each, with the other five owners getting £200 each. But the trust commissioner subtracted a total of £841 from this amount and paid it directly to the vendors' creditors. The £841 seems to have included the survey charge for the block, which was £361.¹⁴⁶

12.10 OVERVIEW, 1868–1910

The status of Ngati Pahauwera's lands in 1883 is shown in map 45, which indicates that at that time most of their tribal estate had been alienated by sale or lease. The following table summarises the alienations by sale from 1868 to 1883. It should be noted that no sales occurred between 1883 and 1911.¹⁴⁷

Block	Area (acres)	Sales to Crown	Private	Remaining Maori land
Mohaka	24,507	—	—	24,507
Waipapa	1290	—	—	1290
Waihua 1	6820	—	—	6820
Waihua 2	2400	—	—	2400
Whareraurakau	3310	—	—	3310
Pihanui 1	6061	—	6061	—
Pihanui 2	1331	—	1331	—
Owhio	5983	—	5983	—
Rotokakarangu	19,972	16,684	—	3288
Putere	17,065	—	—	17,065
Maungataniwha	36,140	—	36,140	—
Total	124,879	16,684	49,515	58,680

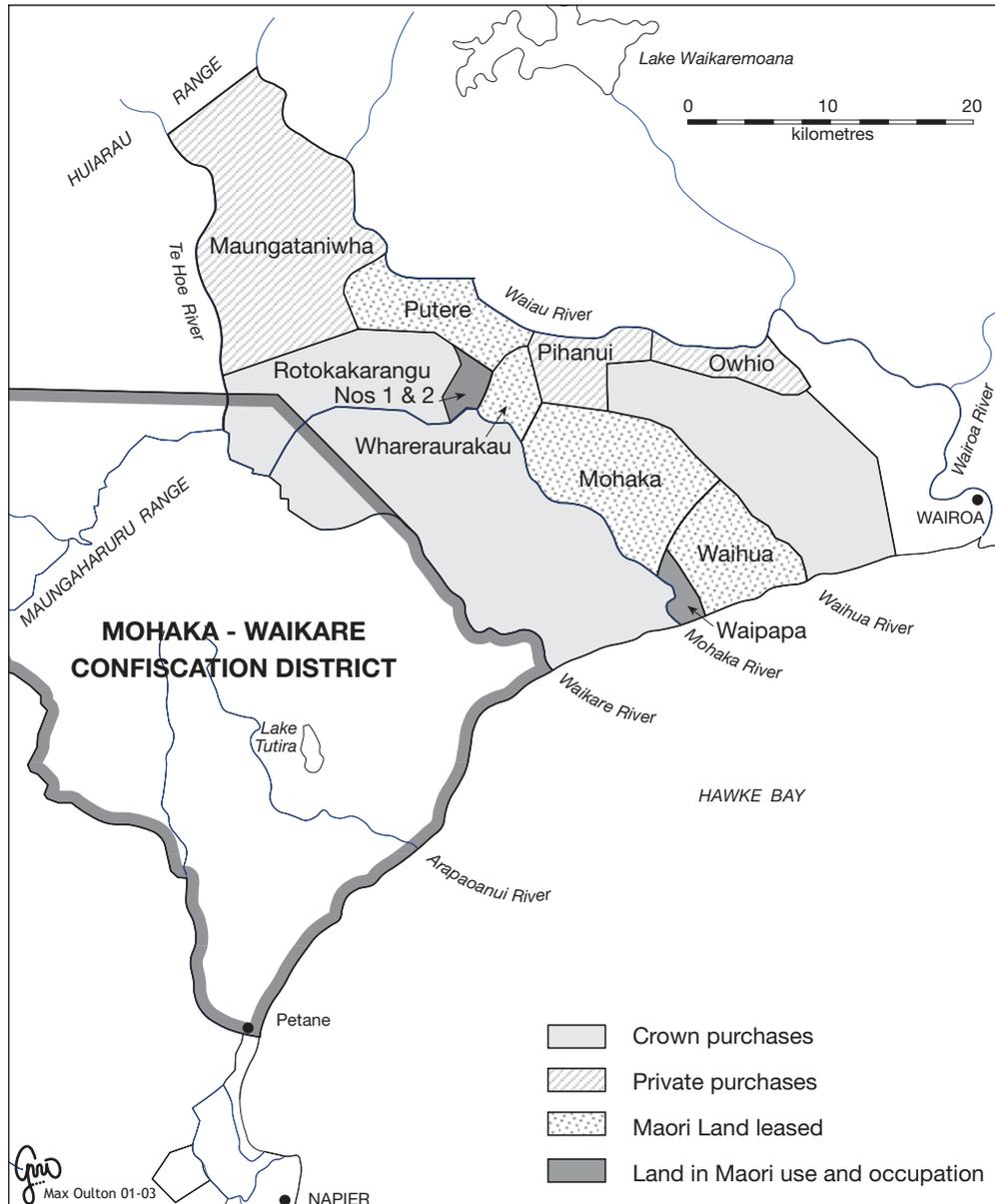
Land alienations, 1868–83

144. Document M7, pp 312–314, 316

145. Document A29, p 71; doc M7, p 320. Mihaera Puketapu is presumably the same person as Mihaere Puketapu; the spelling in the historical record is inconsistent.

146. Document M7, pp 315, 317–319

147. Figures of areas under lease are not included in this table because most lands leased were farmed by the owners at the expiration of the first 21-year terms.



Map 45: Status of lands claimed by Ngati Pahauwera in 1883

Of the land that Ngati Pahauwera still owned in 1865 (after the Crown purchases of some 110,000 acres in Mohaka in 1851 and Waihua in 1865), less than half remained in their hands by 1883. Of the 58,680 acres still nominally in Maori hands, all but 1290 acres in the Waipapa papakainga block and the non-sellers' section of Rotokakarangu had been alienated by way of leases to Pakeha runholders. Thus, by the early years of the twentieth century, Ngati Pahauwera had sold all of their interests in the Pihanui, Owhio, and Maungataniwha blocks and most of their interests in the Rotokakarangu block. They retained full title to only the Mohaka, Waipapa, Waihua, Whareraurakau, and Putere blocks.

Ownership disputes (caused largely by the manner in which title was awarded in 1868) had plagued several blocks:

- ▶ After enabling legislation had been passed, the owners of the Mohaka block were finally determined in 1903 in a full rehearing. The block was further partitioned into 55 new lots, and these were surveyed in 1910.
- ▶ The owners of the Waipapa block were finally determined in 1899. The block was partitioned into 171 lots in 1903, and these were surveyed in 1906.
- ▶ Following a royal commission inquiry in 1904, legislation overturned all the previous partitions of the Waihua 1 and 2 blocks. The blocks' owners were not finally settled until 1910, after appeals from a 1908 rehearing were determined. This uncertainty over the owners led to the Public Trustee holding back the rent payments for the blocks for more than two decades (although one interim payment of £1500 was made in 1902).
- ▶ The owners of the Whareraurakau block were not finally determined until 1903.

In addition, the majority of the Rotokakarangu block had been purchased by the Crown, with small areas remaining in the ownership of non-sellers and minors. The Putere block still remained in Maori ownership, but it had been subjected to an attempted fraudulent purchase, which had led to the first subdivision. There were also disputes between the two main factions of owners, and these led to the overturning of 1888 partitions in 1890.

There is no doubt that the operations of the Native Land Court between 1868 and 1910 had a substantial impact on Ngati Pahauwera. Loveridge and Thomson reflected on the costs that Ngati Pahauwera incurred by putting their lands through the court.¹⁴⁸ First, there were the survey charges. Worgan had charged £492 for surveying the Mohaka, Whareraurakau, Owio, and Pihanui blocks in 1868, and it is likely that Ngati Pahauwera sold blocks like the latter two in order to offset expenses. Henry Ellison's survey charge for Maungataniwha was £361, and this cost was met through the block's sale. Subdivisional surveys were also very expensive. For example, Thomson stated that the eventual cost of surveying the 55 Mohaka partitions ordered in 1903 was £1300.

Secondly, the title disputes that beset several of the blocks had much of their basis in the lack of initial inquiry into the blocks' ownership. This necessitated round after round of rehearings by the Native Land Court, which certainly came at a price. No hearings were held at Mohaka during this entire period, and owners had to travel good distances to Gisborne, Mahia, Wairoa, Napier, or Hastings for sittings of the court. For example, at the 1890 Waihua rehearings at Wairoa, Teka Pakitea said, in the context of not opposing an adjournment, 'I wish the court to know that 50 of N'Pahauwera have been here since the Court opened and have to live at their own expense.'¹⁴⁹

Vigilant attendance at court was obviously in the owners' interests, as evidenced by the problems that Toha's successful subdivision of Putere in 1888 and Mohaka 2 in 1889 caused, in

148. See doc 130, pp 74–83; doc A29, pp 78–88

149. Document A29, p 79

the absence of the bulk of the other owners. The same might be said for the Rotokakarangu non-sellers, or ‘dissentients’, as they were described, who were able to safeguard their interests only by attendance in court.

For the Crown, Sinclair countered that claimants often delayed and prolonged cases ‘so that they could attend race meetings and other public events’. He also argued that ‘the hearings would have been expedited if the parties had adopted a less adversarial stance towards each other’.¹⁵⁰ Sinclair demonstrated a tendency to blame the Maori proprietors rather than the Native Land Court system for the troubles that beset the Ngati Pahauwera blocks. In response to the criticisms levelled by Thomson, Sinclair suggested that the Native Land Court had performed an ‘essentially protective service’ in relation to the Mohaka, Waipapa, and Whareraurakau blocks from 1868 to 1903.¹⁵¹ However, he added, the court ‘could not preserve the quality of relationships between the owners’.¹⁵² Loveridge argued that Sinclair’s stance echoed comments made by some of the judges who heard these cases. One example was the 1905 report of the royal commission that inquired into the Waihua titles, which attributed the ‘considerable confusion’ to ‘the actions of the Natives themselves’.¹⁵³

Sinclair further argued that the 1868 listing of hapu on the titles to Waihua, Whareraurakau, and Waipapa reflected the way in which the Mohaka residents had gone to the Native Land Court that year ‘as a people’ under Paora Rerepu.¹⁵⁴ At the time, Sinclair suggested, hapu relations were ‘amicable’, and the court’s willingness to list hapu names was logical – the court simply could not foresee the ‘acrimonious disputes’ of later years. By the 1890s, Mohaka society was ‘rapidly changing and increasingly materialistic’.¹⁵⁵ Focusing on the attempts to partition the Mohaka block, Sinclair stated that it was clear that the desire for subdivision was being driven by a ‘fundamental economic shift’ away from ‘tribal enterprise’ to ownership and control by individual hapu. That shift related to the introduction of the ‘sheep economy’, which required the land to be viewed in a new way: ‘For the first time, the land itself, as opposed to the mere sites and resources scattered across it, had acquired a material value as property. It was now, for Maori, worth “owning” and could be measured out by the surveyor’s chain and defined.’ The new titles, Sinclair argued, ‘freed owners from the complications which had arisen through their relations with other occupiers’.¹⁵⁶

Loveridge conceded that the drawn-out partitioning of blocks such as Mohaka was fuelled by disputes between the owners, but he felt that it was necessary to look further than societal changes and increasing materialism for an answer as to where the disputes originated. He argued that the quarrels:

150. Document c5, p 92

151. For Thomson’s criticisms, see doc A29, pp 78–88.

152. Document c5, p 97

153. Document J30, pp 80, 82

154. Document c5, p 98

155. *Ibid*, p 94

156. *Ibid*, pp 77, 79–80

were in large measure a consequence of the earlier sales of land to the Crown. In the first place, the 1851 and 1864 sales had caused the displacement of hapu from the south (in particular) and north into the area between the Mohaka and Waihua rivers, where some of the people displaced may not originally have had occupation rights. This, together with the failure of the Land Court in 1868 to come to grips with the problem and clearly identify owners, gave rise to endless altercations.¹⁵⁷

12.11 LEGAL SUBMISSIONS

12.11.1 Claimant submissions

Claimant counsel argued that, by the end of the 1860s, the Crown should have realised that Ngati Pahauwera had no land left to spare. ‘The land remaining’, he said, ‘was rough interior land, essentially valueless for agricultural or pastoral purposes’. But rather than act to repair what was ‘already a breach of [its] protective obligations under the Treaty’, the Crown worsened Ngati Pahauwera’s position by imposing the Native Land Court system and facilitating further land loss. The court system, counsel said, came with crippling expenses, made land alienation inevitable, and subjected what land was left to splintered ownership and disputed titles. In support, counsel quoted the comment of the Mohaka River Tribunal:

The native land legislation and the Native Land Court process largely accomplished what settler governments intended, namely the subdivision and partition of interests which facilitated either Crown and private purchases, or the fragmentation and individualisation of Ngati Pahauwera interests.¹⁵⁸

Counsel added that title to the Waipapa, Waihua 1 and 2, and Whareraurakau blocks was awarded in ‘such an incompetent and negligent manner that members of Ngati Pahauwera spent the next 40 years involved in expensive and disruptive litigation to amend the mistakes of the Court in determining ownership’. He said that Ngati Pahauwera ‘embraced the Native Land Court’, putting blocks through to enable them to be leased to Europeans, but that within 15 years, they had lost more than half the lands left within their control in 1868. Counsel described the alienation of these blocks (Pihanui, Owhio, most of Rotokakarangu, and Maungataniwha) as ‘a huge loss of potential resources’, and he said that the land was ‘sorely missed’ at the turn of the century, when Ngati Pahauwera needed ‘good lands in sufficient quantities’ for sheep farming. He added that the remaining blocks were ‘caught in a form of land tenure which was completely unsuitable for taking part in the developing agricultural economy’.¹⁵⁹ In sum, counsel submitted that:

157. Document J30, p 83

158. Waitangi Tribunal, *Mohaka River Report 1992*, p 48

159. Document X30, pp 55–57

if the Crown had had any serious intention of ensuring that Ngati Pahauwera retained sufficient lands for their present and future requirements then truly protective mechanisms would have been incorporated into the Native Land Court system, such as making lands inalienable from further sale. Instead, further alienation was the result.¹⁶⁰

12.11.2 Crown submissions

Crown counsel agreed that the inclusion of hapu names on the memorials of ownership for the Waihua, Waipapa, and Whareraurakau blocks was not permitted by section 17 of the Native Lands Act 1867, but he submitted that ‘The practical effect of this was to issue a form of tribal title with trustee owners.’ Counsel argued that at the time Ngati Pahauwera had preferred this form of title but that, by the early 1890s, when the first 21-year leases on the blocks expired, ‘changing social organisation’ resulted in them rejecting the ‘hapu or tribal form of title’. By then, owners were seeking the partitioning of their individual interests ‘because of discontentment about distribution of the income by the named owners’. Counsel argued that Ngati Pahauwera had moved well away from the collective approach proposed by Paora Rerepu in 1868 and that this had given rise to the disputes and litigation at the turn of the century. He added:

There is a contradiction in claimant submissions in criticising the Court for not providing a proper vehicle for tribal ownership as well as criticising the Court for, in effect, granting Ngati Pahauwera a form of tribal ownership rather than listing the individual owners in a number of these blocks.¹⁶¹

With respect to the Ngati Pahauwera blocks further inland, Crown counsel submitted that the trust commissioner’s rejection of the attempted Putere block purchase in 1882 was an example of the protection this system offered. He also said that there was no evidence that the 1883 Maungataniwha sale was ‘problematic’. He took issue with the way Loveridge emphasised the block’s size, arguing instead that its ‘topography and location at the margins of the area of influence of Ngati Pahauwera’ meant that its sale would not have significantly affected them. Counsel also felt that, in his calculations about the extent of land loss, Loveridge had tended to ignore the fact that groups other than Ngati Pahauwera held recognised interests in the Putere, Maungataniwha, and Owio blocks.¹⁶²

160. Document x30, p 58

161. Document x55, pp 26–27

162. Ibid, pp 27–28

12.11.3 Claimant submissions in reply

In reply, claimant counsel asserted that the Crown had produced no evidence to back its claim that Ngati Pahauwera's changing social organisation had led to a rejection of a tribal form of land title. Counsel said that the Crown had also failed to acknowledge that there was in fact no legal mechanism for the retention of 'tribal title'. Instead, he submitted, 'the legislation imposed a tenurial revolution upon Ngati Pahauwera, as it did upon Maori throughout the rest of New Zealand, which amounted to an overall attack on tribal title'.

Counsel said that the claimants were not criticising the Native Land Court for awarding a form of tribal title to the Waihua, Waipapa, and Whareraurakau blocks by inserting hapu names on the memorials of ownership, as the Crown had suggested. Rather, he explained, what was being criticised was 'the fact that such a grant was *ultra vires* the legislation', because this had led to 'large amounts of land being tied up in expensive litigation for many years'.¹⁶³

12.12 TRIBUNAL COMMENT

The inequities occasioned by the operation of the Native Land Court have been well documented by many historians and in other Tribunal reports. There is no need for us to go into detail here, beyond noting that the Native Land Court was the vehicle for a revolution in tenure that had a major impact on Maori custom and society. Fundamentally, the ability of any one Maori to bring an application to the Native Land Court for the investigation of title to a block owned in common by a collective under chiefly authority seriously undermined traditional Maori political and economic structures and social cohesion. It also, of course, facilitated the widespread alienation of Maori land, which was one of the objects the Pakeha architects of the Native Land Court system had in mind.

We have already set out in chapter 6 our concerns that the 10-owner rule applied under the Native Lands Act 1865 was inconsistent with the guarantees promised in the Treaty. The amendment in section 17 of the Native Lands Act 1867, which required all persons interested in a block to be listed in a memorial, was an attempt by the Crown to rectify this breach. However, the way it was applied at Mohaka, where hapu were listed, not individuals, failed to comply with the terms of the legislation and was partly responsible for the later dissension and costly litigation. We return to this matter below.

We therefore cannot agree with Sinclair's suggestion that the Native Land Court exercised an 'essentially protective function' towards Ngati Pahauwera. We are reminded of Professor Alan Ward's general description of the court's effect, which we endorse:

163. Document v6, pp 8–9

The system invited not co-operation but contention between parties who – although the Court frequently divided the land – could win all, or lose all, on the Judge's nod. It ushered in an era of bitter contesting, of lying and false evidence. The legalistic nature of the Court also instituted a costly and tedious paraphernalia of lawyers, agents, legal rules and precedents – a morass in which Maori floundered for decades, frittering away their estates in ruinous expenses and still all too often not getting equitable rewards.¹⁶⁴

The supposed 'protection' that Sinclair referred to was largely abandoned with the Crown's abolition of pre-emption in the Native Lands Act 1862. The Crown's right of pre-emption under the Treaty necessarily included the duty of protection – without pre-emption, the theoretical protection it offered was removed. We do not believe that Ngati Pahauwera were to blame for the wrangling and disputes made inevitable by an imposed, foreign tenure system and by a compressed land base.

Loveridge drew a connection between the earlier land sales and the later disputes over blocks such as Mohaka, Waihua, and Waipapa. The reality was, however, that Ngati Pahauwera had already congregated around the mouth of the Mohaka River following their return from exile at Mahia and their adoption of Christianity. After land was sold on the south bank of the Mohaka in 1851 and the north bank of the Waihua in 1865, the option of reoccupying those lands in the future was removed. After Te Kooti's 1869 raid, the issue of mutual security would have oriented tribal members all the more towards occupying the Waipapa block. It seems that the Mohaka block became unoccupied after the attack, for example, but its lease from 1872 prevented its reoccupation in the years to come.¹⁶⁵

When the term of the Mohaka lease expired in the early 1890s and the owners reoccupied the land, it was perhaps inevitable that disputes occurred. The loss of Paora Rerepu's dominant presence may have exacerbated the owners' tendency to factionalise. But disputes also arose in regard to other blocks and, as Loveridge argued, the tensions undoubtedly reflected the concentration of a large number of a hapu in a comparatively small area. The Crown's purchase of the Mohaka block in 1851 and the Waihua block in 1865 – as well perhaps as its purchase of most of the Rotokakarangu block in the decade that followed – contributed to the later disputes. In sum, it was the fact that Ngati Pahauwera no longer had lands to return to from the hub that made matters worse. The disputes may not have been so acrimonious if reserves had existed on the Crown purchases. If that had been the case, certain hapu of Ngati Pahauwera would have been able to reoccupy lands away from their base between the Mohaka and Waihua Rivers, where they were effectively living on the land of others.

The Crown's actions in purchasing over 100,000 acres essentially devoid of reserves (absolutely so, after their alienation) lacked any forethought or concern for Ngati Pahauwera's

164. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Auckland: Auckland University Press and Oxford University Press, 1973), p186

165. See doc M3, p 9

needs. It would have been apparent to McLean and Locke that Ngati Pahauwera were clustered together at Waipapa. It was, therefore, short-sighted of them to assume that, because Ngati Pahauwera did not permanently occupy the Crown purchase blocks, reserves there were unnecessary. In exercising its protective obligations, the Crown's reservation of even 5 per cent of those blocks for Ngati Pahauwera would have been of considerable assistance later on. Although claimant counsel said that blocks such as Rotokakarangu and Maungataniwha were 'sorely missed' at the turn of the century, when Ngati Pahauwera were in dispute over the lands they wished to put into sheep farming, those lands were rugged and always marginal for sheep farming. Rather, it was the absence of reserves in the Mohaka and Waihua Crown purchase blocks that exacerbated the problem of finding sufficient suitable land for any Ngati Pahauwera farming enterprise.

In this context, we do not agree with claimant counsel that the Owhio, Pihanui, Rotokakarangu, and Maungataniwha blocks were 'a huge loss of potential resources' and were badly needed when Ngati Pahauwera required 'good lands in sufficient quantities' for sheep farming. This would be to have it both ways, for counsel had just told us that Ngati Pahauwera's remaining land in the late 1860s was 'rough interior land, essentially valueless for agricultural or pastoral purposes'. We also agree with Crown counsel on two matters. First, we agree that it was wrong for claimant counsel to have emphasised the size of Maungataniwha rather than its essential ruggedness and remoteness, although its forests did have some value. The nature of the land simply reinforces the fact that more reserves should have been retained in the purchase blocks nearer the coast, where there was a greater potential for agriculture. Secondly, we agree that other groups, such as Tuhoë, Ngai Te Kapuamototoro, and Ngai Taraparoa, had interests in several of the blocks, and thus the loss of these lands was not Ngati Pahauwera's alone.

On the matter of the Native Land Court's 1868 awarding of title to the Mohaka, Waipapa, Waihua, and Whareraurakau blocks, we certainly agree with Alexander and Sinclair that Paora Rerepu's choice of Kahungunu as the ancestor for the four blocks was an act of diplomacy and inclusion. Thomson was undoubtedly correct that the court's acceptance of this without proper inquiry led to later title disputes, but it surely avoided bickering at the time, and helped achieve Rerepu's goal of keeping his people together. For this reason, and given the manifest wishes of the Mohaka people (as expressed by Rerepu), we find it difficult to condemn the Native Land Court for its lack of inquiry. As was common in these cases, the court was guided by the decision the owners arrived at out of court, and in the absence of objectors, it made its award accordingly. We have no way of determining whether there really were no objections or whether there were objectors who, for whatever reason, did not appear in court.

As for the land being awarded to hapu rather than to individuals, as prescribed under section 17 of the Native Lands Act 1867, claimant counsel was correct to state (as we noted above) that this was *ultra vires* and that it contributed to problems in the years to come. But, as with

the court's acceptance of Rerepu's claim through Kahungunu, the award may well have suited the circumstances of the time and have reflected Maori wishes. In any event, Crown counsel, in agreeing that it was *ultra vires*, seemed to argue that the court had attempted to institute a form of tribal title. But, with section 17's amendment of section 23 of the 1865 Act, the option of awarding a 'tribal' title no longer existed, and in any case it had been available only for blocks of more than 5000 acres (which would have excluded Waipapa and Whareraurakau). Thus, the combination of the legislation's failure to provide for tribal titles and the unusual manner of the Native Land Court's 1868 award, set the scene for much of the later dissension and litigation.

Despite the existence of these disputes, we do not agree with either Sinclair or Crown counsel that, by the turn of the century, Ngati Pahauwera had rejected tribal title in favour of individual ownership.¹⁶⁶ The Crown based this argument on statements made by competing parties before the Native Land Court who were seeking the separation of their interests from those of other owners, but it is overstating matters to equate this to a rejection of traditional forms of land ownership. The situation by 1910 reflected the factional splintering and divisive effect of the Native Land Court system, with hapu, whanau, and individuals having to battle each other to have rights in land recognised by a Pakeha judge. The individualisation of titles undermined chiefly authority, and with Rerepu's passing the dissension was exacerbated. As will be apparent, we agree with claimant counsel that the Native Land Court system was an 'attack' on tribal title. In the litigation that followed, the contesting of rights should not be mistaken for an endorsement of individualisation and the rejection of collective ownership.

Moreover, the disputes often revolved around the relative rights of the various hapu. As we have observed, hapu were all put in together in blocks such as Waipapa and Waihua in 1868 in order to avoid any conflict arising out of the fact that some were living on the land of others. And, as we have concluded, the lack of reserves in the Crown purchase blocks, as much as the lack of proper title investigation by the Native Land Court in 1868, made matters all the more problematic and likely to be disputed.

We conclude this chapter at 1910 simply because that is when the Native Land Court titles to Ngati Pahauwera's remaining lands had all been finally determined. However, this was not the end of the Native Land Court's operations, and as we relate in the next chapter, there were more land sales and disputes.

¹⁶⁶ We say this also in the knowledge that Stout and Ngata observed in 1907 that the protracted litigation over the Mohaka block was evidence of the 'strong desire' of the Mohaka owners to have their individual interests identified (see sec 13.2). We do not believe this necessarily vindicates the Crown's position: see Robert Stout and Apirana Ngata, 'Interim Report of the Commission Appointed to Inquire into the Question of Native Lands and Native-Land Tenure', 20 March 1907, AJHR, 1907, G-1, pp 9-10.

12.13 FINDINGS

We find that the Crown, in its failure to adequately protect Ngati Pahauwera at Mohaka from Te Kooti's 1869 attack, in its passage of the native land legislation, and in its ongoing land purchasing, breached the principles of the Treaty of Waitangi. We find that Ngati Pahauwera were prejudiced thereby.

More specifically, we find as follows. In regard to Te Kooti's attack, we find that:

- (a) The Crown must bear some culpability for the killing of nearly 70 people and the destruction of property at Mohaka during Te Kooti's attack in April 1869. This is because, while Ngati Pahauwera forces were away assisting Government forces in the Wairoa district, their families were left without adequate military protection when there was a known risk of possible attack. The Crown thus breached its duty of active protection.
- (b) Overall, in this matter the Crown was lax in its protection of Ngati Pahauwera and grudging in its response after Te Kooti's raid, when the Mohaka community was devastated. Ngati Pahauwera were not treated in a way they, as allies of the Crown, might have expected. The Crown thus breached the principle of partnership and its duty to act reasonably and in good faith.

In relation to the Native Land Court system, we find that:

- (a) The native land legislation imposed a revolution in Maori land tenure that seriously undermined the social, political, and economic structures of customary Maori society. The legislation breached the principles of reciprocity and options and the duty of active protection. Paora Rerepu's dominant influence – demonstrated, for example, in the manner in which blocks passed through the Native Land Court in 1868 – largely held this attack on chiefly authority at bay until the mid-1890s, when inter-hapu disputes over land rights flourished.
- (b) These disputes thrived in part because the large Crown purchases at Mohaka in 1851 and Waihua in 1865 had barely included any reserves for Ngati Pahauwera. Many hapu were already congregated on the north bank of the mouth of the Mohaka River, where they may have had few ancestral interests. The Crown's failure to set aside adequate reserves for their present and future needs in the pre-1865 purchases exacerbated the situation.
- (c) The court's listing of hapu rather than individuals on the memorials of ownership was an unusual act that, while *ultra vires* section 17 of the Native Lands Act 1867, may well have suited Maori wishes and the circumstances of the day. It should not be mistaken for the effective granting of a form of tribal title, however, since that instead required the creation of a truly corporate title, with tribal leaders installed as trustees. Section 23 of the Native Lands Act 1865 had theoretically allowed the option of a 'tribal' title for blocks over 5000 acres, but it had been amended by section 17 of the 1867 Act, which merely gave the court the discretion to register the names of individuals

interested in the block. The absence from the native land legislation of provisions which suited Ngati Pahauwera's requirements was a breach of the principle of options and the Crown's guarantee of rangatiratanga.

- (d) The land court system imposed significant and unreasonable costs on Ngati Pahauwera through surveys (some lands were sold to recoup these costs), court sittings, and other litigation. In addition, while attending hearings held in towns away from Mohaka, Ngati Pahauwera were liable for costs of living. In allowing or legislating for this situation, the Crown was in breach of its protective obligations.
- (e) From 1868 to 1883, the land court system facilitated the alienation (including Crown purchases) of half of Ngati Pahauwera's remaining land base. The scale and speed of this land alienation suggests that the Crown was not exercising its duty of active protection. The cumulative effect of these alienations and the Crown's failure to make more reserves on the previously transacted (and better) land seriously eroded a land base sufficient for farming. In this, the Crown was in breach of the principle of mutual benefit and the Maori right to development.

CHAPTER 13

NGATI PAHAUWERA IN THE TWENTIETH CENTURY

13.1 INTRODUCTION

This chapter is concerned with Ngati Pahauwera and their remaining lands during the twentieth century. We begin with the Stout–Ngata commission in 1907 and trace the renewed Crown purchasing of Ngati Pahauwera land in the two decades that followed. We then outline the impact on Ngati Pahauwera of the title consolidation in the 1920s and the development schemes established at Mohaka in the early 1930s. We include here our report on the Kupa whanau claim (Wai 731), which provides a case study of the effects of title fragmentation and land consolidation and development on one Ngati Pahauwera family. We end with our review of Ngati Pahauwera’s position at the end of the twentieth century.

13.2 THE STOUT–NGATA COMMISSION

In 1907, Sir Robert Stout (then the chief justice) and Apirana Ngata were appointed to investigate and report on the best methods for bringing unoccupied and ‘unimproved’ Maori land into production. The commissioners sat at Mohaka on 6 and 7 March 1907, with 100 owners present, and heard evidence on the Mohaka and Whareraurakau blocks. Issuing their ‘interim’ report less than three weeks later, Stout and Ngata observed that the ‘protracted and costly litigation’ over the successive partitioning of the Mohaka block was ‘evidence of the strong desire of the owners to have their individual interests ascertained and allocated, so as to make their occupation effective’. They noted that the two blocks had over 200 owners, whose interests ranged from 15 to 800 acres. Because of the varying quality of the Mohaka block, each owner or family had received a mixture of first-, second-, and third-class land when the block was partitioned, thus meaning that holdings were somewhat fragmented. Moreover, Stout and Ngata estimated that the cost of laying off roads and surveying the 55 subdivisions (the ‘result of thirty-five years’ litigation’) would, ‘on an ordinary scale of charges, absorb five or six years’ rent, and they warned against a pattern of expensive subdivision being repeated with each new generation.¹

1. Robert Stout and Apirana Ngata, ‘Interim Report of the Commission Appointed to Inquire into the Question of Native Lands and Native-Land Tenure’, 20 March 1907, AJHR, 1907, G-1, pp 9–10

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The commissioners recommended that the Whareraurakau block (3310 acres) be leased to the highest bidder as one farming unit. The block had been partitioned in 1903 as follows:

Partition	Area (acres)	Number of owners
Whareraurakau 1	221	11
Whareraurakau 2	1048	30
Whareraurakau 3	1048	24
Whareraurakau 4	110	9
Whareraurakau 5	883	20

Whareraurakau block partitions, 1903

One owner in Whareraurakau 3, Heneriata Kupa, wanted to lease this block, on part of which she and her husband grazed 100 sheep. The owners of other partitions wanted the land leased by public auction. The commissioners recommended that the 1903 partitions be cancelled.² An experienced surveyor a few years later described them as ‘absolutely useless and against settlement’.³

With respect to Mohaka 1 and 2 (24,255 acres), Stout and Ngata recommended that:

- ▶ 910 acres be reserved as papakainga;
- ▶ 3294 acres be used as family or individual farms;
- ▶ 17,576 acres be leased to Maori farmers, ‘the majority of whom are owners’;
- ▶ 1682 acres be leased to the highest bidder; and
- ▶ 793 acres be leased to the highest bidder, ‘but conditionally’.⁴

In other words, as Loveridge argued, the bulk of the remaining Ngati Pahauwera land was needed by its owners, and the commissioners did not recommend the sale of a single acre. Loveridge also made the point that, where they felt it to be appropriate, the commissioners did not hesitate to recommend the sale of Maori land to Europeans elsewhere.⁵ In February 1908, to give effect to these recommendations, all but three of the 55 Mohaka subdivisions were brought under the provisions of part 11 of the Native Land Settlement Act 1907.⁶ The result of this was that the blocks were reserved for Maori use and occupation. Later in 1908, the Tairāwhiti District Maori Land Board was authorised to act as the owners’ agent in arranging leases, where Stout and Ngata had identified that as the owners’ wish. The board correspondingly arranged nine leases of various subdivisions of the Mohaka block. These leases, all to other Maori owners, were to commence in 1911. A further two leases were arranged in 1914 and 1915.⁷

2. Stout and Ngata, ‘Interim Report’, p 11

3. RCL Reay, ‘Report on the Whareraurakau block’, 31 March 1908 (as quoted in doc M6, p 69)

4. The condition was that, if Wepiha Te Wainohu got the consent of the owners, he could have the lease. If not, the lease would go to the highest bidder: Stout and Ngata, ‘Interim Report’, pp 11, 16.

5. See doc J30, p 99

6. ‘Proclamation Declaring Native Land to be Subject to Part 11 of the Native Land Settlement Act, 1907’, 20 February 1908, *New Zealand Gazette*, 1908, no 12, p 620

7. Document M4, pp 16–17

On a more general level, Stout and Ngata highlighted what they saw as the urgent need for Government assistance to be given to Maori so that they could develop their own land. This issue had also been raised by Sir James Carroll in the report of the commission on native land laws in 1891.⁸ Stout and Ngata felt that ‘the encouragement and training of the Maoris to become industrious settlers’ had become the ‘paramount consideration’.⁹ While development assistance had been available to farmers for some time through such initiatives as the establishment of the Department of Agriculture in 1891 and the Advances to Settlers Act 1894, such measures were essentially designed to benefit individual landowners. As such, they were arguably discriminatory against Maori, who invariably held land in multiple ownership. According to Thomson, these measures had seen a land boom on the East Coast (one of the last areas of relatively cheap and available land), coupled with a rise in meat and wool prices in the 1890s. As evidence of the boom, Thomson cited the rise in the Pakeha population at Mohaka: it went from 36 in 1896 to 219 in 1906.¹⁰ But now Stout and Ngata ventured that, ‘with assistance’, Maori owners could ‘occupy [their lands] with profit to themselves and to the State’.¹¹ They went further, saying that it would be ‘absurd’ to expect tenant farmers ‘as handicapped as the Mohaka natives to improve their farms economically . . . without financial assistance’.¹² However, no significant development assistance was forthcoming for some years, even though the first 21-year lease of the Mohaka block ended in the early 1890s and by then many owners were attempting to eke out an existence as sheep farmers. We pick up again on this important issue in more detail at section 13.7.

13.3 THE DETERIORATION OF THE LAND

The state of the unalienated lands of Ngati Pahauwera deteriorated significantly from the later 1890s. The Mohaka block was apparently carrying 40,000 sheep while still under lease, but, by the mid-1910s, the number of stock on it had fallen dramatically. Sinclair felt that the infertile soils and rugged topography made stock management very difficult and militated against the success of sheep farming. He argued that the situation was compounded by the ‘fragmentation of holdings into small, unprofitable units’.¹³ Loveridge, however, felt it plain that the shortage of capital was the reason for the problems that beset the land. After all, he argued, ‘only the users had changed, not the carrying capacity of the land’.¹⁴

8. William Lee Rees, James Carroll, Thomas Mackay, ‘Report of the Commission Appointed to Inquire into the Subject of Native Land Laws’, 23 May 1891, AJHR, 1891, G-1

9. Robert Stout and Apirana Ngata, ‘General Report, Native Lands and Native Land Tenure’, 11 July 1907, AJHR, 1907, G-1C, p 15

10. Document A29, p 89

11. Stout and Ngata, ‘General Report’, p 10

12. Draft of Stout–Ngata report on Mohaka block (as quoted in doc A29, pp 90–91)

13. Document C5, p 81

14. Document J30, p 102

An unpublished 1985 report for the New Zealand Forest Service by Matthew Wright, 'The History of Farming in the Mohaka State Forest, 1860–1950', made it clear that the carrying capacity of the land was limited, given the slash and burn farming methods of the early pastoral settlers, which mitigated against long-term profitable production:

Due partly to a shortage of labour, the usual technique of fertilising the grazed land and inducing new growth was to toss a match into the scrub, burn off as much as possible, and then to set the sheep loose on the regrowth, which was usually fern and which the sheep would eat if no grass was available. This technique worked after a fashion, but it took a good deal from the land without replacing anything, and after thirty years or so this began to show. Thus by the 1890s, just when it was becoming profitable to run large numbers of sheep for their meat [as well as wool], the condition of the land was deteriorating in many of the back country runs to the point where it was very difficult to run any sheep at all.¹⁵

A writer in the *Wairoa Star* in 1934 recalled that:

the whole area on reversion to the native owners quickly began to go back to secondary growths and noxious weeds. At the same time there was scarcely a hoof on the ground, and it was just as well for feed might be said to be non-existent, though some of it may have been grassed while in European occupation. A few of the natives for a time endeavoured to farm these areas, but in a very haphazard fashion. Various persons and firms, and even the Government, provided some finance, but there was no sort of supervision over the farms or the farmers, so that in many cases valuable cattle were lost through neglect to provide adequate feed and shelter, and the same might be said in respect to sheep, while much fencing material was wasted or improperly used, and it is little wonder that retrogression was the order of the day.¹⁶

But early observers were not prepared to concede that some of the problems had been created by erstwhile Pakeha lessees running down their properties and stock numbers as the end of their lease terms approached. These lessees were also often the ones who had introduced the rabbits and blackberry in the first place. Despite this, local Pakeha came to see the Maori ownership of the Mohaka block as a nuisance. Prominent Wairoa landowner JH Brown wrote to the Native Minister, William Herries, in September 1912 to advocate that the Government acquire the Mohaka land (as well as the Tutaekuri block at Wairoa):

There are no Europeans or useful occupiers in any way connected with them, and they are a menace as nurseries for blackberries. I have been, of course, guarded in my enquiries, but

15. Document w10, p 3019

16. *Wairoa Star*, 19 March 1934 (as quoted in doc M4, p108). There is no evidence we have seen of Government finance to Mohaka Maori farmers before 1930.

have been told the Maori owners can be dealt with. The railway will go through the two Mohaka blocks.¹⁷

Under pressure from Pakeha farmers, the Native Minister visited Mohaka in March 1913. Brown was quoted in the local newspaper at the time of the visit as claiming that the Maori owners of the Mohaka block had succeeded only in 'making the country a rotten wilderness, a nursery for rabbits and blackberries'.¹⁸ In the circumstances, he argued, it became a 'duty' to take the land, and the East Coast Rabbit Board also urged ministerial intervention along these lines.¹⁹ In August 1913, the president of the Tairāwhiti District Maori Land Board informed the Native Department that:

Among Europeans there is a strong desire to get these blocks thrown open to the public. . . . The Natives of the Wairoa district have strong objections to their lands being vested in the Board, so that probably a warning that it was likely to be done would have some effect in getting the land either cleared or leased.²⁰

This local agitation is important to bear in mind when considering the Crown's active land purchasing programme from 1914, which we discuss below. The local authorities were firmly in Pakeha control, despite the sizeable local Maori population, and they related best to individual Pakeha pastoral farming developments on large holdings, which were backed with Government credit. As Thomson pointed out, Maori had scattered holdings in multiple ownership and little access to credit.²¹ Rather than assisting Maori to develop their holdings, Pakeha often saw the solution simply in terms of relieving Maori of their land.

The problems of pests and weeds continued for at least the next decade. In 1919, a Crown lands ranger reported that the Mohaka block:

has been very badly farmed for the last ten years, and the heart has been fairly burnt out of it and no seed sown. With the exception of the small sections on the southern end of the block . . . the remainder of the block has gone back to such an extent that it is practically unimproved country.²²

What made matters even worse was the agricultural slump in 1921 and 1922, which hit the Mohaka Maori farmers as hard as anyone. Most of the Maori lessees placed upon the block following Stout and Ngata's recommendations had had their stock financed on credit by stock firms. When the slump occurred, according to a report by Judge Harvey in 1938,

17. Document A29, p 93

18. *Wairoa Guardian*, 3 March 1913 (as quoted in doc A29, p 93)

19. *Ibid*, 12 March 1913, p 2 (p 93)

20. Document A29, pp 93–94

21. *Ibid*, p 94

22. Crown lands ranger to commissioner of Crown lands, Napier, undated (as quoted in doc M4, p 33)

‘practically every lessee’s stock was simply mustered and sold up, leaving the block unoccupied’, except for ‘certain grass pirates who ran their stock everywhere (and paid no rates anywhere)’.²³

In 1923, the East Coast Native Trust Lands Commissioner, H Symes, reported that the Mohaka block was:

in such a bad state that worse conditions could not be imagined. A good portion of this block has at one time been fairly well in hand; has gone back and now the whole block is in worse state than when untouched. Manuka, scrub and tauhinu have a big hold on the whole block while the front along the Mohaka River is well covered with blackberry, and at the rate it is spreading will not take long to render the whole block valueless. The Maoris are doing very little to prevent it spreading. The fern areas have been burned for years and neither sown nor fenced. Some farms have never had a bag of grass sown, thus making room for new pests and weeds as well as all of the old ones.²⁴

Symes explained that the Maori farmers in Wairoa County were generally not coping well but that things were much worse in the Mohaka district:

Under the best conditions breaking in country in this district is beyond the Maori farmer, but under present conditions the most of them have lost heart and are doing nothing on their farms – very little improvement work has been attempted for some years.

Financially these farmers have got into a hopeless condition, in many cases rent is in arrear and rates are paid only in odd cases; where they have stock they are well mortgaged, and on top of this they are heavily in debt at the local stores. Under these conditions it is hopeless for farmers to carry on and the sooner they are relieved of their land the better.

Symes noted that the Crown had already bought ‘a good portion’ of the Mohaka block, and he recommended that, should it ‘feel disposed to make further purchases[,] everything possible should be done to further this end’.²⁵ He also suggested that some assistance be made available for lessees with viable holdings, so long as it was given with appropriate ‘supervision’.²⁶ When forwarding this report to the Native Minister, the under-secretary of the Native Department noted that ‘the fates have been against the Mohaka Natives’. He felt that some assistance ‘ought to be rendered’ but observed that there was no fund from which this could be drawn.²⁷ Government development assistance finally came in 1930, upon Apirana Ngata’s elevation to Native Minister and the implementation of a development scheme at Mohaka. We discuss this at section 13.7.

23. Partial scheme of consolidation, 5 April 1938 (as quoted in doc M4, p 133)

24. Symes, East Coast Native Trust Lands Commissioner, to under-secretary, Native Department, 2 June 1923 (as quoted in doc M4, p 40)

25. Ibid

26. Ibid, pp 40–41

27. Under-secretary, Native Department, to Native Minister, 7 June 1923 (as quoted in doc M4, p 41)

13.4 LAND SALES

After the 1883 Maungataniwha transaction, no more Ngati Pahauwera land was purchased until 1911, and no more by the Crown until 1914. The reasons for this gap probably relate to the fact that much of Ngati Pahauwera's remaining land was tied up in long-term leases, as well as to uncertainties over title, which were due to the numerous disputes and rehearings. Further, the Mohaka block was made inalienable in 1908, when it was brought under the provisions of part II of the Native Land Settlement Act 1907 and thereby reserved for Maori occupation and use (this was done in order to give effect to Stout and Ngata's recommendations).²⁸ These restrictions were removed in subsequent years to allow land sales to the Crown. Loveridge summarised the land alienations during the two decades from 1911 to 1930 as follows:

Decade	Total acreage sold	Of which to Crown	Of which to private purchasers	Acreage in hand at end of decade	Sales*
1911–20	24,873	18,631	6,242	31,449	10.88
1921–30	6646	5381	1265	24,803	3.27

* As a percentage of the total acreage at 1850 (228,522)

Land alienations, 1911–30. Source: doc J30, pp 104, 113.

In 1910, Ngati Pahauwera still owned 58,680 acres, but by 1920 they had lost almost half of this.²⁹ By 1930, further substantial inroads had been made into what little remained. The Crown was the major purchaser, in spite of Stout and Ngata's recommendation that Ngati Pahauwera should retain the great majority of their lands for their own use.

The Crown's motivation for purchasing the land was undoubtedly its desire to provide land for the settlement of servicemen returning from duty in the First World War. Coupled with this was the pressure the Crown faced from local Pakeha wanting to alleviate the problems of pests and weeds on Maori land and from the Wairoa County Council wanting to realise some revenue in rates. Further, with respect to the Mohaka block, the Crown was driven by the hope that the Napier to Gisborne railway would soon pass through it, thus making the land more attractive for subdivision and settlement.³⁰ Maori were often willing to sell because the burden of owning pest- and weed-ridden land saddled with debts became too heavy for many, particularly during the agricultural slump in the early 1920s. (The slump was caused by

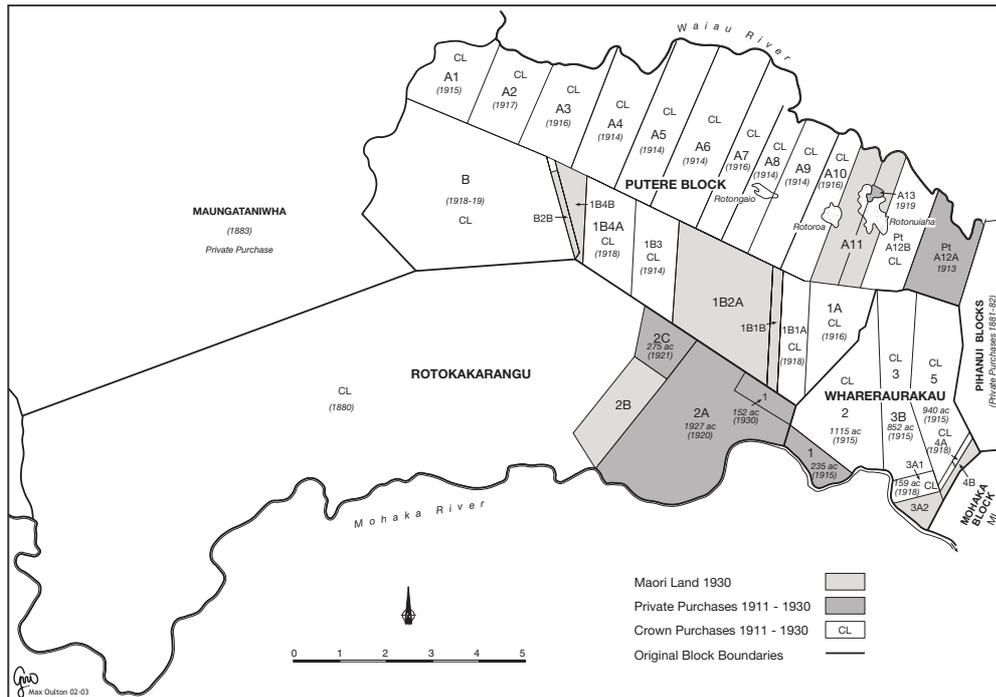
28. Part II of the 1907 Act was superseded by part xvI of the Native Land Act 1909.

29. As can be seen from the figures in the table, Loveridge's total was in fact 56,322. The discrepancy arises from his use of initial survey figures that were superseded by later calculations. For example, Loveridge records the Mohaka block as containing 22,355 acres, but this estimate was modified by the 1884 subdivision survey, which found the block to contain 24,507 acres: see s 12.4.

30. The construction of a railway north of Napier had begun before the First World War, but by 1929 the railhead had reached only Putorino, some miles to the south of Mohaka. The Napier earthquake in 1931 and the 1930s depression caused further delays. The Mohaka River viaduct was completed in 1937, but the railway did not reach Gisborne until 1942: see Ministry of Works, Town and Country Planning Division, *Hawke's Bay Region* (Wellington: Government Printer, 1971), p 179.

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13.4



Map 46: Land sales, 1911–30 – the Rotokakarangu, Putere, and Whareraurakau blocks

the world adjusting to post-war conditions and by the ending of the ‘commander system’, under which New Zealand had been guaranteed high prices for primary produce exported to Britain.³¹)

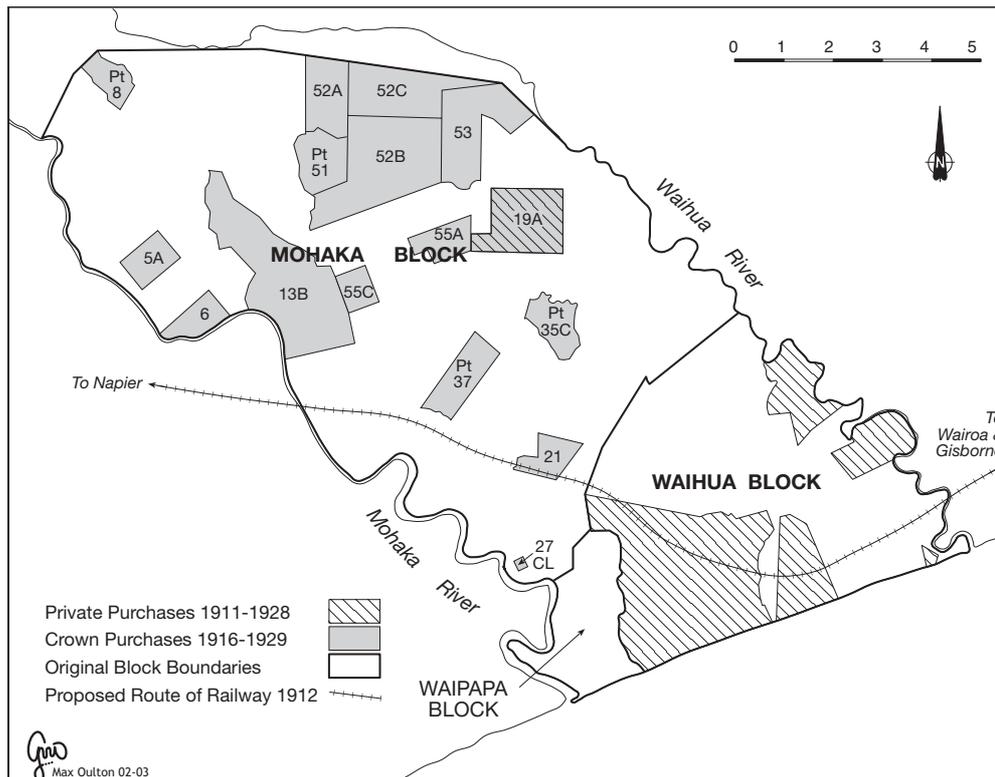
It is not necessary for us to provide the details of every alienation. In maps 46 and 47, we have summarised the land sales to the Crown and private purchasers. As Loveridge observed, these sales were, by and large, ‘done by the numbers’ according to the Native Land Act 1909.³² The first sales under the new regime were typically to Pakeha landowners who were seeking adjoining Maori land to augment their holdings. Among the land sold was 588 acres of Mohaka and 2456 acres of Waihua in 1911, and 554 acres of Putere in 1913. Later sales to private buyers, such as the Glendinning family in Waihua and the Mossmans in Rotokakarangu, followed a similar pattern.³³ The Crown’s primary focus at first was on the Putere and Whareraurakau blocks, which Ngati Pahauwera were more willing to sell than Mohaka. By 1918, the Crown had acquired 3118 acres of the Whareraurakau block (with private purchasers getting most of the rest), and by 1919 it had bought up 13,699 of the 17,065 acres in Putere.³⁴ Alexander thought that there was ‘very little rhyme or reason’ for the Crown’s purchasing in Putere, and

31. Tom Brooking, ‘Economic Transformation’, in *The Oxford History of New Zealand*, Graham Rice, ed, 2nd ed (Oxford: Oxford University Press, 1992), p 231

32. Document J30, p 109

33. Ibid, p 108. In fact, the Mossmans appear to have purchased all that remained of the Rotokakarangu block, securing the last Maori-held section as late as 1977: see doc A29, p 105.

34. Document J30, p 106



Map 47: Land sales, 1910–29 – the Mohaka and Waihua blocks

he thought that it bought more and more land in the block simply because it found that it could.³⁵ By 1930, only a few small blocks remained in Maori ownership.

In the 1920s, the Crown switched its attention to the Mohaka block. By 1922, it had acquired 2000 acres of the block, but in the next five years – following the slump – it purchased a further 5300. As Alexander put it, the Crown officials were just ‘sitting there waiting, willing to snap up an interest if it became available’. He described the Crown as ‘quite indiscriminate’ and ‘willing to buy anything’, and added that the Crown made no effort to ‘look and see what the effect on Ngati Pahauwera would be of its land purchasing activity’.³⁶ Something of the Crown’s approach is evident in comments made by the land purchase officer based in Gisborne, William Goffe, who wrote in January 1918:

I could have purchased two small interests in 55D but I wish to get the larger holders first, the small holders can always be got. . . . If an officer were to visit Mohaka township and stay for a week or two no doubt business would be done if a little latitude were given him in regard price.³⁷

35. Transcript 4.23, p9

36. Ibid, p8

37. Goffe to under-secretary, Native Department, 25 January 1918 (as quoted in doc A29, p 95)

The opportunist nature of the purchase agents' activities was also revealed in the comment of Goffe's successor, John Harvey, that he wished to travel to Wairoa in January 1921 'so as to catch the Carnival crowd' in his efforts to acquire Mohaka block interests.³⁸ Goffe himself also reported that he had made arrangements with a minor to purchase her interests as soon as she came 'of age'.³⁹

The standard method of Crown purchase officers was to acquire the interests of individual owners until the whole block was acquired. A number of scattered small partitions within the Mohaka block were acquired between 1916 and 1929:

Year acquired	Partitions
1916	Mohaka 5A and most of 37
1917	Mohaka 52C
1919–20	Mohaka 2B, 13B, and 55C
1922	Mohaka 52B
1924	Mohaka 8B, 21, 27, and 55A
1925	Mohaka 6
1927–29	Mohaka 35C, 51A, 53, and 19A (already purchased by a Pakeha in 1910)

Mohaka block partitions acquired by the Crown between 1916 and 1929

In addition, individual interests in many other Mohaka partitions had also been acquired by the Crown. Apart from Mohaka 19A, there were no private purchases of parts of the Mohaka block.

The Crown was, in effect, a monopoly purchaser. As we noted in section 9.4, under section 363(1) of the Native Land Act 1909, when the Crown was contemplating or negotiating the purchase of a block of Maori land, it could issue a proclamation prohibiting any alienation, other than to the Crown, for up to a year. Such an order could be extended, and a proclamation of the original order, and any extensions, were to be published in the *New Zealand Gazette*.

Proclamations prohibiting the alienation of the Mohaka block were first published in August 1916. They were extended in November 1917 and May 1918, and expired in November 1919. During the early 1920s, the Crown encountered little competition in its purchasing, but by 1927 a scheme for the consolidation of the Crown's interests was contemplated, which we discuss later. The low valuations had begun attracting the interest of private individuals willing to buy or lease. In August 1928, another proclamation under section 363 of the 1909 Act was issued for the Mohaka block. This was extended annually from 1929 till 1931, and in 1932 it was proclaimed indefinitely.⁴⁰

38. Native land purchase officer, Gisborne, to under-secretary, Native Department, 20 November 1920 (as quoted in doc, M4, p 35)

39. Goffe to under-secretary, Native Department, 14 October 1918 (as quoted in doc A29, p 96)

40. Document M4, pp 29–34, 58–59. Section 442 of the Native Land Act 1931 replaced sec 363 of the 1909 Act. It removed the stipulation that proclamations not exceed one year.



Fig 29: Lake Rotongaio. Photograph by Paul Hamer.

From 1905, the Crown was legally required to purchase Maori land for no less than its Government valuation. As Loveridge observed, this largely worked in the sellers' favour but was dependent upon the existence of up-to-date valuations.⁴¹ However, the Crown continued to use 1913 valuations when endeavouring to purchase Mohaka lands from 1915. This practice seems to have been opposed by some would-be sellers, and Goffe ran into difficulties in 1916 because 'the Natives consider the Government valuations far too low'.⁴² Nevertheless, officials considered that the 1913 Mohaka valuations remained valid. But, in 1919, the new district roll valuation showed that most blocks had risen in value since 1913. Alexander commented that there was 'little evidence that these revised values were used. Instead, and contrary to the legislation, the 1913 values continued to be used.'⁴³ Loveridge estimated that several thousand acres may have been acquired on the basis of out-of-date valuations until the early 1920s.⁴⁴

By this time, land values had dropped markedly because of the agricultural slump. Land purchase officer Harvey reported to Wellington in 1924 that the revised valuations were likely to be as little as a quarter of those done in 1919. In the circumstances, Harvey was advised to revert once more to the 1913 valuations, with the under-secretary of the Native Department commenting that 'it is admitted on all sides that the 1919 valuations are above the true

41. Document J30, p 110

42. Acting under-secretary, Native Department, to Under-Secretary for Lands, 21 September 1916 (as quoted in doc, M4, p 27)

43. Document M4, pp 33-34

44. Document J30, p 110

value of the land'.⁴⁵ Because of these fluctuations in the land values, it is difficult to assess to what extent Maori vendors were prejudiced, especially at times when the Crown was the only purchaser.

Maori were, however, prejudiced by the enforcement of section 363 proclamations. Without access to capital and the wherewithal to develop their land themselves, Maori landowners were effectively denied any means of raising revenue from the land (such as through leasing it). At the same time, the land continued to gather debts, such as rates arrears and unpaid survey liens, which made it much easier for the Crown to acquire the land. One example of the effect of section 363 was Mohaka 52c, which the owner, Kaingakore Tautu, wished to sell so that he could build a home out of the district at Te Aute, where there were better employment prospects. The Crown offered him 15 shillings per acre, the assessed value, which was exactly half the 30 shillings a private purchaser was willing to pay him. Tautu's solicitor protested that this left him:

in the position in which it is to be presumed the Native Land Purchase Board wished to find him – he must either take whatever the Crown may offer, no matter how much less that may be than the real value of the land, or he must leave his land lying idle, paying rates on it, but getting no return.⁴⁶

The Native Land Purchase Board upped the offer to 20 shillings per acre for the 796-acre block. Tautu held out for 25 shillings, but in the face of the board's resoluteness, he reluctantly agreed to sell, in the full knowledge that he was losing out on almost £500 extra that a sale on the open market would have brought him.⁴⁷ And, even then, Tautu had £72 subtracted from his £796 payment to cover outstanding survey charges that dated back as far as 1876.⁴⁸

13.5 THE MOHAKA CONSOLIDATION SCHEME

Consolidation is a process of exchanging scattered interests (whether individual or Crown or both) and grouping them into a contiguous area. There were provisions in the Native Land Court Act 1894 for the exchange of interests between Maori, and between Maori and the Crown, but these were rarely used. In the Native Land Act 1909, sections 130 to 132 made provision for the consolidation schemes that became an integral part of the development of Maori land in the 1930s. Section 130(1) reads:

45. Under-secretary, Native Department, to land purchase officer, Gisborne, 12 March 1925 (as quoted in doc M4, pp 36–37)

46. T W Lewis to Native Minister, 5 December 1916 (as quoted in doc M3, p 470)

47. Document M3, pp 471–473

48. Ibid, p 473

In order to facilitate the consolidation by way of exchange or otherwise of the interests of owners of Native land into suitable areas, the Native Minister may at any time and from time to time make application to the Native Land Court to prepare a scheme of such consolidation with respect to any specific area or areas of Native land; and the Court shall thereupon proceed to prepare a scheme accordingly, and to make all the necessary inquiries in that behalf, and shall submit that scheme under the seal of the Court to the Governor for his approval.

The Mohaka consolidation scheme was implemented under sections 6 to 8 of the Native Land Amendment and Native Land Claims Adjustment Act 1923. The provisions in section 6(1) were almost identical to those in section 130(1) of the 1909 Act, except that a consolidation scheme now had to be submitted to the Native Minister for approval. The 1923 Act also included more detailed provisions concerning the establishment and operation of a scheme, and these were carried over (with minor amendments) into sections 161 and 162 of the Native Land Act 1931. Further provisions were added in sections 163 to 166 of the 1931 Act. In the process of making the required new orders once a consolidation scheme was approved, the Native Land Court had the power to reallocate shares and to cancel or vary existing partition orders, as well as to add any Crown lands, or to vest lands in the Crown in payment of outstanding charges (such as rates arrears or survey liens). When finally approved, a consolidation scheme was to be confirmed by public notice in the *New Zealand Gazette*.

In regard to Ngati Pahauwera lands, according to Alexander, in about 1925 the Crown's priority shifted from buying random, scattered, undivided interests to consolidating its holdings.⁴⁹ Consolidation was also seen as part of the solution to the problem of the parlous circumstances of the Mohaka Maori farmers. The mixing of Crown and Maori interests on the ground had been blamed for inhibiting the progress of the district. In February 1925, a prominent Wairoa settler, James Jessep, wrote to the Native Minister pointing out that the Crown's unpartitioned interests in the Mohaka block were yet another reason 'no stock firms can finance the Maoris'. Jessep believed that it was an 'absolute crime against the country that this big block should be allowed to lie idle, while year by year blackberry and rubbish is extending further and further into it'.⁵⁰ The Native Minister visited Wairoa the following month and reported that Jessep told him: 'The land was producing no rates and was going back daily. The Maoris at the Mohaka end were practically bankrupt owing to the slump. It was quite good farming country, and he thought with the railway going through that it should be taken in hand.'⁵¹ The Minister's response was to promise to extend the practice of consolidation – already in operation on the East Coast – to Wairoa, and to investigate doing the same at Mohaka.⁵²

49. Document M4, p 38

50. Jessup, Wairoa, to Native Minister, 13 February 1925 (as quoted in doc M4, p 43)

51. Native Minister to under-secretary, Native Department, 26 March 1925 (as quoted in doc M4, p 44)

52. Document M4, p 44

In April 1925, the commissioner of Crown lands in Napier reported that the Crown owned 12 subdivisions outright in Mohaka (a total of 3773 acres) but that it held shares in a further 32 subdivisions (these would equate to another 7124 acres if converted on a pro rata basis). Thus, the Crown effectively owned some 45 per cent of the Mohaka block.⁵³ The commissioner advised that, 'to do anything with the Crown lands, a consolidation will have to be effected'. He noted that 'The Natives . . . hold slightly better quality lands and they are geographically better situated than the Crown lands, and there lies their advantage in exchanging'. In the circumstances, the commissioner recommended 'the wiser course' of 'energetically prospect[ing] a purchasing policy for some time yet'.⁵⁴

In October 1925, however, Apirana Ngata, in his capacity as the local member of Parliament, visited Mohaka and reported to the Native Minister that he was:

much impressed with the urgent need for a consolidation scheme in connection with Mohaka and adjoining blocks. The Maori owners were very pressing to have such an adjustment of titles brought about. . . . The Crown has bought extensively and . . . finds itself unable to deal effectively with its interests. The Native non-sellers are burdened with outstanding rates, the black-berry problem, and want of finance, and are of course affected by the non-partition of the interests sold to the Crown.⁵⁵

Ngata recommended that a consolidation scheme be commenced forthwith, and in December 1925 the Native Minister directed that consolidation proceedings be instituted.⁵⁶ Certain matters had to be attended to first, such as the procurement of new valuations to effect the exchanges, but officials were also minded to carry on with purchasing to improve the Crown's position before the consolidation actually began. In November 1926, new valuations of the blocks to be included in the consolidation scheme were completed. On some of the smaller blocks of Maori land, the new values exceeded the 1919 valuation, but on the larger blocks values had dropped considerably. Subsequent Crown purchases were based on 1926 valuations.⁵⁷ In January 1927, the Minister of Lands instructed that consolidation 'be proceeded with the utmost despatch', adding that 'this work was not to be delayed on account of further purchases'. However, the Minister still endorsed 'suitable' purchases being made 'in conjunction with the consolidation proceedings', although not of any areas affected most acutely by the 'blackberry menace'.⁵⁸

53. Document M4, p 45

54. Commissioner of Crown lands, Napier, to Under-Secretary for Lands, 15 April 1925 (as quoted in doc M4, pp 45-46)

55. Ngata to Native Minister, 27 October 1925 (as quoted in doc M4, p 48)

56. Document M4, p 49

57. Document M4, p 53

58. Assistant Under-Secretary for Lands to commissioner of Crown lands, Gisborne (as quoted in doc M4, pp 53-54)

The Crown's policy soon became clear: it was to continue to buy up as much land as possible in the northern part of the block, where the blackberry infestation was less and where the Crown had already secured a reasonable tract which it could convert into sizeable farming units. As Harvey, the land purchaser officer, put it, officials considered that 'the solution to the Mohaka trouble' lay in the Crown acquiring 'as much as possible' in the northern part of the block.⁵⁹ Thus, another 1500 acres of land were bought outright in 1927 and 1928, along with an unknown amount of partial interests, before purchasing finally ceased in 1929. Moreover, as noted, the Crown became concerned about the interest private individuals were showing in purchasing or leasing Mohaka lands, and thus private alienations were prohibited for a year in 1928. As the registrar of the Native Land Court in Gisborne put it, 'the present low values of Mohaka coupled with the fairly bright prospective value seems to be attracting too much attention from outsiders'. It was time, concurred Judge Carr of the Native Land Court, that 'the honeypot was fenced in'.⁶⁰

In January 1930, Ngata decided to implement a land development scheme on the Mohaka and Waipapa blocks. The Mohaka consolidation scheme became an integral part of the proposed land development scheme, not just a way to consolidate the Crown's interests. In his 1931 report for Parliament on Maori land development, Ngata described the 'consolidation of interests' as a significant 'device' in overcoming the difficulties of multiple or communal ownership of Maori lands:

Briefly this is a scheme to gather together into one location if possible, or into as few locations as possible, the interests of individuals or families scattered over counties or provinces by virtue of their genealogical relationships. The basis is the net value of the interests of an individual in the lands included in the consolidation scheme, after assessment of encumbrances, including outstanding title fees, survey charges and local rates. The opportunity is seized to make the new holdings conform to modern requirements, practicable fencing boundaries, access, water-supply, aspect, and so forth; also to adjust the roading of the area; and with the consent of the Crown and of private owners, to effect exchanges of mutual benefit. The Crown has benefited by the consolidation of undivided interests purchased by it, and private owners have succeeded in improving their boundaries or in collecting round their holdings isolated Native interests purchased by them.⁶¹

The blocks included in the Mohaka consolidation were Putere, Mohaka, Waipapa, and Waihua. During 1928, officials worked on reducing the rates arrears and unpaid survey liens. To that end, the Crown gained the Wairoa County Council's agreement to write off £2600

59. Native land purchase officer, Gisborne, to under-secretary, Native Department, 2 March 1927 (as quoted in doc M4, p 55)

60. Registrar, Native Land Court, Gisborne, to Judge Carr, 29 May 1928; Judge Carr to registrar, Native Land Court, Gisborne, 29 May 1928 (as quoted in doc M4, pp 58-59)

61. Apirana Ngata, 'Statement on Native Land Development', AJHR, 1931, G-10, p ii

in rates arrears owing on Mohaka and Waipapa in exchange for a one-off payment by the Crown of £600. This latter figure was then added to the monetary value of the Crown's interests in the Mohaka block. The Crown wrote off about two-thirds of the £3882 owing in survey liens on Mohaka, Waipapa, Waihua, and Putere, with the remainder – £1297 – also being credited to its interests in the Mohaka block. Once this had been achieved – and now that Crown purchasing had finally ceased – the value of the shares that the Crown and Maori had in the Mohaka block could be worked out. They came to £16,733 for the Crown (or 48 per cent) and £18,042 for the remaining Maori owners (or 52 per cent).⁶²

On the recommendation of the Native Land Court, in December 1930, before the exact areas to be cut out for the Crown were determined, the Crown was awarded a 5265-acre section in the north-east corner of the Mohaka block on an interim basis, so that it could proceed to develop the area and open it for settlement. This land became known as the Mohaka B1, or Ngamahanga, block and represented about a third of the Crown's total interests. The Maori owners of several subdivisions within this area objected, saying that they had never consented to the consolidation scheme and did not wish to lose their lands. But Ngata overrode their objections, since the owners' retention of the sections would have left the kind of wedge within the Crown's area that consolidation was designed to avoid.⁶³ Overall, however, and according to Alexander, the confined nature of the consolidation (essentially within just one block) generally worked in favour of consensus amongst the owners about the reorganisation of holdings.⁶⁴ The Ngamahanga block was the only partition made before 1941, when the final consolidation plan was approved. Under the new arrangement, the Crown recovered its investment (by then, over £18,000 after final adjustments) in:

- ▶ 35 further Mohaka 'B' blocks totalling around 7500 acres (in addition to B1);
- ▶ three Waipapa 'B' blocks totalling 135 acres;
- ▶ Waihua B1 of 25 acres;
- ▶ 130 acres of roads and railway lines;
- ▶ 895 acres of public reserves (including land that remains conservation estate today);
- and
- ▶ 'charging orders' amounting to £2176 on 62 Mohaka, Waipapa, and Waihua 'A' blocks.

The charging orders were effectively a sale (on credit) back to Maori ownership of some of the Crown's share of the block, the rationale being to bolster the size of the Maori blocks to make them economically viable.⁶⁵ Land for the railway, the route of which was formally notified in 1924, was taken in 1926 and 1927 under the Public Works Act 1908. No compensation was payable under the 1908 Act but it was under the new Public Works Act 1928. A form of compensation was paid by deducting the cost of the takings from the Crown value in the

62. Document M4, pp 61–67

63. Ibid, pp 69–73

64. See transcript 4.23, p 29

65. Many of the charging orders remained unpaid by 1960: see doc M4, pp 150–153.

Mohaka consolidation scheme.⁶⁶ Ngati Pahauwera Maori, for their part, received 79 Mohaka, 146 Waipapa, and 50 Waihua 'A' blocks. In sum, the Crown had added to the 7195 acres it had acquired outright in Mohaka by 1928 with another 6618 acres it had acquired in partial interests. Its total holding in the Mohaka block was now 13,813 acres, consolidated in the north, leaving Maori with less than half the block, or 10,588 acres.⁶⁷

Alexander was adamant that the Crown was the prime beneficiary of the Mohaka consolidation scheme. He argued that consolidation was ordinarily intended for blocks of land that had been subject to up to 70 years of partitions and successions. However, the titles had been finally determined only relatively recently – in 1903 – 'so the land ownership pattern had been defined less than one generation earlier than consolidation took place'. Maori were thus quite content to stick close to the settlements and easier country at the southern end of the Mohaka block and on the Waipapa block and therefore had much less to gain from consolidation than the Crown. The Crown had quite recently acquired numerous scattered interests, but it was unable to use them.⁶⁸ That the Crown was the principal benefactor, Alexander argued, was further demonstrated by its ongoing purchase of interests to improve its position right up to 1929. He criticised what he saw as the Crown's determination to extract 'its pound of flesh out of consolidation' and to treat it 'very much as an accounting exercise'. He felt, too, that the consolidation and development were heavily focused on the creation of individual family farming units for Maori, and that 'the whole concept of hapu and iwi just went out the door'.⁶⁹

13.6 THE IMPACT OF CONSOLIDATION: THE KUPA WHANAU CLAIM (WAI 731)

The Wai 731 claim was lodged in July 1998 by Kevan Te Taka Kupa and Kathleen Lomax on behalf of all the descendants of their grandfather, Henare Te Taka Kupa. The claimants shared counsel with the Wai 119 claimants and made it clear to us that they supported the broader Ngati Pahauwera claims and were indeed Wai 119 claimants themselves. To this end, they wished their claim to be regarded as a subset of Wai 119 or, rather, as a representative case study for it. However, counsel did seek specific redress for the Kupa whanau. He argued that the Native Land Court process, the Crown's purchasing activity, and the negative impacts of consolidation and development had left the Kupa whanau effectively landless and had led to a breakdown of the relationships within the whanau and between the whanau and Ngati Pahauwera.⁷⁰ The background to the claim is set out below.

66. Document M4, pp 37–38

67. Ibid, pp 144–158; doc J30, pp 117–118

68. The advent of development, however, did serve to make lands further away from Waipapa more attractive and feasible places to settle for Pahauwera: see transcript of evidence of David Alexander 4.23, pp 11–12.

69. Transcript 4.23, pp 10–12, 19–20

70. Claim 1.55(a)

The claimants' tipuna were signatories to the Mohaka and Waihua Crown purchases in the mid-nineteenth century, and once the Native Land Court had finally determined title to all Ngati Pahauwera blocks by 1910, the Kupa whanau held various interests in the Mohaka, Waipapa, Waihua, Putere, and Whareraurakau blocks. During the period of renewed Crown purchasing between 1914 and 1930, Henare Te Taka Kupa (who succeeded to his father Te Taka Kupa's interests in 1919) sold his interests in Mohaka 40B, 41, 42, and 43 to the Crown. It is likely that the land was sold because it was difficult hill country and marginal for farming. For example, Kupa's uncle, Hune Kupa, wrote in October 1921 that he and his mother wished to sell their interests in Mohaka 40B because they would 'never be able to occupy this place, we are paying rates for nothing. So it is better for us two to sell it.'⁷¹ At the same time, Kupa's solicitor wrote that he wished to sell his shares in the same block because he was 'really in need of money'.⁷² It seems that Kupa's father had sold his share of Whareraurakau 3 in 1913 and that his grandmother had sold the family's land in Putere 1B3 the following year.⁷³

13.6.1 Consolidation and land development

Kupa's remaining holdings in the Waipapa, Mohaka, and Waihua blocks became subject to the Mohaka consolidation scheme. For the purposes of the consolidation, the Ngati Pahauwera owners arranged themselves into family groupings, and Kupa's interests were bundled with those of other members of his whanau, including his uncle, Hune. Overall, Kupa had interests in some 20 blocks. Those interests, some of which were very small, included two sections in the Waipapa block that he owned outright, an 11.6 per cent shareholding in the 255-acre Waihua 1C10 block, and a 13.8 per cent share of the 88-acre Waihua 2C10 (both of which were owned exclusively by members of the Kupa whanau). These latter two shares represented his largest land holdings, and were of generally good-quality land, albeit land lacking a water supply. The Native Department calculated Kupa's total interests in lands subject to the consolidation scheme to be worth £207. Between 1930 and 1941, the Native Land Court held a series of hearings at which it rearranged the interests of the various groups of owners. Kupa did not appear before the court during this protracted and contentious process, but Hune Kupa seems to have appeared as spokesman for the family group.⁷⁴

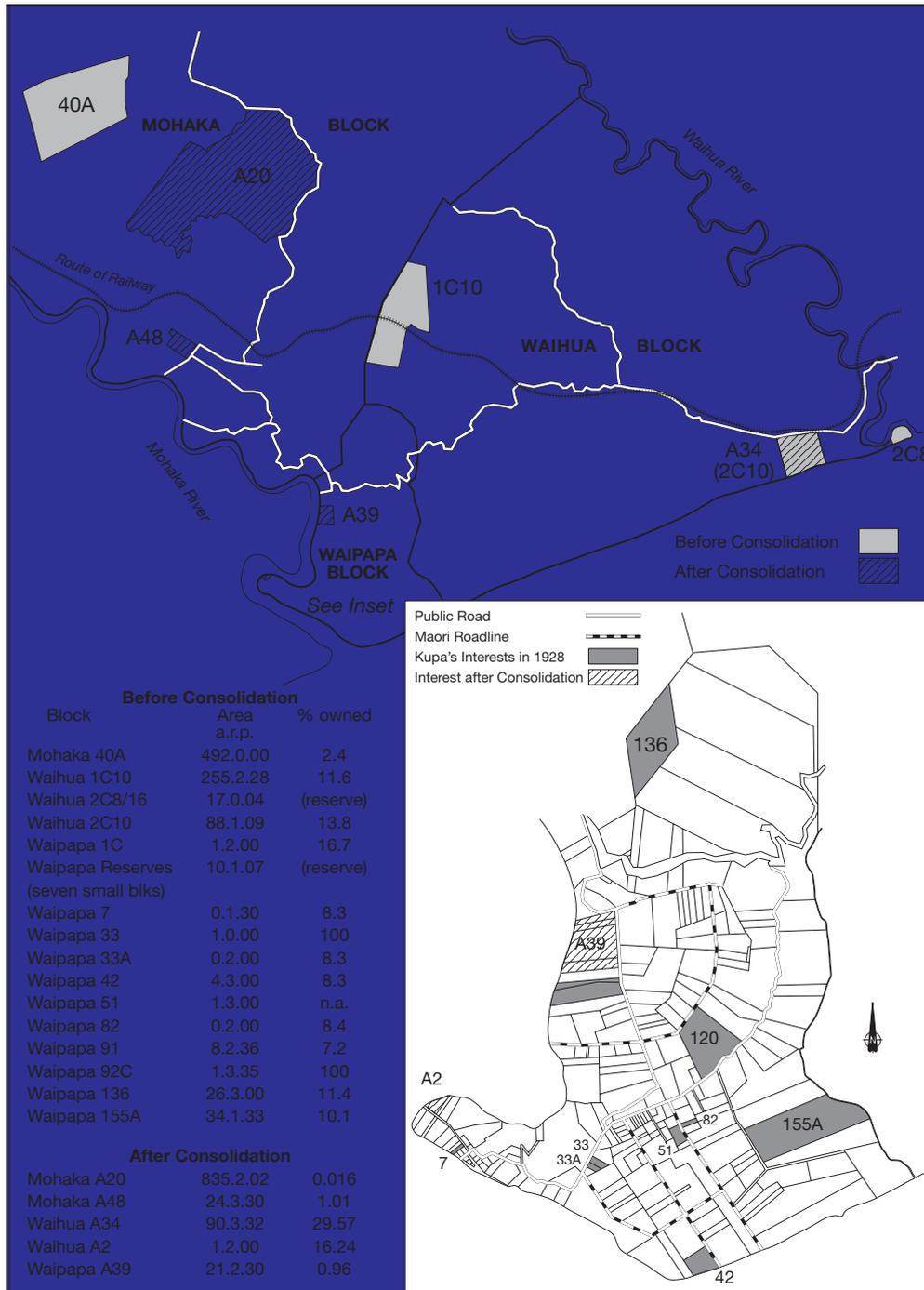
The location of Kupa's land interests before and after the consolidation are shown in map 48. In the final consolidation orders of September 1941, Kupa was allocated shares in Mohaka A20 and A48, Waihua A34 (formerly Waihua 2C10), and Waipapa A2 and A39. His main interest remained in the renamed Waihua A34, where he held a 29.6 per cent interest (the

71. Hune Kupa to native land purchase officer, 10 October 1921 (as quoted in doc T17, pp 38–39)

72. Croker and Duff to native land purchase officer, 12 October 1921 (as quoted in doc T17, p 40)

73. Document T17, pp 44–45

74. *Ibid*, pp 52–54



Map 48: Henare Te Taka Kupa's interests before and after consolidation; *inset*, the Waipapa block

equivalent of 27 acres), and his other interests were a 16 per cent share in Waipapa A2, a share of around one per cent in Mohaka A48 and the same in Waipapa A39, and a 0.016 per cent share in Mohaka A20.⁷⁵ But he no longer enjoyed sole ownership of any sections.

At the same time as Kupa's land interests were being consolidated, his lands became subject to the Mohaka development scheme (Kupa farmed outside the scheme on land leased by his mother, Ani Keefe). Waihua A34 was farmed as a development unit from 1938 by one Henry Hodges (though, at that time, it was still known as Waihua 2C10).⁷⁶ From 1941, after consolidation orders were finalised, Waihua A34 became Kupa's principal asset, and as the largest shareholder, he became concerned about Hodges' occupation. Kupa wrote to the Native Land Court in Gisborne in 1947 complaining that the land had 'gone right back' and suggesting that his son could take over the unit. The registrar agreed that the property showed 'neglect in advanced degree', and the Board of Maori Affairs recommended to the court that Henare Te Taka Kupa junior be installed as the new occupier. The court considered the matter at a hearing in October 1947. It agreed that Hodges should be replaced as the nominated occupier, but rather than push Hodges' family off the land, it ruled that the farm should be taken over by two of Hodges' sons. After the best part of a decade of dispute, Kupa finally accepted the decision in 1956, and Mihi and James Hodges were confirmed as the unit's nominated occupiers.⁷⁷

13.6.2 Kupa whanau interests in 1998

Waihua A34 was partitioned in 1959, with the result that Kupa's interests became 38.22 per cent of the shares in the 84-acre Waihua A34B block. Kupa died in 1961 and was succeeded by his eight children. Mohaka A20 and A48 do not appear amongst Crown researcher Brent Parker's spreadsheets of Maori-owned land in the Ngati Pahauwera tribal area (see sec 13.8.1), and we can conclude only that both have been sold or converted to general land.⁷⁸ Kevan Te Taka Kupa has a 16.7 per cent share of the Waipapa A2 block, which is a small section of 0.607 hectares and has a total of 143 owners, and a 1.7 per cent share of Waipapa A39, which is almost nine hectares in size and has 88 owners. He also has a 14.3 per cent share of the 35-hectare Waihua A34B block. A number of other members of the Kupa whanau, including various of Kevan's aunts and uncles, are owners in Waihua A34B.⁷⁹

In addition to Kevan Te Taka Kupa, three other grandsons of Henare Te Taka Kupa – Henry, Norman, and Gillie – addressed the Tribunal, as did his last remaining son, Richard. We heard that all but one of the eight children that Henare and his wife, Maude, had were

75. Document T17, p 55

76. Henry Hodges was Henare Te Taka Kupa's uncle, having married his aunt Makere: document T17, p 18

77. Document T17, pp 57–61

78. Document w5

79. See docs w5(c) and (e)

born at Mohaka. For a time during the 1930s, since Henare was not placed on the land as part of the development scheme, the family squatted in a tent on Crown-owned land on the south side of the river, and Norman's father, Taka, was born in that tent. The entire family eventually moved to live with Maude's family near Hastings, where Henare was able to find some labouring work. At times, the children were sent back to Mohaka to learn about their whakapapa and tikanga, but only two stayed for any length of time. Those who were sent home – Kevan's father, Tom, Taka, and Gillie's father, Stan – were harshly treated by their Mohaka relations and eventually turned their back on their Mohaka heritage.⁸⁰

Henry was born at Raupunga in 1949, but his family left the district when his father, Henare junior, was not able to replace Henry Hodges as the occupier of Waihua A34. Henry described the experience of effectively being left 'landless' as being 'traumatic' for his father, and he related how the hardships suffered by the family had resulted in the children becoming very distant from one another.⁸¹ In spite of his shareholdings, Kevan also considered his immediate family to have been 'completely alienated from our turangawaewae'.⁸² For the most part, Henare's grandchildren grew up with little knowledge of their roots or their relations. In making this claim to the Tribunal, the whanau has been able to come together, learn about their past, and get to know each other. As Henry commented, presenting the claim was 'an attempt to go some way to fix up the hurts of the last two generations'. It was 'part of the healing process'.⁸³

13.6.3 Claimant submissions

In closing submissions, claimant counsel referred to Wai 731 as a 'case study', and he described the effects of the consolidation and development schemes on the Kupa whanau as 'catastrophic'. Counsel criticised the way in which Henare Te Taka Kupa was left without any exclusive land interests in Mohaka after the consolidation, and how the Mohaka development scheme removed control of the land from its owners. He also noted that Henare, as the principal shareholder in Waihua A34, was unsuccessful in his efforts to have one of his sons farm the land. In sum, counsel argued:

The dispossession of the Kupa whanau demonstrates incontrovertibly the inadequacy of the Mohaka consolidation and development schemes. It is an example of the clear breach of both the Crown's obligation of active protection of Ngati Pahauwera's interests under the Treaty of Waitangi and the duty to ensure that the Kupa whanau and the whole of Ngati Pahauwera retained an adequate endowment of land for their present and future needs.⁸⁴

80. See docs T41, T42, T43, T44

81. Document T43, paras 7–9

82. Document T41, para 11

83. Document T43, para 9

84. Document X30, pp 64–65

13.6.4

13.6.4 Crown submissions

Crown counsel was succinct in his comments on the Wai 731 claim. He submitted that ‘the evidence submitted in support of this whanau claim cannot be considered by the Tribunal to be generally representative of the outcome of consolidation and development schemes in the Mohaka claim area’.⁸⁵

13.6.5 Claimant submissions in reply

In reply, claimant counsel argued that, whether the claim is representative or not, it ‘remains one whanau’s experience of the consolidation and development schemes and for that reason does provide a case study for this Tribunal’. He added that there was nothing in any of the evidence presented to the Tribunal to suggest that the Kupa whanau’s experiences were unique. Nor, he said, had the Crown challenged any of the evidence called in support of the claim. He concluded that the claim was well founded, and he called on the Tribunal to make findings as sought in the amended statement of claim.⁸⁶ In that document, the claimants sought as relief, *inter alia*:

- ▶ the provision by the Crown of sufficient land within the Ngati Pahauwera rohe to enable the Kupa whanau to return to Mohaka;
- ▶ the return to the whanau of any land in Crown title which formerly belonged to the whanau; and
- ▶ the payment by the Crown of financial compensation for their losses.⁸⁷

13.6.6 Tribunal comment

The story of the Kupa whanau is, from the evidence we heard in our inquiry, typical of the effects of title fragmentation, the consolidation scheme, and the dispersal of the Ngati Pahauwera population in the twentieth century. We consider that claimant counsel was correct to categorise the claim as a ‘case study’ for the parent Wai 119 claim. However, we consider it inappropriate to recommend any specific redress in this claim, particularly along the lines sought by counsel. Precisely because the claim was so very representative, there are doubtless many other whanau in the same position as the Kupa whanau. Moreover, there are probably whanau who have no landholdings whatsoever within Ngata Pahauwera’s tribal territory because they are descended from those who, for one reason or another, sold all their interests earlier in the century. Kevan Te Taka Kupa stated that ‘the whanau has no land’, but an examination of Parker’s spreadsheets shows that he and other whanau members still hold interests in some Ngati Pahauwera blocks (see sec 13.6.2).⁸⁸

85. Document x55, p 9

86. Document y6, pp 4–5

87. Document 1.55(a), pp 5–6

88. Document t41, p 4

Kevan may well be justified in perceiving these small and undivided interests as differing very little from a state of 'landlessness', but they nevertheless can give rise to a sense of *turangawaewae* and inclusion in the Mohaka community. This contrasts with, for example, the situation of the Wai 732 claimants at Petane. In that case, as we related in chapter 6 (sec 6.5.2), a *tipuna* was disenfranchised and succeeding generations were left without interests in ancestral land or a sense of belonging at Petane Marae. In the case of the Kupa whanau, however, we sensed an inclusive and welcoming attitude on the part of the Ngati Pahauwera tribal community, which we presume would be displayed towards other Ngati Pahauwera people who were coming to terms with their tribal identity for the first time.

We think that provision should be made for all Ngati Pahauwera people – including the Kupa whanau – to benefit from and share in the settlement of the Wai 119 claim. We do not believe that specific redress should be afforded a whanau group that had a registered claim when there are others in similar or even worse circumstances who did not. The Kupa whanau claim is a representative example of the Ngati Pahauwera claims, and as such it should be included in the settlement of all those claims.

A sequel to the hearing of the Wai 731 claim was an application by Kevan Te Taka Kupa to the Maori Land Court in September 1999 objecting to the 1995 vesting of Waipapa A114 (the Mohaka Marae reserve) in the ownership of Te Kahu o Te Rangi. Kevan's objection was made on the basis that he had not been consulted, despite his descent from one of the 185 original owners of Waipapa A114. It seems that, in researching the issues in the Wai 731 claim, Kevan had, for the first time, learnt of his family interests at Mohaka, and as a result he felt aggrieved that he had never known of hui such as the court sitting which led to the 1995 vesting. However, he was content to withdraw his application after the court and the Mohaka marae trustees present acknowledged his *whakapapa* to the land.⁸⁹

13.7 LAND DEVELOPMENT SCHEMES

As already discussed, Ngati Pahauwera had never had sufficient capital with which to develop their lands. Individual Maori freeholders, like Pakeha, could theoretically borrow up to 75 per cent of the value of their property (or the equivalent proportion of their interest in a lease) under the Advances to Settlers Act 1894. But, as Loveridge noted, few Maori farmers owned land individually and thus the opportunity offered by the legislation was not, in reality, open to most Maori landowners.⁹⁰ Ngata observed that 'so great was the prejudice against the Native title, [that] very few were able to secure assistance from that source'.⁹¹ Furthermore, as Reform Party leader and ex-Prime Minister Gordon Coates observed in 1929, 'it is hopeless

89. Maori Land Court Wairoa minute book 101, pp 153–157

90. Wai 46 R01, doc M21, pp 183–184

91. Apirana Ngata, 'Native Land Development', AJHR, 1931, G-10, p iii (46 R01, doc M21, p183)

generally for the Maori to get [financial] assistance from private sources, because the security is regarded as not being altogether satisfactory from the viewpoint of the private lenders'.⁹² In the early part of the twentieth century, as most of the leases to Pakeha pastoralists expired, this lack of available finance contributed to the reversion of so much of Ngati Pahauwera's land to scrub and weeds. It also facilitated the sale of much of Ngati Pahauwera's remaining land from 1911, particularly after the agricultural slump of 1921 and 1922. The Maori farmers who had leases from the Tairāwhiti District Maori Land Board were financed by local stock firms in the 1920s, but, when prices fell, the stock were sold to pay off debt. Answers to the problems besetting Ngati Pahauwera's lands were sometimes seen to lie in their being purchased by the Crown, as we noted above at section 13.3. For example, a Native Land Court memorandum concerning a particular Mohaka subdivision in 1924 recorded that 'Judge Carr . . . considers that this interest is an encumbrance to the owner, Anaru Natane, as it produces no revenue, and the prospective liabilities – partition – surveys – blackberries – rates, is an argument in favour of its acquisition by the Crown'.⁹³

However, an alternative to such 'solutions' was advocated. In 1891, the commissioners appointed to consider the state of native land legislation, who included James Carroll, had argued that Parliament had to 'devise means for encouraging and assisting the Natives to become useful settlers. This can be done if they are afforded facilities for rendering productive the lands they already possess'.⁹⁴

Stout and Ngata (quoted above) had recommended in 1907 that Maori be given 'assistance' to 'occupy [their lands] with profit to themselves and to the State'. In 1923, Symes, the East Coast native trust lands commissioner (whom we have also quoted above), recommended that a 'practical man' be employed to help local Maori farmers, 'firstly in inspecting and later in supervising, buying and selling stock, and advising generally. . . . A good man's salary would be a small item compared with what is lost annually by the farmer under existing conditions'.⁹⁵ Later in the decade, in September 1929, a group of Mohaka Maori owners took some initiative and purchased over 100 dairy cows. They were supported by the Tairāwhiti District Maori Land Board, which hoped to subsidise developments with a fund made up of deductions to cover rates, survey charges, and succession orders from the moneys paid by the Crown in purchasing interests in the Mohaka block.⁹⁶

With Ngata's rise to the position of Native Minister in 1928, Crown-financed development initiatives for Maori land at last proceeded apace. They accompanied, as Ashley Gould

92. G Coates, 1 November 1929, NZPD, 1929, vol 223, p 1105 (Wai 46 ROI, doc M21, pp 181–182)

93. Document A29, p 95

94. William Lee Rees, James Carroll, Thomas Mackay, 'Report of the Commission Appointed to Inquire into the Subject of Native Land Laws', 23 May 1891, AJHR, 1891, G-1, p xxx (doc J30, p 107)

95. Symes, East Coast Native Trust Lands Commissioner, to under-secretary, Native Department, 2 June 1923 (as quoted in doc, M4, p 41)

96. Document M4, pp 78–79

has pointed out, a Government programme to develop unoccupied Crown land.⁹⁷ Ngata's Maori land development programmes, however, went much further than those designed for the development of Crown land. Certainly, Ngata had long seen the consolidation, corporate management, and development of Maori lands as the answer to their rapid alienation and as a means of providing a working economic base for Maori tribes. Ngata had a specific cultural agenda in mind too. In developing Maori land, Ngata envisioned the development of the 'human material' – the Maori communities working the land.⁹⁸ Maori were to become, as Carroll had advocated, 'useful settlers'. Yet, Ngata's intention was not a straightforward transformation of Maori into efficient producers. In conjunction with consolidation schemes, land development would reconstitute tribal land bases. The development of Maori land was to be accompanied by extensive marae-building projects and was predicated upon the involvement of Maori leaders, preferably hereditary tribal leaders.⁹⁹ As Professor Alan Ward has commented, Ngata sought to make Maori rural communities 'economically viable' and to ensure that they were 'culturally secure'.¹⁰⁰

The legislative basis for Ngata's proposal was provided in section 23 of the Native Land Amendment and Native Land Claims Adjustment Act 1929. The purpose of development schemes was described in section 23(1) as being the 'better settlement and more effective utilization of Native land or land owned or occupied by Natives, and the encouragement of Natives in the promotion of agricultural pursuits and of efforts of industry and self-help'. Under the Act, the Native Minister gained extensive powers, while the role of Maori land boards was reduced. To bring land into development, the Minister had the authority to gazette any blocks and control their development through his agents. Once land had been gazetted, its private alienation was prohibited. Furthermore, under section 23(3)(f) of the 1929 Act, no owner could 'exercise any rights of ownership in connection with the land affected so as to interfere with or obstruct the carrying-out of any works', except with the consent of the Native Minister. The provisions in section 522 of the consolidated Native Land Act 1931 further refined these powers. In the Native Land Amendment Act 1932, the judicial functions of Maori land boards were returned to the Native Land Court. That Act also set up a Native Land Settlement Board, which was chaired by the Native Minister and had representatives from the Treasury, the Departments of Agriculture and Lands and Survey, and the Valuation Department.

97. Ashley Gould, 'Maori Land Development 1929–1954: An Introductory Overview with Representative Case Studies', Twentieth Century Maori Land Administration Research Programme, report for the Crown Forestry Rental Trust, 1996, p 20

98. 'Statement for the Commission on Native Affairs' not dated (Wai 46 RO1, doc M21, p 206)

99. Aroha Harris, 'Maori Land Development Schemes, 1945–1974 with two case studies from the Hokianga', MPhil thesis, Massey University, p 18; and Ranginui Walker, *He Tipua: The Life and Times of Sir Apirana Ngata* (Auckland: Penguin Books Ltd, 2001), p 235

100. Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 1, p 108

Ngata also pushed ahead with restructuring the Native Department, later known as the Department of Maori Affairs. Both Native Land Court and Native Trustee offices were moved into the expanded department, and staff were taken on to supervise the various land development schemes that Ngata had initiated. By the early 1930s, the department's major occupation had become the operating of the land development schemes. However, under the Native Land Amendment Act 1936, the powers vested in the Native Minister were transferred to a Board of Native Affairs. As we comment further below, this transferral of authority marked a significant change in the Labour Government's Maori land development policy.

Aroha Harris has identified four phases in the development of Maori land, although she notes that the last three were often collapsed. In the preliminary phase, a proposal to bring land into the ambit of the development scheme was initiated, the owners' agreement was gained, and titles were investigated. Liabilities for rates, survey liens, and other charges on the land were assessed, a rates 'compromise' was negotiated with the local authority, and a reduction in survey liens or charges on the land was negotiated with the Crown. Next, in the development phase, land was cleared, grassed, and stocked, and buildings were erected. In the third phase, land was farmed under the control of the department until the debt was reduced to the level of the land's improvement valuation. Finally, the land was 'settled' by Maori farmers (lessees or owners), a phase which inaugurated, according to Harris, 'its own process of selecting, financing, supervising and training settlers'.¹⁰¹ Selection was undertaken initially by the Maori land board as an agent of the Minister and, later, by the Board of Native Affairs.

In what Harris has termed an 'ironic twist', much of the funding for the scheme was provided from the native land settlement account, which had been established for the purpose of purchasing Maori land.¹⁰² Ward notes that the State also injected considerable funds from other sources, beginning with a £250,000 vote in 1928.¹⁰³ All the funds were secured by an interest-bearing mortgage over the land, which was to be repaid by the Maori owners or lessees. However, Ngata did not intend the advances to be overgenerous. Indeed, he frequently commented that Maori were used to a lesser standard of living than Pakeha. As he explained to his friend Peter Buck in July 1930, the schemes would make use of what he called 'the Maori standard of living, cheap housing, a bare sustenance allowance (made possible by the nature of the leadership), exploitation of natural food supplies etc'.¹⁰⁴ This view was echoed by other administrators involved in the scheme. The registrar of the Tairāwhiti district Maori Land Court, commenting on land that was to become part of the Waihua scheme (in the Mohaka area), explained that it was:

101. Harris, p 41

102. Ibid, p 30

103. Ward, vol 1, p 109

104. Sir Apirana Ngata, *Na to Hoa Aroha – From Your Dear Friend: The Correspondence between Sir Apirana Ngata and Sir Peter Buck, 1925–50*, ed MPK Sorrenson, 3 vols, (Auckland: Auckland University Press, 1986–88), vol 2, p 43

very unattractive from a European settlement point of view. In fact I doubt if European settlers would take it up . . . I would recommend that the Crown hand over these portions for lease to Natives. A Maori can take from the land a greater proportion of his food than a European can, and only a moderate living for him is better than unemployment.¹⁰⁵

Wider policy objectives underpinned the assistance being offered to individual farmers. As the previous comment attests to, many schemes, such as those in the Mohaka area, were intended to provide unemployment relief in the late 1920s and early 1930s. We have already commented on Ngata's vision of the redevelopment of a rural Maori economic base. Yet, as the decade progressed, the schemes became increasingly subordinated to the Labour Government's nationalising and centralising programme. By 1935, Ngata had resigned his native affairs portfolio following a commission of inquiry into the department, which reported in 1934.¹⁰⁶ The administration of Maori land development schemes was centralised within the Native Department, though district advisory committees provided input. The day-to-day administration was carried out by predominantly Pakeha staff in the development section, which became an increasingly significant component of the department. Gould comments that successive governments 'moved the emphasis away from serving the peculiar needs of rural Maori towards the efficient use of the land for the "national good"'.¹⁰⁷

One of the effects of centralisation in the 'national good' was an increasingly intrusive bureaucratic interest in the schemes. Ngata had early on been concerned about overweening paternalism on the part of the Pakeha bureaucracy. He outlined these concerns to Buck:

the paraphernalia of Department, Board and pakeha supervision are imposed by the conditions of State assistance and reveal the pakeha attitude of hesitation and distrust. I am having more trouble fitting these pakeha features into the machine, than hitching on Maori folk to the new job.¹⁰⁸

This paternalism, Harris argues, was reflective of a broader objective of using the schemes as a 'vehicle for socialising Maori people into a modern New Zealand society'.¹⁰⁹ The role of Pakeha supervision was to become a contentious issue for some Maori involved in working the land in the Mohaka development schemes.

From the outset, there was an unresolved tension in the scheme as to whether the purpose was to develop communal farming or to establish individual units. Ngata clearly felt that the benefits of communal living and the development of communities were integral to the scheme's success. This was why land consolidation, 'whose limits are set by the tribal or

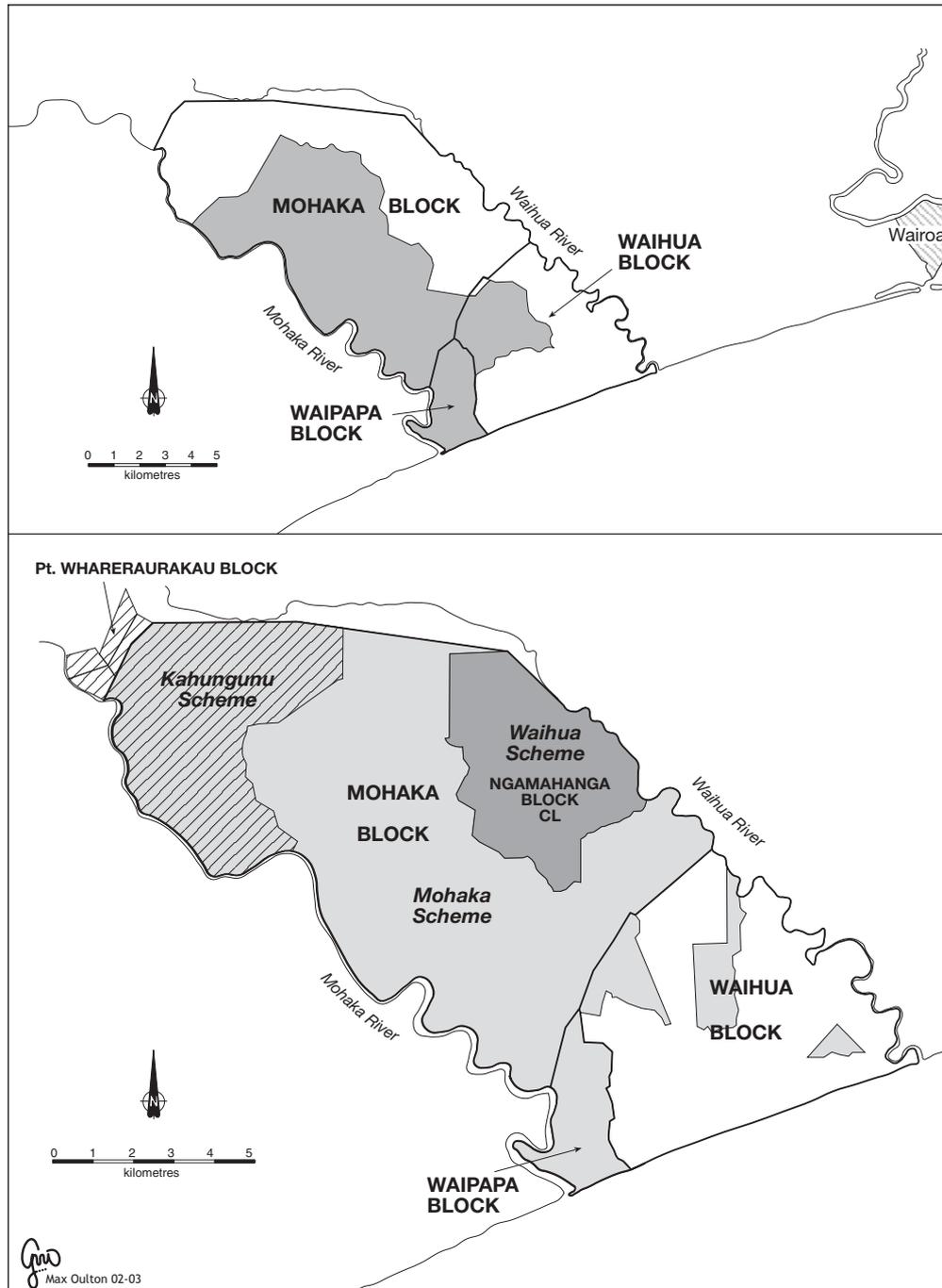
105. Document M4, p 84

106. David Stanley Smith, John Alexander, Donald Gordon Johnston, Lawrence William Nelson, 'Report of the Commission on Native Affairs', 1934, AJHR, 1934–35, G-11

107. Gould, 'Maori Land Development', p 13

108. Ngata, *Na to Hoa Aroha*, p 44

109. Harris, p 16



Map 49: Land development schemes at Mohaka; *top*, the Mohaka development scheme, 1930; *bottom*, the Mohaka, Kahungunu, and Waihua development schemes, 1933

sub-tribal boundaries', was so important.¹¹⁰ However, the development of 'communalism' was a particular concern of the 1934 commission. Defending his policy, Ngata argued before the commission that the 'tendency of the schemes is towards an individual life and must be so if you provide an individual cottage'.¹¹¹ After Ngata's resignation, the community development aspect of his land development schemes became tightly constrained by the Pakeha bureaucracy of the Native Department. The focus shifted to the individual 'unit' allocated to each farm in the scheme ('unit' was the term used for the 'nominated occupier' or farmer) and to concerns about recouping the finance advanced and secured against each farm. Yet, the tenurial position of individual farmers often remained uncertain, owing, Ward argues, to the confusion of the 'underlying pattern of hapu interests': 'Some of the schemes were based on a thorough discussion with, and the full consent of, the parties at the time, some were not. The question of priority between the farmer and the beneficial owners was never adequately resolved.'¹¹² Researcher Anita Miles has observed that, when decisions about land utilisation needed to be made, the relationship between the individual owner or lessee and that person's hapu was not always clear.¹¹³

By 1935, nearly 105,000 acres of land were under development, with a further 549,000 acres having been gazetted, and the schemes were providing work for 2635 men.¹¹⁴ Much of the accumulated debt was eventually written off. As Ward points out, while Maori communities 'now tend to look back on the schemes with a sense of bleakness and frustration', the main obstacle to the realisation of Ngata's vision was that there was 'simply not enough suitable land left to support a class of Maori small holders in reasonable prosperity'. Yet, despite Ngata's belief that Maori could live at a more basic subsistence level than Pakeha, their migration to the cities revealed that 'They, like most New Zealanders, wanted to live in reasonable comfort rather than struggle on marginal farms; they wanted well-paid jobs, good housing, and other opportunities in the towns.'¹¹⁵

13.7.1 The Mohaka development scheme

Ngata brought the Maori lands in the Mohaka and Waipapa blocks into a development scheme in January 1930 (map 49). Apparently, the planning for the consolidation scheme was sufficiently advanced at this time to allow the Native Department to develop the Maori holdings.¹¹⁶ In May 1930, in his letter to Buck, Ngata was already able to boast about the 'combined effects' of consolidation and development:

110. Ngata, *Na to Hoa Aroha*, pp 29–30

111. Gould, 'Maori Land Development', p 35

112. Ward, vol 1, p 109

113. Anita Miles, *Te Horo Development Scheme*, Waitangi Tribunal research series, 1993, no 13, pp 38–39

114. Harris, p 12

115. Ward, vol 1, p 111

116. Apirana Ngata, 'Report on Native-Land Development Schemes', AJHR, 1932, G-10, p 46; see also doc M4, p 105

THE MOHAKA KI AHURIRI REPORT

13-7.1

From the Mohaka bridge to the road deviation to Wairoa you will find new fencing in progress – numerous patches being cleared of fern, scrub and black-berry – 117 cows being milked, 48 springers have been purchased, and 100 Taranaki weaners. A contract for ploughing, discing and harrowing 300 acres of land is in progress. Scrub-cutting and the clearing of black-berry are seen all along the road. Men, young and old, women too are out on the roads and fields . . .

We have spent over £3000 already and authorised a further £3500 for the current year.¹¹⁷

Robert Jones, the chief judge of the Native Land Court, concurred. The Mohaka scheme was:

perhaps the one that will be the best illustration of the effect upon the Maori mind . . . Already over 150 dairy cows have been supplied to the Maoris, who are still calling for more stock, so that there is ample evidence that the Maoris are imbued with the right kind of spirit.¹¹⁸

The scheme was expanded in April 1931 to include Maori-owned lands in the Waihua and Putere blocks. Soon thereafter, the Minister of Lands agreed to the inclusion of 2500 acres of land in the north-western part of the Mohaka block that had been earmarked for the Crown under the consolidation scheme. Ngata commented in a letter to Buck that this was land that Crown officials ‘despair of working under their System, but [which] fits in with ours’.¹¹⁹ Ngata negotiated the use of funds voted for the relief of unemployment because the Mohaka scheme as it stood could not provide work for all the owners. Ngata was also able to gain the Minister of Lands’ agreement to the Ngamahanga block being brought into the scheme. The Crown had intended to break in and forest this block as unemployment relief, but by 1932 the development work had been abandoned.¹²⁰ Ngata accepted the advice of officials that Ngamahanga ‘could be developed on sound economic lines’, although a member of the Land Development Board had heavily criticised the Crown for wasting money by attempting to develop country ‘more suitable to breed birds in than anything else’.¹²¹

In 1933, the areas added to the development scheme out of Maori and Crown lands in the north-western part of the Mohaka block and the Whareraurakau 3A1, 3A2, 4A, and 4B blocks were rearranged into a separate scheme, known as Kahungunu. The Crown land in the Ngamahanga block became known as the Waihua development scheme, although it was all in the

117. Ngata, *Na to Hoa Aroha*, vol 2, pp 30–31

118. ‘Report of Under-Secretary for the year ended 31st March 1930: Native Land Courts and Other Matters under Control of Native Department’, AJHR, 1930, G-9, p 2 (Harris, p 32)

119. Ngata, *Na to Hoa Aroha*, vol 2, p 162

120. See doc M4, pp 83–88

121. JR Franklin, Wanganui, to Minister of Lands, 26 October 1932 (as quoted in doc M4, p 89). For the advice on Ngamahanga, see under-secretary, Native Department, to Under-Secretary for Lands, 2 March 1933, recalling the ‘opinion’ of the ‘officers in charge of development operations’ (as quoted in doc M4, p 92).

north-eastern part of the Mohaka block and did not include any of the Waihua block. The Mohaka scheme included the rest of the Mohaka block, all of the Waipapa block, and parts of the Waihua block (map 49). A prominent local Pakeha farmer and chair of the Wairoa County Council, Gordon Nolan, was made supervisor for all three schemes.¹²²

The speed with which progress was made on the Mohaka scheme is evidenced by a newspaper report of December 1931:

A truly remarkable illustration of what can be accomplished by hard work combined with sound practices is to be found in the Mohaka area, where the Maori farmers have virtually worked wonders in transforming the appearance of the countryside.¹²³

The following November, a lengthy report full of praise for the scheme appeared in the *Gisborne Times*:

In the course of three years, energetic Maoris, under expert supervision, have transformed barren pumice land, overgrown with manuka and blackberry, into profitable dairy farms, thus permanently enriching the wealth of the country and providing work for the unemployed. . . . Now what was a barren wilderness three years ago is a huge dairy farm, or rather a series of dairy farms, running 800 cows, and development progressing daily. Surely that is a feat of which the Native Minister must be proud.¹²⁴

A similarly positive account appeared in the *Wairoa Star* in March 1934.¹²⁵ Ngata wrote to Buck on 21 February 1933:

I then went on to Mohaka to see the first extensive Maori unemployment scheme, undertaken on land returned by the Crown at the back of Mohaka, about 6000 acres. There were 65 in camp, and a brief look over them satisfied me that the stuff was good, keen and conscious of the seriousness of the times. It would have done the pakeha Unemployment Board [good] to have seen how naturally the youth of the Maori race fits into the hard conditions of today.¹²⁶

13.7.2 Problems in the Mohaka, Waihua, and Kahungunu development schemes

By 1936, the Government had expended £36,757 on the Mohaka scheme, £9598 on the Kahungunu scheme, and £6525 on the Waihua scheme.¹²⁷ As Loveridge suggested, these were ‘respectable’ sums by the standards of the day, and the schemes were of clear benefit to some

122. Document M4, pp 93–95

123. *Gisborne Times*, 7 December 1931 (as quoted in doc M4, p 82)

124. *Ibid*, 26 November 1932 (p 95)

125. *Wairoa Star*, 19 March 1934 (doc M4, pp 108–111)

126. Ngata, *Na To Hoa Aroha*, vol 3, pp 62–63

127. Document J30, p 121

Ngati Pahauwera.¹²⁸ Whether or not this expenditure was a wise and fair investment, in light of the land value, is a more complex issue.

For a start, the money expended of course formed a loan and had to be repaid, with interest. Each individual farmer who became a nominated occupier was granted a 42-year lease by the Maori land board. The nominated occupier on each farm had initially to assign control of their milk cheque to the Native Department, although later they were permitted to keep some of that income for personal spending. Thomson thought that this generally left 'very slim living margins'.¹²⁹ Certainly, the Native Department did not act as a charity. As the November 1932 *Gisborne Times* article put it, 'the Department is safeguarded by its 100% assignment, so stands to lose nothing'.¹³⁰ Alexander commented:

virtually every Maori farmer in effect became indebted to the Crown. . . . And in many situations because that indebtedness involved interest payments as well, [it] became like an albatross around the necks of those Maori farmers. It became a real burden to get out from under.¹³¹

As the effects of the Depression hit, dairy farming profits in New Zealand plummeted. By 1934, Jones's estimation of the Mohaka scheme had changed, and he now admitted that: 'The state of the dairy industry today has unfortunately assumed the proportion of a national calamity.'¹³² In an attempt to ameliorate the national situation, a series of Acts were passed between 1931 and 1933 to reduce farmers' debt burdens: for example, the Mortgages and Tenants Relief Act 1931 offered mortgagors the opportunity to have their interest rates reduced and arrears remitted 'wholly or in part' and the National Expenditure Act 1932 legislated for a general reduction in rents and interest.¹³³ However, as we have already noted, Maori landholders were unlikely to receive State Advances loans, and private finance was equally hard to come by.¹³⁴ The benefits of debt reduction were not targeted at the Maori land development schemes.

The schemes could not accommodate all the numerous owners of the Maori blocks, and some inevitably missed out. One owner complained that, of the eight owners of the blocks in which he had an interest:

Four . . . now have all these lands and are being backed up by the Native Land Development Scheme, and four others are cast out. I am one of them. I have a family of six children and not a single acre to live on, in other words we are landless and homeless.¹³⁵

128. Document J30, p 121

129. Document A29, p 107

130. *Gisborne Times*, 26 November 1932 (as quoted in doc M4, p 98)

131. Transcript 4.23, p 14

132. RN Jones, 'General History of the Mohaka Development Scheme', 1934 (as quoted in doc J30, p 122)

133. 'Report of the Dairy Industry Commission', 1934, AJHR, 1934-35, H-30, pp 54-55

134. Document A29, p 107

135. Paramena Nicholson to Savage, 6 July 1936 (as quoted in doc A29, p 108)

This owner was told that his interests were 'too small to warrant development assistance'.¹³⁶

The reality was that the scheme required tough decisions to be made as to which owners were to make up the more than 60 nominated occupiers who were each eventually allocated a farm on the three schemes. We have already reviewed the situation of the Kupa whanau, who were unable to settle on a scheme farm.

For those who did secure farms, life was far from easy. Maori farmers suffered 'quite miserable conditions to begin with', according to Alexander. They lived in ex-railway workers' huts (tin sheds with dirt floors) and were expected immediately to begin clearing scrub, then sow grass seed and farm dairy cows, while their levels of debt mounted year by year. The official annual reports and newspaper reports were upbeat, but these masked the realities of constant scrub reversion, highly marginal terrain, and low butter fat yields owing to poor quality stock and pastures. In hindsight, said Alexander, 'dairy farming was a blind alley'.¹³⁷ In 1950, the Board of Maori Affairs concluded:

In the opening up of development [at Mohaka] insufficient regard was given to . . . [the] capability of the land, in that farms sections were made too small . . . Much of the land was of a sub-marginal nature and events have proved that it never should have been considered for dairying.¹³⁸

Ngata's preference was for dairying, however, because he believed that its labour-intensive nature would enable as many local people as possible to make a living off the land. And this consideration became crucial as the Maori unemployment rate soared. By 1933, three-quarters of the adult male Maori population were registered as unemployed and, partly as a result of Ngata and others believing that Maori could live off the land better than Pakeha, they received less relief than unemployed Pakeha. Most of the relief payments that were made to Maori were funnelled from the Unemployment Board to workers on land development schemes.¹³⁹ None the less, even taking account of the poor living conditions and the difficulty of the work, Maori working the schemes at Mohaka may still have been better off during the Depression than if land development had not commenced in the area.

Some Ngati Pahauwera witnesses were able to give us first-hand accounts of their experiences working on the development scheme. Erueti Te Kahika began working on the scheme in 1932 as a teenager, and his family was allotted its own farm in the Kahungunu scheme in 1938:

When we started off milking cows, we had to give Maori Affairs half our cream cheque to pay for the cows. They set it up that way. They were tough, bloody tough. The more cream we put out the bigger your cheque, and they would take half of it. What was worse is that they

136. Under-secretary, Native Department, to Paramena Nicholson, 18 August 1936 (as quoted in doc A29, p 108)

137. Transcript 4.23, p 16

138. Head office Board of Maori Affairs, Mohaka Development Scheme Report, 24 August 1943 (as quoted in doc 116, p 210)

139. Michael King, 'Between Two Worlds', in *The Oxford History of New Zealand*, p 293

took all the proceeds from lambs, sheep and beef that we had on the farm – at one stage you couldn't even eat one of your own lambs or sheep. We had to pay for the power and food, telephone and clothes with what was left. I was lucky though, I used to work part-time on the road with the county. . . . If I had not had this other work we could not have kept going.¹⁴⁰

Te Kahika's father had incurred a big debt to the Native Department for fencing materials needed to develop the farm, and, when he died, Te Kahika inherited it (he described it as 'a hell of a big burden'). Although he was finally able to pay it off around the time the Wairoa dairy factory closed in 1978, he said that many could not pay their debts and had to walk off the land.¹⁴¹ We note that, despite the interest reductions mentioned above, the level of indebtedness among non-scheme dairy farmers and other smallholders remained high during the 1930s.¹⁴²

In 1990, Thomson interviewed kaumatua Tom Gemmell senior of Raupunga about the scheme. Gemmell recalled:

The whole trouble with these units, they were very small, . . . not very economic. [Native Affairs] didn't realise what it was like to be milking [only] 20 or 30 cows. There's no living in [that]. . . . We were being assisted by the Department of [Native] Affairs. At the same time, [it was] a struggle, because they cut you down to a bare living, hardly enough to make both ends meet. . . . Things would get tough when you've got a big family and when you see your family starving you couldn't just carry on, so you have to leave the place and get employment to keep the family going.¹⁴³

The farmers in the development schemes were not helped by the onset of the Second World War, which resulted in a substantial reduction in the amount of capital that the Crown was prepared to invest. During the war, most of the 11 Kahungunu scheme settlers walked off their farms, and thereafter they were run by the Department of Lands as Rawhiti Station. The development of the Ngamahanga block was effectively abandoned by 1946 because of the block's poor soil and difficult terrain, and because of the problem of perennial scrub reversion, which was exacerbated by a lack of capital and suitable labour during the war. This was the second time that development of the block was abandoned. The land was then sold into private ownership in 1953.¹⁴⁴ By 1951, only 51 people with 170 dependants were being supported in any way by the Mohaka scheme, and the lack of economic returns in dairying was forcing more farmers either to switch to running sheep or simply to walk off the land. Of the 30 dairy units left by then, 22 had fewer than 30 cows.¹⁴⁵

140. Document P8, p 5

141. Ibid, pp 5–6

142. See for example, Tom Brooking, 'Economic Transformation', p 243 passim

143. Document A29, p 108

144. Document M4, pp 119, 125–129

145. Document A29, pp 108–109

Alexander considered that the schemes could have proven more of a success if sufficient capital had been put into fencing and paddocking early on. The Crown had been unwilling to lend the Maori farmers more money because it realised that they would never really be able to pay the loans back, though it should be noted that, at least in the case of the Kahungunu scheme, some of the debt was remitted by the Native Department.¹⁴⁶ Alexander commented that:

In the end it turned out that the Crown was more concerned about the financial effects for itself in terms of whether it would get repaid than it was about the social effects on, or the benefit to, the Maori people and it was the financial effects that eventually led to the development schemes actually folding.

Since the 1940s, Alexander added, much of the hill country has been taken out of farming and put into forestry, which has proven a much more economic venture. The Forest Service had in fact been interested in planting trees on the Crown lands in the schemes before any farming commenced in the 1930s, but it faced the opposition of the Native and Lands Departments, which believed in farming at all costs.¹⁴⁷ We would add that, by the 1940s, the impetus behind the schemes (particularly Kahungunu) to provide unemployment relief had dissipated. As Gould has noted (see above), the 'national good' had changed and now required the productive development of land and schemes that were less of a burden on the taxpayer.

13.8 SOCIAL AND ECONOMIC SITUATION

In this section, we briefly review the state of Ngati Pahauwera's remaining lands, the factors that encouraged migration from the Mohaka district, and the social conditions that existed within the community at Mohaka.

13.8.1 Land holdings

After the last of the Rotokakarangu block was acquired by the Mossman family in 1977, Ngati Pahauwera retained land in only four blocks: Waipapa, Waihua, Mohaka, and Putere (map 50). Sections of all those blocks continued to be sold into the latter part of the twentieth century, and in November 1997 Tureiti Moxon stated that there were only 5428.62 hectares (approximately 13,415 acres) left in Maori ownership.¹⁴⁸ A slightly higher figure (6111.1 hectares) was later given by Brent Parker, who produced comprehensive spreadsheets on the

146. Document M4, p 120

147. Transcript 4.23, p 17

148. Document N8, p 23

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basis of schedules of ownership provided by the Maori Land Court.¹⁴⁹ Parker conceded under cross-examination from claimant counsel that he was unaware whether all the owners he had identified were in fact Maori. He agreed that what he had provided showed the maximum possible amount of Ngati Pahauwera land (in that some may have been undivided interests purchased by Pakeha) and the minimum possible number of owners (given the lack of successions).¹⁵⁰ In other words, there are probably even more owners and even less land than is at first apparent. The following summary is based on Parker's figures:

Block	Remaining land held under Maori title (hectares)	Approximate area (acres)	Parcels across which ownership is spread
Waipapa	359.7628	888	155
Waihua	1329.7172	3285	48
Mohaka	3485.7148	8613	92
Putere	935.8648	2313	8
Total	6111.0596	15,100	303

Remaining Ngati Pahauwera land holdings

Parker did not provide summary details of the overall number of owners of Maori land in the four blocks, but he did make the following points, which underscore the claimants' concern that Ngati Pahauwera landholdings today are scattered, fragmented parcels in multiple ownership:

- ▶ in many instances there are large numbers of owners of sections within the blocks;
- ▶ many of the ownership interests are small as a percentage of the overall shareholding; and
- ▶ there are a number of people with ownership interests in more than one block and in more than one section in a block.¹⁵¹

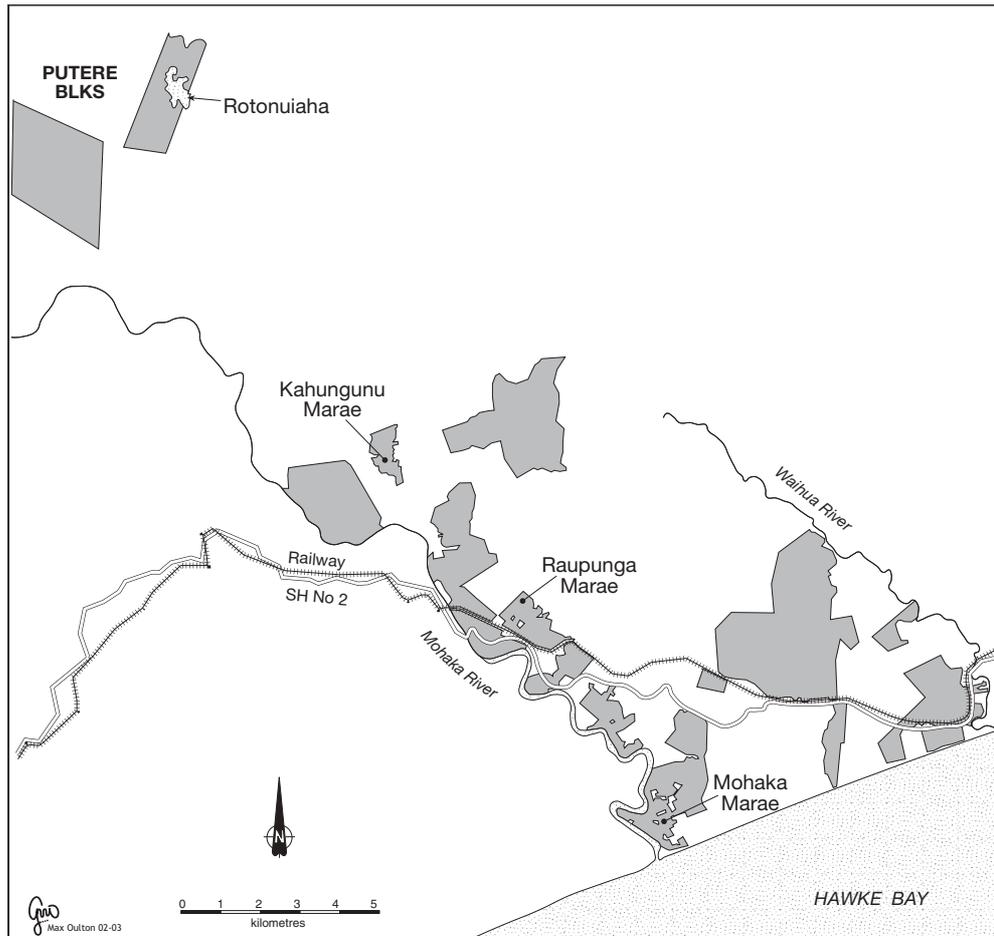
From a perusal of Parker's spreadsheets, we can provide the following random examples:

- ▶ the Waihua A9 block, of 165 hectares, has 126 registered owners;
- ▶ Putere 1B2C, of less than one hectare, has 32 owners, one of whom owns an undivided amount of 0.0021584 hectares (we calculate this to be 21.584 square metres, or the size of an average living room);
- ▶ Mohaka 37C, of 11 hectares, has 68 owners;
- ▶ Mohaka C12, which, at almost 1700 hectares, is the largest block retained by Ngati Pahauwera, has 592 owners, one of whom owns an undivided amount of 0.000777 hectares, or fewer than eight square metres;
- ▶ four owners in Waipapa A113 own undivided interests of 3.2 square metres each; and

149. Document w5, p 4. Apparently, Mrs Moxon's figures included Raupunga township but excluded Putere, while the converse is true for Parker's figures: see doc x30, pp 17–18.

150. Cross-examination of Brent Parker by Grant Powell, twelfth hearing, 29 July 1999, tapes 17–18

151. Ibid, p 3



Map 50: Maori land at Mohaka, 1997. Source: Te Puni Kokiri.

- ▶ one owner, Gary Christopher Te Kahika, owns several small, undivided interests in Mohaka A77, Waipapa A82, Waihua A46, and Putere c, which together total less than a fifth of a hectare.¹⁵²

It is also likely that many cases exist where owners with tiny shareholdings have died and not been succeeded to. If they have large families, their shareholdings will become even more minute upon succession. The scenario given us by Mrs Moxon of 100 owners for a quarter-acre section is not so far-fetched.¹⁵³ In fact, it is inevitable.

In a personal case study, Mrs Moxon related how her own family (that of her parents Te Muera and Margaret Hawkins and their descendants) owns almost 16 hectares outright in four separate Waipapa blocks, along with undivided shares in a further seven Waipapa and Mohaka blocks. She said that this scattering of interests, along with the 'uneven quality' of the whanau lands, had 'virtually destined the Hawkins whanau to subsistence or low grade

152. See docs w5(a)-(f), x60

153. Cross-examination of Tureiti Moxon by Craig Linkhorn, fifth hearing, 6 November 1997, tape 12

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enterprises'. Whanau members have had to leave to find employment, she explained, not only to give themselves a livelihood but also to pay the rates and to ensure that the family retained its land:

The whanau has attempted various agricultural/pastoral enterprises on its land but the consequences have always been piecemeal and erratic, as indeed they are destined to be by the nature of the original allocation. The whanau holdings have feet of clay.¹⁵⁴

As land values increased with the ongoing development of forests and vineyards, the rates on the four Waipapa blocks owned outright by the family doubled between 1995 and 1997. With the blessing of other whanau members, Mrs Moxon's brother, Peter Hawkins, has been attempting to farm 23 acres of the land, but he is finding it difficult:

I'm trying to do something with the land so it doesn't grow into blackberries. . . . I haven't been able to make a living off the land but I am hoping to utilize the land by planting crops. I would rather be working my own land than stuck inside some building in town somewhere. We've got the land. A lot of people say that Maori people are lazy but we aren't, it's just that we haven't got the finances to keep us going, that's all it is. . . . Overall it is very frustrating. Every cent we make is put back into the land but at the moment it's not enough to give us a future. It's hard to keep working when the land is not your own.¹⁵⁵

He also explained that his main source of income was the dole.

13.8.2 Migration from Mohaka

From a number of the witnesses, we heard that large numbers of Ngati Pahauwera have left the Mohaka district for opportunities elsewhere. Further evidence of this came from a survey carried out by Mrs Moxon in 1993. Of the 284 living members of eight separate whanau groups included in her study, the dispersal was as follows:

Region	Number	Percentage of total
The Mohaka area	52	18.31
Elsewhere in Hawke's Bay–Poverty Bay	73	25.70
Elsewhere in the North Island	108	38.03
The South Island	17	5.99
Overseas*	34	11.97
Total	284	100.00

* In all but one case, 'overseas' meant Australia.

Dispersal from Mohaka. Source : doc J16, pp 53–54.

154. Document N8, pp 15–16

155. Document P10, pp 6–7

While we do not know in which generation the migration occurred, and while the sample cannot be said to be definitive, the study nevertheless illustrates what was already apparent: the great majority of Ngati Pahauwera now live beyond their tribal boundaries.

Population numbers have expanded, landholdings have decreased through further sales, shareholdings have diminished and fragmented through successions, and work has been hard to come by at Mohaka. The economy has changed radically in the last two generations and agriculture can now support far fewer people. Furthermore, the overwhelming majority of Mrs Moxon's sample group owned no land outright within Ngati Pahauwera tribal areas, and half had no shares in any blocks in multiple ownership.¹⁵⁶ In the circumstances, it is little wonder that we heard so many personal accounts of Ngati Pahauwera migration from Mohaka.

13.8.3 Social conditions

For those who remained on the land, the prospects and living conditions were bleak. We heard personal accounts and were given figures showing chronic unemployment, low levels of education, poor health, and drug and alcohol abuse. In addition, many young men were resorting to Wairoa-based gangs. Coupled with this has been a dwindling of services: the general store and post office at Raupunga closed in 1988, with the garage following suit in 1992, and ever since then the community has had to travel to Wairoa for all its needs. We heard of the substandard (and Health Department condemned) local water supply. On our site visit, we saw rubbish dumped over the sides of cliffs, because, for the four years previous to our visit, the Mohaka–Raupunga community had had no rubbish dump (the Department of Conservation had closed the unofficial one and the Wairoa District Council had not yet established a new refuse transfer station).

We also witnessed firsthand the living conditions of the local people, many of whom had returned from the cities and were effectively squatting on multiply owned land. Most New Zealanders would associate some of the housing we saw with shanty dwellings in the third world – homes were constructed from old caravans, tarpaulins, and corrugated iron. Many dwellings were simply relocated railway workers' huts dating from the era of the development scheme and were quite unsuitable for families. Claimant witness Lou Wesley explained the difficulties for those returning to live in the district:

I sort of own family land, well I pay the rates for it. . . . I have tried to pay the rates. . . . although since the last rate rises, when the rates doubled, I have been falling behind. I now pay a couple of hundred dollars a year which is a lot when there are no footpaths or other services provided by the Council. No one is living on either block. We are not utilising the land at the moment.

156. Document J16, pp 56–57

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I wanted to settle on the family land when I came home. I have the land but I can't even move onto the land because of Council bylaws. I have to start off little with a caravan maybe. It's difficult for sewage and things around here. I think you need a permit to construct a long drop now because it's a building. . . .

You need a proper house as the Council won't let you live in a garage converted into a dwelling. I haven't got \$100,000 to build a house, a garage would be dear enough for us. . . . In the end it is just too difficult to build here. . . . My interests in Mohaka are just too fragmented and the titles too unclear to build a house on any of the family land. There is also no suitable land for sale round here. So in the end I just have to move away.¹⁵⁷

Some employment opportunities exist at Mohaka, but they are few and far between. Nobile Wines has a joint venture growing grapes on 90 acres of Maori land near Raupunga, and it employs some Ngati Pahauwera people. However, Mrs Moxon told us that the company has also had great trouble employing local people for casual work because they face a six-week stand-down from their benefits after having had paid employment. Mrs Moxon also told us that 12 of the 91-strong workforce on the 15,500-hectare Mohaka Forest in 1994 were Ngati Pahauwera people.¹⁵⁸ While we do not have the up-to-date figure, we presume that the forest continues to employ at least as many Ngati Pahauwera. We also heard, however, that most of the work goes to outside contractors, and that Ngati Pahauwera gain little more by way of income from the forest than they do by leasing out Raupunga Marae as accommodation for the contractors.¹⁵⁹ The forest has also had a negative impact: its boom raised property values and triggered the rates rise so bitterly complained of by several witnesses. In recent years, more and more local farmland has been planted in pine forest. This was manifest to us when the Tribunal was taken by helicopter around the rohe of Ngati Pahauwera. Maori owners risk being unable to pay rising rates on land that they have no means to develop. It remains unclear how much additional employment will be created by this expansion of exotic forestry.

13.9 THE MOHAKA RIVER CLAIM

Because of recent events, we need to comment briefly upon the Ngati Pahauwera's Mohaka River claim. Before doing so, however, we need first to set out the events that led to the Tribunal's report on that claim in 1992.¹⁶⁰ In 1987, the Minister of Works and Development received an application from the Hawke's Bay Acclimatisation Society and the Council of

157. Document P11, pp 4-5

158. Document N8, pp 25-26

159. Document X30, pp 71-72

160. The following is taken from the Waitangi Tribunal, *The Mohaka River Report 1992* (Wellington: Brooker and Friend Ltd, 1992), pp 1-4.



an urgent hearing of its river claim. The Crown opposed the request for urgency but the Tribunal granted it, considering there to be a ‘very real possibility of injustice to Ngati Pahauwera if the draft conservation order is confirmed before this Tribunal has considered and reported on the present claim’. The Tribunal heard the claim between April and June 1992 and issued its report in November of the same year. It found that Ngati Pahauwera had not relinquished rangatiratanga over the Mohaka River when selling riparian lands. It recommended that, inter alia:

- ▶ ‘The Crown should enter into discussions with Ngati Pahauwera with a view to reaching agreement on the vesting of the bed of the river from the Te Hoe junction to the river’s mouth in Ngati Pahauwera and on a regime for the future control and management of the river.’
- ▶ ‘A water conservation order should not be made unless and until discussions between Ngati Pahauwera and the Crown result in an agreement on a regime for the control and management of the river, in which event the order should incorporate the agreement.’¹⁶¹

After the release of the Tribunal’s report, there were some initial negotiations or discussions between the Crown and Ngati Pahauwera over the river claim, but these did not lead to any agreement. As noted below, claimant counsel submitted in late 1999 that Ngati Pahauwera were no nearer a resolution of their river claim than they had been in 1992. For some years, then, it appeared that the Crown had left the matter in abeyance. However, very recently, on 12 March 2004, Environment Minister Marian Hobbs announced that a decision had been made to place a water conservation order over the river. She acknowledged that a considerable period of time had elapsed since the original 1987 application but said that she had concluded, ‘after thorough and careful consideration of all relevant matters, including the Waitangi Tribunal’s *Mohaka River Report*’, that an order was needed.¹⁶² Ngati Pahauwera spokesman Charlie King reacted by saying that Ngati Pahauwera ‘had not been informed of the order and [were] disappointed no contact had been made before the decision’. He said there were ‘still issues we want to discuss with the Crown’.¹⁶³

The Mohaka River Tribunal also reported that an average of 32,500 cubic metres of gravel had been extracted from the bed of the Mohaka River each year since 1963. Since the Tribunal had found that Ngati Pahauwera had never parted with its ownership rights over the river, it recommended that the Crown pay compensation for the gravel extracted. It also recommended that no more gravel be extracted from the river without Ngati Pahauwera’s approval.¹⁶⁴ According to Mrs Moxon in 1997, however, gravel continued to be extracted without that approval.¹⁶⁵

161. Waitangi Tribunal, *The Mohaka River Report 1992*, p 79

162. Press release, <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=19147>, downloaded 22 March 2004

163. *Hawke’s Bay Today*, 15 March 2004

164. Waitangi Tribunal, *The Mohaka River Report 1992*, p 71

165. Document J17, p 9

13.10 LEGAL SUBMISSIONS

The legal argument focused on twentieth-century loss of land, on whether the Crown should have been more protective of Maori interests, and on whether Maori had freedom to sell their individual interests if they wished.

13.10.1 Claimant submissions

Claimant counsel argued that, once title to all their remaining lands had been finally settled in 1910, Ngati Pahauwera's lack of access to capital plus the Crown's pressure on them to sell left many individuals believing that was 'their only viable option'. He added that the Crown was 'manipulative' in its use of both section 363 of the Native Land Act 1909 and out-of-date valuations. He considered that the Crown's 'purchasing binge' from 1914 to 1930 further eroded a seriously diminished land base, 'with the result that Ngati Pahauwera descended further into poverty'.¹⁶⁶

Counsel submitted that the consolidation scheme was clearly not designed to restore Ngati Pahauwera's land base, given that, for several years after the proposed consolidation scheme was approved, the Crown continued to purchase land in order to improve its position. He concluded that the scheme was generally of little advantage to Ngati Pahauwera. He likewise felt that, while the land development scheme may have benefited some members of Ngati Pahauwera, this was at the expense of others who could not get a farm. As a case in point, he cited the experience of the Kupa whanau.¹⁶⁷ Even those who did partake in the scheme, caused submitted, suffered real hardships and difficulties. The development scheme was a case of 'too little too late' and caused 'more social disintegration, hardship and land alienation'. By 1940, counsel suggested that Ngati Pahauwera had 'reached a position of near destruction, a position they have retained since that time'.¹⁶⁸

Counsel criticised the Crown for failing to act on the recommendations of the Tribunal in the *Mohaka River Report*. He contended that the Crown was no closer to meeting its Treaty obligations to Ngati Pahauwera with respect to the river than it was at the time of the release of the report in 1992. He argued that such 'failure to act on the recommendations of the Tribunal is as much a Treaty breach as the specific claims proved in the course of both the river claim and the present land claims'.¹⁶⁹

13.10.2 Crown submissions

With respect to the Crown's purchasing of Ngati Pahauwera land between 1914 and 1930, Crown counsel noted that there were 'a number of similarities between twentieth century

166. Document x30, pp 59–61

167. Ibid, pp 64–65

168. Ibid, p 66

169. Ibid, p 75

Crown purchases from people in the Mohaka claim area and from people to the south in the Mohaka Waikare blocks'. He said that 'In reviewing this period there is considerable common ground between the Crown and the claimants on a number of the criticisms made by witnesses of the behaviour of officials.' Counsel felt that this acknowledgement raised the question of whether the Crown should have bought land at all during this period. The answer, he said, was a 'qualified yes'. Changing social and economic circumstances meant that owners developed interests elsewhere and had a right to sell their shares, while the Crown had a right to buy such shares to further its programmes for soldier settlement, railway construction, and the like. However, he conceded that:

these valid objectives should not have been pursued by placing undue pressure on those who did not wish to sell, or by undermining the communities living in the area. Following the report of the Stout–Ngata Commission the Crown could be said to have been put on notice as to the objectives of the owners of the remaining land owned by Ngati Pahauwera in the Mohaka claim area.¹⁷⁰

We shall return to a consideration of Crown counsel's submissions on Ngati Pahauwera's relative landlessness – and its potential connection to their socioeconomic underachievement – in chapter 19.

Counsel raised the question of whether Government officials acted fairly and reasonably toward Maori during the sale process, and he concluded that there were 'some aspects of the process employed that were seriously flawed and could have been avoided'.¹⁷¹ For example, counsel acknowledged the potential for Crown abuse of section 363 of the Native Land Act 1909. Quoting from another volume of the Crown's closing submissions (relating to the Mohaka–Waikare district), counsel reiterated that 'The use of the power in s363 to impose pressure upon owners who had manifested no wish to enter negotiations with the Crown was a serious departure from the standards of fair and reasonable dealing embodied in the Treaty'.¹⁷²

Overall, counsel felt that the Crown's use of section 363 had been 'reasonable' in Putere, which had already been 'the subject of bona fide Crown purchasing for some time', but was 'harder to justify' in Mohaka. In that case, very few owners wished to sell, and counsel implicitly accepted that the Crown should have taken heed of the collective view presented to the Stout–Ngata commission that the land be retained for farming by its owners. Counsel noted, however, that the Crown did not employ section 363 in other blocks where land was being leased and sold, such as Rotokakarangu 2, Whareraurakau, and Waihua, and the use of section 363 had not affected 'the kainga block at Waipapa'.¹⁷³ This showed, he said, that the Crown was capable of 'some discrimination in the claim area'.

170. Document x55, pp 31–32

171. Ibid, p 33

172. Document x51, p 121 (doc x55, p 34)

173. Document x55, pp 34–35

With respect to evidence that officials used out-of-date valuations to justify the price offered when purchasing land, Crown counsel agreed that ‘this behaviour amounts to Crown purchasing agents ignoring the requirements of the 1909 Act’. He suggested that the Crown could have avoided this transgression simply by refraining from purchasing ‘until the next valuation roll was published revaluing the land in light of the agricultural slump being experienced’.¹⁷⁴ Counsel noted that Loveridge had suggested that several thousand acres were purchased in the period in which the Crown used out-of-date valuations, but he said that it was unclear exactly how many acres were actually sold using superseded valuations and he criticised claimant counsel for not maintaining this distinction in closing submissions.¹⁷⁵

Counsel argued that, to a large extent, Maori interests were protected in land sales by the Tairāwhiti District Maori Land Board, which scrutinised transactions to ensure that the vendors were not rendering themselves ‘landless’. He said that there were numerous examples in the evidence of the board performing a protective function. He also submitted that many individuals claimed to have land outside the Ngati Pahauwera district, which perhaps indicated a drop in ‘active tribal affiliation to Ngati Pahauwera’ during this time. Moreover, he said, the Crown could not have reasonably foreseen that Maori would move over the course of the twentieth century from valuing individual title to again preferring tribal title. During the period 1910 to 1930, he argued, Ngati Pahauwera ‘seem to have decided for themselves that their future lay in becoming individual farmers’. To that extent, he said, individual sellers ‘made, what were to them, rational choices about where to focus their interests’.¹⁷⁶

Counsel acknowledged, however, that little thought was given as to how those who actually chose to remain on the land could maintain viable communities. ‘Coherent thinking about the interests of those who wished to remain appears to have been overlooked until the Crown moved to provide development finance.’ In conclusion, he conceded that:

The net effect of the purchase programme was to undermine the existing Maori presence in the area and compromise the future prospects of the Maori communities then in existence. This was in a period where the area of land remaining in Ngati Pahauwera ownership was much smaller than the area of land which they had been involved in selling.

Both the extent and manner of purchasing are open to criticism in the light of the Treaty. Readiness to sell is certainly an aspect of the question that must not be ignored and the protection of the Land Board in this region was meaningful. However, it would be reasonable to conclude that in taking advantage of this willingness, the government acted in a manner that was at times unfair and with little regard for the maintenance of a viable Maori presence in the region. In these respects the Crown did not maintain the standards of good faith and fair dealing that had found expression in the Treaty.¹⁷⁷

174. Ibid, pp 36–37

175. Ibid, p 37

176. Ibid, pp 37–40

177. Ibid, pp 41–42

With respect to the land development schemes (and the associated consolidation scheme), counsel noted that the claimants had been highly critical in a general way, but he submitted that each scheme needed to be examined in its own right. To this end, he cited the position of Ward in his Waitangi Tribunal commissioned Rangahaua Whanui *National Overview* report that, while the schemes had some problems in planning and management, they were genuine (albeit belated) attempts to help Maori become farmers, and each needed to be evaluated in terms of the balance of profit and loss to the community concerned. Counsel further submitted that, just because such State involvement in and regulation of agriculture would be frowned on today, it did not follow that the schemes were undertaken in breach of the principles of the Treaty.¹⁷⁸

Overall, Crown counsel felt that the evidence in this inquiry was insufficient to allow the Tribunal to say much ‘by way of specific findings that evaluate the three major schemes in operation in the Mohaka claim area in the way recommended by Professor Ward’. As an example, he provided a list of questions that he did not believe could be adequately answered, such as how many owners who wished to farm were not appointed unit-holders, what levels of consent were obtained from the owners over the method of agriculture to be pursued, and so on.¹⁷⁹

As for the problems inherent in Ngati Pahauwera’s remaining lands being held in small parcels by large numbers of owners, Crown counsel submitted that, under the Te Ture Whenua Maori Act 1993, the Crown had ‘promoted a number of options for land to be held collectively’. He noted, however, that ‘individuals may be reluctant to participate in initiatives to reinstitute collective land titles’.¹⁸⁰

Crown counsel made no submissions on the claimants’ allegation that the Crown had failed to act on the Tribunal’s recommendations in the *Mohaka River Report*.

13.10.3 Claimant submissions in reply

Claimant counsel noted that the Crown had answered with a ‘qualified yes’ to the question of whether the Crown should have continued to buy land during the period from 1910 to 1930, largely on the basis that many of the sellers had land outside the Ngati Pahauwera district. He felt, however, that this both ignored the issue of whether Ngati Pahauwera retained sufficient land for their present and future needs and was contradicted by Crown counsel’s concession elsewhere that, at some point between 1910 and 1930, the Crown should have ceased to purchase further interests. He also took issue with Crown counsel’s comment that the use of section 363 of the Native Land Act 1909 was reasonable in the case of Putere but not so

178. Document x55, p 43

179. Ibid, p 44

180. Ibid, p 51

in the case of Mohaka. He submitted that it was ‘hard to see any justification for alienation proclamations being consistent with the Treaty in any circumstances’.¹⁸¹

Counsel disputed that the Tairāwhiti District Māori Land Board had performed a protective function. He submitted that the evidence showed that the Māori land boards streamlined land alienation; in the first decade that the Tairāwhiti board operated, Ngāti Pahauwera lost 44 per cent of the land they retained in 1910. He also took issue with the remark that Ngāti Pahauwera individuals made rational choices to sell their interests. This, he said, belied the fact that such ‘choices’ were ‘not real choices at all, but rather a forced response to outside pressures such as Crown policy, the title situation regarding Māori land, and a lack of access to development capital’.¹⁸²

With respect to the consolidation and development schemes, counsel argued that there was indeed ample evidence available on which to determine whether the schemes’ problems outweighed their benefits. That evidence, he submitted, ‘shows clearly not only what did not work but why the schemes failed’. The schemes, he said, caused ‘hardship and suffering’ to Ngāti Pahauwera. He criticised the Crown for claiming that the evidence was deficient while not presenting any evidence of its own to counter that of the claimants or to clarify the position.¹⁸³

13.11 TRIBUNAL COMMENT

Despite Crown counsel’s constructive concessions on the issue of Crown land purchasing during the years 1914 to 1930, there remained a point of difference between the Crown and the claimants. Crown counsel conceded that the use of section 363 and out-of-date valuations breached Treaty principles and that purchasing should probably have ceased at some unspecified point during this period, but he added that protective mechanisms were in place and that Māori mostly exercised their own rational free will in selling. Claimant counsel argued that purchasing should have ceased decades before. The issue, therefore, is whether the Crown should have purchased Māori land at all during this period. The Crown answered ‘Yes’, with qualifications, and the claimants emphatically said ‘No’. The matter rests then on whether restricting alienation would have been a responsible, protective act, or whether it would have unnecessarily removed any initiative from individual Māori landowners.

We consider that no purchasing should have taken place during this period. Crown counsel conceded that communities were detrimentally affected by excessive or coercive purchasing, but we think it should have been clear in 1910 that Ngāti Pahauwera would need all their remaining land to continue to exist as a viable community. Such a conclusion is implicit

181. Document Y6, pp 10–11

182. *Ibid*, pp 12–13

183. *Ibid*, pp 13–14

in the Stout–Ngata commission’s report. Moreover, the Crown had an obligation to be vigilant in protecting Ngati Pahauwera’s interests. By assenting, under the Treaty, to the Crown’s right of pre-emption, Maori had envisaged the Crown assuming the role of active protector in the context of land transactions. The Crown’s subsequent monopoly over the alienation of Maori land carried with it a concomitant duty to purchase reasonably and to regulate the process so as to safeguard Maori interests. In our view, it is therefore insufficient to justify any of the Crown’s post-1910 purchasing activity by stating that rational choices were made to sell and that the Crown should not have interfered with that right of self-determination. The Crown decision to purchase at Mohaka after 1910 ignored the small remaining land base and the context in which Maori ‘chose’ to sell. A foreign system of land tenure had been imposed, and this led to the breakdown of traditional social structures and controls. Crown counsel argued that the Tairāwhiti District Maori Land Board acted as a safety valve, but this is belied by the overall statistics, which show that the land base retained in 1910 was almost halved by 1930.

In sum, at the start of the twentieth century, Ngati Pahauwera were in occupation of their core lands, which were sandwiched between the lands they had already sold to the Crown for Pakeha settlement. What remained to them was probably just enough to accommodate a growing population. It might be argued that an individual needing to raise cash to improve his or her life elsewhere should not, for example, have had his or her personal freedom to do so constrained by the Crown preventing the sale of any small interest that that individual owned. But, had development finance and technical assistance been made available to owners of land in multiple title at the time in the same way that it was to individual landowners, the issue would probably never have arisen. It was not enough that the Crown should have refrained from purchasing or that alienation restrictions should have been put in place, because those measures needed to be supported by at least the kind of development assistance that had been available to individual landowners since the 1890s. Instead, the Crown’s actions exploited the predicament that the new tenure system of the Native Land Court had placed Ngati Pahauwera in. We do not accept that an individual’s rights could override the wider interests of the whole community. Each purchase of a small, undivided interest further weakened collective authority and community cohesion. We believe that the preference for keeping land in communal ownership was always strong, but the attack it suffered under the Native Land Court system cannot be underestimated. The tenurial reforms mitigated against ‘community’ and fostered disputes. We endorse the following statement taken from the Tribunal’s *Rekohu* report:

Far more was ‘lost’ under the land reform processes than was ever confiscated. Moreover, there is a respect in which tenure reform was more debilitating than confiscation. Although customary authority was put at risk by both processes, for those with remnants of land under the Native Land Court, the court operated to continually impose a foreign law upon the landowners, and so to continually reduce the application of ancestral values. In addition

to the constant impact of the court and its legal system in this way, the listing of individual names on a paper title undermined the traditional reciprocity between chief and kin, whanau and whanau, and hapu and hapu. The purchase of those individual signatures, which amounted usually to the purchase of undivided interests with or without the prior partition of blocks, and certainly before individual holdings were marked on the ground, pitted Maori against Maori, family against family, faction against faction. The constant 'teasing for land', as some Maori called it, distracted most people, sabotaged their efforts to farm the land, and created a pauperising dependence on selling the former tribal patrimony bit by bit in order to secure a cash income. Nothing was more destructive of Maori self-reliance and self-respect, or of viable community development.¹⁸⁴

The Crown's exploitative use of section 363, under which it gave itself a monopoly to purchase and starved the owners of income from their lands where leases had expired, was in breach of its duties under the Treaty. It is true that the Crown had secured a right of pre-emption under the Treaty, but it had long abandoned it upon the introduction of the Native Land Court system (and it had simultaneously abandoned most forms of active protection of Maori interests from the predations of the market). To reintroduce it in such circumstances was selective and an act of bad faith. We concur with claimant counsel that there was no justification for concluding that the exercise of section 363 in the case of Putere was reasonable. It is difficult to see how the entire provision, which granted the Crown monopoly rights over any dealings with specified blocks of Maori land for defined but often lengthy periods, and often forced owners into sale, could be in compliance with the principles of the Treaty of Waitangi. The Crown could and should have been focusing its efforts at the time on assisting the Maori owners to develop and improve their own land.

With respect to the consolidation scheme, we consider that the Crown's concerted and last-minute effort to purchase more interests so as to maximise the benefits it received displayed a singular obsession with its own interests that could only be to the detriment of Ngati Pahauwera. There is something almost perverse about the Crown identifying a pressing need for a consolidation scheme to resolve the problem created by the purchasing of small and scattered fragments, and then putting the scheme on hold while more interests were acquired. Nor were officials anything less than open about what they saw as the benefits to the Crown – rather than to Maori – of the consolidation. Such schemes, theoretically, went some way towards assisting both the Crown and Maori toward a better use of their interests, but it was largely Crown actions that created the need for a consolidation scheme in the first place.

The land development schemes were instituted with much better intentions. Some credit is due to the Crown, therefore, for belatedly attempting to assist Maori to develop their lands,

184. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p188

and for making such gestures as reducing the amount landowners owed in rates arrears and for survey liens. In practice, the schemes were poorly administered. They began as Ngata's unemployment schemes, but it is clear now that the marginal terrain was not suitable for dairying and the farms were far too small. Sheep and cattle farming were less labour-intensive but would have been a more sensible option in the long run. However, pastoral farming would certainly have been no panacea: the folly of such unsustainable land use in marginal and unstable hill country has been highlighted repeatedly, most recently by the damage inflicted by Cyclone Bola in 1988. What was needed was probably a combination of forestry developments in the steep back-country and pastoral farming or more intensive activities such as cropping or dairying on the best lands towards the coast. Unfortunately, however, there was a stubborn unwillingness amongst Lands and Survey and Native Department officials to see beyond farming, despite the interest in tree-planting expressed by the Forest Service in the area at the time. But officials in the 1930s did not have the benefit of our hindsight. After decades of land purchasing, there was simply insufficient land left to accommodate Ngati Pahauwera in intensive farming near their main settlements.

We also need to comment on the contemporary situation. While urbanisation after the Second World War was a national phenomenon, the migration of Ngati Pahauwera out of their Mohaka homes was exacerbated by the failure of many farms and the lack of local employment. For those who remained, or have returned after finding themselves unemployed elsewhere, there are considerable difficulties in creating a lifestyle that is more productive than eking out a subsistence in substandard housing and relying on Government benefit payments. Obviously, the multiple ownership of relatively small subdivisions of land has worsened the situation, and it raises the question of the appropriate relationship between, on the one hand, the many heirs to traditional interests and, on the other, those actually making a living off the land (who can be only a few). It seems to us that the Crown has consistently failed to come to terms with this issue, despite Ngata's endeavours of the 1930s. The Te Ture Whenua Maori Act 1993 is probably the best try yet, and for that the Crown deserves belated credit. It is an area, however, where new policy initiatives will constantly be needed.

Finally, we need to comment upon the claim to the Mohaka River, which we acknowledge was not an issue that was properly before us. However, it is clear that the Crown took few if any steps to comply with the Tribunal's 1992 recommendation that a regime for the management and control of the river should be agreed upon with Ngati Pahauwera before any conservation order was made. It would also appear that in making this order the Crown has not acknowledged Ngati Pahauwera's rangatiratanga. Ngati Pahauwera's efforts in bringing the urgent claim in 1991 to prevent the order being made in advance of any recognition of their rights have proven to be in vain. Further, the Mohaka River gravel resource – being as it is the principal supply of roading metal for Hawke's Bay, Gisborne, and Taupo¹⁸⁵ – is a major

185. Waitangi Tribunal, *The Mohaka River Report 1992*, p 70

potential asset for an essentially asset-less people. The recognition of Ngati Pahauwera rights to the resource, and the payment of appropriate royalties and compensation, would be an important step towards restoring a viable economic base to the local community.

13.12 FINDINGS

We find that the Crown, in its failure adequately to protect the Ngati Pahauwera land base at Mohaka in the twentieth century, and in its response to the recommendations in the Tribunal's *Mohaka River Report* of 1992, has breached the principles of the Treaty of Waitangi. We find that Ngati Pahauwera were and are prejudiced thereby.

More specifically, we find that:

- (a) By resuming the purchasing of Maori land in the Mohaka district from 1910, the Crown ignored the recommendation of the Stout–Ngata commission that Ngati Pahauwera's remaining land should be retained for their use and occupation. It seems clear to us that the commission's was the first serious investigation of the needs of Mohaka Maori and the Crown should have taken care to pay heed to its recommendations. We believe that the commission's report effectively put the Crown on notice that land purchasing at Mohaka should cease, and that the Crown's ongoing and vigorous purchasing programme was in breach of its duty of active protection.
- (b) Further, under section 363 of the Native Land Act 1909, the Crown prohibited the alienation of certain blocks to create a monopoly to purchase, and it exploited that monopoly in clear breach of the principle of reciprocity. Maori who wished to sell or lease to private purchasers were unable to, and Maori who did not wish to sell at all could be forced to by denying them the ability to gain any income from their land.
- (c) The Crown's use of 1913 valuations as the basis for some purchases when a higher district valuation had been issued in 1919 further prejudiced Maori sellers. Crown purchases after 1926 were based on a new valuation of that year. It is not known how many transactions between 1919 and 1926 were affected, but where they were, the Crown was in breach of its duty of active protection and its duty to act reasonably and in good faith.
- (d) The imposition of a consolidation scheme was not as disruptive here as it was in other locations, confined as it was to the lower Mohaka Valley. However, the scheme's underlying purpose was to consolidate scattered Crown interests, and thereby benefit the Crown. Having itself identified an urgent need for consolidation because of its own purchasing activities, the Crown's relentless pursuit of further land acquisitions was also a breach of its duties of good faith conduct and active protection.
- (e) While Maori landowners were not explicitly excluded from State development assistance from 1894, the conditions of the Advances to Settlers legislation effectively

excluded the vast majority of Maori, who owned land in multiple title, from any benefit. Thus, before 1930 Mohaka Maori did not have access to sufficient capital and technical assistance to maintain viable farms and the Crown was therefore in breach of the principle of mutual benefit and the Maori right to development. Furthermore, the effective 36-year gap between 1894 and 1930 is a period in which the Crown could be said to have breached the principle of equity.

- (f) Legislative debt reduction initiatives during the Depression were targeted at State Advances and private development finance rather than at money owed by Maori development scheme farmers. This also breached the principle of equity.
- (g) Ngata's land development scheme was well intentioned and certainly provided some relief for the unemployed of Ngati Pahauwera in the early 1930s. Thus, belatedly, the Crown had gone some fair way towards fulfilling its obligation to assist Maori to develop their land. However, from the mid-1930s the focus in the Native Department shifted from Ngata's vision of community development to the establishment of individual Maori farmers and the repayment of development costs. There was no adequate review as to whether dairying was the appropriate form of land use, despite suggestions from the New Zealand Forest Service that it was not, nor did the department have any flexibility to vary the farming type or to consider forestry or other more appropriate alternative land uses.
- (h) The imposition of a 'reformed' land tenure system which created, through the operation of the Native Land Court, individual disposable property rights was destructive of traditional social structure and community cohesion, and made it more difficult for a tribe to retain control of its lands. Most landholdings today are scattered, fragmented parcels in multiple ownership, with many owners owning worthless and negligible undivided interests that make community development an enormous challenge. This state of affairs has come about through clear breaches of the principle of options and the duty of active protection. While some remedial legislation has been passed, further initiatives may need to be developed.
- (i) The Crown's failure to negotiate a settlement of Ngati Pahauwera's Mohaka River claim in the 14 years since the Tribunal reported on it, and its non-compliance with the Tribunal's particular recommendations – that a regime for the management and control of the river be negotiated prior to any water conservation order being made, that compensation be paid for past gravel extraction, and that no further gravel be taken without Ngati Pahauwera's approval – are breaches of the Crown's duty to act reasonably and in good faith and its duty to actively protect Ngati Pahauwera's interests. We accept and endorse the Mohaka River Tribunal's findings and recommendations. Now that we have reported on the rest of the Ngati Pahauwera claim, the Crown should hasten to comply with the principle of redress.

CHAPTER 14

THE NGAI TANE CLAIM (WAI 436)

14.1 INTRODUCTION

Claim Wai 436 was lodged in October 1998 by Wi Te Tau Huata on behalf of the Ngai Tane hapu. It is a cross-claim against the Ngati Pahauwera claim (Wai 119). The lands claimed extend across the inland area of Ngati Pahauwera's claims (map 51). The claimants are described in the statement of claim as 'the whanau and hapu who traditionally had mana whenua over significant portions of the land' extending in a band north from Lake Tutira to Lake Waikaremoana (and including the current Mohaka Forest). The issues concerned are similar to those raised in Wai 119: the Crown purchase of Mohaka in 1851, the loss of the Te Heru o Tureia reserve, the 'confiscation and other wrongful disposition of their lands from 1867 to the present century'.¹

The Wai 436 claim was a challenge to the status of Ngati Pahauwera as the umbrella group to negotiate claims in the Mohaka district. Counsel for Ngati Pahauwera applied to the Tribunal to have the Ngai Tane claim dismissed under section 7 of the Treaty of Waitangi Act 1975 on the ground that it was frivolous, vexatious, or not made in good faith (or that it was a combination of some or all of these). The Tribunal decided it would be necessary to hear the Wai 436 claim before being able to judge whether or not it was vexatious or frivolous. In this chapter, therefore, we consider in some detail the meaning and the use of the name 'Ngati Pahauwera' for both a confederation and a hapu, the events leading up to the lodging of the Wai 436 claim, and the nature of the evidence produced, as well as the responses of other parties, in order to assist in the resolution and settlement of the claims in the Mohaka district.

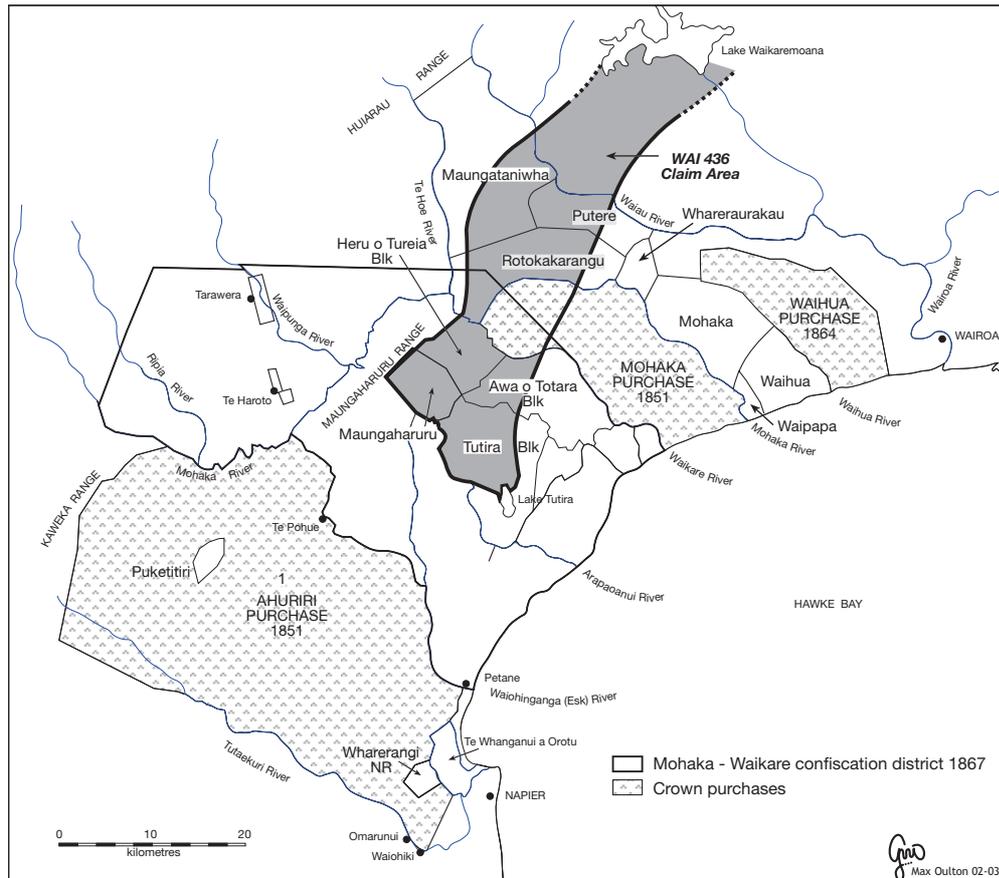
14.2 THE USE OF THE NAME 'NGATI PAHAUWERA'

In this report, we have generally used 'Ngati Pahauwera' to refer to a confederation of hapu associated most particularly with the Mohaka River area. As we related in chapter 11, the name 'Pahauwera' (burnt beard) commemorates the singeing of Te Kahu o Te Rangi's whiskers in about 1824. From that time on, his descendants came to be known as Ngati Pahauwera. Since Paora Rerepu was of this hapu, and was a chief of great authority in the Mohaka area in

1. Claim 1.31(a)

THE MOHAKA KI AHURIRI REPORT

14.2



Map 51: Lands claimed by Ngai Tane

the nineteenth century, the confederation of hapu around him seem also to have increasingly become known as Ngati Pahauwera. However, the notion of Ngati Pahauwera as a single hapu within the confederation has continued to exist amongst those knowledgeable in such matters. Cordry Huata, for example, told the Planning Tribunal in 1991 that the 'hapu of Ngati Pahauwera' he belonged to included 'Ngati Pahauwera'.² For many decades now, the confederation has been known simply as Ngati Pahauwera. David Alexander, the witness before our inquiry who viewed most of the primary historical documents relating to Ngati Pahauwera's lands, said that references to Ngati Pahauwera in the collective sense were already being made during the nineteenth century. The 1903 Mohaka Native Land Court case, he said, 'rejuvenated' the use of the term to apply to a single hapu, but after that it 'faded away again', at least in the written record.³

In 1992, the Mohaka River Tribunal described Ngati Pahauwera as the 'main hapu' of the Mohaka people, with other hapu living or having lived under its mana. Kaumatua Charlie King noted that the other principal hapu within the confederation had included Ngati Kura,

2. Document T56, p 2

3. Transcript 4.23, p18

Ngati Kurahikakawa, Ngati Kapekape, Ngati Paikea, and Ngaiterau. However, he said, ‘Now, when we go anywhere, there is only one hapu, Ngati Pahauwera.’ Cordry Huata described Ngati Pahauwera as an ‘umbrella group’, and explained: ‘Hapu under the umbrella include Ngati Purua, Ngati Paikea, Ngati Tuhemata, Ngati Huki, Ngati Rauiri, Ngati Kaihaere, Ngati Tangopu, Ngati Kapekape, Ngai Taane, Ngati Kura, Ngati Paroa, Ngati Hineku and others.’⁴ During the course of our hearing of Ngati Pahauwera’s evidence in 1997, Ruku Wainohu dated the adoption of ‘Pahauwera’ as a collective name to more recent times. He told us that the loss of so many people in the musket wars of the 1820s, Te Kooti’s raid of 1869, the influenza epidemic of 1918, and two world wars had meant that some hapu had disappeared completely:

This became a great worry to our kaumatua so a move was put into place that all the hapu in our rohe come under the umbrella of Ngati Pahauwera. People like Paul Lemuel, Canon Wi Huata and Ozzie Huata took the initiative and whenever or wherever we travelled we became known as Ngati Pahauwera. This has never been disputed, so today irrespective of which hapu we belonged to in the past, we are now known as Ngati Pahauwera.⁵

There is evidence of the long-standing use of ‘Ngati Pahauwera’ for the wider kin group of confederated hapu, but less certainty about the extent to which the separate hapu names within the Ngati Pahauwera confederation retain particular currency today. We observed enough at our hearing at Mohaka, however, to confirm that ‘Ngati Pahauwera’ is the accepted and well-supported name for the people of that district. However, the compass of this appellation for the confederation was challenged by the Ngai Tane claim.

14.3 REPRESENTATION FOR NGAI PAHAUWERA

After the *Mohaka River Report* was issued in 1992, there was some debate about who were the most appropriate persons to represent of all Ngati Pahauwera in negotiations with the Crown. The matter was referred to the Maori Land Court upon the application of George Hawkins of the Ngati Pahauwera claims negotiating committee pursuant to section 30(1) of the Te Ture Whenua Maori Act 1993. On 13 June 1994, the court, under Judge Ken Hingston, sat at Mohaka.⁶ Specifically, the court was requested to select representatives who, inter alia, would:

- ▶ negotiate the settlement of the Mohaka River claim with the Crown;
- ▶ receive funding from the Waitangi Tribunal, the Crown Forestry Rental Trust, or any other agency; and
- ▶ represent Ngati Pahauwera in any future claims before the Tribunal.

4. See Waitangi Tribunal, *The Mohaka River Report 1992* (Wellington: Brooker and Friend Ltd, 1992), p 8

5. Document P6, p 2

6. Wairoa Maori Land Court minute book 92, fols 66–102 (paper 2.295, attachment A)

Over 80 people attended the court sitting. Kathy Ertel and Shaan Stevens appeared as counsel for the Ngati Pahauwera Incorporated Society, George Hawkins represented the negotiating committee (a subcommittee of the incorporated society), and Wi Te Tau Huata represented Te Runanganui o Ngati Pahauwera. Judge Hingston noted that the court had been asked to rule because of ongoing disputes over the mandate of those prosecuting the Mohaka River claim.

Wi Huata's representation of the runanga was immediately disputed by Toro Waaka, and the court adjourned so that the matter could be resolved. But it was not, and Hingston declared that the court was neither in the position nor had the time to decide who represented the runanga, since it was obviously not united. In the circumstances, he said, the runanga could not therefore be accepted as a party in the proceedings. Ms Ertel then suggested a further adjournment so that the parties could meet out of court and come to an agreement. This was acceded to, and, following this meeting, the deputy registrar reported that a majority vote had accepted that the Ngati Pahauwera Incorporated Society was 'the appropriate body to carry out Ngati Pahauwera aspirations'.

However, Hingston pointed out that the membership of the incorporated society could be overturned at an annual general meeting and that it would therefore be wise to have a 'section 30 committee' appointed by the Maori Land Court and comprised of members who did not face the annual hurdle of re-election. Otherwise, the Crown might lose confidence in the negotiators if they were regularly changed. Section 30 of the Te Ture Whenua Maori Act 1993 was designed to give certainty, he said, rather than allow negotiators to be changed 'at the whim of an AGM'. He also noted that the Ngati Pahauwera Incorporated Society's constitutional requirement for a majority of the executive to live locally was at odds with the necessity for the section 30 committee to represent all Ngati Pahauwera people, regardless of where they lived. Wi Huata, for his part, argued for the involvement of Te Runanganui o Ngati Pahauwera in the committee. Later he commented that 'one thing I'm sure Pahauwera can unanimously agree to and that's that the funding should be completed. As far as we're concerned, it doesn't really matter who negotiates as long as you get the resources [from the Crown Forestry Rental Trust]. That is the issue.' In the end, because of the clear preference of the majority for the involvement of the incorporated society, Judge Hingston agreed to the section 30 committee comprising four nominees of the society's executive and four nominees taken from the floor of the meeting.

The incorporated society's four nominees were Tom Gemmell, Kuki Green, Guy Taylor, and Ruku Wainohu. The court then had the task of choosing four nominees from the floor, and a number of names were put forward. Wi Huata and Rana (Ranapia) Huata (of the Wai 436 claimant group) were also nominated from the floor, but they declined to be considered. The court first sought an assurance from the incorporated society that it could work with all of the nominees. This affirmation was given by Ms Ertel. The court then decided the other four members – George Hawkins, Toro Waaka, Reay Paku, and Charlie Hirini (the latter as

a kaumatua member) – and ordered the eight names to be registered as representatives of Ngati Pahauwera under section 30(1) of the Te Ture Whenua Maori Act.

14.4 THE FILING OF THE WAI 436 CLAIM

The Wai 436 claim, written on Te Runanganui o Ngati Pahauwera letterhead, was lodged with the Tribunal by Wi Huata on 16 June 1994, three days after the section 30 hearing in Mohaka.⁷ The claim was made on behalf of Mr Huata's 'whanau and hapu Ngai Tane' and had specific regard to the area of land encompassing the Mohaka Forest. Mr Huata stated that 'this claim is a cross claim to the Ngaati Pahauwera Incorporated Societies [*sic*] current claim. But because the mana of Ngai Tane uri and hapu has been takahi'ed [trampled on] we the people of Ngai Tane must look after itself.' While the exact meaning of Mr Huata's words is unclear, they could be interpreted as indicating that he had a grievance against the incorporated society on behalf of Ngai Tane. Given the timing of the filing of Mr Huata's claim, it seems logical to infer that it arose out of his dissatisfaction with the Maori Land Court proceedings and the appointment of the section 30 committee.

In directing that the claim be registered, the Tribunal chairperson noted that it was a 'cross-claim to that already registered with the tribunal by the Ngati Pahauwera Incorporated Society [ie, Wai 119]'.⁸

14.5 THE PATH TO HEARING THE WAI 436 CLAIM

The Wai 436 claim was subsequently included in the Mohaka ki Ahuriri district inquiry. Tribunal staff met with Mr Huata on 21 November 1996 to ascertain what involvement he wished to have in the forthcoming hearings, particularly given the impending hearing of the Wai 119 claim.⁹ According to the record of the meeting made by Tribunal staff, Mr Huata sought a Tribunal-facilitated or Tribunal-endorsed meeting of Wai 119 and Wai 436 representatives to try to gain an assurance from the section 30 representatives that the interests of Ngai Tane would be protected. If that assurance were forthcoming, Mr Huata said, then he would withdraw his claim. If it were not, Mr Huata advised that he would reserve the option of pursuing his interests at a later date. Tribunal staff informed Mr Huata that he would have the opportunity to be heard.¹⁰ Tribunal staff then wrote to him on 22 January 1997 stating that

7. Claim 1.31

8. Paper 2.113

9. This hearing was originally due to take place in March (and then April) 1997, but did not in fact take place until November 1997.

10. Georgina Roberts to Judge Isaac, 25 November 1996, Waitangi Tribunal file Wai 436/0

the Mohaka ki Ahuriri presiding officer (Judge Isaac) was favourable to the idea of facilitating or endorsing a meeting of the representatives for the two claims.¹¹

Judge Isaac wrote to counsel for Wai 119 on 7 February 1997:

Mr Huata's main concern is that the interests of Ngai Tane, on whose behalf he has made the claim, are represented.

As the Wai 119 claim is due to be heard in April this year, the Tribunal wishes to obtain from your clients an assurance that the Ngati Pahauwera Section 30 representatives will represent the interests of all hapu under Ngati Pahauwera. If this assurance can be given, then we have been advised by Mr Huata that the Wai 436 claim would be withdrawn.¹²

On 14 February 1997, before the Tribunal received a reply to this request, a letter was received from Mr Huata disputing the record of the 21 November 1996 meeting made by Tribunal staff. Mr Huata denied that he had said the claim would be withdrawn 'if the Section 30 Committee in Mohaka were prepared to also represent Ngai Tane'. He maintained that he had suggested only that a Tribunal-facilitated meeting take place:

Ngai Tane's view is that the evidence and research that has been done to date, which will be used by the Section 30 Ngaati Pahauwera Committee (while we agree with most of what's been written and compiled) it is not evidence relevant to all the hapu of Ngaati Pahauwera.¹³

In a subsequent letter to the Tribunal on 3 March, Mr Huata reiterated that a meeting facilitated by Judge Isaac was required and that 'until that happens under no circumstances will Ngai Tane be withdrawing its claim'.¹⁴

In the meantime, however, the Ngati Pahauwera Section 30 Representatives Co-Operative Society Limited had received Judge Isaac's letter of 7 February and, on 26 March, Guy Taylor advised the Tribunal that the section 30 committee members represented 'the interests of all hapu that come under the umbrella of Ngati Pahauwera whanau/hapu. We assure the Tribunal that Ngai Taane, being one of those hapu, will be represented by our group at the hearing of Claim Wai 119'.¹⁵

A judicial conference was held on 7 April 1997, two weeks prior to the scheduled 21 April start of the Wai 119 hearing (the hearing was subsequently deferred until later in the year). Matters remained sufficiently open after the conference for the Tribunal to direct on 9 April: 'Claimants for Wai 436 are to discuss further whether they wish to be heard as part of the Wai 119 claim, or whether they will be heard separately'.¹⁶ No response was received, and staff

11. Georgina Roberts to Wi Huata, 22 January 1997, Waitangi Tribunal file Wai 436/o

12. Judge Isaac to Grant Powell, 7 February 1997 (doc 2.295, attachment)

13. Wi Huata to Georgina Roberts, undated, Waitangi Tribunal file Wai 436/o

14. Wi Huata to Morris Te W Love, Tribunal Director, 3 March 1997, Waitangi Tribunal file Wai 436/o

15. Guy Taylor, secretary, Ngati Pahauwera Section 30 Representatives Co Operative Society Limited, to LG Powell, 26 March 1997. This letter was forwarded to the Tribunal on 3 April 1997 by counsel for Wai 119. LG Powell to registrar, Waitangi Tribunal, 3 April 1997 (doc 2.295, attachments).

16. Paper 2.212

followed the matter up with a further query to Mr Huata on 7 July.¹⁷ But Mr Huata did not reply to this letter either, so staff wrote again on 3 December, noting that the original direction had asked whether Mr Huata wished Wai 436 to be heard as part of the Wai 119 claim. Since the Wai 119 claim had been heard in November 1997, staff noted that any hearing of Wai 436 would have to be separate. Mr Huata was advised that, if no response to the letter were received, 'the Tribunal will consider your claim on the information it has before it'.¹⁸ The Tribunal took this position because the hearing of claimant evidence was drawing to a close, and it wished to proceed to hear the case for the Crown.

Again, Mr Huata did not reply to the Tribunal's letter. Rather than close off the possibility of the Wai 436 claim being heard, however, and since there had been delays in the completion of other claimant evidence, on 28 April 1998 staff once more wrote to Mr Huata seeking confirmation that he wished to proceed to a hearing. Mr Huata finally responded on 4 May 1998, this time on 'Te Runanga o Ngai Tane' letterhead. He advised that he had not responded up until that time since Ngai Tane had not been in a position to present their case owing to a lack of research funding. 'It is certainly our desire to take our own claim to the Waitangi Tribunal. It is certainly our desire to research our own claim. We are certainly keen to get help from you to get funding to research our claim.' He added that 'It should be noted that while we are today all known as Pahauwera and are descended from the eponymous [*sic*] ancestor Te Kahu o Te Rangi during the pre war days and certainly up to about the 1970's we were known by our hapu like Ngai Tane'.¹⁹ In another letter dated 19 May 1998, Mr Huata said that he hoped that the Tribunal would help the Wai 436 claimants obtain funding from the Crown Forestry Rental Trust, something they had up to then been unable to do.²⁰

On 15 June 1998, the Tribunal made a formal offer to Mr Huata of research funding for the Wai 436 claim. It was stated that the research commission on offer would provide a report that:

1. Identifies the hapu Ngai Taane, and comments on its relationship with other hapu/iwi groups;
2. Describes Ngai Taane's occupation of the Maungataniwha and Crown-purchased Mohaka block area; [and]
3. Provides oral testimony from members of Ngai Taane about their knowledge of living in the Maungataniwha and Mohaka Forest area.²¹

At a conference on 26 June, Mr Huata indicated that he would be ready to proceed to hearing by October. He was directed by Judge Isaac to appoint counsel within two weeks and to

17. Dean Cowie to Wi Huata, 7 July 1997, Waitangi Tribunal file Wai 436/o

18. Dean Cowie to Wi Huata, 3 December 1997, Waitangi Tribunal file Wai 436/o

19. Wi Huata to Dean Cowie, 4 May 1998, Waitangi Tribunal file Wai 436/o

20. Wi Huata to Dean Cowie, 19 May 1998, Waitangi Tribunal file Wai 436/o. Since the trust had put significant resources into funding the Ngati Pahauwera claim, it was presumably not in a position to fund counter-claimants such as Ngai Tane.

21. Dean Cowie to Wi Huata, 15 June 1998, Waitangi Tribunal file Wai 436/o

amend his statement of claim. For his part, counsel for Wai 119, Mr Powell, stated that he would be assessing whether the Wai 436 claim was covered by the section 30 order.²² On 19 August, the Tribunal received notification from Carrie Wainwright that she had just been instructed to act for Ngai Tane. Counsel informed the Tribunal that an amended statement of claim would shortly be forthcoming and that an attempt would be made to have the claim ready for a November 1998 hearing. Further, counsel said that she had been instructed that Ngai Tane was ‘not a hapu of Ngati Pahauwera, and that Ngai Taane’s founding ancestor was senior to, and not junior to, the founding ancestor of Ngati Pahauwera’. She added that Ngai Tane was not, therefore, included in the Maori Land Court’s section 30 order.²³

On 1 September, the Tribunal commissioned Dr Richard Hill to complete a research report for the claimants reviewing the historical evidence relevant to Ngai Tane’s claims.²⁴ The deadline for this project was 30 September, although this was later extended to 7 October.²⁵ In conjunction with this work, on 17 September the Tribunal commissioned Maria Mareroa (who had been nominated by the Wai 436 claimants) to ‘develop a methodology for collecting oral historical information from Ngai Tane informants’, and to conduct, transcribe, and analyse interviews with Ngai Tane informants.²⁶

14.6 THE WAI 119 REQUEST FOR A TRIBUNAL RULING

The issue of the section 30 committee’s representation of the Wai 436 claimants was placed on the agenda for a conference planned to precede the November 1998 hearing. In a written submission to that conference, counsel for Wai 119, Mr Powell, argued that the Tribunal should exercise its discretion under section 7 of the Treaty of Waitangi Act 1975 not to inquire further into the Wai 436 claim on the grounds that the claim was frivolous, vexatious, or not made in good faith. Furthermore, counsel added that, by participating in the Wai 119 claim, an adequate remedy was available for the redress of the Wai 436 claim. Alternatively, he said, if Mr Huata was unhappy with the composition of the section 30 committee, he could avail himself of processes under the Te Ture Whenua Maori Act 1993.²⁷

Mr Powell also stated that Mr Huata took full part in the 1994 section 30 hearing and did not appeal the judge’s decision as to the committee’s membership. In the absence of compelling reasons to the contrary, he said, ‘the section 30 order is determinative of the representatives of Ngati Pahauwera for Waitangi Tribunal claims within the rohe of Ngati Pahauwera

22. Paper 2.280

23. Paper 2.289

24. Direction 3.38

25. Direction 3.41

26. Direction 3.42

27. Paper 2.295, p 2

including Ngai Tane'. He said that, at the 7 April 1997 conference, Mr Huata had indicated that he wished his claim to be heard as part of Wai 119:

as long as he had representation of his choice within the Wai 119 claim, received funding from Wai 119 and was allowed to make decisions affecting Wai 119. Mr Huata took exception to the section 30 order but otherwise saw Ngai Tane as part of Ngati Pahauwera.

Mr Powell argued that Mr Huata did not advance any claim that Ngai Tane was distinct from Ngati Pahauwera at the 26 June 1998 judicial conference, and it was not until he had instructed counsel in August 1998 that this claim was made.²⁸

In her submissions, counsel for Wai 436, Ms Wainwright, reiterated that Ngai Tane were not a hapu of Ngati Pahauwera and therefore not covered by the section 30 order. She said she would adduce evidence establishing:

the separate identity and seniority of the Ngai Tane line. This will show that in no sense can Ngai Tane properly be described as a hapu of Ngati Pahauwera. This is not to deny that Ngai Tane and Ngati Pahauwera have in many respects similar aspirations for their claims against the Crown, nor that their pasts have in many respects been interrelated.²⁹

In directions following the conference, Judge Isaac ruled: 'To enable the Tribunal to fully consider the matters raised by Wai 436 and Wai 119 counsel, the Tribunal will need to hear all evidence and submissions in support of and in opposition to the Wai 436 claim.' The Tribunal thus deferred commenting on the compass of the section 30 order or making a ruling pursuant to section 7 of the Treaty of Waitangi Act until after the November hearing of Wai 436, at which the Wai 119 claimants were to be given the opportunity to respond. Counsel for Wai 436 was directed to file an amended statement of claim forthwith.³⁰

14.7 THE WAI 436 AMENDED STATEMENT OF CLAIM

The Wai 436 amended statement of claim was received by the Tribunal on 23 October 1998. In it, the claimants alleged that:

- ▶ Ngai Tane held 'mana whenua' over various lands, including that portion of the 1851 Mohaka purchase today comprising the Mohaka Forest.
- ▶ Crown officials treated primarily with Paora Rerepu for the purchase of the Mohaka block, despite him having no rangatiratanga over those areas belonging to Ngai Tane.
- ▶ Ngai Tane did not consent to the sale of the Mohaka block, as evidenced by their ongoing use of it in the years that followed.

28. Paper 2.295, pp 3–5

29. Paper 2.296

30. Paper 2.298

14.8

- ▶ In due course, Pakeha occupation of the surrounding areas increasingly caused Ngai Tane to be confined to the Te Heru a Tureia reserve, which was itself soon purchased by the Crown without any consultation with Ngai Tane.
- ▶ Overall, the Crown failed to identify the correct owners from whom to purchase land and failed to ensure that those owners were paid.

The claimants sought recommendations from the Tribunal for the return of Crown forests and State-owned enterprise land, along with other forms of compensation.³¹

14.8 THE HEARING OF THE NGAI TANE CLAIM

The Ngai Tane claim was heard in Napier from 16 to 18 November 1998. At the outset, Ms Wainwright submitted that the Tribunal should immediately exercise its discretion to rule under section 7, otherwise it would be too late. The power to rule under that section, she said, was ‘the Tribunal equivalent of strike-out proceedings in the Courts, and this is a matter which is inherently an issue to be decided *before* a claim proceeds. Once a claim has been heard, the Tribunal has already inquired into it.’ (Emphasis in original.)³² Mr Powell disagreed, responding that such submissions should properly have been raised at the judicial conference preceding the hearing. He submitted that the Tribunal should maintain the course it stated in its 23 October direction of hearing the evidence and making its ruling on the section 7 matter thereafter. The Tribunal agreed with Mr Powell and proceeded to hear the evidence in accordance with its intended course.

The evidence for the Ngai Tane claimants was of two kinds: traditional and historical perspectives, with a focus on whakapapa, and contemporary perspectives of Ngai Tane as a hapu group. We review each of these in turn.

14.8.1 Traditional and historical perspectives

Cordry Huata’s brief of evidence provided the fundamental basis for Ngai Tane’s claims for a status separate from Ngati Pahauwera. Cordry (as we shall call him to distinguish him from his brother Wi) professed expertise in whakapapa. He stated that Ngai Tane descend from Kotore, whose descent was on ‘the senior line from Kahungunu’. ‘Kotore’, he explained, meant ‘vagina’, and Kotore had been so-named because he had once been spared death as a child through his mother ‘concealing his maleness’. His descendants were known as Ngai Tane to emphasise that he had indeed been a man.³³ Cordry also explained that the principal

31. Claim 1.31(a)

32. Document T33, p8

33. Document T29, p3

source of his information was the whakapapa book handed down to him that had been compiled by Hemi Huata, his great grandfather.

Cordry said Kahu o Te Rangi was a great-grandchild of Kotore. Thus, 'Ngai Tane cannot be seen in any sense to be "under" Ngati Pahauwera, because the parent cannot come under the child.' Kahu o Te Rangi's descent from Kahungunu, he said, was on a teina (younger sibling or cousin) line, while Kotore's was on a tuakana (elder) line. Today, he related, 'as events have unfolded . . . Pahauwera has come to be treated as the senior line. I believe this came about because Kahu o te Rangi was the man of his day.'³⁴ Cordry said that 'Pahauwera' was used to describe a tribal grouping rather than one single hapu as early as the 1840s and 1850s. The double meaning of 'Pahauwera', he said, carried right through until the 1960s. After that, however, the 'other groupings have tended to give way to the influence of Ngati Pahauwera in Mohaka'.³⁵ Today, he said, 'many people probably don't know that they are Ngai Tane'.³⁶

Cordry described Ngai Tane as an inland people who travelled through the mountains from Tutira to Maungaharuru, and on to Waikaremoana, but 'would not have had exclusive rights' to such a large area, although their influence would have been stronger in some areas.³⁷ He said that Ngai Tane had a 'major landholding' in the 1851 Mohaka purchase area and were left landless after the transaction. He contrasted their situation with Ngati Pahauwera, who he said retained land. 'This is because', he claimed, 'those who were encouraging the sale of land ended up being looked after by the Crown.'³⁸ Cordry then related that Ngai Tane became confined to the Te Heru a Tureia reserve but that the reserve was in turn sold by the 'people at Mohaka'. As a result, some Ngai Tane joined with Te Kooti in his attack on Mohaka in 1869 in order to 'exact utu against Paora Rerepu' and the other sellers of the land:

This and other incidents in which Ngai Tane people were involved along with Te Kooti led to their having land confiscated in the area south of the Waikare. That was ancestral land in which Ngai Tane had a substantial interest. As enemies of the government, they stood to lose everything, and substantially that is what happened.

As 'friendlies', Ngati Pahauwera gained in power and influence. This was to the detriment of other groups, including Ngai Tane.³⁹

Cordry was closely cross-examined by Mr Powell, who referred to Cordry's statements to the Planning Tribunal in 1991 and the Mohaka River Tribunal in 1992 that he was Ngati Pahauwera, and that Ngai Tane were a hapu of Ngati Pahauwera. Cordry said he had not been

34. Ibid, p 4

35. Ibid, pp 7-8

36. Ibid, p 12

37. Ibid, p 8

38. Ibid, pp 10-11

39. Ibid, pp 11-12

happy with writing that, since 'Ngai Tane has a separate identity'. He reiterated that Ngai Tane were in fact a distinct group, and senior in whakapapa terms to Ngati Pahauwera. Mr Powell asked, since all the section 30 representatives could whakapapa to Kotore, whether that made them in fact Ngai Tane rather than Ngati Pahauwera. Cordry said that it did, and that it was 'not my problem' if they had not heard of Ngai Tane. Mr Powell then put it to Cordry that Ngati Pahauwera witnesses would assert that Huata whanau members who had now passed away, such as Canon Wi Huata, Ozzie Huata, and Hemi Huata, had never publicly described themselves as Ngai Tane. Cordry said that that may have been so, but neither had they denied that they were Ngai Tane.⁴⁰

With respect to Te Kooti's raid on Mohaka, Mr Powell asked why the published sources such as Judith Binney's study were silent on any involvement by Ngai Tane. Cordry said that he did not know. Cordry specified that members of the Huata family were not involved in the attack on Te Huki Pa but that some Ngai Tane definitely were. On further questioning, Cordry agreed with Mr Powell that 'basically it was Ngai Tane attacking Ngai Tane', explaining that 'we ate ourselves'. Mr Powell put it to Cordry that it was odd that no one told Ngati Pahauwera that there were Ngai Tane involved, since, as Cordry had earlier explained, Ngai Tane were avenging Ngati Pahauwera's selling of their land. Cordry had no explanation for this.

Tribunal members also questioned Cordry Huata and pointed out that the Mohaka-Waikare district could not have been confiscated in response to the support shown for Te Kooti in 1869, since the confiscation was proclaimed in 1867. The Tribunal also pointed to the error in his evidence that the Te Heru o Tureia reserve was sold in 1868 (and thus motivated Ngai Tane's participation in Te Kooti's raid the following year). The reserve was actually sold to the Crown a decade earlier, in 1859. In response to further Tribunal questions, and on a different matter, Cordry agreed to our suggestion that Ngai Tane and Ngati Pahauwera might be able to resolve their differences through discussions. Cordry responded: 'We should not be fighting each other; we are up against the Crown.'⁴¹

In his evidence, Hill stated that he had experienced some difficulty in carrying out the terms of his commission from the Tribunal. The commission's timeframe was:

premised on the possibility of the existence of a significant body of documented information, regarding both Ngai Tane's tribal history and its relationship with the Crown, in previous research generated by Waitangi Tribunal processes and in the tribal memory. While these are not unreasonable assumptions, an extensive search of research reports and other records, and an examination of whakapapa evidence to hand from the claimants, has proven them incorrect.

40. Cross-examination of Cordry Huata by Grant Powell, ninth hearing, 16 November 1998, tape 4

41. Ibid, tape 5

In other words, Hill could find little or no mention of Ngai Tane in either historical reports and documents or recorded oral tradition. In the circumstances, he explained, some of his report was 'of necessity speculative reconstruction'.⁴² In conclusion, Hill stated:

given our lacuna of written documentation on Ngai Tane, our quest for the history of post-Treaty Ngai Tane might well need to come primarily from within the hapu itself . . .

Mr [Cordry] Huata acknowledges that the history of his own hapu has been so subsumed by that of Pahauwera and other groupings that people with 'specialised knowledge' (including the Huatas, who 'have been brought up with it') tend to be the only ones who 'know much about Ngai Tane'.⁴³

Despite these concerns, Hill did in fact make frequent historical mention of Ngai Tane in his report. His sources for such references were the subject of some scrutiny from counsel. In his preface, Hill explained that he had often 'block footnoted' references to reflect the way in which many of his statements were 'based on composited impressions from the referenced works and other general readings'.⁴⁴ In other words, his footnotes would often relate to the information contained in a number of paragraphs and would refer to a range of sources without specifying which statements had relied on which sources. Frequently listed among the sources was 'information from Huata/Wainwright/Taylor', which Hill explained referred to conversations he had held with Cordry Huata and senior and junior counsel acting for the Ngai Tane claimants. Indeed, almost all of the specific information in his report, he conceded, came from Huata family sources. He acknowledged his particular reliance upon Cordry Huata for information, agreeing under questioning from Mr Powell, for example, that his references to 'recent tribal memory', 'the tribal genealogist', 'the whakapapa expert', 'Ngai Tane testimony', and so on, were mainly to Cordry Huata, whose main source was Hemi Huata's whakapapa book.⁴⁵

Hill was questioned by Crown counsel as to whether the absence of references to Ngai Tane in historical works – such as Mitchell's *Takitimu*, Lambert's *Old Wairoa*, Guthrie-Smith's *Tutira*, and Binney's *Redemption Songs* – meant that Ngai Tane were probably not present in the nineteenth century. In reply, he was equivocal, saying that it was 'not totally insignificant'. He added, however, that it was not unusual for tribal names to emerge, disappear, and then re-emerge in the historical record. Crown counsel suggested that he had been able to locate only a reference or two to Ngai Tane. In Dr Angela Ballara's *Iwi*, for example, the author cited proceedings of the Native Land Court in 1877 at Makaraka, near Gisborne, which related to another group known as Ngai Tane well outside the Mohaka ki Ahuriri inquiry boundary.⁴⁶

42. Document T14, p 2

43. Ibid, p 44

44. Ibid, p 2

45. Cross-examination of Richard Hill by Grant Powell, ninth hearing, 16 November 1998, tape 3

46. Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), p 163

14.8.2

But Hill thought that these references could indeed have been to Huata's Ngai Tane, since the hapu was 'peripatetic'.⁴⁷

In this and other statements, it was clear that Hill had chosen to present a speculative view of Ngai Tane's history, as he himself acknowledged. At all times, however, he was careful to ascribe unsubstantiated scenarios to the Ngai Tane perspective, which had recently been imparted to him by the claimants. His report and summary were characterised by phrases such as 'Ngai Tane may have been', 'It is quite possible that', 'probably including Ngai Tane', and so on. Because of this vagueness, and the absence of any solid, corroborative account of Ngai Tane's existence as a distinct entity in the nineteenth century, the questions were left open. Hill acknowledged that he had not provided any answers and described his results as 'preliminary and provisional'.⁴⁸ In conclusion, Hill suggested that an exhaustive search of National Archives files, local newspapers, and Native Land Court minute books might yield something more concrete, but he added that such an outcome was 'possible rather than probable'.

14.8.2 Contemporary perspectives of Ngai Tane

(1) Oral history interview project

As noted above, Maria Mareroa was commissioned at the request of the claimants to conduct oral history interviews with members of Ngai Tane, to transcribe the interviews, and to analyse the 'priority topics' that became apparent. In her report, she stated that the 'principal theme running through the oral data . . . is the recognition of Ngai Tane as an autonomous group'. The interviewees' vision for the outcome of their claim, she said, was 'the ability for Ngai Tane to exercise mana over their resources, and to be recognised as tangata whenua within their rohe'.⁴⁹ She related Ngai Tane's view of their senior status in whakapapa terms to Ngati Pahauwera, their mana over their tribal lands, the rift between them and Ngati Pahauwera (a rift born of the Ngati Pahauwera land sales to the Crown in the 1850s), and the socio-economic effects that landlessness had had on the hapu.

It seems to us that, rather than dispassionately step back and analyse the statements made to her, Mareroa tended in her report to accept at face value selected assertions of the interviewees, without employing any of the caution shown by Hill. She accepted the view that Ngati Pahauwera had 'usurped' Ngai Tane's status as 'tuakana' (older sibling or cousin) and had sold Ngai Tane land to the Crown without consultation. She also accepted Derek Huata's assertion that Ngai Tane joined with Te Kooti in raiding Mohaka as a result of Ngati Pahauwera's land sales (Derek Huata's evidence is reviewed below).⁵⁰ Her advocacy for the Wai 436

47. Cross-examination of Richard Hill by Craig Linkhorn and Fergus Sinclair, ninth hearing, 16 November 1998, tape 2

48. Document T14, p 2

49. Document T18, p 1

50. Ibid, p 9

case is made clear in comments such as Ngai Tane having ‘usually managed to triumph over adversity’.⁵¹ She did not mention that many of the interviewees knew very little of Ngai Tane but were willing to support the claim because of their personal support for the main claimants. Also, she did not touch upon the fact that a number of the interviewees in their transcripts expressed allegiance to Ngati Pahauwera or even support for the section 30 committee. Several of those who voiced concerns about the committee seemed to do so on the basis that it needed only to be made more representative of all the hapu of Ngati Pahauwera.

Mareroa’s report was objected to at the outset by counsel for both Wai 119 and the Crown on the ground that her ‘analysis’ amounted to little more than the paraphrased assertions of her interviewees. In the circumstances, said Mr Powell, the weight placed on Mareroa’s analysis would have to be less than that placed on the actual transcribed statements of the informants. Fergus Sinclair, for the Crown, agreed and noted furthermore that an incomplete set of transcripts of the interviews had only just been received.

Under cross-examination and in the fullness of the inquiry, Mareroa acknowledged that:

- ▶ The Ngai Tane claimants had drawn up the list of persons for her to interview.
- ▶ The transcripts in some cases doubled as the briefs of evidence presented to the Tribunal by Ngai Tane witnesses and counsel for Ngai Tane had been present during a number of the interviews.
- ▶ At the sessions where counsel was present (namely, those of Maraea Aranui, Rana Huata, Cordry Huata, and Te Hira Huata), counsel had in fact led the interviewing, and recorded and edited what the informants said, reading back the resulting text for the interviewees to confirm. In these cases, the interview texts were not transcripts but agreed statements.⁵²
- ▶ Counsel was also present at several of the pre-interview briefings, as was Wi Huata. These sessions were effectively designed to coach the interviewees on the intended focus of the interviews.
- ▶ Although the transcripts were largely verbatim, the grammar had been changed in places for the sake of sense.
- ▶ The transcripts did not contain her own questions, so it was not clear when an interviewee was prompted by a question.
- ▶ In order to save money, most of the recordings of the interviews had been taped over for subsequent interviews.
- ▶ She was not present during the interview of Neville Baker, and the ‘transcript’ of this interview was in fact a ‘*précis*’, not a proper transcript.
- ▶ She had personal connections to the Wai 436 claimants through a long-term business partnership with the named claimant’s wife.⁵³

51. *Ibid*, p12

52. Document T18(g), p1

53. Cross-examination of Maria Mareroa, ninth hearing, 17 November 1998, tape 6

14.8.2(2)

In sum, as an independent analysis of oral testimony, the report had significant shortcomings, not the least being its methodological weaknesses. In Mareroa's favour, we can say that she was not helped by the small amount of historical information that was provided by the interviewees, most of whose comments were focused on contemporary matters. As she acknowledged in her introduction, 'The essential historical and whakapapa knowledge came from Cordry Tawa Huata.'⁵⁴

Mareroa was directed to file with the Tribunal the missing transcript of her interview with Tom Spooner junior, the surviving audio tapes of her interviews, and her notes of those interviews for which tapes were no longer available.⁵⁵ She duly filed the additional material in December 1998, along with some of her own summary comments about the interviews that had not previously been presented. We now review each statement or interview transcript, and in doing so we note that most of the interviewees were closely related to the named claimant, Wi Huata.

(2) Mareroa's interviewees who did not appear in person

Roger Aranui said in the transcript of his interview with Mareroa that he was both Ngai Tane and Ngati Pahauwera, and the nephew of Maraea Aranui's late husband, Ariel Aranui. At the outset, he made two comments:

1. We support the section 30 committee, as they were duly elected at a hui a iwi.
2. I do not have a great knowledge of the hapu Ngai Tane, however I do know that we have links to it.

Mr Aranui supported the Wai 436 claim, he said, 'so that more knowledge can come forward about Ngai Tane'. He did not know his Ngai Tane whakapapa, he said, but despite this, he thought it important that 'the mana of Ngai Tane be recognised and that the Crown does not reinforce our assimilation into Pahauwera. . . . some factions of Pahauwera would like not to recognise this mana'.⁵⁶

In her notes, Mareroa commented that Mr Aranui did not see the recognition of Ngai Tane as challenging Ngati Pahauwera in any way. She added the, in our view, somewhat subjective comment that the fact that the Aranui whanau had 'little knowledge' of their Ngai Tane whakapapa and rohe was 'unimportant', since 'the mana from their whakapapa links supersedes this'.⁵⁷ We note that Mr Aranui accepted his nomination for membership of the section 30 committee at the June 1994 hearing but that he was not appointed.

Neville Baker, a former Maori Trustee, was interviewed in Wellington by Hinemoa Awatere, who made a 'précis' of the interview. He was asked, generally, why hapu chose to

54. Document T18, p1

55. Paper 2.310

56. Document T18(g), p4

57. Ibid, p5

collectivise under various confederations and, specifically, about the views that the late Te Okanga (Ozzie) Huata and Canon Wi Huata had about ‘umbrella set-ups’ such as Ngati Pahauwera in Mohaka. Probably because Mareroa was not conducting the interview, Mr Baker’s answers were not focused on the issues set out in her research commission. He spoke of the three sub-districts that the Department of Maori Affairs broke Ngati Kahungunu into for administrative purposes and discussed the operation of whanau trusts. He did not mention Ngati Pahauwera. With respect to Te Okanga and Canon Wi, he merely said that they ‘ensured their turangawaewae was clearly identified and recognised’ and that the Huata family ‘strongly supported the retention of hapu and whanau lands in the area’.⁵⁸ There was no mention of Ngai Tane in this statement.

Derek Huata began his interview by describing Ngai Tane as part of Ngati Pahauwera, but then he abruptly changed tack and made statements such as ‘We are as different from them as Tainui is from Ngati Porou’. He described Ngati Pahauwera (or, alternatively, the ‘other families’ or the ‘other side’) as ‘devious’, ‘opportunists’, and liars. The views expressed in the rest of the lengthy transcript of his interview can be summarised as follows:

- ▶ He, Cordry Huata, and his uncle, Ariel Aranui, were the driving force behind Ngati Pahauwera’s opposition to the proposed water conservation order over the Mohaka River. His uncle was not supported in this by other Ngati Pahauwera, both because they were not concerned about the situation and because his uncle was Ngai Tane.
- ▶ The opposition to Ariel Aranui because he was Ngai Tane stemmed from the fact that Ngai Tane had joined with Te Kooti to attack Te Huki Pa (although this reason was never openly discussed). Ngai Tane had done this because they saw the people at Te Huki as ‘traitors’ who had sold Ngai Tane land. The incorporated society and the section 30 committee are descendants of the land-sellers.
- ▶ Ngai Tane have ‘two enemies’ – the Crown and ‘the hapu of Ngati Pahauwera’.⁵⁹

Paraire Huata, the eldest son of the late Canon Wi Huata, told Mareroa that he was backing the Wai 436 claim to support Wi Huata because of the assistance that Wi had given him in the past. He seemed surprised by the claim, however, saying, ‘Now Wi always comes up with angles that absolutely surprise me, I didn’t even know about Ngai Tane in that sense.’ Overall, he seemed to have no particularly strong views about Ngai Tane.⁶⁰

Tama Huata, the younger brother of Paraire Huata, gave roughly half of his comments in his interview in Maori. Apart for one small section, these were not translated in the transcript. In the one part that was translated, Mareroa reported Tama Huata to have said that Te Okanga and Canon Wi felt that Ngai Tane should align with Ngati Pahauwera, ‘even though Ngai Tane was the tuakana’.⁶¹

58. Ibid, p7

59. Ibid, pp 8–17

60. Ibid, pp 26–27

61. Document T18, p 8

14.8.2(2)

We have to disagree with this translation. At no point in the Maori transcript of the interview is there mention of Ngai Tane or the word 'tuakana'. The relevant passage Mareroa translated is:

Ko te mea nui ki ahau mo tenei kaupapa kia whakawhaiti mai na whakaro me te hau oranga mo te hapu, te hapu kei roto i te poho o Ngati Pahauwera. No te mea, na te amorangi o Wi Te Tau, na Te Okanga. I whawhai raua ia nga wa katoa. Ko te whakahuia pai te hapu, te whanau, te iwi. Otira, ko te tirohanga mo Te Okanga raua ko taku Papa kia whakapiri mai kei raro i te mahu o Ngati Pahauwera.⁶²

This section was later translated for us by Piripi Walker:

The main priority in my view on this matter was to concentrate the focus on the well-being of the hapu, as a part of Ngati Pahauwera. Because my father Wi Te Tau and Te Okanga fought for this often, to unify the family, the hapu and the iwi. And at the same time Te Okanga and my father sought to remain united as a family under the auspices with Ngati Pahauwera.

Mr Walker believed that the transcription of the word 'mahu' (healed), should probably be 'maru' (auspices).

Speaking in English, Tama Huata told Mareroa that Ngai Tane should be 'given their recognition' under the Ngati Pahauwera umbrella. He said that 'whoever the section 30 [committee] is, they have to be broad enough to represent everybody and they have to be together'.⁶³

Tom Spooner junior was the brother of Maraea Aranui. Their father, Tom Spooner senior, had died two months before the Ngai Tane hearing. Mr Spooner junior told Mareroa that 'We were brought up as Pahauwera, and I never knew anything else', although he said that he later learned that he was Ngai Tane. Like Derek Huata, Mr Spooner junior seemed to bear a lot of resentment towards what he described as a 'take-over' of the running of the Mohaka River claim by those connected to the Ngati Pahauwera Incorporated Society. His father, he said, lost faith in the section 30 committee members and 'thought they were a bunch of no-hopers'. Mr Spooner junior blamed the committee members for the 'endless fighting' and said that 'as far as I believe they were not elected by the people, they were put there by the Crown'. He said that his father had been committed to ensuring the recognition of Ngai Tane.⁶⁴

Despite this, Mareroa recorded Mr Spooner junior as saying (in her additional notes of her 'preliminary interview' with him):

62. Document T18(g), p 31

63. Ibid, pp 32-33

64. Ibid, pp 43-44

I do not know very much about Ngai Tane, I have lived most of my life away from that area. I have never gotten on well with my father and for the past three years we haven't spoken to one another. So it is hard to represent him and to try and tell you what he might have thought about this claim.

He said that he supported the claim because his sister, Maraea Aranui, supported it, and he admitted that 'I don't know my Ngai Tane whakapapa'. He also said that, while he was 'not for or against the [section 30] committee', he thought that 'everyone should be represented, not just a certain section of Pahauwera'.⁶⁵

(3) Ngai Tane witnesses appearing at the hearing

Wi Huata denied that his claim had anything to do with his non-representation on the section 30 committee. He said that he and his father, Ranapia Huata, had been 'offered representation' on the committee but had not considered it an appropriate way forward for those they represented. He maintained that Ngai Tane had a 'history and destiny separate from Ngati Pahauwera'.⁶⁶ Under cross-examination from Mr Powell, Wi Huata did admit that he had told the Maori Land Court in 1994 that it did not matter who represented Ngati Pahauwera as long as funding was secured. However, he said that he now held a different view, and he explained that the section 30 representatives were not 'any good', since, for example, the Mohaka River had not yet been returned despite the Tribunal's 1992 recommendation to that effect.⁶⁷

In his separate interview with Mareroa, Mr Huata said that he had 'little faith' in the section 30 representatives, who he felt were trying to 'inflict oppression' on Ngai Tane. He said that 'Tane' was an uncle of Kahu o Te Rangi and that Ngai Tane could therefore not be a hapu of Ngati Pahauwera. Rather, they were separate tribes. He said that he wanted Ngai Tane to be recognised as an iwi. Referring to the river claim and, presumably, his own former identification with Ngati Pahauwera, he said, 'It was merely cosmetic and because of expediency that we came under Pahauwera'.⁶⁸

Te Hira Huata, Ranapia's daughter and Cordry's and Wi's sister, said that she had been taught Ngai Tane haka and waiata by her uncle, Ozzie Huata. She recited several of these haka and waiata to us, explaining that they expressed the opposition of the Ngai Tane people to the selling of land and detailed the areas where Ngai Tane were tangata whenua.⁶⁹

Mr Powell observed that the haka expressing opposition to land-selling made no specific mention of Ngai Tane. He also asked why the waiata, which Te Hira Huata said gave the names

65. Ibid, p 45

66. Document T24, pp 5-6

67. Cross-examination of Wi Huata by Grant Powell, ninth hearing, 17 November 1998, tape 7

68. Document T18(g), pp 39-41

69. Document T28

14.8.2(3)

of Ngai Tane tipuna (but which again did not actually refer to Ngai Tane), named Tureia and Rongomaipapa but did not mention Kotore. Te Hira did not know. In her pre-interview notes, Mareroa recorded that she had asked Ms Huata how she knew these were specifically Ngai Tane waiata. Ms Huata said that, in one, there were landmarks mentioned that were 'known' to be in the Ngai Tane rohe, 'so that substantiates it'. She also cited as verification her 'own knowledge' and 'korero . . . with others'.⁷⁰ In response to Mr Powell's final question as to whether Ms Huata also regarded herself as Ngati Pahauwera, the answer was 'Yes'.⁷¹

Maraea Aranui was the wife of the late Ariel Aranui, the original Wai 119 claimant, who had died in 1991. Mrs Aranui said that both her husband and her late father, Tom Spooner senior, who had died two months previously, were Ngai Tane as well as Ngati Pahauwera, and that her father 'saw his Ngai Tane descent as an important part of his Maori identity'. She said that she supported the Wai 436 claim and the assertion of Ngai Tane rangatiratanga.⁷² However, she conceded upon questioning that the first she had heard of Ngai Tane whakapapa had been three weeks previously; the Tribunal hearing was the first occasion on which she had publicly stated that she was Ngai Tane; when she referred to Ngai Tane's lands, she did not actually know 'precisely' where they were; and, when she said the Spooner family was one of the main Ngai Tane families, she had received that information from Cordry Huata.⁷³

In her bundle of notes and transcripts forwarded to the Tribunal after the hearing, Mareroa added that Mrs Aranui supported the Wai 436 claim because her husband (along with Cordry Huata) had toiled on the Mohaka River claim but had been given little support from Ngati Pahauwera. Mrs Aranui had apparently become upset with the section 30 committee for having been 'hostile' to her and her whanau and having 'trampled Ngai Tane and other hapu'.⁷⁴

We note that, after her husband's death, Mrs Aranui became the named Wai 119 claimant and appeared before the Mohaka River Tribunal in 1992, reading from her late husband's 1991 evidence to the Planning Tribunal. 'The basis of my husband's submission', she had explained at the time, 'was the Rangatiratanga of Ngati Pahauwera'.⁷⁵ Ariel Aranui did not mention Ngai Tane.

The last witness for Ngai Tane at the hearing was Ranapia Huata, the father of Cordry and Wi and the grandson of Hemi Huata. He began by relating how his great-grandmother Ruiha (on his 'Pahauwera side') was 'the only survivor of the massacre at Te Huki Pa'. He said that, when he was growing up, 'it was common knowledge . . . that the people at Te Huki Pa didn't know why the attack took place. They didn't realise that it was utu by Ngai Tane for the land

70. Document T18(g), p 35

71. Cross-examination of Te Hira Huata by Grant Powell, ninth hearing, 17 November 1998, tape 5

72. Document T23

73. Cross-examination of Maraea Aranui by Grant Powell, ninth hearing, 17 November 1998, tape 5

74. Document T18(g), pp 2-3

75. Document B1, p 1

sales that had taken place over their heads. People said that Te Kooti was there, but I have heard conflicting stories about that.⁷⁶

Ranapia Huata went on to describe this alleged conflict between Ngai Tane and Ngati Pahauwera as a 'war', explaining that, 'after the war', his Ngati Pahauwera grandmother, Ropine Aranui, had married his Ngai Tane grandfather, Hemi Huata, 'as a means of restoring peace between those tribes'. Following in those 'footsteps', he said, he now wanted Ngati Pahauwera and Ngai Tane to live peacefully together, but without Pahauwera coming 'over the top of Ngai Tane'.⁷⁷ When asked by Mr Powell whether Ngati Pahauwera knew they had been 'at war' with Ngai Tane, Mr Huata said that they had not known.

At the end of Ranapia Huata's presentation of his written brief, Ms Wainwright said that Ngai Tane had developed a proposal within the previous 24 hours that Mr Huata would explain to the Tribunal.⁷⁸ Mr Huata spoke in Maori and his korero was later translated for us by Piripi Walker. Addressing George Hawkins and Ruku Wainohu, he asked them to end the Tribunal hearing immediately so that the fighting could stop. He said that they were both descended from those who had sold the land and caused the 'argument and pain'. He told them that they should dismiss their lawyer and return with him to Mohaka to discuss the issue themselves.⁷⁹

Ms Wainwright summed up this korero to indicate that Ngai Tane proposed that the Tribunal hearing be suspended and discussions commenced between Ngai Tane and Ngati Pahauwera, with progress being reported to the Tribunal by January 1999. At that time, if no progress had been made, the hearing could recommence.

Mr Powell took instruction and informed the Tribunal that Ngati Pahauwera would be prepared to discuss matters at a hui, but, for the sake of balance, his clients still wished to put their own evidence to the Tribunal as scheduled. Ms Wainwright responded that the offer to enter discussions was conditional on Ngati Pahauwera refraining from giving its evidence there and then. If the 'dirty linen' was aired, she said, her clients believed that no settlement would be possible. She added that Ngati Pahauwera had already had a hearing in November 1997 and that the two parties were now 'even stevens'. Mr Powell disputed this, arguing that the Ngai Tane allegations had not been at issue at that time.⁸⁰

The Tribunal considered the matter and decided to hear from Ngati Pahauwera as intended, stating that it would then withhold its decision on the section 7 matter and direct the parties to enter discussions.

76. Document T25, p1

77. Ibid, p3

78. Ninth hearing, 17 November 1998, tape 7

79. Transcript 4.21, pp 2-4

80. Ninth hearing, 17 November 1998, tape 7

14.8.3 The case for Ngati Pahauwera**(1) Opening submissions**

In opening, Mr Powell said that, while Ngati Pahauwera did not deny that Ngai Tane was a hapu, they did dispute Ngai Tane's claim to stand outside the Ngati Pahauwera confederation and, therefore, the section 30 order. The cause of the claim, he submitted, was Wi Huata 'breaking with Ngati Pahauwera following the appointment of the section 30 committee'. No documentary evidence had been adduced to substantiate the claim, he said. Other Huata whanau witnesses had relied upon the research of Cordry Huata, but, he contended, Cordry Huata had made a 'fundamental error in his whakapapa', as the evidence of Patrick Parsons would show. In short, he contended, 'it is impossible to whakapapa from Kotore to Tamihana Huata in the manner suggested by Cordry Huata in his report'. Moreover, Mr Powell submitted, Cordry Huata was 'equivocal' about Ngai Tane's contemporary status, acknowledging that those apart from his whanau who may be Ngai Tane express their identity through other lines of ancestry.⁸¹

In conclusion, Mr Powell submitted that it was imperative for 'the integrity of [the] Treaty of Waitangi claims process' that a section 30 order facilitating the Treaty claims of a particular kin group be respected, unless there were substantive grounds why another group should be able to stand apart. Unless the Tribunal found such grounds in the case of Ngai Tane, he said, it should decline to inquire further into Wai 436. He reiterated that no evidence had been adduced that countered the notion of the Ngati Pahauwera confederation. It was apparent, he said, that the Wai 436 claim was 'frivolous, vexatious and an abuse of process'.⁸²

(2) Evidence

George Hawkins said that he had never heard of Ngai Tane other than through the Wai 436 claim, despite the fact that Hemi Huata was his uncle and Canon Wi, Ozzie, and Eddie Huata were his first cousins. None of them, he said, 'ever spoke of Ngai Tane'. Moreover, 'they always stated that they were Ngati Pahauwera', although, like himself, they could also whakapapa into Tamaterangi and thus had land interests near Frasertown in the Wairoa district. He said that he had also never heard that any one other than Te Kooti and some Tuhoe were involved in the 1869 raid on Mohaka, adding that he had spoken with his aforementioned Huata relations on the subject. He said that the first he had had heard that a group from within the Ngati Pahauwera rohe claimed responsibility for the raid was when the Wai 436 amended statement of claim was filed.

Mr Hawkins appended to his brief the evidence in Maori presented by Canon Wi Huata to the Planning Tribunal in 1991, which made no mention of Ngai Tane and set out 'clearly the same view of Ngati Pahauwera as I hold and which is held by the other Wai 119 claimants'. He disputed Cordry Huata's whakapapa explanation of the 'senior male line' of descent, arguing

81. Document T34, pp 2-6

82. Ibid, pp 6-7; see also opening submission of Grant Powell, ninth hearing, 17 November 1998, tape 7

instead that the 'direct male line is through Rakaipaaka to Te Kahu o Te Rangi whereas the line relied upon by Cordry Huata comes through Hinemanuhiri'. He also thought it impossible 'to link Kotore with Hemi Huata through Hikapii whose children gained their mana on their mother's side (Ngai Tahu)'. Furthermore, he found Cordry Huata's explanation of the meaning of Kotore 'hard to believe' (under later cross-examination, he said he understood Kotore to mean 'erection'). In sum, he concluded that he could not believe that a group 'of the size claimed by the Wai 436 claimants . . . left absolutely no evidence of its passing'.⁸³

In response to Mr Hawkins' lack of knowledge of Ngai Tane, Ms Wainwright made the point that Cordry Huata had mentioned Ngai Tane no fewer than six times in his Mohaka River evidence. Mr Hawkins said that he did not recall that detail. He said that he was relying on tribal memories, which never mentioned Ngai Tane.⁸⁴

Toro Waaka said that he was a member of the section 30 committee and a descendant of both Kotore and Te Kahu o Te Rangi. He outlined his breadth of experience as a representative of Ngati Pahauwera and as a tribal researcher, and he said that he had 'no knowledge of Ngai Taane having any take whenua in the Mohaka/Waikare area'.⁸⁵ He disputed the logic of the Ngai Tane claimants' assertion that, since Kotore is a tipuna of Ngati Pahauwera, then all Ngati Pahauwera are in fact Ngai Tane (he said in fact that most Ngati Kahungunu descend from Kotore). Ngati Pahauwera also descend, he said, from numerous other tipuna but did not call themselves by those names.⁸⁶

Mr Waaka said that neither of his parents (both members of hapu under the Ngati Pahauwera 'umbrella') had heard of Ngai Tane, which was 'very strange since both are very closely related to the Huata whanau'. He said that no kaumatua he had known had mentioned Ngai Tane, and cited Canon Wi Huata's statement to the Planning Tribunal: 'Ko Tureia he tino tipuna ki a matou o Ngati Pahauwera. . . . Ko Ngati Pahauwera matou.' ('Tureia is the important ancestor to us of Ngati Pahauwera. . . . We are Ngati Pahauwera'.⁸⁷) Mr Waaka concluded that the Ngai Tane testimony ignored the reality of the early 1800s, when Kahungunu territory was under constant siege by other tribes. In the circumstances, he said, 'If you did not have strength of numbers you were decimated. This was one reason related hapu rallied around the banner of Ngati Pahauwera.' He added that the Huata whanau 'have a legitimate claim to many of the lands in the Mohaka/Waikare area as part of the Ngati Pahauwera confederation and will benefit from the Ngati Pahauwera claim through these hapu'.⁸⁸

Ms Wainwright asked Mr Waaka if he regarded himself as Ngai Tane. He said that he did not.⁸⁹

83. Document T35

84. Cross-examination of George Hawkins by Carrie Wainwright, ninth hearing, 17 November 1998, tape 8

85. Document T36, p 2

86. Ibid

87. Document T57, pp 9, 10

88. Document T36, p 5

89. Cross-examination of Toro Waaka, ninth hearing, 18 November 1998, tape 9

14.8.3(2)

Ruku Wainohu said that he felt ‘qualified by whakapapa to represent probably all of the hapu within the 119 claim area’. He said that, if the Huata whanau wished to claim as Ngai Tane, ‘that is their business and has nothing to do with me [but] does not change the fact that they come within the Ngati Pahauwera confederation and the section 30 order’. Other than Cordry Huata’s reference to Ngai Tane in the Mohaka River claim, he said, he had not heard and did not know of Ngai Tane. He added that, if Ngai Tane’s founding ancestor was Kotore, the section 30 committee was very representative of his descendants, with six members being able to whakapapa to him.⁹⁰

Guy Taylor produced a letter dated November 1869 from Ngati Pahauwera to MacLean that had been published in *Te Waka Maori o Ahuriri* in December 1869. The letter was an account of the attack on Te Huki Pa by the survivors of the raid. It did not mention any involvement from persons identified as Ngai Tane, although various individuals of Te Kooti’s party were named. The attackers were generally described as ‘Hauhau’. Mr Taylor added that no thorough investigation had ever been undertaken as to the tribal origins of the attackers.⁹¹

Parsons had previously presented whakapapa and traditional history evidence to the Tribunal for other claimant groups in the inquiry. He was very conversant with the Native Land Court’s minutes for the Mohaka area, as well as the 1891 Te Kuta minutes, which seem to have been kept by a ‘Komiti Takiwa’, a Maori district committee investigating the ownership of the Te Kuta block. He related how, after the Ngati Kahungunu invasion, the mana over the Mohaka area was held by Tureia. From him it had passed in a direct male line to Te Kahu o Te Rangi and on to Paora Rerepu. He refuted the claim of Kotore’s ‘genealogical seniority’, and said that Ngai Tane were not mentioned in 400 pages of Te Kuta hearing minutes (which covered the environs of the entire length of the Waikare River).⁹²

Parsons acknowledged that Tamihana Huata, who had lived four generations before Cordry Huata, had rights to the district, but he explained that these came from his own ancestor, Hikapii, who had arrived from Wairoa several generations earlier and married a local woman. After presenting his evidence, Parsons added that Tamihana Huata had in fact participated in the Mohaka transaction. While he did not sign the deed, evidence recorded in the Te Kuta minutes indicated that Tamihana, who would have been about 30 years old in 1851, had been paid £10.⁹³ Parsons also said that Te Kahu o Te Rangi had been taken to Te Heru o Tureia for burial because it was ‘the maunga’ of Ngati Pahauwera, not because he had died there while visiting Ngai Tane, as Cordry Huata had asserted.

Ms Wainwright asked Parsons whether, if the ‘Kotore line’ did not hold the mana, this meant that it was not in fact the tuakana line. He said that the only relevant matter was Tureia’s conquest, which gave him acknowledged mana and overrode everything else, including any

90. Document T37

91. Evidence of Guy Taylor, ninth hearing, 18 November 1998, tape 9

92. Document T39, pp 1–3

93. Document T39(a); see also doc J20, p 7

argument about a 'tuakana' line. The mana would still descend by direct line to Te Kahu o Te Rangi.⁹⁴

When asked to give his own view of the meaning of 'Ngati Pahauwera', Parsons replied that that was for Ngati Pahauwera to define. He did comment that 'purists' said that Ngati Pahauwera comprised only the descendants of Te Kahu o Te Rangi. However, when interacting with the outside world, the Mohaka hapu would all come together under one umbrella and identify as Ngati Pahauwera, whether they were descended from Te Kahu o Te Rangi or not. Today, he said, they are seen as an iwi called Ngati Pahauwera.⁹⁵

Two kaumatua also made verbal statements. Charlie King spoke in Maori and indicated that he had spent a considerable amount of time travelling with Ozzie Huata and Canon Wi Huata and that neither had ever mentioned Ngai Tane. He said that the Ngai Tane claim was a great disappointment to him. Paora Whaanga demonstrated his extensive knowledge of whakapapa and explained the links of Te Kahu o Te Rangi to the Wai 436 claimants. He concluded by saying that he had never heard of Ngai Tane 'as a registered iwi or authority'.⁹⁶

14.8.4 Closing submissions

Closing submissions were received in writing shortly after the close of the hearing. Before the hearing adjourned, the Tribunal urged that discussions take place among the parties in a spirit of conciliation, not confrontation. The Tribunal's written directions noted that 'the evidence demonstrated that the claimants had close whakapapa links and that they had expressed a desire to attempt to resolve their difficulties by discussion among themselves'. The Tribunal also observed that 'any resolution effected between the parties would be stronger and more enduring than any decision imposed upon them by the Tribunal'. Discussions were to be arranged, with counsel filing memoranda reporting on progress by 31 January 1999. If there seemed no possibility of a settlement at that point, the Tribunal would then go on to rule on the Wai 119 application regarding section 7.⁹⁷

(1) *Submissions for Wai 436*

In closing, Ms Wainwright reiterated that Ngai Tane was not part of Ngati Pahauwera and was therefore not covered by the section 30 order. She said that Cordry Huata had demonstrated this. The fact that many Ngai Tane people could affiliate to Ngati Pahauwera if they chose, or that Ngai Tane for political and other reasons had chosen at times to align with Ngati Pahauwera, had no bearing on the matter. The section 30 order, she said, could cover only those who chose to identify as Ngati Pahauwera. If Ngai Tane chose to stand apart and

94. Cross-examination of Patrick Parsons by Carrie Wainwright, ninth hearing, 18 November 1998, tape 9

95. Ibid, tape 10

96. Oral submissions of Charlie King and Paora Whaanga, ninth hearing, 17 November 1998, tape 8

97. Paper 2.310

14.8.4(1)

identify as a separate group on the basis of certain lines of whakapapa, she asked, ‘who is to say that such a hapu does not exist? . . . surely it is the entitlement of those Maori people to affiliate to whichever of their legitimate lines of descent they choose.’⁹⁸

Ms Wainwright then attempted to rebut the various arguments made against the Wai 436 claim:

- ▶ She said that there was nothing inconsistent in the Huata whanau having previously supported the Wai 119 claim or having identified as Ngati Pahauwera, because they ‘did, and do, support the Ngati Pahauwera claim. However, the [Wai 436] claim is made on behalf of Ngai Tane which is a separate group with separate interests in the claim area.’
- ▶ She denied that Wi Huata’s opposition to the section 30 committee lay behind the claim, arguing that he and his father ‘were offered representation [*sic*] on the section 30 committee but turned it down’.
- ▶ She rejected the notion that the claim was essentially a Huata whanau claim, pointing to the support for it from members of the Spooner and Aranui whanau, for example.⁹⁹
- ▶ With respect to Hill’s failure to find much mention of Ngai Tane, she suggested that a search of primary sources might yield some information. She pointed to Parsons’ discovery of a reference to Tamihana Huata in the Te Kuta minute books as an example. She added that there was a reference to Ngai Tane in Hemi Huata’s whakapapa book, as well as references to Ngai Tane in works such as Ballara’s *Iwi*, ‘albeit in different areas’. In any event, said Ms Wainwright, the lack of reference to Ngai Tane in the sources examined was ‘inconclusive in and of itself as evidence of the significance or otherwise of Ngai Tane vis a vis other groups’.¹⁰⁰
- ▶ She said that the account produced from *Te Waka Maori o Ahuriri* in 1869 actually supported Ngai Tane’s involvement in Te Kooti’s raid on Mohaka, since two persons she described as Ngai Tane chiefs (Himiona and Pera Tipoki) were listed as participants. Furthermore, she reiterated the story given by Ranapia Huata that his grandmother Ropine (of Ngati Pahauwera) had married Hemi Huata in order to heal rifts between Ngati Pahauwera and Ngai Tane.
- ▶ She rejected the argument that the Ngai Tane witnesses had all relied upon Cordry Huata’s knowledge of whakapapa and that, if Cordry were wrong, then the claim would lack foundation. She said in fact that, not only had none of the Ngati Pahauwera witnesses challenged Cordry’s evidence, but some, such as Toro Waaka, had even remarked upon his expertise.¹⁰¹
- ▶ She said that it was of no issue that Ozzie Huata and Canon Wi Huata had never publicly identified themselves as Ngai Tane. ‘It would typically be only among Ngai Tane people that Ngai Tane would identify themselves principally in this way.’

98. Document U5, pp 2–4

99. *Ibid*, pp 4–5

100. *Ibid*, pp 5–7

101. *Ibid*, pp 7–8

- ▶ She argued that those who had led the conquest of the Mohaka district along with Tureia ‘could have included Kotore’, as illustrated by the ‘korero’ about Kotore giving his daughter to Whatuiapiti.¹⁰²

Ms Wainwright accepted that the paucity of information uncovered by Hill meant that there was ‘a lack of corroborative or documented, evidentiary support for the Ngai Tane claim’. However, she submitted, because of the Tribunal’s role as a commission of inquiry, it was entitled to rely ‘solely on the oral evidence of the Ngai Tane witnesses’ if it believed that the evidence presented was ‘more likely than not to be true’. Finally, she called upon the Tribunal to dismiss the section 7 application on the basis that the Wai 436 claim was not frivolous or vexatious, nor was it brought in bad faith.¹⁰³

(2) Submissions for Wai 119

Mr Powell made two main points in closing. First, ‘Ngai Tane were subject to the section 30 order when it was made and knew at the time that they were subject to it’ and, secondly, ‘In any event there is insufficient evidence to support an assertion that Ngai Tane were or continue to be an entity separate from Ngati Pahauwera within the Ngati Pahauwera rohe.’¹⁰⁴ He then expanded on each of these points in turn.

With respect to the section 30 order, Mr Powell argued that Wi Huata had attended the 1994 hearing as someone who identified as Ngati Pahauwera and had certainly made no mention of Ngai Tane. Mr Powell quoted the reason Mr Huata gave for taking such a different stance four years later as ‘things had changed since then’. According to Mr Powell, the simple explanation was that Mr Huata was in fact:

upset with being unable to control the Ngati Pahauwera claim, unhappy with the length of time taken to settle the claim, and unhappy with the performance of the Section 30 committee. Hence he looked for a new vehicle and lodged the Wai 436 claim on behalf of Ngai Tane.¹⁰⁵

Mr Powell disputed the helpfulness to the Wai 436 claim of the reference to Ngai Tane in Hemi Huata’s whakapapa book. He said that no whakapapa was provided in the book for the hapu, which was ‘in fact described in this reference as having been slain’. Overall, said Mr Powell, no actual whakapapa for Ngai Tane had been presented. ‘It is not enough’, he submitted, ‘to say that the descendants of Kotore are Ngai Tane. The evidence has been that most Ngati Kahungunu whakapapa to Kotore.’ He stressed that Cordry Huata was the only one who professed knowledge of Ngai Tane whakapapa, and Cordry had also said that not many people had much knowledge of Ngai Tane. As an example, he pointed to the fact that

102. Ibid, pp 8–10

103. Ibid, pp 10, 13, 14

104. Document v6, p 2

105. Ibid, p 3

one of the Wai 436 claimants' own witnesses, Maraea Aranui, had only just heard of Ngai Tane.¹⁰⁶

Mr Powell pointed to shortcomings in Hill's evidence, such as his failure to find references to Ngai Tane in historical texts, his 'block footnoting', and his reliance on Huata whanau sources for information on the existence of Ngai Tane. With respect to Mareroa's evidence, Mr Powell argued that 'The methodology employed by Ms Mareroa was such as to render this report worthless to the Tribunal'. We have already commented on this methodology and need not relate Mr Powell's criticisms here. But he did make the further point that 'No explanation was given as to why those interviewed and present at the hearing did not give evidence themselves rather than relying on Ms Mareroa.'¹⁰⁷

Mr Powell then summarised the Ngati Pahauwera evidence, and, in conclusion, he submitted that 'it would be contrary to all the evidence before the Tribunal to find that Ngai Tane is separate and distinct from Ngati Pahauwera, either historically or currently, within the claim area'. He also reiterated his earlier submission that the integrity of a section 30 order should not be undermined through the recognition of any group purporting, without foundation, to evade the order.¹⁰⁸

14.9 SUBSEQUENT DISCUSSIONS

Discussions between the parties were arranged, and counsel for both sets of claimants asked for additional time to report back on progress, which the Tribunal granted.¹⁰⁹ It seems that representatives of the Wai 436 and Wai 119 claimants met twice, in Napier, on 16 and 23 January 1999. Both meetings were facilitated by Te Puni Kokiri staff, but it seems that it was not possible for any common ground to be established. Counsel for Wai 436 informed the Tribunal of this on 16 February 1999 and asked the Tribunal to decide whether to appoint a mediator to take discussions the further; commission further research into the Wai 436 claim; or make findings and recommendations on the Ngai Tane claim, bearing in mind 'the scarcity of documentation in areas where the Crown chose to deal with one Maori group only'.¹¹⁰ In a letter to the Tribunal of 17 February 1999, counsel for Wai 119 confirmed the failure to reach an agreement and invited the Tribunal to rule on the evidence presented at the November 1998 hearing.¹¹¹

By way of direction of 27 May 1999, Judge Isaac stated that the Tribunal would not rule on the section 7 matter before hearing the Crown's evidence and closing submissions, along with

106. Document U6, pp 4-5

107. Ibid, pp 5-8

108. Ibid, pp 11-12

109. Paper 2.315; memorandum in relation to paper 2.316

110. Paper 2.318, p 6

111. Paper 2.319

any further closing submissions from the Wai 119 and Wai 436 claimants. The Tribunal thus deferred making a ruling on the section 7 application until it had issued its final report. The Tribunal commented that it was:

of the view that Wai 436 and Wai 119 should continue in their attempts to resolve their conflict by themselves. We do not consider that the Tribunal was established as a means to consider or settle inter hapu disputes but as a means to consider or settle claims made by Maori against the Crown.

In its final report this Tribunal will give its full consideration to the rights, interests and relationships of the Wai 436 & Wai 119 claimant groups and in this consideration, will exercise (if necessary) its mind to the Section 7 application of Wai 119.¹¹²

14.10 ADDITIONAL LEGAL SUBMISSIONS

In its closing submissions of November 1999, the Crown responded briefly to the Wai 436 claim. Crown counsel said that the Crown awaited the Tribunal's ruling on the section 7 application and submitted that:

the evidence before this Tribunal does not establish that it was more probable than not that a group called Ngai Tane, acting independently of the Ngati Pahauwera confederation or other tribal groups, was present but ignored by the Crown in Crown Maori dealings within the inquiry boundary.¹¹³

No final closing submissions were received from counsel for Wai 436. Counsel for Wai 119 did not address the Ngai Tane claim any further in his closing submissions or submissions in reply.

14.11 TRIBUNAL COMMENT

It is not within the Tribunal's jurisdiction to rule on disputes between Maori groups – that role lies with the Maori Land Court. The Tribunal's jurisdiction is concerned with Maori claims against the Crown. In order to meet that jurisdictional requirement, the Wai 436 claim was certainly lodged against the Crown, but it was apparent that it was also directed against the Ngati Pahauwera claimants. Another Tribunal reflected upon a similar matter in *The Pakakohi and Tangahoe Settlement Claims Report* of 2000, where it observed that there was

112. Paper 2.345, p 2

113. Document x55, p 9

‘an air of artificiality about claims of this nature being advanced in this Tribunal’.¹¹⁴ The issue of jurisdiction was not argued before us, but we raise it here in order to clarify that the Wai 436 claim was brought against the Crown and complied with section 6 of the Treaty of Waitangi Act 1975.

In its *Pakakohi and Tangahoe Settlement Claims Report*, the Tribunal reviewed the concerns of two sets of claimants who purported to represent the kin groups Pakakohi and Tangahoe. The claimants sought a recommendation from the Tribunal that their claims not be settled as part of the Ngati Ruanui settlement with the Crown. In assessing the merits of their claims, the Tribunal adopted a four-part test. Questions 1 and 2 were posed as threshold tests, which, if answered in the affirmative, would allow the Tribunal to proceed to answer questions 3 and 4. If the answer to either question one or two were ‘no’, the claims would fail:

1. Does tikanga or early colonial history (or both) recognise Pakakohi or Tangahoe (or both) as a cultural and political entity distinct from Ngati Ruanui?
2. Do Pakakohi or Tangahoe (or both) have claims which are distinct from those of Ngati Ruanui? From this question, we sought to discern whether there was a prima facie argument in favour of Pakakohi and Tangahoe each being entitled to a separate settlement.
3. Is there sufficient evidence of support for a separate settlement in favour of Pakakohi Inc or Tangahoe Inc (or both) to warrant the Tribunal taking a hard look at the Crown’s handling of the Ngati Ruanui working party mandating process?
4. If there is sufficient evidence to warrant a ‘hard look’ at the matter, were there flaws in the Crown’s handling of that matter of sufficient severity to warrant the Tribunal considering that the Crown’s acceptance of the working party’s mandate to settle on behalf of Pakakohi or Tangahoe (or both) is unsafe?¹¹⁵

We have adopted a similar approach to the Ngai Tane claim. We posed three test questions:

1. Does the written historical record and oral tradition recognise Ngai Tane as a cultural and political entity distinct from Ngati Pahauwera?
2. If it does, does Ngai Tane have claims that are distinct from those of Ngati Pahauwera?
3. If the answer to either question is ‘no’, is the claim frivolous, vexatious, or not made in good faith?

Questions 1 and 2 were hurdles. If they were both crossed in the affirmative, then, by definition, there could be no possibility of us considering the claim to be frivolous, vexatious, or made in bad faith.

114. Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report* (Wellington: Legislation Direct, 2000), p 56

115. *Ibid*, p 57

14.11.1 Ngai Tane in historical records and oral tradition

It seems that a hapu called Ngai Tane existed, but the limited historical evidence tends to indicate that they were present to the north of our inquiry boundary. We consider it is telling that Hill could locate no reference to a Ngai Tane in the Mohaka district in the written sources he consulted. Ms Wainwright argued that this was because Hill had not searched through primary sources such as Native Land Court minutes. However, Parsons, whom we consider a reliable and independent witness and who is thoroughly knowledgeable about the ancestral history of our inquiry district, gave evidence that he had never seen any reference to Ngai Tane in any Native Land Court minutes or other such sources. Ms Wainwright pointed to the fact that Parsons had found a reference to Tamihana Huata as indicating that references to Ngai Tane could indeed be found, but this reference was not to Ngai Tane per se and did not prove the existence of Ngai Tane as a separate entity.

In her doctoral thesis, 'The Origins of Ngati Kahungunu', Ballara made an exhaustive study of Native Land Court minute books and other sources from Wairoa to Wairarapa. Her long list of 'Iwi and Hapu of Hawke's Bay and Wairarapa' included a Ngai Tane at Patea, a Ngai Tane in the Wairarapa Valley, a Ngai Tane in the Wairoa district, and a Ngai Tanehimoa at Porangahau, but none at Mohaka.¹¹⁶

In a discussion of hapu formation in her book *Iwi*, Ballara commented that 'Ngai Tane' did not figure 'at all' in tribal lists of the nineteenth and twentieth centuries. By this, she was referring to the Ngai Tane who lived inland of Gisborne, who were not the same people as the Mohaka Ngai Tane and who, in 1840, 'existed only as the subjugated clients of other hapu'. In an endnote, Ballara commented that there was 'also another group of the same name living under Ngati Pahauwera at Mohaka' but provided no source for this.¹¹⁷

We disagree with Ms Wainwright's submission that Hill's lack of success in locating references to Ngai Tane was 'inconclusive in and of itself as evidence of the significance or otherwise of Ngai Tane vis à vis other groups'. All in all, in terms of written references, we were left only with a mention of a group called Ngai Tane to the north of our inquiry district and a reference in the late Hemi Huata's whakapapa book. While we were not provided with a copy of the whole whakapapa book, copies of the relevant pages were submitted. The reference they contained to Ngai Tane was in a list of hapu said to have occupied the Mohaka land that the Crown purchased in 1851.

In terms of oral tradition, we were confronted with an assertion of Ngai Tane's existence by Cordry Huata and others on the one hand, and a denial of knowledge of Ngai Tane by Ngati Pahauwera representatives on the other. We were also told by Ngati Pahauwera witnesses that Huata family members had always identified strongly as Ngati Pahauwera and had not previously mentioned Ngai Tane. Ms Wainwright acknowledged that the Ngai Tane claims were

116. Angela Ballara, 'The Origins of Ngati Kahungunu', PhD thesis, Victoria University of Wellington, 1991, p 572

117. Ballara, *Iwi*, pp 163, 347 n 5

not backed by corroborative written material and therefore invited us to decide the matter on the strength of the oral evidence. We do not wish to delve into matters of whakapapa too deeply because genealogies are a matter for the families concerned. However, we make the following observations:

- ▶ We agree that Tureia's conquest of the original inhabitants was the overriding matter determining rights in the Mohaka district. This view appears to be the established orthodoxy on the subject. Therefore, arguments as to whether the ancestor from whom descent is claimed lived earlier rather than later become irrelevant. Tureia's mana had been passed from him to Te Huki, to Puruaute, and to Te Kahu o Te Rangi, and at the time of the signing of the Treaty in 1840, was held by Paora Rerepu, a direct descendant of Te Kahu o Te Rangi.
- ▶ For the same reasons, we do not agree with the Wai 436 claim that Ngai Tane have superiority over Ngati Pahauwera owing to their descent along a 'tuakana line'.

In sum, therefore, the evidence for Ngai Tane having existed as a cultural and political entity distinct from Ngati Pahauwera in our inquiry district is slight. Ngati Pahauwera's witnesses did not deny that Ngai Tane may have been an old hapu name; they simply said that they did not know or recognise it now. A group called Ngai Tane clearly existed to the north of Mohaka, but the question remains as to whether they (or another Ngai Tane) were present in the Ngati Pahauwera claim area. Furthermore, the connection that the Wai 436 claimants have to this group was not made explicit to us. Thus, other than the oral information of the Huata whanau, there is little we can point to that will answer question 1 in the affirmative. We stress, however, that this does not mean that we question the Wai 436 claimants' right to identify as Ngai Tane now, if that is clearly their wish.

We conclude that there is insufficient evidence in the historical or oral record to recognise Ngai Tane as having been a cultural and political entity distinct from the Ngati Pahauwera confederation since 1840.

14.11.2 Are Ngai Tane claims distinct from Ngati Pahauwera?

The Wai 436 claimants said that Ngai Tane were non-sellers who lived in the interior and were not consulted about the Crown's purchasing of either the Mohaka land in 1851 or the Te Heru o Tureia reserve in 1859. We agree that there were Maori living at or near Te Heru o Tureia who objected to the Mohaka sale and who were quite possibly unaware of the sale of that land at the time. But there is no evidence that these people were the tipuna of the Wai 436 claimants. The best description we have of them is 'Maungaharuru Maori', and we cannot conclude from the available evidence that they were Ngai Tane. Moreover, as we noted in chapter 11, Donald McLean recorded in his diary on 4 December 1851 that Maori were 'gathering in considerable numbers from the interior of the Mohaka' for the signing of the Mohaka deed of sale. This statement undermines the Ngai Tane perspective that Paora Rerepu essentially sold

the land out from under their feet. And, despite the fact that several Ngai Tane claimants told us that Ngai Tane were of Waikare as well as the interior of the Mohaka, McLean also paid money directly to the 'Waikare natives'.

Furthermore, the evidence that Parsons located showing that Tamihana Huata was paid a share out of the Mohaka purchase money is a significant piece of information. Much was made by Ngai Tane witnesses of the distinction between themselves, as an overlooked and landless hapu, and Ngati Pahauwera, as the land sellers. That Tamihana Huata received money was not disputed by the Wai 436 claimants, even though it was obviously news to them. Ranapia Huata said merely that, if Tamihana Huata had received any money, 'it would have been as recognition of him being of Ngai Tane because he is not Pahauwera'.¹¹⁸ But that did not square with his earlier denial that Ngai Tane had played absolutely no part in the sale. Ms Wainwright did not address the issue in closing, instead attempting to turn Parsons' find into a positive for her clients by claiming it to have been a historical reference to Ngai Tane. Parsons did not find any reference to Ngai Tane in the Te Kuta minutes where he located the reference to Tamihana Huata.

We think that the denigration of the section 30 committee as land sellers has not been helpful. For a start, if Tamihana Huata did receive some of the payment money, the criticism would seem misplaced. Moreover, the evidence of Ruku Wainohu was that six of the eight members of the section 30 committee descended from Kotore, the ancestor claimed as tuakana by Ngai Tane, and only one descended from Te Kahu o Te Rangi.¹¹⁹ This indicates, at least, that those identifying as 'Ngati Pahauwera' do so under the 'umbrella' of Ngati Pahauwera rather than solely through descent from Te Kahu o Te Rangi (whose descendants are perceived by Ngai Tane as the arch land sellers). The Ngai Tane position is thus provocative and unlikely to settle the rift between such close relatives. The evidence indicates that, with 297 names on the Mohaka deed, the signatories were widely representative of local Maori and no one group deserves more than any other to be labelled land sellers.

Secondly, the argument was made that some Ngai Tane had joined Te Kooti in the attack on Mohaka in 1869 in order to exact revenge upon the Ngati Pahauwera land sellers. Rana Huata even suggested that Te Kooti may not have participated in the raid at all, it essentially being carried out by Ngai Tane alone. Again, however, there was no clear evidence for these assertions. Ms Wainwright pointed to a couple of names of those in Te Kooti's party as Ngai Tane chiefs. We believe that it was incumbent upon the claimants to establish their whakapapa connection to these individuals, but no evidence of such a connection was produced. Scholars of Te Kooti, such as Binney, have related that Te Kooti's men were principally Tuhoe or Ngati Hineuru. No reference to Ngai Tane participation in any of Te Kooti's other raids has been verified. There were serious chronological errors in the Wai 436 evidence attributing the Mohaka-Waikare confiscation to Te Kooti's actions, because the confiscation was proclaimed

118. Memorandum in relation to paper 2.318, app G, p 8

119. Ibid, p 11; doc T37

in 1867, before Te Kooti returned from the Chatham Islands. And the sale of the Te Heru o Tureia reserve was wrongly claimed to have occurred in 1868 and to have motivated Ngai Tane to join Te Kooti. In fact, this transaction took place in 1859.

Ranapia Huata said that the marriage of his grandparents, Hemi Huata and Ropine Aranui, had been designed to heal the breach between Ngai Tane and Ngati Pahauwera that had been caused by the land sales and the attack on Mohaka (or the ‘war’). However, we were not convinced that this was a healing marriage, when, according to Ngai Tane witnesses, Ngati Pahauwera were unaware that some Ngai Tane (but not Huata whanau ancestors) had attacked them. The evidence of Ngati Pahauwera witnesses was that, until the recent statements by the Wai 436 claimants, they had never heard of any involvement in Te Kooti’s attack in 1869 by a group known as Ngai Tane. If the Ngai Tane claimants’ explanation for the lack of evidence of Ngai Tane involvement in the raid is that the part played by their forebears was always kept quiet, it makes little sense to suggest that the raid was later followed by a healing marriage. In conclusion, we find that the Ngai Tane Wai 436 claimants have not provided convincing evidence that their claims are separate and distinct from those of Ngati Pahauwera.

14.11.3 Is section 7 of the Treaty of Waitangi Act 1975 relevant?

Given that our answers to the first two questions are in the negative, we are obliged to address the Wai 119 claimants’ request for a ruling under section 7 of the Treaty of Waitangi Act 1975, as envisaged in our third question. The Wai 436 claim could be seen on one level as a rejection of the trend towards the confederation of the Mohaka people under the banner of Ngati Pahauwera in favour of a return to the erstwhile arrangement of small, independent hapu groups. But the matter is unfortunately not so straightforward. Such a preference may be a legitimate choice for those such as Ngai Tane to take, but the obvious triggers for such an action – claim funding, hapu representation, settlement negotiations, and the like – amount not to a trend away from confederation so much as a political decision by a particular group to stand apart. Seen against this context, it is clear that we must proceed with the utmost caution. Counsel for Wai 119 was concerned that we not undermine the status of the section 30 committee by effectively finding that Ngai Tane are autonomous and not covered by it. We have considerable sympathy for his concern and believe that matters that could have been raised before the Maori Land Court in June 1994 should not be litigated years later before the Waitangi Tribunal.

We were also not altogether clear what status the Ngai Tane claimants were seeking in relation to Ngati Pahauwera. We were left unsure as to whether they:

- ▶ saw the situation as one in which Ngati Pahauwera and Ngai Tane (being the only two kin groups of any note in the Mohaka district) held equal status as ‘tribes’ or ‘iwi’, and thus should share resources and acknowledge each other in their respective rohe; or

- ▶ believed that Ngai Tane's senior status in whakapapa terms meant that the funding and recognition that had come to Ngati Pahauwera should in the future be directed more appropriately to them, and that those of Ngati Pahauwera who descended from Kotore should re-identify as Ngai Tane; or
- ▶ wanted the individual hapu groups under the Ngati Pahauwera umbrella (such as Ngai Tane) to be given more autonomous and independent status, while at the same time not challenging the confederation.

In reality, the various Ngai Tane claimants sought a mixture of all goals, which did not make our task of assessing the merits of the claim any easier. Ngai Tane are not a group of comparable size to Ngati Pahauwera. Ms Wainwright argued that the claimant community was wider than the Huata whanau, with other families such as the Aranuis and the Spooners also identifying as Ngai Tane. With respect, however, the support of the likes of Maraea Aranui (also a Wai 119 claimant) and Tom Spooner junior seemed to be uninformed, with neither having any real knowledge of Ngai Tane. Furthermore, as noted, Roger Aranui had expressed his support for the section 30 committee and had indeed once accepted nomination to stand for it. We are wary of endorsing the use of whakapapa to create virtual claimant communities; settlements should be conducted with actual communities on the ground. Traditionally, whakapapa has been used to establish relationships among scattered kin groups, and it was not intended to be used as a device to divide groups of relatives from each other.

To the extent, however, that the claim can be said to be essentially based upon the third goal, there is less for us to criticise. We are aware that it was not couched in this way in many of the claimants' statements, but we believe that it was so described in a number of them. In short, this is what convinces us that it is not appropriate for us to find the claim to be frivolous or vexatious or made in bad faith. For example, Tom Spooner junior said that he was 'not for or against the [section 30] committee but I think everyone should be represented, not just a certain section of Pahauwera'. Likewise, Tama Huata said:

Deep down one of their [Canon Wi and Ossie Huata's] main things was that Ngati Pahauwera remember it includes us and that's the main point . . . It requires all the families, the hapu, to make up that umbrella. . . whoever the section 30 is, they have to be broad enough to represent everybody and they have to be together.

Perhaps, therefore, there is a genuine concern amongst some of Ngati Pahauwera that traditional hapu names or identities within the confederation are being lost sight of to an unsatisfactory extent. Cordry Huata's evidence to the Mohaka River Tribunal in 1992 – which not only predated the 1994 section 30 hearing and the filing of Wai 436 but was also given in the context of him describing himself as part of Ngati Pahauwera – was that Ngai Tane was one of these hapu. In case this concern does exist, we draw the matter to the attention of the incorporated society and the section 30 representatives, although we fully acknowledge that the considerable number of traditional hapu names means that semi-autonomy for each of

those hapu is an unworkable concept. Beyond that, we do not believe that we can take the matter any further. It is properly an issue that should be resolved by the people of Ngati Pahauwera in their own internal discussions. Furthermore, if there is a genuine concern on the part of some with the composition of the section 30 committee, then we need only make the point that it is open to those persons to avail themselves of the appeal procedures under the Te Ture Whenua Maori Act 1993.

The Ngai Tane claimants are very closely related to their Ngati Pahauwera counterparts. Furthermore, the level of Huata whanau involvement in the Ngati Pahauwera claim for the Mohaka River, before both the Planning Tribunal in 1991 and the Waitangi Tribunal in 1992, was substantial. Video evidence was presented to the Mohaka River Tribunal by Derek Huata, for example, and it had been produced by himself, Ngatai Huata, and Huia Huata. Cordry Huata was, of course, a key Ngati Pahauwera witness before both inquiries, and the late Canon Wi Huata also gave evidence to the Planning Tribunal. It thus becomes clear how committed to the Ngati Pahauwera cause Huata whanau members have been in relatively recent times. We were not happy with Wi Huata's explanation that he and his whanau had only ever identified as Ngati Pahauwera for 'expedient' and 'cosmetic' reasons. Such an assertion contradicted the clear commitment shown by members of the Huata whanau to Ngati Pahauwera claims in the past and did not give us great confidence in their motives for now wishing to stand apart from Ngati Pahauwera and conduct separate settlement negotiations as Ngai Tane.

In sum, therefore, we are not convinced that the Wai 436 claimants have established that their claims are separate and distinct from those of their Ngati Pahauwera relatives in Wai 119. However, we do not dismiss the Wai 436 claim as being frivolous or vexatious for the reasons set out above. We think that the settlement of the Wai 119 claim should include all hapu of Ngati Pahauwera, including Ngai Tane, and that the Huata whanau should be encouraged to participate in the settlement process. If they do, however, this should not preclude the negotiation of a settlement. We note the endorsement by the Pakakohi and Tangahoe Tribunal of the Crown's policy to negotiate settlements with 'large natural groupings'.¹²⁰ The Ngati Pahauwera confederation is arguably such a grouping (see ch20), and Ngai Tane are a constituent part of that grouping. They are therefore covered by the section 30 order of the Maori Land Court.

We also endorse the position the Tribunal took in its *Whanganui River Report* in relation to the Tamahaki claimants. There, the Tribunal stated: 'While Maori custom generally favours hapu autonomy, it also recognises that, on occasion, the hapu must operate collectively. We consider that this [the tribe's Whanganui River claim] is one such occasion and that this is the generally held view.' The Tribunal went on to say that:

120. Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report*, p 65

on the evidence, it is not practicable, reasonable, or fair to the majority's point of view that the Government should treat separately for the resolution of this claim, or that one group that has not established a unique status outside of the general genealogical ties should weaken a united position by standing apart.¹²¹

We believe that the Whanganui River Tribunal's statements are relevant when assessing the claims of Ngai Tane and Ngati Pahauwera.

14.11.4 Conclusions

We conclude that:

- (a) The Wai 436 claimants have not established that Ngai Tane were a separate cultural and political entity distinct from those hapu contained within the umbrella of the Ngati Pahauwera confederation.
- (b) The claims of Ngai Tane in respect of the Crown's purchase of Mohaka in 1851 and the Te Heru o Tureia reserve in 1859, and those in respect of other matters since, are the same as the grievances against the Crown claimed by the Ngati Pahauwera confederation in the Wai 119 claims.
- (c) There is no basis for the negotiation of a separate settlement of the Ngai Tane claim. The representatives mandated to negotiate a settlement are the section 30 committee.

14.12 FINDINGS

Having regard to the foregoing conclusions, we find that there are no separate or distinct breaches of the principles of the Treaty by the Crown with regard to the Wai 436 claim. However, we are satisfied that Ngai Tane share the wider Ngati Pahauwera experience of Treaty breach and prejudice, as outlined in our other findings.

121. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 13

PART V

SOME SPECIFIC CLAIMS

In this part, we have separated out some specific claims which are localised, concern some specific lands and a particular hapu or group of Maori owners. We have termed them specific claims because we consider that any redress of these claims should be directed to the specific groups of Maori affected rather than form part of the total settlement quantum awarded a larger group. By this, we do not mean that these specific groups should have stand-alone negotiations, however. See chapter 20 for further discussion.

In chapter 15, we consider the issues raised in the Waiohiki claim (Wai 168), which concerns land sales, the administration of the Waiohiki reserve by the Public Trustee from 1883 to 1907, land taken for stopbanks on the Tutaekuri River, and gravel extraction near Waiohiki Marae. In chapters 16 and 17, we consider claims arising out of public works on the Tarawera and Tatarakaakina blocks. In chapter 16, we review an issue raised as part of the Wai 299 claims in the Mohaka–Waikare confiscation district concerning the construction of power lines across the Tarawera and Tatarakaakina blocks in the mid-1970s and the failure of the Crown to pay compensation. In chapter 17, we review the Wai 639 claim which relates to the acquisition of land in the Tarawera township by the Ministry of Works.

CHAPTER 15

THE WAIOHIKI CLAIM (WAI 168)

15.1 INTRODUCTION

The Waiohiki claim (Wai 168) was first lodged with the Tribunal in August 1990 and concerns land within the territory of the hapu Ngati Parau and Ngati Tahuahi.¹ According to the claimants, their takiwa includes the former Te Whanganui-a-Orotu (or Napier inner harbour), as well as present-day Napier and Taradale, and extends to the south of the Tutaekuri River, almost to the Ngaruroro River (map 52). The claim concerns five principal areas of land: the former Waiohiki reserve; the Otatara and Hikurangi Pa sites; the Waitanoa block; Meeanee sections 19 and 20; and that area of the Tutaekuri River within the claimants' rohe. The Tutaekuri River no longer flows along its nineteenth-century course but has been re-routed south, as we explain later. The claimants stated that they exercised authority over these lands but that the actions of the Crown have meant that their 'rangatiratanga over and rights of ownership to the aforementioned land and other entities have been unjustly abrogated'.²

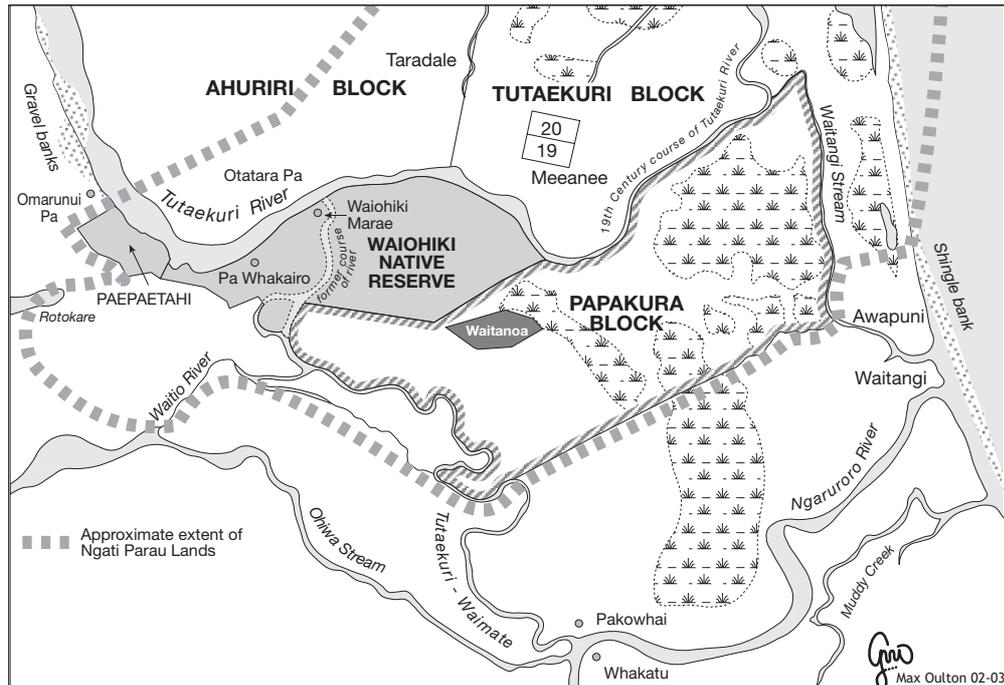
As we said in chapter 1, our district inquiry boundary was defined by the extent of the claims included in the inquiry. The Ngati Parau claimants thus had the option of raising with us matters that had occurred throughout their takiwa and as far south as the Ngaruroro River. However, they confined their claim to some specific issues around the Tutaekuri River and Waiohiki Marae, and these matters are the focus of this chapter.

15.2 THE SALE OF NGATI PARAU LANDS

Several issues in the Waiohiki claim relate to lands that were sold in the nineteenth century: the Ahuriri, Tutaekuri, and Papakura blocks (sold respectively in 1851, 1856, and 1868). Tareha Te Moananui was based at Pa Whakairo, near the present Waiohiki Marae, and was involved in the sale of all three blocks. Ngati Parau today includes a large number of the descendants of Tareha and their marae is at Waiohiki.

1. The claimants usually referred to themselves as Ngati Parau and we will follow this practice throughout this chapter unless Ngati Tahuahi is specifically mentioned.

2. Claim 1.9(d), para 4.3



Map 52: Ngati Parau lands

15.2.1 The Ahuriri purchase: Otatara and Hikurangi

Otatara and Hikurangi are two parts of a very considerable pa complex of terraces, dwelling sites, pits, and middens, most of which is included in the 33 hectares of the Otatara Pa historic reserve, which the Department of Conservation administers. As claimant counsel conceded during closing submissions, Otatara and Hikurangi were included in the Ahuriri deed in 1851 (see ch5).³ As a result, the area now covered by the reserve passed from the Crown into the hands of private settlers in the late 1850s and early 1860s.⁴ Counsel asserted, however, that at that time the Pakeha recognised the pa complex as a place of historical significance for the claimant hapu and other Maori. Roy Pewhairangi told us that Otatara is ‘the guardian of all people who live in its shadow’.⁵ He explained that it held a prominent position over the Tutaekuri River and was the boundary between Ahuriri and Heretaunga: whoever inhabited Otatara also controlled those two regions. Peneamine Whitiwhiti told us that Otatara and Hikurangi were strategic locations in the network of waterways and were much sought after.⁶ Otatara was also inextricably linked with Waiohiki Marae through tradition, ancestry, and occupation. Many battles, according to Mr Pewhairangi, were fought for and against Otatara in the last 600 years, and during that time, Ngati Parau and Ngati Tahuahi

3. Document x45, pp 32–34

4. Document w6(a), p 41

5. Document n25(f), p 68

6. Document n14, para 10

had the greatest 'mana' there.⁷ Despite all this, counsel told us that, because they were no 'statutory provisions' to protect Otatara, 'extensive destruction' was caused to it after the mid-1930s as a result of quarrying for roadfill.⁸

The quarrying at Otatara began after the 1931 Napier earthquake, the claimants told us, and the quarry was located there because the material found in that area was good for building roads. Tipu Tareha said, 'This is rather sad, especially because Otatara is wahi tapu as an ancient pa as well as an urupa.'⁹ In 1972, the site was apparently purchased by the Napier City Council and the Hawke's Bay County Council, and the quarrying continued until 1984, when the site 'changed hands again', this time becoming the property of the Department of Lands and Survey.¹⁰ Nigel Hadfield told us that he was instrumental in making an application to the Department of Labour to establish a New Zealand Conservation Corps pilot project to rehabilitate the 'quarry ravaged Otatara Pa Historic Reserve'.¹¹ The application was successful, and the restoration project commenced in 1989 in conjunction with the Department of Conservation, which now administers the area, together with Waiohiki Marae. Mr Hadfield recounted a series of events which led to the deterioration of the relationship between the department and the Conservation Corps. He explained that, by 1991, when the project finished, the corps decided to administer the project themselves. They produced interpretation signs for the pa and produced a booklet on the site, which the department still sells to the public. Since around 1995, according to Mr Hadfield, a new conservator has been appointed to the department, and the relationship has improved once again.

15.2.2 The Tutaekuri block: Meeanee sections 19 and 20

The Tutaekuri block (of about 1000 acres) was sold to the Crown in 1856 by Tareha, Karauria Pupu, and Hone Hoeroa (see ch 6). According to researcher Tony Walzl, political tensions in the local Maori community at this time led Roman Catholic missionaries at Pakowhai to seek a new site for their mission. They thus purchased almost 400 acres in the Tutaekuri block – Meeanee suburban sections 14, 16, 17, 18, 19, 20, and 36 – at a Government auction in 1857, and in February 1858 or thereabouts, they left the Pakowhai mission for Meeanee.¹²

Walzl argued that, although this would seem to be a straightforward purchase of freehold land which the Crown had already bought from Maori, there was in fact more to the transaction. He suggested that, given the Crown's very recent purchase of the Tutaekuri land before the Meeanee auction:

7. Document N25(f), p 69

8. Document N24, pp 11–12

9. Document N30(f), para 4

10. Ibid, para 6

11. Document N32, p 12

12. Document U13, pp 17–20

the possibility arises that the move by the Catholic mission onto the new [*sic*] available land to the north was anticipated by the church and local Government officials before the Crown purchase was completed in November 1856. It is even possible that such a scenario existed as far back as the time negotiations with Ngati Parau began in April 1855.

In other words, the prospect of a mission station on the land may well have been an enticement to Ngati Parau to sell the Tutaekuri block. Walzl suggested that the more ‘specialised settlers’ (such as missionaries) offered the prospect of ‘education, medicine and instruction in Christian belief and practice’. Walzl could not provide detailed evidence that Waiohiki Maori were explicitly offered any such promises, but he argued that this was the way in which transactions were negotiated until at least 1860 (the Ahuriri transaction of 1851 being the prime example) and that such transactions provided a ‘context’ in which land transactions were completed ‘in accordance with traditional imperatives and customs’.¹³

Furthermore, argued Walzl, while in contemporary times the distinction between church and State is clear, and the sale of this land would be considered a private transaction, at the time in question:

although the movement towards separation was well advanced, there were some residual areas of Church involvement and interlinkages with the Crown which further blur an assessment as to whether any modern claim being made was against exclusively private interests or whether it involved private interests which at the time were acting as agents of the Crown.¹⁴

15.2.3 The Papakura block: Waitanoa

Waitanoa was a 94-acre ‘reserve’ within the Papakura block. The Wai 168 statement of claim asserts that Waitanoa and the timber on it were illegally or wrongfully taken from Tareha.¹⁵ In the 1860s, Waitanoa, also known as ‘Little Bush’, had ecological significance as a substantial patch of bush on an otherwise virtually featureless grassy and swampy plain.¹⁶ The matter was researched by Richard Moorsom, who noted that timber was a strategic resource on the Heretaunga Plains, particularly for Tareha’s Pawhakairo community, which lived about three kilometres away and had no other bush in its immediate vicinity.¹⁷ The local community actively used the bush, and the barring of access to it was a major blow to the community.¹⁸

In 1865, the Papakura block was leased. Waitanoa was marked on the associated map as a ‘reserve’, although the text of the deed did not mention it by name, a fact which Moorsom

13. Document v13, pp 33–35

14. Ibid, pp 38–42

15. Claim 1.9(e)

16. Document T27, p 5

17. Ibid, p 7

18. Ibid, p 30



Fig 31: Group at Pawhakauro, Hawke's Bay, circa 1870. Photograph by Samuel Carnell. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (S Carnell collection, G-22169-¼).

found surprising, given that the bush was wholly enclosed in the leased land.¹⁹ Very soon after the leasing agreement was concluded, the Native Lands Act 1865 was passed and the Native Land Court began operations in Hawke's Bay. The deed to lease Papakura had stated 'if the government should set up later a Court for selling and leasing Maori land, we agree that this deed will come under its jurisdiction'.²⁰ As a result, in November 1865, Tareha and others identifying as Ngati Kahungunu applied to the Native Land Court for a determination of title. The Papakura block (3363 acres) was awarded to only two owners, Tareha and Wi Ngamaiaia. A new lease agreement was signed with the two owners, and the diagram of the land attached to the deed again indicated Waitanoa, although the word 'reserve' had disappeared, leaving the section described only as 'Native'. There was still no reference to Waitanoa in the document's text. Moorsom suggested: 'At law, therefore, Waitanoa may have been subject to the same terms of the lease as the rest of the Papakura block.'²¹

One year later, on 2 August 1867, the Provincial Council purchased the Papakura block for £9500, with final payments made in March 1868. The deed of sale included no reference to Waitanoa, although its boundaries appeared in the deed plan, where they were simply marked 'Waitanoa'. Nominally, therefore, it was included in the sale, although in subsequent

19. Ibid, p 14

20. Deed of lease, 20 July 1865 (as quoted in doc T27, p 15)

21. Document T27, p 18

deeds to complete the sale it was explicitly excluded and reverted to the unencumbered ownership of the two title-holders of the Papakura block. While negotiations to sell Papakura to the Crown were going on during 1866 and 1867, Tareha became involved in a confused series of transactions over Waitanoa. Tareha claimed that these were lease arrangements and that Maori access to the bush for firewood had been protected, but they were interpreted as a sale of the block. There was very little documentation on the matter, and when Tareha's complaints were investigated by the Hawke's Bay Native Land Alienation Commission in 1873, the commissioners had to rely largely on verbal statements from the parties involved. Moorsom commented that the scarcity of documentation was 'not surprising for private transactions' and that the exposure that the commission gave to the 'exploitative character of much of the purchasing of Maori land in Hawke's Bay' in the five years following the establishment of the Native Land Court led to tighter scrutiny and legislative reform in the 1870s.²² We rely both on Moorsom's summary of the evidence given to the 1873 commission and the commission's report for the following account.²³

In the mid-1860s, Henry Russell, the member of Parliament for Hawke's Bay, was acting for a Scottish investor, Aikman, and had already acquired several leasehold sections in the Papakura block. Some time in 1866, Russell, acting through an agent, sought a lease of Waitanoa from Tareha. Russell claimed that the agent did obtain a 21-year lease for £120 per annum that bore Tareha's signature, but he said that the agent subsequently 'lost' the document. For his part, Tareha denied having signed anything and said that he had never seen a lease document, but he did recall receiving an advance of £20 sent by messenger from Russell. While Russell was away in Wellington for a session of Parliament, and with the deal not completed, Tareha leased the block to a William Miller and a Mr Lindsay for £160 per annum, although he reserved his right to the timber and firewood. Tareha also gave Miller and Lindsay a right of first refusal should he decide to sell. This deed was duly registered. At the time, Miller was farming on adjacent land, and he put a tenant on Waitanoa. Miller told the 1873 commission that local Maori used to come every day to collect firewood. When Russell returned to Hawke's Bay, he bought out Miller and Lindsay's lease for £200 and paid off their tenant. He then sued Tareha for damages of £400 for alleged breach of contract. Russell also asked FE Hamlin to act as an agent to negotiate with Tareha to purchase Waitanoa. It is not clear in the 1873 evidence what role, if any, Wi Ngamaiaia, Waitanoa's other owner, had in these transactions, since all the negotiations seem to have been conducted with Tareha.

The threat of legal action was of concern to 'some of Tareha's people', and it is said that they approached a Napier trader, Frederick Sutton, to buy Waitanoa and 'help Tareha out of his difficulty with Mr Russell'. Sutton immediately informed Hamlin of this, and the next day Russell engaged Sutton to negotiate with Tareha for Waitanoa. In return for the land, Russell

22. Document T27, p 22

23. Ibid, pp 23-28; see CW Richmond, 'Report of the Hawke's Bay Native Lands Alienation Commission', 31 July 1873, AJHR, 1873, G-7

offered Tareha £250 and promised to withdraw his legal action. Tareha accepted Sutton's offer, but he insisted on retaining Maori access for timber and firewood. Sutton verbally assured Tareha that 'the timber would not be considered as included in the deed – and on this understanding the chief executed the conveyance'.²⁴ Russell then repudiated this oral assurance, saying that Sutton had exceeded his mandate. Meanwhile, Tareha had hired a lawyer, Joshua Cuff, to represent him in Russell's action against him in the Supreme Court. While Sutton had been negotiating with Tareha, neither Tareha nor his lawyer was aware that he was actually acting on behalf of Russell (who was in turn acting as an agent for Aikman).

Russell's and Sutton's evidence before the 1873 commission was contradictory. Among other things, Russell suggested that Tareha and his people were already in debt to Sutton and needed to raise more money. Sutton conceded there was some debt, but he had long defended the interests of Tareha and his people. Despite their different interpretations, it was probably in the interests of both not to reveal Russell's involvement. Tareha found out only when some of Russell's employees banned access to Waitanoa. Sutton claimed that Russell's lawyer, Wilson, had assured him that the firewood and timber would be reserved in the deed, but it was not. Wilson admitted to the commission that Sutton had given a verbal assurance to Tareha that it would be. The deed transferred the land to Sutton, who told the 1873 commission that Russell had refused to 'allow the Natives that privilege' and that Russell had said he had already 'paid through the nose for that block'.²⁵ Only after Russell agreed to sign an indemnity covering him against any later claims by the former owners of Waitanoa did Sutton transfer the land to Aikman.

The 1873 commission did not accept that the price paid was too low, since they considered that it was in line with other rentals and valuations at the time. It did, however, accept that Tareha had a valid complaint that the provision for access to timber and firewood on Waitanoa had not been included in the deed of sale. Moorsom suggested that the commissioners did not address the more fundamental issue that Tareha thought his agreement with Sutton was a lease, not a sale. Tareha was recorded as telling the 1873 commission: 'Sutton said, Enough for me is what is growing on it – the grass. It was a lease Mr Sutton wanted. He said, The land will remain with you, the trees and the firewood. I agreed to that.'²⁶

The actual deed was not produced before the 1873 commission, but Pakeha witnesses all agreed that it was a deed of sale. The deed no longer exists; it may have been lost in the Napier earthquake. From this distance, it is not possible to determine the deed's precise words or whether Wi Ngamaiaia, the other owner, also signed it. There also remains the question of whether Tareha fully understood what he was signing, whether the terms of the deed were properly translated into Maori for him, or whether there was a written Maori version of the deed.

24. CW Richmond, 'Report on Case No III', AJHR, 1873, G-7, p 12 (doc T27, p 23)

25. CW Richmond, 'Report of the Hawke's Bay Native Lands Alienation Commission', 31 July 1873, AJHR, 1873, G-7, pp 7–8 (doc T27, p 28)

26. Ibid, p 7 (p 28)

Despite the commission's finding on the access to firewood, there is no record of Maori resuming any rights at Waitanoa, nor did the land appear in the lists of reserves. However, there is also no record of any further protest by Tareha or his successors. It may be that the timber resources had already disappeared by the time of the 1873 commission. Nevertheless, Waitanoa was labelled on various maps as a 'Native reserve' until 1890.²⁷

15.3 THE WAIOHIKI NATIVE RESERVE AND THE PUBLIC TRUSTEE

The Waiohiki lands remained in customary Maori use and occupation until after the death of Tareha in 1880. Title was determined by the Native Land Court in 1886, but it was not investigated in the usual way because the application was lodged by the Public Trustee. In September 1883, Te Roera, a son of Tareha, and seven others wrote to the Native Minister asking that Waiohiki and Paepaetahi be 'reserved as permanent kainga for ourselves'.²⁸ The resident magistrate at Napier, Captain George Preece, forwarded the request, and in an accompanying letter, he suggested that his predecessor, Samuel Locke, had intended gazetting the two blocks under the Native Reserves Act 1856 because Tareha had wanted to keep these lands 'for the use of the Natives'. At that time, the administration of native reserves had been transferred to the Public Trustee by the Native Reserves Act 1882. The letters were passed on to Alexander Mackay, the commissioner of native reserves, who recommended to the Minister that the Public Trustee apply to the Native Land Court for an investigation of title of the Waiohiki lands. The Minister agreed to this, and he also accepted Preece's request to appear for the Public Trustee.²⁹

On 26 August 1886, the Native Land Court vested 1189 acres (1043 acres of Waiohiki and 146 acres of Paepaetahi) in the Public Trustee as a native reserve, and it identified 20 beneficiaries to the land. Some individuals excluded from this title requested a rehearing, and one was eventually held in 1895. As a result of that rehearing, four more beneficiaries were identified and Waiohiki was partitioned into six blocks. When informed of this rehearing, the Public Trustee denied his responsibility for the land in question, stating 'this Reserve is not a "Native Reserve" vested . . . under the "Native Reserves Act 1882" and therefore not under my control'.³⁰

Dean Cowie, who researched the matter, suggested that the trustee's oversight was 'not an isolated error' and that it was 'hardly an auspicious start to the relationship between the Public Trustee and his Waiohiki beneficiaries'. He noted, however, that the fault should not be

27. Document T27, pp 34–35

28. Te Roera Tareha and seven others to Native Minister, 29 September 1883 (doc N9, p 17). The translation given here was taken from a contemporary translation that accompanied the original letter. The relevant Maori text read 'ko matou hiahia tenei me Rahui i aua whenua he kainga pumau mo matou'.

29. Document N9, p 19

30. Public Trustee to clerk, Native Land Court, Hastings, 3 July 1895 (as quoted in doc N9, p 19)

‘wholly apportioned to the incompetence of the Public Trust office’.³¹ He observed that the Public Trustee had remained unaware of his responsibility for 12 years, a period during which the Public Trust Office was under strain from an overload of work. However, once the trustee had been made aware, he made no effort to find out more. A file note dated 26 May 1898 suggested that the land was ‘vacant as far as this office is aware’.³² Cowie concluded that the Public Trust Office was ‘not designed or equipped for managing a reserve which beneficiaries, let alone Maori beneficiaries, still occupied’.³³

In June 1898, the Hawke’s Bay County Council notified the Public Trustee that it intended to acquire one acre 34 perches from Waiohiki 1E for a gravel pit. This transfer was eventually proclaimed under the Public Works Act 1894 in 1899.³⁴ Cowie was critical of the Public Trustee for not insisting that the council lease the land, rather than compulsorily acquire it. He noted that the gravel on that land could have been a valuable source of income for local Maori, although it appears that the council had been taking gravel for some time prior to acquiring the land.³⁵ Regardless, the council’s request prompted the Public Trust Office to prepare a report on the reserve, as a result of which it was discovered that portions of the reserve were being leased to (among others) the Napier Golf Club (although no rent was being paid). Parts of the reserve were also being occupied and cultivated by Maori. Cowie suggested that, by this time, Maori may have ‘forgotten’ about their relationship with the Public Trustee, although the trustee appeared anxious to remind them that he could dispose of their lands.³⁶ A struggle ensued over who would control the leases of the reserve, local Maori or the Public Trustee, and the disagreement continued over the next few years. The trustee was concerned to find that, as well as the land that was being leased to the golf club, further land was being used by George Donnelly to graze stock, and he wanted to ensure that rents were distributed to all the beneficiaries. Cowie commented that ‘a question mark remains over whether the Trust Office was capable of managing the interests of Maori on behalf of Maori’. He concluded that deficiencies in the trust’s consultation with Maori ‘probably lies with the legislators who established the Acts of Parliament under which the Office administered Maori reserves’, which provided scant provision to involve Maori in decision-making regarding their reserve lands.³⁷

In early 1906, when the golf club lease was being renegotiated, questions were again raised about the role of the Public Trustee in relation to Waiohiki, and these persisted through 1907. In the face of this questioning, the trustee decided that it was time to relinquish his responsibility. Under section 41 of the Maori Land Claims Adjustment and Laws Amendment

31. Document N9, p 19

32. Minute, Public Trust Office file note 98/330, 26 May 1898 (doc N9, p 20)

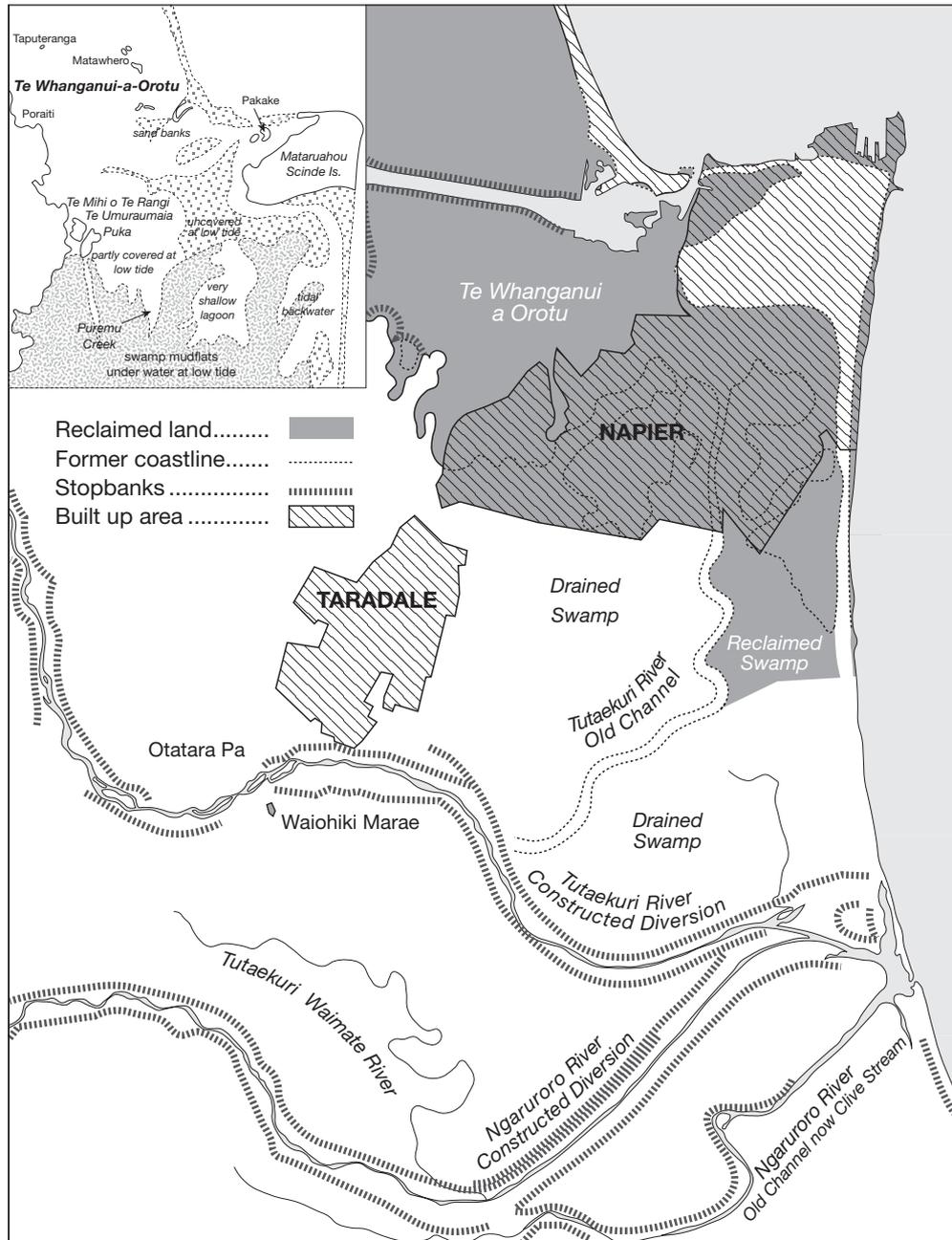
33. Document N9, p 20

34. ‘Proclamation Declaring Land taken for a Quarry, Block VII, Heretaunga Survey District’, 3 August 1899, *New Zealand Gazette* 1899, no 65, p 1404

35. Document N9, p 25

36. *Ibid*, pp 21–22

37. *Ibid*, pp 23–24



Act 1907, the Waiohiki reserve was vested ‘absolutely’ in the Maori owners. Cowie noted that no reason for the change of heart was given, but he speculated that the Public Trustee was ‘embarrassed at the history of neglect shown by his office to the Waiohiki Maori, and was aware that his office would never be a successful owner and manager of this reserve’. A confusing relationship persisted, however, between the Waiohiki Maori, the Napier Golf Club

(which maintained its lease), and the Public Trustee (who, until the lease expired, continued to receive rent from the club and distribute it to the owners). The golf club later purchased two subdivisions, no doubt wary of the unusual circumstances surrounding its tenure of the land.³⁸

Thus, the Waiohiki land became Maori land, but it lacked any protection or reserve status. Several Waiohiki subdivisions were sold over subsequent years. In 1912, two acres of Waiohiki 1D were sold to Nathan and Company for £70 to establish a dairy factory. This was done at the request of the seven owners, who hoped that the presence of a factory would enable them to develop dairy farming in the district. In 1915, a further one acre 40.3 perches were taken under the Public Works Act from Waiohiki 1E for the Hawke's Bay County to use as a gravel pit.³⁹ After 1915, although the land was further partitioned, the ownership of most of Waiohiki remained in the hands of the hapu, which occupied and farmed it until river control acquisitions were made in the 1930s.⁴⁰

15.4 THE TUTAEKURI RIVER

The Tutaekuri River flows through the takiwa of Ngati Parau and has always played an important role in the lives of Waiohiki Maori. However, the landscape of the lower reaches of the river, downstream of Waiohiki Marae and Otatara, has been much modified over the last 150 years. The Tutaekuri once flowed into a low-lying area of swamps and lagoons at the southern end of Te Whanganui-a-Orotu. In the 1930s, the river was diverted to an estuary at Waitangi and new stopbanks were constructed (map 53). In this section, we review the significance of the Tutaekuri River for the people of Waiohiki Marae and then we consider the taking of Waiohiki lands for river control works.

15.4.1 The Tutaekuri River and Ngati Parau

The Tutaekuri River was a significant resource for the people of Waohiki and, despite its altered character, was obviously still of great importance to Ngati Parau. Local Maori told us stories of swimming and playing in the river as children, of catching eels, flounder, koura, and inanga, and of gathering watercress from the river's tributaries and firewood from its banks. Mr Hadfield, who was born in 1962, said that the Tutaekuri 'is part of us and we are part of it, it symbolises our very existence'.⁴¹

38. Document N9, p 27

39. 'Proclamation Declaring Land Taken for the Purposes of a Gravel-Pit in Block VII, Heretaunga Survey District', 18 November 1915, *New Zealand Gazette*, 1915, no 130, p 3819

40. Document N9, pp 27-28

41. Document N32, p 4

However, Tipu Tareha said that, while the river had been 'like a mother to us when we were young', they had seen it 'ruined before our very eyes'.⁴² Albert Gray reported a great depletion of the eel fishery. Taape Tareha-O'Reilly argued that the river was now much shallower than it had been in the past. For example, she said that, when Tareha died, a steamer carrying people from Wairoa to the tangi was able to come all the way up the river to Waiohiki – a trip which would no longer be possible.⁴³ We discuss the causes of these impacts later, after we have reviewed the river control works that culminated in the diversion of the river in the 1930s.

15.4.2 Flood control on the Tutaekuri River

Floods on the Tutaekuri River occurred before European settlement (see ch 3). The Tutaekuri has its source in the Kaweka Range – an area of high rainfall – and, with a number of tributaries rising in the hill country, it has a very large catchment area of about 850 square kilometres. In its pre-settlement state, the river carried a substantial load of gravel, sand, and silt. This amount has increased since the nineteenth century as bush and scrub in the river's upper reaches have been cleared and transformed into pasture. Accelerated erosion on steep pasture has also added to the load. Below Puketapu, the riverbed flattens out and the gravel materials are deposited. The river aggrades its bed until a big flood, when it breaks out and forms a new channel. The Heretaunga Plains have been built up over many centuries by this process.⁴⁴

In the 1870s, European settlers attempted to modify and control the river, as hydrologist Gary Williams explained:

A stopbank was constructed along the north (true left) side of the river as early as 1874. The upper part of this bank, protecting the settlement of Taradale, was maintained by the Taradale River Board, while the lower part, protecting Meeanee, was maintained by a separate Meeanee River Board. On the south (true right) side of the river, stopbanks and protection works were undertaken by another river board again, the Clive River Board.

Introduced willow and poplar trees were planted to protect land and stopbanks from river attack. The willows in particular spread rapidly within the river channel and adjacent low lying land.⁴⁵

Ironically, the effect of these stopbanks and the planting of willows and poplars was to increase the amount of deposition in the stream bed, and, as a result, breakouts through the stopbanks were more disastrous. The magnitude of flood flow was also increased by greater run-off in cleared pastoral lands in the catchment area. Williams commented that, in the

42. Document N30(a), p 2

43. Document N29, p 4

44. Document N10, pp 2–3

45. *Ibid*, p 4

1890s and into the early twentieth century, 'large flood events' became more frequent on the Heretaunga Plains: 'The flood protection measures in place were not especially successful, and the lack of coordination gave rise to piecemeal works and a deflection of flooding from one area to another.'⁴⁶

Various schemes to control the Tutaekuri River were promoted. The Clive River Board put in a flood overflow channel from the Tutaekuri to the Waitangi Stream, but it had limited success. Dredging was seen as being too expensive, and probably ineffective, although some gravel was extracted for road building. The diversion of the Tutaekuri, either by a more direct route to Te Whanganui-a-Orotu or south toward the Ngaruroro River mouth, seemed to be the best option. The formation in 1910 of the Hawke's Bay Rivers Board meant that there was now a single authority to plan a coordinated flood control scheme and to address the issue of raising finance. Another big flood in 1917 provided extra incentive for a comprehensive flood control scheme.

In May 1919, the Hawke's Bay Rivers Board released the report of engineers Fulton, Furkert, and Hay, and it became the blueprint for the river diversion and flood control scheme that was eventually implemented in the 1930s (map 53). The report also proposed that all the land between the affected rivers and their stopbanks be acquired by the rivers board. The reason given was that the board 'might be able to construct the works under agreements with the land owners without the actual purchase, but it would be very difficult to control the occupier unless the Board owned the land'.⁴⁷ Thus, it became rivers board policy from that time on to acquire all relevant land on the banks of the Tutaekuri River from Waiohiki and Taradale to the coast. During the 1920s, debate over the proposed scheme, and its possible alternatives, continued. Pressure was building to divert the Tutaekuri River south both because sediments were building up in its bed and because it would make it easier to reclaim the low-lying lands between Napier and Taradale. An amendment to the Hawke's Bay Rivers Act 1910 in 1930 gave the rivers board the power to raise a loan to supplement Department of Public Works funding. However, before work could commence the whole region was shaken by the Napier earthquake in February 1931. The effect of the resultant land uplift in Te Whanganui-a-Orotu and at the Tutaekuri River mouth was to make the river flow more sluggish. As a result, there were more floods at Meeanee. In 1932, the rivers board, with subsequent Cabinet approval, finally decided to divert the Tutaekuri River south to a new exit to the sea at Waitangi.⁴⁸

15.4.3 The taking of Waiohiki Lands for river works

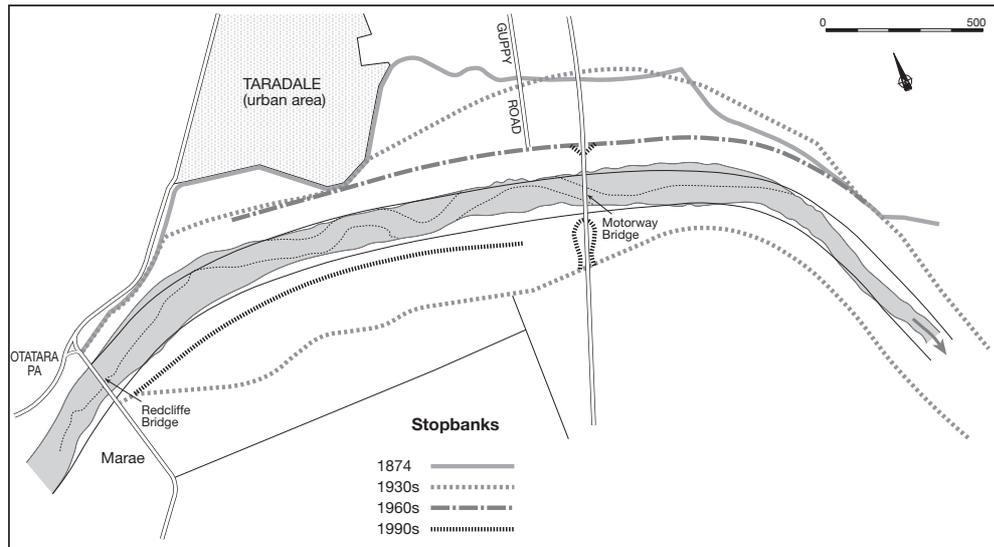
On 12 March 1934, the Hawke's Bay Rivers Board occupied land at Waiohiki and large-scale works began.⁴⁹ The scheme was intended to create a channel of constant width and

46. Ibid, p 5

47. Fulton, Furkert, and Hay, 29 May 1919 (as quoted in doc N9, p 8)

48. Document N9, 8-15

49. Ibid, p 15



Map 54: Stopbanks on the Tutaeakuri River at Waiohiki

uniformity from Redcliffe Bridge to the river mouth.⁵⁰ The disadvantage of the plan was that it required more land than the other possible proposals. The location of the stopbanks at Waiohiki is shown in map 54.

Little or no consultation was carried out with Waiohiki Maori landowners over the nature of the works or how much land was to be taken. In April 1933, the intention was to acquire about 65 acres, but in August 1934, after work had started and notices had been sent to some owners, the area to be taken was increased.⁵¹ Roy Pewhairangi, the great-grandson of one such owner, Kawhe Toheriri, told the Tribunal that ‘a Board member visited my great grandfather’s farm and handed him a notice of intention to take his lands for river control and [he] was asked to remove his stock from the land so that work could commence’.⁵² Hineiaia Pene stated that Toheriri ‘lost about 30 acres of riverbank land’ and was left with ‘about 7 acres behind his home’, which greatly reduced his dairy production. Pene also explained to the Tribunal that compensation was not negotiated with the affected landowners, although some of them had their houses painted – ‘it seemed to be an initiative of the Rivers Board’. She commented, ‘Kawhe Toheriri lost the most land but did not get his home repainted’.⁵³ Actually, compensation was awarded by the Native Land Court in 1937, but the painting was not part of it.

The proclamation of intention to take 183 acres of the Waiohiki block was finally issued on 21 November 1935 under section 22 of the Public Works Act 1928.⁵⁴ Following the proclamation, the owners and lessees objected, but the Department of Public Works dismissed them,

50. Document N10, p 6

51. Document N9, p 31

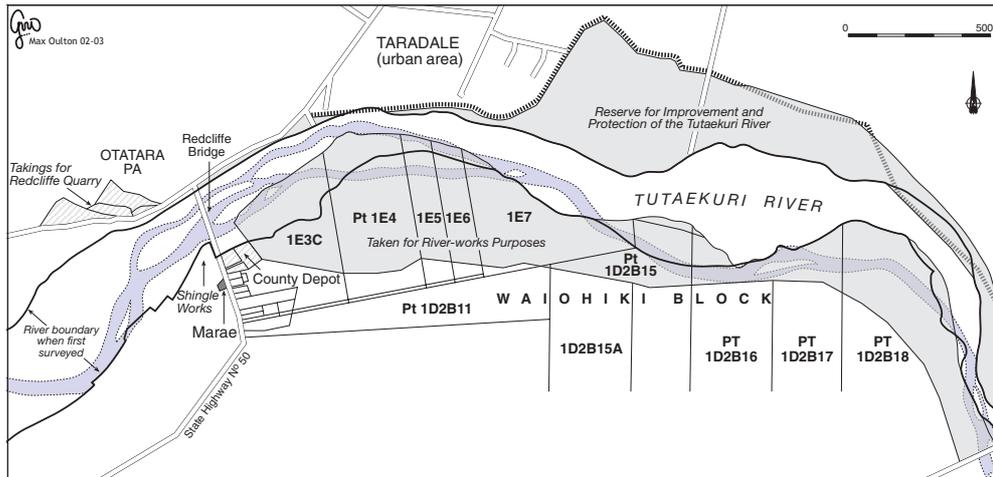
52. Document N25(f), p 75

53. Document N18, p 5

54. ‘Notice of Intention to Take Lands’, 21 November 1935 *New Zealand Gazette* 1935, no 86, p 3381

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Map 55: Land at Waiohiki taken for river works

stating, ‘This is a case where there is no alternative. It is not like taking of land Bldgs or Roads where there are several alternatives. This particular land is within the stop banks.’⁵⁵ The 183 acres, including any accretions (new land created by river deposits), were finally taken under the Public Works Act 1928 on 23 October 1936.⁵⁶ This was 2½ years after the rivers board had moved onto Waiohiki lands. By then, the board had already virtually completed the rebuilding of the stopbanks. The lands taken are shown in map 55.

In April 1934, the Waiohiki owners had instructed a Napier lawyer, A E Lawry, to act for them. Lawry had lodged objections to the taking, and when these were ignored, he attempted to negotiate a settlement with the rivers board. Finally, in October 1937 the matter came before the Native Land Court, which could award financial compensation based only on the market value of the land taken. There was no scope to claim for the traditional value of the land or for the fact that the land was papakainga. Neither was there scope to examine the detrimental effect that the taking had on farming, and absolutely no capacity to question the scale of the taking. The court could consider only a series of valuations provided by the rivers board, the owners, and the Department of Public Works. The board’s valuer estimated that the block was worth £1525, with betterment of £2462,⁵⁷ while the owners’ highest valuation

55. Document N9, p33

56. ‘Land Taken for the Purposes of River-Works in Blocks VII and VIII, Heretaunga Survey District’, 29 October 1936, *New Zealand Gazette* 1936, no 70, p1934

57. ‘Betterment’, reintroduced in section 28(1)(d) of the Finance Act (No 2) 1936, meant:

The Court shall take into account by way of deduction from the total amount of compensation that would otherwise be awarded on any claim in respect of a public work (whether for land taken or injuriously affected or otherwise) any increase caused or likely to be caused by the work or by the prospect of the execution of the work in the value of any land of the claimant that is injuriously affected by the work, or in the value of any other land in which the claimant has an interest.

While the term was not used in the 1936 Act, it was generally referred to as ‘betterment’ and had previously existed in public works legislation.

was £3651, with no allowance for betterment.⁵⁸ The board's counsel extolled the virtues of the river control scheme in order to sustain its argument for betterment, which would reduce the value of compensation, and was keen to be seen to have chosen the option that cost the ratepayer the least. The owners' counsel, Lawry, sought to emphasise that his clients had been denied an opportunity to object, that the board was taking more land than it needed in order to save money on construction, and that the remaining lands would not markedly increase in value.⁵⁹ Lawry also argued that 'expense was saved to the board at the expense of the individual owners and the land taken [was] in excess of what was required'.⁶⁰ Williams told us that 'The re-positioning of the stopbanks, and the extent of the present design channel clearly demonstrate (as later day proof) that the land taking in the 1930's was extended to reduce costs, not because of river engineering requirements.'⁶¹

On 1 October 1937, the Native Land Court recommended payment of £2951 compensation, with no interest ascribed. The rivers board appealed and was partly successful in reducing the compensation by £293.⁶² According to Cowie, despite the deductions made by the Native Appellate Court, all the owners fared rather well in terms of compensation when compared with some other owners of land along the Tutaekuri and Ngaruroro who had been affected by compulsory acquisition and who got less than half of what they sought.⁶³ However, even if this was the case, the compensation was only for the loss of the land as a productive commodity – it did not give any recognition to the land's papakainga status, the spiritual and economic benefits of the water frontage, or the destruction of viable farms on Maori freehold land, where tenure was intrinsically more complex.

In 1950, the Hawke's Bay Rivers Board was dissolved and its functions taken over by the Hawke's Bay Catchment Board. More recently, responsibility was transferred to the Hawke's Bay Regional Council. The Tribunal was also told that, at various times since 1938, the stopbanks have been upgraded. Between 1990 and 1994, the upgrading along the Tutaekuri River included topping the stopbanks as well as carrying out some reconstruction and realignment of them. On the Waiohiki side of the river, however, a gap was left in the new stopbank for 'quiet water', the idea being that the flood waters would collect there and reduce the pressure on the stopbanks further down. Williams told us that he failed to 'follow the logic of what had been constructed'. He explained that, except for the 'quiet water', the structure in the early 1990s was very similar to that proposed in 1929.⁶⁴

According to David Pene, after the stopbank was completed surplus lands were not offered back to the original owners because they were deemed 'unsuitable for grazing purposes'.

58. Document A17, pp 784–785; see doc A16, pp 12–16; doc N9, pp 36–40

59. Document N9, p 37

60. Napier Native Land Court minute book 79, 19 March 1937, p 143

61. Document N10, p 9

62. Decision of the Maori Appellate Court, 1938 (doc A17, pp 605–606)

63. Document N9, p 41

64. Document N10, pp 10–12

Pene pointed out that this ‘flew in the face’ of his family’s successful farming on these lands (see sec 15.5). Later, the lands were leased to a Pakeha farmer.⁶⁵

15.4.4 Environmental impacts on the river

Several claimants also expressed great concern at the environmental impacts on the river and adjacent lands. First, gravel extraction from the Tutaekuri River bed has continued. Williams explained, that since the 1950s, the gravel extracted has greatly exceeded the natural build up, and there has been a ‘pronounced degradation’ of the river, particularly from the Redcliffe Bridge downstream, and a ‘significant degradation’ of the river up to the Puketapu Gorge.⁶⁶ Ngareipa Hawaikirangi told us that the work done in the 1990s was carried out without meaningful consultation: ‘we were told that it was going to happen’. More recently, the Hawke’s Bay Regional Council met with the marae committee ‘to tell us that they want to dig a further channel in the river to encourage the flows towards the Waiohiki side of the river. Not much has changed.’⁶⁷ Hineiaia Pene told us that she had ‘no idea why they built the bank well away from the river on the Waiohiki side and yet the Taradale side stopbank [was built] close to the river’. She argued that the position of the stopbank ‘encourages the river to spread out on the Waiohiki side during floods – it effectively acts as a form of protection for Taradale’.⁶⁸ Ngareipa Hawaikirangi also recalled the rivers board digging into the bed of the river to ‘encourage the flows towards the Waiohiki side of the river’.⁶⁹ Williams concluded:

The lower reaches of the Tutaekuri River have been grossly modified by river management and other human activities over the last 150 years. . . .

The environment impacts of the diversion and associated river works were no doubt given little consideration, while the conservation of wetlands and estuary margins no where appeared on the agenda.⁷⁰

A second complaint related to the toxic ponding area at the southern end of the Napier City dump, which was located alongside the Tutaekuri River. Albert Gray believed that a drain from this pond could possibly allow toxic chemicals to flow into the river.⁷¹ This liquid waste dump has been in existence since the tip opened 20 years ago. It fills a hole that was left by the excavation of fill for the stopbank. When the river is in flood, there is only the stopbank between the dump and the river. The Waiohiki Community Trust has challenged the regional council to take action on the cesspool, which was estimated to be eight metres

65. Document J35, p 93

66. Document N10, p 10

67. Document N16, para 7

68. Document N18, para 21

69. Document N16, para 7

70. Document N10, pp 11–12

71. Document N22(a), p 4

deep, 90 metres long, and 30 metres wide. Mr Gray, the trust's chairman, was reported in newspapers as saying that the proximity of the marae meant that Maori interests were offended, and that 'Lamentations and pleas from the marae and others were ignored'.⁷² Other newspaper articles shown to the Tribunal at the time of our 1997 hearing reported that 'pressure from Waiohiki representative Alby Gray led to the covering of an old liquid waste cesspit with earth. But as [Mr Gray] noted at the time, "You can't get away from the fact that it (the cesspool) is still there."' The article also reported that 'The Redcliffe dump is now capped and a transfer station for the Omarunui dump has been built on top of it.' Despite this, leachate could still find its way through the gravel to the river via groundwater. At the time of our hearing in 1997, regional council tests had reported no traces of leachate in the river, although the quality of the groundwater around the dump was found to be 'substandard and smelly'.⁷³ We are unaware of the current state of affairs.

Ngareipa Hawaikirangi told us that the electricity pylons and high-voltage wires that have been located next to Waiohiki, and that cross in front of the marae and over Kawhe, Tareha, and Whitiwhiti land, were ugly and 'potentially dangerous'.⁷⁴ Mr Hadfield told us that, as a child, he 'feared the high voltage power lines that run over my parents house, because of the electrical explosions that occur during windy periods and the buzzing that is created by dew or rain'. But he explained that he was powerless to have them removed because, by law, the landowner or the people who requested that the pylons be moved had to pay the full costs of their relocation. Concerned with the health of his two young children, Mr Hadfield sent a letter to the general manager of Hawke's Bay Power Limited to discuss the removal of the power lines. The general manager replied that he was prepared to test the electromagnetic fields in the area.⁷⁵ We are unaware if anything came of this.

15.5 SOCIAL AND ECONOMIC PLIGHT AT WAIOHIKI

During the twentieth century, the claimants were at pains to point out that the prosperity of the Waiohiki community had declined. Taape Tareha-O'Reilly outlined a host of social, economic, and environmental problems facing Ngati Parau today and asked, 'Is this Tareha's legacy?' She said that Tareha had instead envisioned 'a just and fair society', where all worked together for 'mutually good outcomes between Maori and non-Maori'. Given the Tareha family's 'strong tradition of military service and loyalty to the Crown', she asked, 'What is it then that we have done to offend the Crown that has deserved such heavy and consistent

72. Document N22(b)

73. Document N22(c)

74. Document N16, p 3

75. Document N32, pp 17-18

punishment as evidenced by the social statistics and the various deprivations you have been informed of during this hearing?⁷⁶

Others blamed the Waiohiki demise on the taking of land for river control purposes. Hineiaia Pene said that ‘The land down by the river was taken by the Rivers Board, the land was split up and the economy around Waiohiki seemed to disappear.’⁷⁷ Others still blamed the downturn in the dairy industry brought on by the Depression. In this section, therefore, we relate the changes that have taken place in community life at Waiohiki since the late nineteenth century and comment briefly upon their causes.

It is clear that Tareha Te Moananui was, for a time, a wealthy man who enjoyed an affluent lifestyle and adopted many of the habits of the Pakeha Hawke’s Bay gentry at his home at Waiohiki until his death in 1880. His wealth was largely the result of land sales and the rewards that the Crown had given him for his military service both at Omarunui and in the pursuit of Te Kooti (ventures which had landed him in financial difficulty). One of these rewards was, of course, the sole title to the Kaiwaka block, which we discussed in chapter 9.

After his death, Tareha’s two sons, Kurupo and Te Roera, continued their father’s lavish ways until their own deaths in 1938 and 1941 respectively. As we have seen, they defended in the courts their rights to succeed to his shares in blocks such as Kaiwaka and Tatarakina in the face of petitions from those who felt that they had been disinherited by the non-inclusion of their tipuna in the titles. The brothers were successful dairy farmers and, by 1908, were running some 400 cattle on their 500 acres at Waiohiki. Like their father, however, they needed to sell land to finance their farming operations and maintain their lifestyle. In 1910, for example, they sold Kaiwaka 1 and 2A to the Crown.⁷⁸

Kurupo, in particular, lived in style. He had a large house and entertained many guests. After the wharenuī at Waiohiki burned down in the 1890s, Kurupo’s home was invariably the venue for hui, tangi, and feasts.⁷⁹ He twice traveled to Britain to attend ceremonies involving the royal family. There, he developed an interest in golf and, upon his return to New Zealand, he established a golf course on 100 acres of Waiohiki land.⁸⁰ Tareha’s grand-niece, Airini Donnelly, whom we have already introduced in chapter 9 (see sec 9.3.1), was also a prominent figure in Hawke’s Bay public life. She lived with her husband, George Donnelly, ‘in style’ in a home on the slopes of Otatara across the river from Waiohiki Marae.⁸¹

The claimants told us that Airini and George Donnelly influenced the Waiohiki community to take up dairy farming, which proved particularly successful. Roy Pewhairangi said

76. Document N29, pp 6–8

77. Document N18, p 4

78. Angela Ballara and Taape Tareha-O’Reilly, ‘Tareha Kurupo, Tareha Te Roera’, DNZB, vol 3, p 500

79. Document N15, p 2; doc N18, p 3. In an echo of this, the wharekai at Waiohiki Marae was badly damaged by fire in March 2002 and had to be demolished.

80. Ballara and Tareha-O’Reilly, p 501

81. SW Grant, ‘Airini Donnelly’, DNZB, vol 2, p 121

that Ngati Parau were ‘very well off’ and often attended dinner parties in ‘bow ties and suits’.⁸² As we have already noted, a dairy factory was established on land sold for this purpose by Waiohiki Maori. David Pene said that, in the early days, the Tareha family, with the size of its herds, ‘had the dairy market cornered’.⁸³

Yet, by the 1940s, the Tareha family had lost its wealth. Witnesses born around this time gave accounts of their upbringing that were in stark contrast to the lifestyles of Kurupo, Te Roera, and Airini a few decades before. We heard of tin sheds, dirt floors, sugar bags covering open windows, and so on.⁸⁴ As we noted, Hineiaia Pene attributed the demise in large part to the taking of land by the rivers board. She also said that, after the death of her father, Kurupo, in 1938, ‘we seemed to go backwards’.⁸⁵ But the reality is that much of Kurupo’s wealth had already evaporated by the time of his death.⁸⁶ What had occurred at Waiohiki was that comparatively affluent lifestyles had been maintained through the pre-Depression boom in dairying and by the short-term expediency of selling land. When the riparian lands were taken and the dairy industry declined, more land was sold to make ends meet, as related by Hineiaia Pene and Peneamine Whitiwhiti.⁸⁷ David Pene summed the situation up this way:

The dairying, horticultural and agricultural industry brought great wealth to the Tareha family subsequently altering their lifestyle to that of the aristocratic and affluent. Large homes were built in the style befitting the aristocracy with tennis courts, large cars and household staff equal in those days to the English ruling class. The Tarehas basked in their wealth, they were never modest in displaying or sharing their affluence with others Maori or Pakeha. My mother recalls the status held by the Tareha family all went with the sale of their land to sustain their lifestyle.⁸⁸

Waiohiki has also simply declined in terms of population. The lack of employment opportunities in the area saw many young people leave and head for the cities, a situation replicated in countless other rural communities throughout New Zealand since the Second World War. We pick up on these themes again in chapter 19.

82. Document N25(f), p 78

83. Document J35, p 92

84. See, for example, doc N22(a), pp1–2

85. Document N18, p 4

86. At the Native Land Court hearing of the application for the probate of Kurupo’s will, the court recorded ‘Estate under value of £2500. Personalty very small’: Napier Native Land Court minute book 80, 30 September 1938, p106. This contrasts with a 1906 account, for example, that Kurupo was ‘the owner of four racehorses, and drives a six horsepower Wolseley motor car’: *The Cyclopedia of New Zealand*, 6 vols (Wellington: Cyclopedia Company, 1897–1908), vol 6, p 438.

87. Document N18, p 4; doc N14, p 3

88. Document J35, p 93



Fig 32: Kurupo Tareha playing golf. Photographer unknown. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (F-38029-½).

15.6 LEGAL SUBMISSIONS

15.6.1 Claimant submissions

We now outline the submissions of counsel for Wai 168 on each of the issues discussed above. We start with Otatara and Hikurangi. The Wai 168 statement of claim contends that the Otatara Pa and surrounds are taonga of immense cultural, historical, and spiritual value over which the claimants continue to exercise tino rangatiratanga.⁸⁹ To support this contention, claimant counsel outlined the various Acts protecting sites of historical, archaeological, and special interest from the Reserves and Domains Act 1953 onwards. He submitted that the Crown ‘consistently failed to manage the reserve to the minimum standard laid down by statute, let alone observing any higher fiduciary obligations towards Maori, especially the present claimants’.⁹⁰ He also noted that, while the Crown has owned the reserve for the last 30 years, ‘the damage has continued apace’. He highlighted a number of ongoing threats to the reserve, including the effects of natural processes (such as erosion, wind damage, and earthquakes), the impact of visitors, and a loss of information, which were leading to ‘a new and irredeemable ignorance about the historical significance and physical features of the site’. Counsel submitted that the Crown had prejudicially affected the claimants by breaching both their article 3 rights (as New Zealand citizens) and their article 2 rights (concerning the

89. Claim 1.9(c), pp 11–12

90. Document x45, p 39

protection of their taonga) in respect of the mismanagement of, lack of consultation about, and continuing damage done to, the Otatara and Hikurangi Pa sites.⁹¹

Counsel argued that, in negotiating the purchase of the Tutaekuri block, the Crown raised a number of expectations among Waiohiki Maori. One of these was that a Catholic mission would be established on the Meeanee sections. If the mission had been built, counsel submitted, it would have resulted in 'substantial social and economic benefits for the claimants, particularly, but not exclusively, in increased mana and in greater access to beneficial aspects of European culture and technology'.⁹² Counsel said that Ahuriri Maori believed that, in transacting with the Crown in 1851, they were 'entering an ongoing reciprocal relationship'. He submitted that this kind of relationship was also expected with the sale of Tutaekuri. In failing to ensure that the mission – which, counsel argued, would have provided health and educational services – was established at Meeanee, the Crown 'failed to meet the promises . . . facilitating their acquisition of Ngati Parau's land'.⁹³

In regard to the 'sale' of Waitanoa, counsel argued that both the methods of purchase and Tareha's understanding of the transaction showed it to be an example of 'fraudulent dealing' on the part of the Pakeha purchasers. He pointed out that at that time there was no 'statutory mechanism in place to protect Maori from the use of unscrupulous methods by Pakeha intending to purchase their lands'. Counsel mentioned the loss of access to firewood as a particular grievance. The 1873 commission was set up in a 'belated attempt' to address the issues, but the Pakeha members 'displayed such a dismissive attitude' towards Maori concerns that the Maori members submitted dissenting reports. Counsel submitted that the Crown should have 'taken more care to ensure that Maori interests could not be so harmed' and 'created some means whereby Maori could gain effective redress'.⁹⁴

Claimant counsel submitted that Ngati Parau's wishes to have their Waiohiki lands reserved to them as inalienable were made clear to Government officials. But, in creating reserves, counsel submitted that the Crown 'actively took a position assuming Maori incompetence' and 'created a regime where Maori lost all control of their "reserved" lands'.⁹⁵ The reserve system 'subverted the wishes of the Maori owners of Waiohiki' by taking the lands vested in the Public Trustee 'out of Maori ownership in all but name'.⁹⁶ Counsel submitted that for many years the Public Trustee took little interest in his legal obligation to manage the land efficiently and to make money for the beneficiaries from the reserve. Further, he argued that the trustee did not take account of the '*full* interests of the beneficial owners . . . their beliefs and strong personal views' as well as the financial situation (emphasis in original).⁹⁷

91. Document x45, pp 40–42

92. Ibid, p 60

93. Ibid, pp 66–68

94. Ibid, pp 58–59

95. Ibid, p 15

96. Ibid, pp 18–19

97. Ibid, pp 24–25

Counsel submitted that the Public Trustee was an agent of the Crown and that the trustee's mismanagement was a 'prejudice caused by the Crown', the result of which being the 'eventual loss of the reserved land'.⁹⁸

Claimant counsel made submissions regarding the taking of riverbank land, the loss of access to the Tutaekuri River and to taonga associated with the river, and the environmental management regime. Counsel admitted that the problems caused by the flooding of the river did necessitate some form of protection but argued that Ngati Parau were prejudiced by the 'forcible acquisition' of their riparian lands.⁹⁹ Counsel maintained that more land was taken than was required for flood protection works, and that this was done for financial, rather than engineering, reasons. He noted that, while the Maori owners 'protested immediately' about the lands that were taken for the stopbanks, their objections were ignored. Counsel submitted that the compensation offered to the claimants was inadequate, because it was based on low valuations and did not take account of the 'traditional, customary, emotional, spiritual and other ties that the owners had to the lands'. He noted in particular that any land that was not required for the stopbanks should have received a market valuation, and he argued that the loss of the land created undue hardship and made Ngati Parau's farming activities even more marginal.¹⁰⁰

Counsel argued that Ngati Parau had been further prejudiced 'through a lack, indeed absence, of recognition by the Crown of their kaitiaki relationship with the Tutaekuri River'.¹⁰¹ He made extensive use of the Mohaka River Tribunal's findings to argue that Ngati Parau did not cede all their customary rights to the river. At the time of the 1851 Ahuriri purchase, and throughout subsequent Crown purchases, counsel stated that 'Ngati Parau held the mana and rangatiratanga over the lower reaches of the Tutaekuri River'. He also noted that none of the block purchase agreements included specific provisions alienating Ngati Parau's riparian rights. Counsel submitted that the Crown had prejudiced Ngati Parau's rights to their taonga associated with the river and that these rights had been further prejudiced by the Crown's environmental mismanagement of the river, which has led to the degradation of the river itself and the surrounding land.¹⁰²

Claimant counsel then referred to the taking of part of the Waiohiki reserve in 1898 in order to extract gravel. Counsel noted that the Public Trustee gave the rights to commence the extraction to the Hawke's Bay County Council without the consent of the reserve's beneficial owners. Counsel submitted that the Public Trustee failed the beneficial owners once the land had been alienated by neglecting to negotiate adequate compensation; charging survey costs against the owners (which costs were taken from the compensation money); and

98. Ibid, p 69

99. Ibid, p 69

100. Ibid, pp 27-31

101. Ibid, p 70

102. Ibid, pp 43-48

15.6.2

dismissing the owners' requests for the balance of the compensation funds.¹⁰³ Counsel also referred to the significant degradation of the river that has resulted from the ongoing extraction of gravel, as was discussed in oral testimony such as that of Ngareipa Hawaikirangi's (see sec 15.4.4).

15.6.2 Crown submissions

Crown counsel admitted that the Crown was 'critical of aspects of its own stewardship of the historic reserve covering Otatara and part of Hikurangi pa'. Counsel qualified this, however, by saying that the protection and management of the site were continually being improved by the tangata whenua (led by Ngati Parau) and the Department of Conservation, who were working together to combat the ongoing threats to the reserve.¹⁰⁴

Crown counsel made no submissions about the 'promise' to establish a Catholic mission on Meeanee land. In regard to the sale of Waitanoa, counsel observed that 'Tareha was experienced in land dealings and could hardly have been unaware of the fundamental difference between a sale and a lease'. Counsel therefore disagreed with the claim that Tareha thought that the Sutton transaction was a lease.¹⁰⁵ Furthermore, counsel suggested that the evidence available was too limited to allow firm conclusions to be drawn on the issue of the price paid for the block, although he speculated at some length as to the mitigating factors which may have influenced that price.¹⁰⁶ He concluded overall that the 1873 commission was faced with 'a great deal of irreconcilable evidence', and that there was 'no clear basis for concluding that, through undue pressure, the purchase price was seriously inadequate. The vendors had a justifiable claim to access to the bush, and legal remedies to secure this if need be.'¹⁰⁷ In their criticism of the 1873 commission, counsel argued that the claimants had:

merely accepted Tareha's evidence at face value and constructed an analysis on that foundation alone. This approach is too uncritical. It does not take account of the original complaints before the Commission, or the quality of the evidence; nor does it allow that the Commissioners were better placed to assess credibility than those who must rely only on the Commission's record. Allegations concerning the price have likewise been adopted without a sufficiently thorough inquiry into all the relevant circumstances.¹⁰⁸

Crown counsel made extensive submissions on the Public and Maori Trustees. In sum, counsel submitted that the trustees are not the Crown, 'have a separate legal existence from the Crown', and have not acted and do not act 'on behalf of' the Crown. Rather, they act as

103. Document x45, pp 19–20

104. Document x52, p 38

105. Document x58, p 19

106. Ibid, pp 19–22

107. Ibid, p 22

108. Ibid, p 23

trustees who have ‘discrete legal obligations to beneficiaries’.¹⁰⁹ Counsel argued that ‘agents or entities which can be said to act on behalf of the Crown are either controlled by a Minister of the Crown or expressly declared by statute to be an agent of the Crown’.¹¹⁰ Counsel stated:

the Crown is responsible for monitoring the Treaty responsiveness of the system under which the Public Trustee and Maori Trustee have operated. If there is systemic failure that required modification and it was within the power of the Crown to modify the system (by promoting legislation in Parliament or otherwise) then responsibility for breaches of the principles of the Treaty at this level rests with the Crown.¹¹¹

While accepting that the Public, Native, and Maori Trustee legislation is a proper matter for Tribunal inquiry, counsel asserted that ‘the Tribunal has no jurisdiction to find that the Public Trustee and Native/Maori Trustee has acted consistently or inconsistently with Treaty principles’.¹¹²

Crown counsel conceded that the Crown had a duty actively to protect the land interests of the people at Waiohiki to ensure that they had sufficient land for their present and future needs, which duty might include implementing a system of ‘reserving’ land and monitoring and modifying the outcomes of this process. Counsel accepted that the actions of the commissioner of native reserves could be seen as actions ‘by or on behalf of’ the Crown.¹¹³ However, counsel submitted that:

complaint about the administrative behaviour of the trustee does not necessarily mean that the system, promoted by the Crown through legislation, that the Public Trustee was to work under was defective by definition. Rather than systemic failure, the complaints and problems in evidence before the Tribunal reflect the assessment by the beneficiaries of the quality and content of the work being done by the Public Trustee to administer the land at Waiohiki.¹¹⁴

Crown counsel noted that the Tribunal had previously considered the question of who acts ‘by or on behalf of’ the Crown in its *Report on the Orakei Claim*, *Ngai Tahu Report 1991*, and *Te Roroa Report*, and, in relation to the Native Land Court, in the Chatham Islands inquiry. The *Te Roroa Report* was the only instance in these cases where the Tribunal found that the Native Land Court was an agent of the Crown by reason of its powers and authority being conferred by statute.¹¹⁵ The Tribunal similarly heard evidence relating to the Maori Trustee’s relationship with the Crown during the Ngai Tahu hearings, but it came to no specific findings in the

109. Document x52, pp 20–21

110. *Ibid*, p 32

111. *Ibid*, p 21

112. *Ibid*

113. *Ibid*, pp 32–33

114. *Ibid*, p 23

115. *Ibid*, pp 26–27

Ngai Tahu Report 1991. Similarly, in the *Turangi Township Report 1995*, the Tribunal made no finding on the status of the Maori Trustee but found that ‘the Maori Trustee had done all that could be reasonably expected of him’.¹¹⁶

The Crown argued that in this case the Tribunal’s jurisdiction was limited to considering whether the Crown took appropriate action to remedy the situation created by the actions of the Public Trustee. Most appropriately, however, the Tribunal could consider the legislation controlling the trustee.¹¹⁷

In regard to the submissions concerning the Tutaekuri River, Crown counsel submitted that ‘no particular evidence’ was presented to the Tribunal which supported the claim to the river:

Accordingly, there is nothing in the particular context of these claims concerning rivers that the Crown responds to by way of evidence or legal submissions . . . Rather, the Crown notes the interests expressed on behalf of claimants and suggests that these issues be included in negotiations with the Crown for the settlement of all the claims of the hapu participating in this regional inquiry.¹¹⁸

On the issue of the Crown’s responsibility for environmental change generally, Crown counsel submitted that the claimants’ criticisms were ‘ill-informed in several respects’. In particular, counsel argued that extensive fires and serious flooding had occurred before there was a Government presence in the region. Furthermore, although pastoral activities had caused considerable environmental change, much of this had occurred before the land passed out of Maori control.¹¹⁹ (See also chapter 18.)

Crown counsel made no specific submissions on the taking of Waiohiki lands for river works, although he did make submissions on public works acquisitions generally (see chapter 17 for further discussion).¹²⁰ These suggested that, while each taking had to be assessed within its own context, there were several questions that needed to be addressed:

- ▶ Was there compensation, consultation, and consideration of alternative sites or form of tenure?
- ▶ Were the owners left with sufficient land for their reasonably foreseeable needs?

A particular issue in the taking of Waiohiki lands is whether the Hawke’s Bay Rivers Board was acting as an agent of the Crown, although this issue was not argued by claimant counsel. Various Waiohiki partitions that were taken in 1936 under the Public Works Act 1928 were listed in the statement of claim, and, by implication, their taking was seen as an action of ‘the Crown’.¹²¹ The Crown did make submissions on what is meant by the Crown, noting that

116. Document x52, pp 28–29

117. Ibid, pp 36–37

118. Ibid, p 39

119. Ibid, p 40

120. Ibid, pp 10–15

121. Claim 1.9(c)

there is no definition of the term in the Treaty of Waitangi Act 1975.¹²² Crown counsel quoted from P W Hogg's *Liability of the Crown*:

The Crown includes the departments of government that are headed by a Minister. It is the control of the Minister that provides the link to the Crown. Municipal bodies, school boards, universities, hospitals, regulatory agencies, administrative tribunals and public corporations even if they are performing 'governmental' functions, are not agents of the Crown unless they are controlled by a Minister or expressly declared by statute to be an agent of the Crown.¹²³

15.6.3 Claimant submissions in reply

Claimant counsel welcomed the Crown's admission that its management of the Otatarā and Hikurangi sites had not been what it might have. However, he took issue with Crown counsel's statement that heritage values had changed considerably in the intervening period, arguing that 'the claimants have always had their special relationship with the site; it did not develop of recent times'. Counsel observed that 'major damage' occurred in the very recent past, 'when "modern" heritage values existed'.¹²⁴

Counsel argued that the Crown wrongly assumed that the Waitanoa transactions happened in the context of a free and fair market. He also questioned the grounds on which the Crown cast doubt on Tareha's evidence to the 1873 commission, and pointed out that Crown counsel did not address the detail of the firewood issue in his submissions to the Tribunal. Counsel reiterated that the Crown was responsible for Ngāti Parau's loss of resources at Waitanoa because:

- ▶ it failed to provide statutory protection for Maori from unscrupulous land buyers until 1870 and it offered no remedial mechanism;
- ▶ the 1873 commission was superficial and arbitrary in its conclusions on the Waitanoa case; and
- ▶ the system created under the Native Lands Act 1865 was a breach of Maori rights under article 2 of the Treaty.

Counsel concluded that Maori were not offered the same protection for their land as Pakeha landowners, which was a breach of their article 3 rights.¹²⁵

In reply to the Crown's submissions on the reserving of land at Waiohiki, counsel argued that the Native Minister (as a Minister of the Crown) was directly implicated and involved and that the issue therefore fell within the jurisdiction of the Waitangi Tribunal. In 1883, Te

122. Document x52, pp 29–32

123. Peter W Hogg, *Liability of the Crown*, 2ND ed (Toronto: Carswell Company, 1989), p 9 (doc x52, p 30)

124. Document x3, pp 23–24

125. *Ibid*, pp 21–23

Roera and others requested that their lands at Waiohiki be permanently reserved for Maori, and they did not request that those lands be managed by someone else. The Minister's actions after receiving this request, claimant counsel argued, 'have been breaches by the Crown of the principles of the Treaty of Waitangi in respect of the Waiohiki and Paepaetahi lands'.¹²⁶ Counsel also noted that, under cross-examination, historical witness Brian Gilling had confirmed that the Native Minister had received Te Roera's request personally and that the Minister's annotations were on it.¹²⁷ Counsel concluded his review of the actions of the Native Minister as follows:

In the event, the Public Trustee became involved and at the behest of the Native Minister. And even if the Minister himself, through his own acts or omission, could not be held entirely blameworthy in section 6 [of the Treaty of Waitangi Act 1975] terms (and it is submitted that he was) then his having set in train a course which invited or insinuated the Public Trustee's actual involvement certainly made complete the Crown's dereliction of duty (of active protection) towards Te Roera and other Waiohiki Maori by having that department of government (the Public Trust) exercise 'responsibility'.¹²⁸

Claimant counsel also challenged the Crown on its argument that the Public Trustee was not an agent of the Crown, arguing, among other things, that Executive scrutiny of the Public Trust Office undermined that contention.¹²⁹ Counsel did concede, however, that the Public Trustee fell into 'a slightly anomalous category', in that, while the property he administered did not belong to the Crown, the trustee himself was Crown controlled, and thus 'the Crown's overarching authority was preserved in systemic terms'.¹³⁰ Counsel further argued that, in its 'constitutional make up and its operational character', the Public Trust Office displayed those attributes 'which were entirely consistent with its having been, in 1883, a government department (and therefore "of the Crown")'. Thus, claimant counsel submitted that the Crown (through the trustee) had failed 'actively to promote the protection of Maori property and identity in accordance with Maori values to the fullest extent practicable' and that the Crown also bore responsibility for a 'systemic failure' in regard to the trustee. As examples of the latter, counsel cited the presumption of the Public Trustee's involvement because of the Native Reserves Act 1882, the paternalistic nature of that Act towards Maori, the lack of monitoring of the trustee, and the resulting loss of land ownership for Waiohiki Maori. The Crown's authority and ability to modify this system through an Act of Parliament meant, counsel asserted, that 'responsibility in terms of breaches of the principles of the Treaty rests at this level with the Crown'.¹³¹

126. Document Y3, pp 4-5

127. Ibid, p 16

128. Ibid, p 5

129. Ibid, pp 5-8

130. Ibid, p 8

131. Ibid, pp 8-9

Claimant counsel also expanded on the river claims. Counsel noted that, 'in the absence of [the Crown] denying the claimants' allegations, the Tribunal may find that [the] basis of their allegations is well founded, especially bearing in mind the *Ika Whenua Rivers Report* and the *Whanganui River Report*'.¹³² Counsel proceeded to summarise the evidence presented in relation to the Tutaekuri River, concluding that:

the Treaty has been breached in that the Crown has removed from Ngati Parau the possession and control of their part of the Tutaekuri River[,] has omitted to protect Ngati Parau rangatiratanga in and over the River, this being contrary to the principles of the Treaty of Waitangi, and that Ngati Parau has been and continue to be prejudiced as a result.¹³³

Those Acts counsel identified as contrary to the Treaty included the Coal-mines Act Amendment Act 1903, which was used to expropriate the riverbed, and the Resource Management Act 1991, which vested authority over the river in local authorities.

15.7 TRIBUNAL COMMENT

First, the Tribunal notes that Ngati Parau are also part of the Wai 400 claim of Nga Hapu o Ahuriri. The sale to the Crown of lands including Ahuriri (1851), Tutaekuri (1856), and Papakura (1868) that affected Ngati Parau should be dealt with in any comprehensive settlement of claims concerning loss of land.

We make no comment on the claims concerning Otatara and Hikurangi, since the Department of Conservation has acknowledged its former shortcomings in the administration of this land and is working on maintaining a good relationship with Ngati Parau at Waiohiki Marae. We expect that working partnership to continue to safeguard this important wahi tapu. We draw attention to the fact that other hapu of Ahuriri also regard the Otatara Pa complex as a significant site, and alongside settlements concerning loss of land, this should be acknowledged as part of the settlement of their claims.

In regard to the mission station, we were not provided with evidence establishing the likelihood of a 'promise' of such a station at Meeanee, as claimant counsel submitted. We note that his evidence focused on the promises given to Ahuriri Maori and that he could assume only that a similar promise may have been offered to Waiohiki Maori. The legal status of these lands is quite clear. The land became Crown land in 1856 by purchase, and its subsequent purchase from the Crown by members of the Roman Catholic Church was conducted privately and at a step removed from the original Maori vendors. Walzl's contention that there may well have been a suggestion to Ngati Parau that the land would be used for a mission station at the time of the 1856 transaction is simply speculation.

132. Ibid, p 24

133. Ibid, p 30

With respect to Waitanoa, there was clearly a wish on the part of Maori to retain the reserve, but the Crown did nothing to ensure that this occurred. As the 1873 commission noted, the result of this was that Tareha and his people lost a significant resource of timber and firewood. We have already commented in chapter 6 that the provisions of the Native Lands Act 1865, which allowed title to Maori land to be vested in 10 or fewer owners, were in breach of the Treaty. It was under this statutory regime that Waitanoa was lost.

The issue of the Waihoiki reserve concerns both the community's original request for the land to be permanently protected and the Public Trustee's administration of that land from 1883 to 1907 under the Native Reserves Act 1882. On the first matter, we believe that the Crown should have imposed restrictions on the land's alienation to secure the owners' objective. Instead, it placed the land under the Native Reserves Act and the Public Trustee, which was an inappropriate response and by no means a safeguard against alienation. On the second matter, however, we could find little actual prejudice to Maori arising from the Public Trustee's administration from 1883 to 1907. The only land that was alienated was that taken by the Hawke's Bay County Council under the Public Works Act 1894 for gravel extraction, which amounted to just over one acre. It was argued that the Public Trustee could have negotiated a lease and royalty payments. However, once the county council had decided to take the land under Public Works Act provisions, there was little that the Public Trustee could have done to prevent it. Compensation of £15 was paid for the land, but the valuation evidence is insufficient to conclude whether or not that sum was fair.

The Public Trustee did not actively manage the land, but his benign or ignorant neglect of it did not cause any alienations. In practice, for most of this time Waiohiki Maori organised matters themselves, which included arranging a lease of some of the land to the Napier Golf Club. There is insufficient evidence to suggest that rents from grazing or from some other use of the land may have been larger or more equitably distributed if the Public Trustee had taken a more proactive role. And when conflict developed between the Public Trustee and Waiohiki Maori over control of the leases, the Public Trustee relinquished his trust in favour of the Maori owners of the land.

We note that the Te Whanganui a Tara Tribunal carried out a number of tests in order to determine whether or not the Public Trustee was an agent of the Crown, and it concluded that 'the trustees have not, as a matter of law, been acting by or on behalf of the Crown in the performance of their statutory responsibilities'. Both the Public Trustee and the Maori Trustee were found to have been established by separate statutes, each as a corporation sole, and were intended to be independent in their respective roles of administering lands and estates in trust.¹³⁴ However, since we have not identified any prejudice resulting from the

¹³⁴ Waitangi Tribunal, *Te Whanganui a Tara Me Ona Takiwa: Report on the Wellington District* (Wellington: Legislation Direct, 2003), p 377

Public Trustee's administration of the Waiohiki reserve, we see no need to come to considered conclusions on the trustee's status in this report.

We turn now to the taking by the Hawke's Bay Rivers Board of 183 acres of land for river control purposes. We note that the rivers board was established by statute, the Hawke's Bay Rivers Act 1910, with the specific purpose of acting as a coordinating body, headed by an elected board, with the power to implement a flood control scheme on the Hawke's Bay rivers Tutaekuri, Ngaruroro, and Tukituki, and the power to levy rates, raise loans, and acquire land. The rivers board was, in effect, a local authority with a specific function, but it was not the Crown, nor was it an agent of the Crown. That said, and while some compensation was paid for the land, there was little consultation with the owners on possible alternative alignments of the stopbanks and no consideration given to other forms of tenure, such as easements. Further, when much of the land was subsequently leased for grazing, the lease was not offered to the former Maori owners. Altogether, we believe that the land did not actually need to be taken and that Waiohiki Maori suffered prejudice as a result. The Treaty breach, however, arises technically from the Crown's passing of the Hawke's Bay Rivers Act 1910 rather than with the actions of the rivers board itself.

In this context, we endorse the finding of the Tribunal in its *Ngai Tahu Ancillary Claims Report 1995* that public works legislation should be careful not to breach the principle of reciprocity, whereby the Maori cession of sovereignty was in exchange for the protection of rangatiratanga. The Tribunal thus argued that 'the power of compulsory acquisition for a public work or purpose should be exercised only in exceptional circumstances and as a last resort in the national interest', and that, before taking the freehold, the Crown should first seek to acquire 'a lease, licence, or easement'.¹³⁵

We acknowledge that the Ngati Parau claimants maintain a significant relationship with the portion of the Tutaekuri River that flows through their lands, and that they therefore have genuine concerns about the environmental health of the river and its protection from pollution. These are matters which are properly the concern of the Hawke's Bay Regional Council. On the issue of claims to the ownership of the river, we were referred to other Tribunal reports, including the *Mohaka River Report*, the *Ikawhenua Rivers Report*, and the *Whanganui River Report*, where, we were told, the relevant jurisprudence was to be found. However, because we did not hear from other hapu that might claim interests in the Tutaekuri River, we make no comment on this aspect of the claim and simply note that the issues appear to be similar to those already reported on by another Tribunal in respect of the Mohaka River. We also note that, like the Mohaka River claimants, Ngati Parau have an issue with the ongoing extraction of gravel from the river.

135. Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995), p 11

15.8 FINDINGS

We find that the Crown, in purchasing Ngati Parau land, in failing to protect Otatara Pa, in failing to safeguard the Waitanoa reserve from alienation, in failing to protect the Waiohiki reserve in the manner requested by its owners, and in passing legislation that allowed the Hawke's Bay Rivers Board to acquire Maori land for river control purposes, breached the principles of the Treaty of Waitangi. We find that Ngati Parau were prejudiced thereby.

More specifically, we find that:

- (a) The Waiohiki claimants share in the prejudice of the Treaty breaches arising from those Crown land purchases that we have discussed previously, particularly those regarding the Ahuriri transaction.
- (b) There was a lack of active protection over the Otatara Pa site (which the Crown has correctly conceded).
- (c) The claim against the Crown in respect of Meeanee sections 19 and 20 and the alleged promising of a Roman Catholic mission in 1856 is not well founded.
- (d) The Crown failed actively to protect the Waitanoa reserve or to remedy the situation when it was drawn to the attention of the Hawke's Bay Lands Alienation Commission in 1873. In this latter regard, the Crown was in breach of the principle of redress. Furthermore, as we have found previously, the 10-owner provisions of the Native Lands Act 1865 were also in breach of the principle of options, the principle of reciprocity, and the duty of active protection.
- (e) The request to protect the Waiohiki reserve in permanent Maori ownership was met with an inappropriate response by the Crown that provided no ultimate safeguard for the land against alienation. In this regard, the Crown failed in its duty of active protection.
- (f) The Crown conferred excessive and unjustified powers on the Hawke's Bay Rivers Board to acquire Maori land under the Public Works Act 1928 and it did not impose on it a duty to consult or require that the freehold title be taken only as a last resort. The Waiohiki Maori community suffered prejudice from what was clearly the unnecessary loss of their land. Furthermore, the loss of so much of their riparian land has had a detrimental effect on their access to, and relationship with, the Tutaekuri River. The Crown was thus in breach of the principle of reciprocity and the duty of active protection.

CHAPTER 16

THE POWER LINES ON THE TARAWERA AND TATARAAKINA BLOCKS

16.1 INTRODUCTION

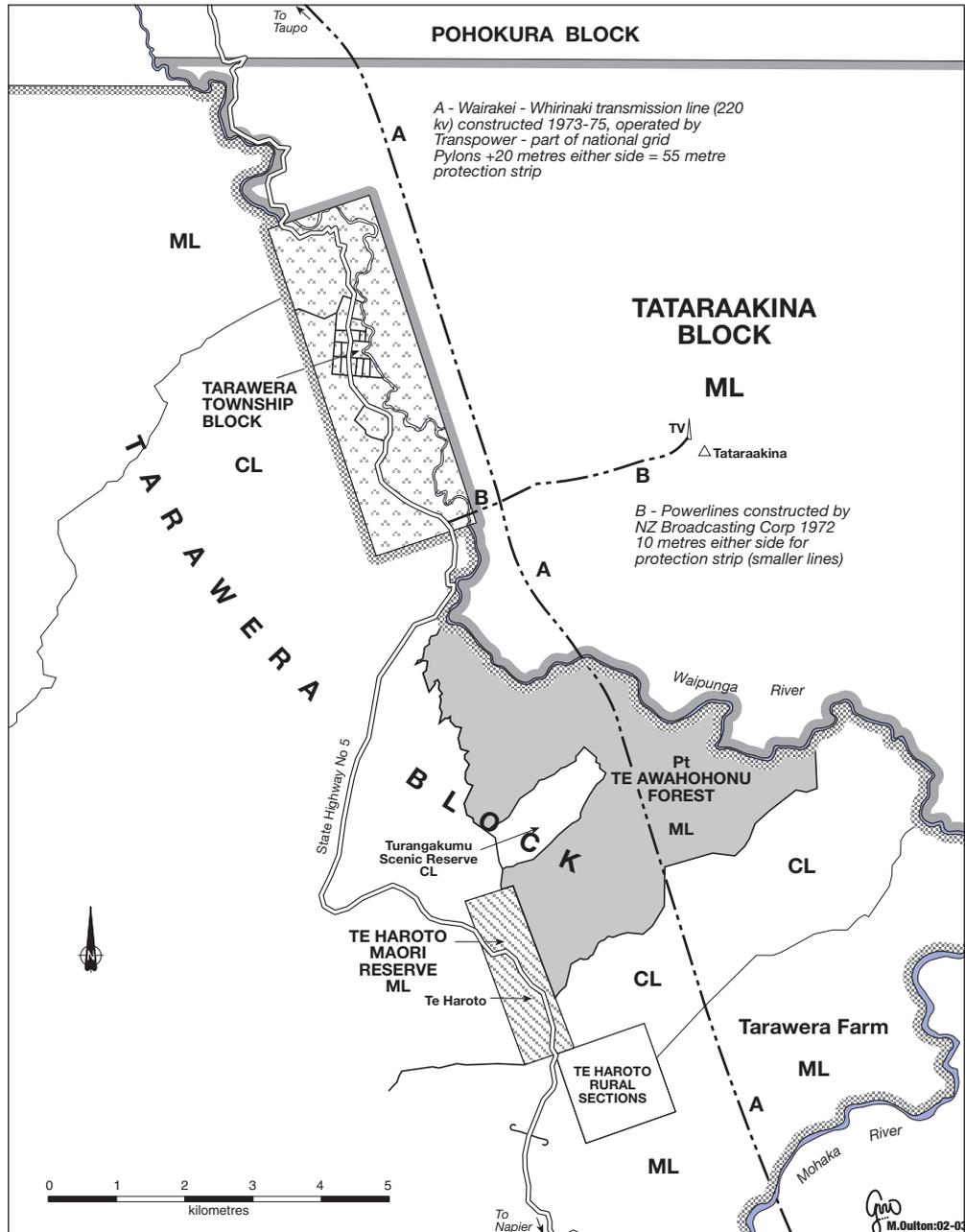
The failure of the Crown to pay compensation for the construction of a 220-kilovolt transmission line across Maori land in the Tarawera and Tataraaakina blocks (as well as in the Pohokura block, which lies to the north of our inquiry district) is an issue that arose in the Wai 299 claim and is reviewed separately in this chapter. There is also a smaller power line from the main highway east across the Tataraaakina block to a television transmitter and microwave tower near the summit of Tataraaakina Mountain. Both lines were constructed in the 1970s and are shown in map 56. Along the route of any power line, there are restrictions on land use and height of vegetation. The protection strip for the smaller New Zealand Broadcasting Corporation (NZBC) line on Tataraaakina is 10 metres either side of the line. For the larger pylons carrying the 220-kilovolt line, the protection strip is 55 metres wide (15 metres for the pylons plus 20 metres either side).

16.2 THE NZBC POWER LINE

In 1970, the NZBC began negotiations to acquire the use of a site on Tataraaakina Mountain for a television transmitter and microwave tower. At the time, Robert Holt and Sons were logging the indigenous forest in the area in completion of the final part of a logging licence held by the Fletcher Timber Company (Fletchers), which was due to expire in 1971. Access was by logging road, and after some argument about the ownership of the bridge over the Waipunga River, the Maori Trust Office confirmed that the bridge belonged to the Maori owners of Tataraaakina, since the cost of it had been deducted from their royalties.¹

In June 1971, the NZBC applied to the Maori Land Court to arrange a meeting of owners of the Tataraaakina block to consider a resolution to lease a one-acre site for the tower and to allow access along the logging road. A meeting of owners was held in Napier on 27 October 1971. It was attended by 39 owners, plus 17 proxies, who together represented 32 per cent of the total shares in the block. There was little discussion and the lease and road access was agreed.

1. Document R9, pp 55–56



Map 56: Powerlines on the Tarawera and Tataraaikina blocks

However, when the matter came before the Maori Land Court in February 1972, the NZBC found that it had neglected two relevant factors. One was the need to provide for any other parties that used the road and might therefore generate a liability against the NZBC for maintenance costs. The other was the need for a power line to the transmitter. When the lease was confirmed, the court added a provision to give the Maori Trustee the power to apportion any

maintenance costs and an easement was granted to the NZBC to put up poles and a power line.²

The lease for the tower, the road access, and the power line are not at issue in this claim, although there are ongoing concerns, which we discuss later, regarding the use of, and responsibility for, the 20-metre protection strip along the route of the power line.

16.3 THE 220-KILOVOLT TRANSMISSION LINE

The 220-kilovolt transmission line that crosses the Tarawera, Tataraaakina, and Pohokura blocks is part of the national grid. It was built by the New Zealand Electricity Department between 1973 and 1975 in order to connect the Wairakei power station and the Whirinaki pulp mill north of Napier. The department, which later became the Electricity Division of the Ministry of Energy, operated the line until the mid-1980s, when the ownership of the national grid and the responsibility for operating it were transferred to a State-owned enterprise, Transpower New Zealand Limited.³

In the following sections, we outline the legal powers and obligations that the Minister of Electricity had to enter private land and construct a transmission line. Because the central issue in this claim is the Crown's failure to pay compensation for the construction of the line, we therefore consider the process for notifying the owners and their attempts in the 1980s to get some compensation.

16.3.1 The legal requirements

Under section 11(2)(a) of the Electricity Act 1968, the Minister of Electricity was authorised to:

- (a) Construct, provide, and use such works, appliances, and conveniences as may be necessary, directly or indirectly, for generating electricity from any source of energy, for operating the national electrical system, and for the transmission, use, supply, and sale of electricity when generated.

Under section 11(2)(d) and (e), the Minister could enter private land and construct certain works:

- (d) Construct tunnels under private land, or aqueducts and flumes over the same, erect towers, pylons, and poles thereon, and carry wires over or along any such land, without

2. Document R9, pp 56–57

3. Document T16, p 3

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16.3.1

being bound to acquire the same; and for these purposes the Minister shall have a right of way to and along all such works and erections:

- (e) Construct such electric lines and works, lay such lines and cables, and construct and erect such towers, pylons, and poles, as may be necessary for the exercise of his functions under this Part of this Act.

Under section 11(2)(j), the Minister could:

- (j) Hold, manage, purchase, exchange, take on lease, or hire, acquire, or otherwise obtain any property whatsoever which in the opinion of the Minister is necessary for the exercise of his functions under this Act:

Provided that, in the case of land or any estate or interest in land, acquisition shall be undertaken on behalf of the Minister of Electricity by the Minister of Works under the provisions of the Public Works Act 1928.

Section 14 set out the public notification procedure: a proclamation could be published in the *New Zealand Gazette* defining the 'middle line' and identifying all the lands over which the power line was to cross. In section 14(6) and (7):

- (6) As soon as may be after the public notification of a Proclamation under this section, the Minister shall notify the persons then owning and occupying the land affected by the Proclamation that it is intended to take any part of the land for the transmission line, or that it is intended to construct the transmission line over, upon, under, or close to the land, or that the land will not be affected, as the case may be.

- (7) If any land is to be taken, the time for claiming compensation shall run from the date of the Proclamation taking the land; and, if the transmission line is to pass over, upon, under, or close to the land without any part of the land being taken, the time for claiming compensation for any injurious effect thereto shall run as if the claim were a claim for damage under section 45 of the Public Works Act 1928.

Claims for compensation under section 45 of the Public Works Act 1928 had to be lodged within 12 months of the completion of the work, or the relevant portion of it. Section 63 of the Statutes Amendment Act 1939 amended this by authorising the Supreme Court to extend this period for up to five years in respect of land injuriously affected.⁴ In effect, this meant that claims could be lodged up to five years after the date of completion of the work. The Public Works Act 1981 extended this to six years.

Section 16(1) of the Electricity Act provided:

- (1) Every person having any right, title, estate, or interest in any land or property injuriously affected by the exercise from time to time of any powers conferred by this Act shall be entitled to full compensation for all loss, injury, or damage suffered by him.

4. See Waitangi Tribunal, *Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), pp 263–268

If no agreement was reached, claims were to be determined under the provisions of the Public Works Act, as far as they were applicable. Under section 19(2), items for which compensation was payable could include any tree (or part of a tree) removed at the time of construction, but only if the tree 'was growing on the land before the erection of the electric line'.

Section 104 of the Public Works Act 1928, as substituted by section 6 of the Public Works Amendment Act 1962, obligated the Maori Trustee to negotiate compensation where any Maori land in multiple ownership was taken under the Public Works Act 'for any public work', or where any such land was 'injuriously affected thereby' or suffered 'any damage from the exercise of the powers given by this Act'. Maori land vested in a single owner was excluded, unless that owner specifically requested the Maori Trustee to negotiate on their behalf. Maori lands in multiple ownership that were already vested in trustees or a Maori incorporation were also excluded, but the trustees or bodies corporate could ask the Maori Trustee to act as an agent for them.

The provisions we have outlined were those that applied in the 1970s when the Wairakei to Whirinaki 220-kilovolt transmission line was constructed. The transmission line was a public work, and compensation was payable for injurious affection to Maori owners of land over which it passed. The nub of the issue is that no one lodged a claim on behalf of the numerous owners of the Pohokura, Tarawera, and Tataraaakina blocks within five years of the completion of the line, as required by the Public Works Act 1928 (as it was framed then). Since 1992, TransPower, as a State-owned enterprise, has been required to operate under a different regime, following 'international practice'. Now, 'new lines on private land are only able to be built on easements purchased at a fair market price from each landowner.'⁵

16.3.2 Notification of owners

Under section 15 of the Electricity Act 1968, the Minister of Electricity had the right to enter any land at any time for the purpose of surveying, constructing, and repairing a transmission line, and the Electricity Department referred to a notice of intention to enter land for the purpose of surveying the route for a line as a 'courtesy notice'.⁶ Moorsom noted that in January 1972 a letter from the Electricity Department was sent to the district officer of the Department of Maori Affairs in Palmerston North advising that the Wairakei to Whirinaki line would cross Maori land in the Tarawera and Tataraaakina blocks and requesting a list of owners to whom courtesy notices could be sent. On 7 March 1972, the department duly sent out notices to the affected landowners.⁷

In its January 1972 letter, the department also requested that the district officer obtain permission from the Board of Maori Affairs for the surveying and construction of the line over

5. TransPower NZ Ltd, *Information for Landowners and Occupiers: General Information for People Living, Working or Playing near Transmission Lines* (Wellington: TransPower NZ Ltd, 1996) (as quoted in doc T16, pp 6–7)

6. Document T16, p 10

7. The relevant Electricity Department files are now held by TransPower and were reviewed by Boast.

land in the Tarawera development scheme. Moorsom stated that he found no other records of the project in Maori Land Court files and nothing seems to have been recorded in Maori Affairs development files either.⁸ In 1963, the land in the Tarawera development scheme had been gazetted under part XXIV of the Maori Affairs Act 1953, but control of the actual development work had been handed over to the Department of Lands and Survey.

On 10 October 1973, a second notice, one termed a 'wayleave notice' by the Electricity Department, was sent from the department's Napier office to affected landowners after the surveys were completed. The notice was a standard form letter advising that, under sections 11 and 15 of the Electricity Act 1968, the department was authorised to 'build transmission lines and telephone lines on private land without being bound to buy the land, and give the Department right of way to and along those lines'. In a space provided, the details of the property affected were typed in, along with a statement that work would commence on or after 31 October 1973. There was also a note about the need for some bush and scrub to be cut, which work the department would do, unless the owner advised that he or she would arrange for it to be done. The next paragraph referred to compensation, and we quote it here in full:

Section 16 of the Electricity Act 1968 provides for the payment of compensation where any property is damaged or injuriously affected by carrying out any work authorised by the Act. Should you wish to make a claim for compensation will you please write to me giving particulars of the property, and the amount which you consider would be fair compensation for each item. I will, if necessary, arrange for an officer of the Department to discuss the matter with you, with a view to reaching a mutually satisfactory settlement. You will appreciate that an assessment of the compensation payable cannot normally be made until the work on the property affected has been completed, but any claim should be made no later than 12 months after the completion of the work.⁹

No date was given for the work's expected completion, although it was stated at the end of the notice that the date that power would begin to be transmitted would be 'notified by newspaper advertisement'. For a Maori owner, this notice would be advice of a fait accompli, and with no specific dates it would not carry any sense of urgency. There was no reference at all to the provisions in the Public Works Act 1928 and because no indication was given of the completion date of the work, a reader would not know when the 12-month period in which to make an application for compensation was to begin or end.

It is not certain how many Maori owners received these notices. The one quoted from above was addressed to Lyndhurst O'Donnell in Hastings and referred to the Tatarakaia block. The Electricity Department file indicated that the notice was also sent to three other owners – P Sullivan of Napier, P Tahau of Te Haroto, and Mrs H Campbell of Pakipaki,

8. Document R9, p 57

9. JR Nixon, district manager, New Zealand Electricity Department, Napier, to L O'Donnell, 10 October 1973 (doc t16, app 3)

Hawke's Bay – as well as to the district officer of the Department of Maori Affairs in Palmerston North and to a Mr D Edmundson, care of Lee, Heaps, and Edmundson, Napier. With regard to the Tarawera c6 block, similar notices were sent to the same four owners and Maori Affairs officer, the commissioner of Crown lands in Napier, and a Mr T Nuku. Since the Tarawera and Tataraaikina blocks each had over 100 owners, these individuals were presumably seen as representatives or trustees.

The Department of Maori Affairs responded to the notice by advising the Electricity Department that, in respect of Tataraaikina, the land had been vested in trustees and therefore the Maori Trustee had no authority to act on behalf of the owners.¹⁰ Technically, in terms of the 1962 amendment to section 104 of the Public Works Act 1928, this was true, but there is no evidence that either the Maori Trustee or the Department of Maori Affairs was proactive in ensuring that the representatives of the Maori owners fully understood the owners' rights to compensation. We consider the status of these trusts later, but, at this stage, we note that no claims for damage or injurious affection were lodged on behalf of the owners of the Tarawera or Tataraaikina block before 1981.

16.3.3 The Tataraaikina 'agreement' of 1975

There is on the Electricity Department file a copy of an informal agreement in the form of a letter dated 18 June 1975 which was sent to the department's Hamilton office. The letter was signed by VJR Keen, P Sullivan, GM Campbell, LH O'Donnell, and one other person, whose signature is illegible. The agreement concerned only the timber cut on the 'Pylon route' through Tataraaikina, and it provided for the department to pay compensation for all the logs that were felled, but, owing to their inaccessibility, were unable to be extracted and taken to a mill. There is no information about how this 'agreement' was reached. Landowner Philip Sullivan told the Tribunal that, although he believed that the 'Line Supervisors and other workers' on the ground were sincere in their 'sympathetic concern', they had no authority, and the trustees had difficulties in dealing with two Electricity Department officers in Hamilton and Napier:

My recollection is that meetings that were held with NZED were at our instigation. I do not recall that the NZED made any active effort to fully consult with the Trusts.

The discussions to hear our concerns [were] not in my view taken seriously. An informal agreement signed by myself and other Tataraaikina Trustees was never completed. It was an attempt to try and address the tip of our concerns, beginning with compensation for millable native trees.¹¹

10. Document T16, p 12

11. Document T54, p 6

16.3.4

Agreement had been reached with other landowners along the line. Boast recorded that Fletchers, which owned a 2898-acre block near Taupo, was paid \$2159. This was calculated on the basis of \$1159 for the loss of the trees and \$1000 for the loss of the land for timber. A farmer on 1190 acres at Te Pohue, 'after a great deal of correspondence, valuations etc', was paid \$8942. As Boast commented, it was a question of where and on what the onus was placed: on the landowner to make a claim or on the Crown to make an offer on costs. 'Those who went to the trouble and expense of fighting the issue out with NZED received compensation; those who did not missed out.'¹²

16.3.4 The status of the trusts

On the Tatarakaia block, the Maori Trustee had been administering Fletchers' timber licence referred to above (sec 16.2) in the vicinity of the NZBC power line. Fletchers also leased land at the north-eastern end of the block, but this was not affected by the 220-kilovolt line. At about this time, 'trustees' had been appointed by the Maori Land Court under section 438 of the Maori Affairs Act 1953. The nature of this trust and the terms of the trust order were not produced in evidence to the Tribunal. However, Mr Sullivan told the Tribunal that he was appointed 'one of the initial Trustees of Tatarakaia Land Trust' in 1972:

The [Maori Land] Court limited the Trust to two years and we were not given full powers. We only had powers to make arrangements for a commercial exotic forest. I later applied for a variation to the terms of the Trust and the time limit was removed.¹³

Given that the Maori Trustee had already been involved in timber licences on Tatarakaia, it is curious that he took no interest in the 220-kilovolt power lines issue, although he had been involved in the issue of access by logging road and the ownership of the bridge for the television transmitter and microwave tower on Tatarakaia. There was no trust on the Pohokura 3B and 7A blocks also affected by the 220-kilovolt line, but the Maori Trustee had no involvement there either.

On the Tarawera block, the situation was more complex. In 1963, part of the land affected by the 220-kilovolt line, now known as Tarawera Farm, had been gazetted under part xxiv of the Maori Affairs Act 1953 for a land development scheme. The rights of the land's owners were severely restricted in section 328(1) of that Act, which, while preserving the 'legal ownership' of the land, gave the Board of Maori Affairs 'exclusive occupation' of it. In effect, the Maori owners lost control of what was being done, and the administration of the development scheme was controlled by the board. At Tarawera, the responsibility for actual development work on the ground was transferred by the board to the Department of Lands and Survey.

12. Document T16, pp 13-14

13. Document T54, p 3

In 1970, after some debate about the extent of land to be developed for farming, it was agreed that the New Zealand Forest Service should take over the development of exotic forestry on some 20,000 acres of the block. In December that year, an ‘advisory committee’ was set up, and in 1971 it became a section 438 trust known as the Te Awahohonu Forest Trust.¹⁴ Mr Sullivan told the Tribunal that he was one of the trustees:

Initially, the Maori Land Court limited the powers of the Te Awahohonu Trust: the Trust was to negotiate a forestry lease with the Crown and there was a 12 month deadline imposed. Later the time limit was removed and the Trust had permanent status.¹⁵

In December 1971, the Forest Service was granted a forest licence to begin clearing the land in preparation for planting, pending the negotiation of an afforestation lease.

Mr Sullivan also commented generally on the difficulties of this transition period. The owners went from having no direct involvement in their lands while they were leased out to setting up trusts to administer those lands and, in the case of the Forest Service proposal, to negotiating a joint venture with the Crown. ‘Looking back now’, he reflected, ‘we were very “green” at the start’:

I have a business background, as did some of the other Trustees. We had an understanding of commercial matters but had no prior experience as Trustees. We had been to a lot of meetings with the Maori Affairs Department when they ran things, but we had no direct experience in managing our land.

We were acting under imposed powers. For the first time we had some degree of control over our lands, but it was limited control. This added to the situation of confusion of who had responsibilities and powers.

The biggest difficulty at the time was lack of resources. We worked for nothing and often had to put in our own funds. The Trusts took over the blocks of land just after the time of the great exploitation of the milling years. We all had other jobs and responsibilities . . .

Our major concern was to stop further fragmentation of land, and that was our main focus in the early stages.¹⁶

Mr Sullivan also commented on the wayleave notice sent in October 1973:

The letter was very unclear. There was a time delay before any compensation would be paid . . . The letter left it up to land owners to provide details of the compensation. We didn’t have the resources to go and hire the appropriate specialists. In any event, we didn’t have the money to pay a lawyer or other advisers for their views on compensation.

14. Document R9, pp 121–122

15. Ibid

16. Ibid, p 4

16.3.5

The Crown portrayed the transmission line as a *fait accompli* over which we could do nothing. We believed the Crown had absolute rights and nothing could be done to stop the construction.¹⁷

Heitia Hiha told the Tribunal that, although trusts were set up in the 1970s, Maori had no ‘direct meaningful management or control’ over their lands until the 1980s. He added: ‘Trustees did not receive any training.’¹⁸

When the survey and wayleave notices were issued in 1972 and 1973, the trustees for the Tatarakina and Tarawera blocks were new, were very inexperienced, lacked resources, and had limited powers. On Tarawera Farm, the land was controlled by the Department of Lands and Survey, which did nothing. The rest of Tarawera was controlled by the Forest Service, which likewise did nothing. Unlike the NZBC power line, the 220-kilovolt line was not a matter taken before the Maori Land Court. The Department of Maori Affairs took no interest. The Maori Trustee, who had powers under the Public Works Act 1928 to negotiate compensation, was not asked to get involved and did not take any initiative. The Electricity Department did not pursue the matter. The trustees were unaware of their rights and had limited powers anyway. The whole matter lapsed.

16.3.5 Efforts to claim compensation in the 1980s

By the early 1980s, the trustees were more experienced, and as exotic forests were developed, the restriction on planting under the 220-kilovolt line became an issue. On 21 June 1982, Lyndhurst O’Donnell wrote to the Minister of Energy, William Birch, seeking compensation for the loss of production in the protection strip along the power line on the Pohokura 3B, Pohokura 7A, and Tatarakina blocks. The Minister’s response was that the claim was outside the six-year statutory limit in the Public Works Act 1928 and therefore could not be considered. An Electricity Department file note in 1982 explained:

We have considered the possibility of an ‘*ex gratia*’ payment in another case, some years ago. That case was similar, except that there had been some difficulty in establishing the legal owners, and the District Maori Trustee had not helped enough.

As it turned out, although we agreed to do this, and the Crown Law Office had raised the suggestion in the first place, the fact that the Crown Law Office had confirmed that the claim was ‘statute-barred and no legal liability on the Crown’ caused Treasury to not allow the payment.

There have been other cases of claims not being made within the time limit, and, in each case, we have had to refuse payment.

17. Document R9, p 5

18. Document T53, p 2

We are attempting to avoid these in future by ensuring that districts follow up all line construction and nudge owners into making a claim. If there is still no claim made, we at least ensure that there is documentary evidence of having tried.¹⁹

The Pohokura trustees enlisted the aid of their member of Parliament, Dr Peter Tapsell, who wrote to Birch in December 1983 asking for further consideration of this ‘extremely important matter’ and commenting:

I would have expected the Electricity Department to not only be fair, but to quite clearly be seen to be fair in matters such as this, for if [Maori] are to be denied their fair compensation by virtue of a technicality in the law, then clearly the confidence of Maori land owning groups will be undermined and in fact severely damaged by what can only seem as a grave injustice. You are aware I am sure that many of the trustees of blocks of Maori land are unskilled in the legal technicalities of making submissions, objections etc and it would certainly seem to me as grossly unjust if their inexperience is to be used against the trustees in such a way as to be a detriment to the beneficiaries.²⁰

A response was drafted by what was then the Electricity Division of the Ministry of Energy and sent to Tapsell by the Acting Minister of Energy, Hugh Templeton. This explained the six-year limitation under the Public Works Act 1981 and added a further comment:

Discussions were held with the trustees on the effect of the line on the land and land to be excluded from future planting was identified and marked out. Compensation was paid for the loss of trees felled at the time but not recoverable because of inaccessibility to transport. Compensation was not requested for loss of land for forestry and this was considered normal as most owners regarded the line clearings to be useful as fire-breaks and did not claim for this loss.²¹

Apart from being a piece of retrospective rationalisation, this statement was inaccurate. First, the letter was written in response to one from the Pohokura trustees, but in 1973 there was no trust in place on the Pohokura blocks. Secondly, the Tataraaakina ‘agreement’ is cited, but this was in respect of Tataraaakina only, not Pohokura. Thirdly, it is not clear who regarded the lack of a request for compensation as ‘normal’. Fletchers, for example, sought compensation where its forests were involved, as did farmers. Mr Sullivan told the Tribunal: ‘The felling of millable native trees and leaving a “swathe” of exposed clearing along the pylon path only exacerbated infestation of noxious plants like gorse, pampas, blackberry and created an unwanted fire risk path.’²²

19. B E Thomas, filenote, 20 July 1982 (doc T16, app 3)

20. Tapsell to Birch, 1 December 1983 (doc T16, app 3)

21. Templeton to Tapsell, 17 January 1984 (doc T16, app 3)

22. Document T54, p 4

The failure of the Electricity Department to pay compensation for the 220-kilovolt line is a festering grievance which has been inherited by TransPower. In 1993, when representatives of Powermark New Zealand Limited, the company contracted to do maintenance work on the line, requested permission to enter the block, this was refused by the Tataraaikina trustees. Although, as the secretary of the Tataraaikina Incorporation explained, TransPower and its agents did have the power to enter the land, 'recent requests . . . to consent to entry have been declined/ignored', because the 'current Trustees' did not wish to be seen to be supporting what they considered to be an 'unfair situation'.²³

16.3.6 Use of the protection strips

There are ongoing issues for any owner of land over which power lines have been constructed, whether compensation has been received or not. These issues include the restrictions placed on the use of the land and the height of any vegetation within the protection strip along the route of the line. These restrictions are particularly onerous for owners of land planted in indigenous exotic forest. There are also ongoing issues around the allowing of regular access for maintenance, and they in turn raise questions about contributing to the maintenance of Maori roads used by maintenance workers, and the landowners' responsibilities in maintaining the height of vegetation at a safe distance from power lines in such a rugged and remote landscape as the Tarawera, Tataraaikina, and Pohokura blocks.

The economic losses to landowners in an area of potential exotic forestry development can be significant. The secretary of Opepe Administration Services calculated that the 220-kilovolt line traversed approximately 20 kilometres of the large Tataraaikina block and that most of the land along this route was 'suitable for pine forestry'. Allowing for the 55.5-metre protection strip, this means that about 111 hectares cannot be used for forestry. The secretary estimated that, on a 30-year rotation and a net return of \$40,000 per hectare, this represented a loss of some \$4.44 million per rotation. (The smaller NZBC line, for which the protection strip along four kilometres amounted to about 9.2 hectares, was not included in this calculation.) The secretary concluded with the comment that, while much of Tataraaikina was 'unsuitable for economic development', it was 'unfortunate that the power transmission lines on the property cross over what can be termed as the developable land on the block'.²⁴ We are in no position to assess these figures, but we agree with Heitia Hiha, one of the trustees of Tataraaikina, who noted: 'The economic loss from not being able to plant exotic forest is significant.'²⁵

There are also ongoing issues concerning the landowners' obligations, responsibilities, and liabilities with regard to preventing trees growing into power lines and causing damage

23. Secretary, Tataraaikina Incorporation, to TransPower New Zealand Ltd, 16 August 1994 (doc T16, app 3(8))

24. Document T53(a)

25. Document T53, p3

(including the damage caused by ‘flashovers’ where the trees concerned were not touching the lines). Boast commented that it may seem strange that landowners should have any duties or responsibilities for the maintenance of power pylons and lines on or over their property:

The transmission line is a kind of easement and generally in law the possessors of a servient tenement are not expected to maintain the easement in any manner for the benefit of the owners of the easement, although obviously they may not intentionally or negligently cause damage to it.²⁶

So far as we know, the relative liabilities and responsibilities of TransPower and landowners toward the maintenance of power lines over their land have not been resolved or clarified. Mr Hiha summed up the response of the Maori landowners of the Tataraaakina and Tarawera blocks:

Now, there are moves to make land owners responsible for keeping the transmission line paths clear and to make them responsible for any damage to the towers and lines. The land for the transmission lines has been virtually confiscated from them anew but now they are to become responsible for their safety. Is this justice?²⁷

16.4 LEGAL SUBMISSIONS

16.4.1 Claimant submissions

Counsel for Wai 299 noted that, at the time that the wayleave notice was delivered to the five representatives of the Tarawera and Tataraaakina owners, much of the forest land was in the control of the Forest Service, and the farm area was controlled by the Departments of Maori Affairs and Lands and Survey. ‘The Trusts believe that the Crown agencies did not act in the best interests of the Trusts and their land owners.’ Counsel also submitted that the wayleave notice was ‘insufficiently clear’ and did not adequately inform the landowners of their rights:

The procedure used for notifying land owners and dealing with compensation was minimalist, and more suited to the convenience of the Electricity Department than to land owners. Land owners were not told that if they failed to claim compensation within the time limits specified in the Public Works Act they would miss out.²⁸

Counsel also noted that the Crown had not challenged the evidence submitted, nor had it produced any other relevant evidence. Counsel concluded that the Crown had ‘failed in its duty under the Treaty’ by acquiring an effective easement over Maori land without obtaining

26. Document T16, p 22

27. Document T53, p 3

28. Document X39, p 109

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the consent of, or consulting with, the owners, had failed to advise those owners fully on their rights to compensation, and had imposed obligations and conditions which restricted their use of, and potential income from, the land affected.²⁹

16.4.2 Crown submissions

Crown counsel did not dispute the evidence presented, but he submitted that the Tribunal had before it only a 'comparatively small body of evidence of what occurred'. Therefore, the claimants relied on legal submissions concerning both the effect of the legislation in force at the time of the construction of the transmission line and 'what the principles of the Treaty of Waitangi require of the Crown in setting out to make use of any land for public purposes'.³⁰ Counsel submitted: 'The law governing the activities of NZED in relation to construction of this transmission line appears to have been complied with.' Compensation was available, but it was not claimed within the period stipulated and was in any case limited; it did not cover the 'consequential economic loss asserted on behalf of [the] claimants'.³¹ However, counsel conceded that no evidence had been put before the Tribunal to show that Crown officials had explained the limitation period to the owners or had assisted them in making a claim for compensation. Counsel concluded: 'the form of tenure used amounts to a statutory easement. Ownership of the land was retained by Maori.'³²

16.4.3 Claimant submissions in reply

Counsel for Wai 299 made no submissions in reply relating to the transmission line grievance.

16.5 TRIBUNAL COMMENT

In other inquiries, the Tribunal has commented at some length on the use of public works legislation to take Maori land, with the consent of or in consultation with the owners.³³ However, all these reports were concerned with land that was taken and with title that was transferred to the Crown. The construction of a transmission line under the Electricity Act 1968 was, in effect, a compulsory taking of a statutory easement, and it also imposed certain

29. Document x39, p 111

30. Document x52, pp 15–16

31. Ibid, pp 18–19

32. Ibid, p 19

33. See Waitangi Tribunal, *Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995); Waitangi Tribunal, *Te Maunga Railways Land Report* (Wellington: Brooker's Ltd, 1994); and Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995)

obligations and responsibilities on the landowner who retained the underlying title. We note that TransPower has operated under a different regime since 1992, but there are still ongoing restrictions on the use that owners can make of the protection strip. The effect is similar to a taking of the land but with an additional burden on the landowner.

It is not just Maori landowners who have felt unfairly imposed upon by the construction of transmission lines. For Maori owners of the Tarawera and Tataraaakina blocks, however, this further ‘confiscation’ of their ancestral land has created an ongoing grievance and has exacerbated the Crown’s failure to consult with them or to pay any compensation. The several Tribunals referred to above concluded that for the Crown to take Maori land for public works without obtaining the consent of the owners was a breach of its fiduciary obligation to act on the guarantees of protection in articles 2 and 3 of the Treaty. The Tribunals similarly criticised the Crown’s failure to consult with the landowners about alternatives to the takings and its failure to preserve an economic base for those Maori by preserving adequate land resources.

16.6 FINDINGS

We find that the Crown, in its construction of the 220-kilovolt transmission line over the Tarawera and Tataraaakina blocks (and over Pohokura, which, although it lies outside our inquiry district, has some of the same owners), breached the principles of the Treaty of Waitangi. We find that the Maori owners of those blocks were prejudiced thereby.

More specifically, we find that:

- (a) The provisions of the Electricity Act 1968 in respect of the construction of transmission lines were draconian. The Crown, in effect, could and did enter the Tarawera and Tataraaakina blocks for the purpose of surveying and constructing a transmission line without the consent of the owners. Furthermore, it had no obligation to consult with them. This breached the principles of reciprocity and partnership and the duty of consultation.
- (b) At the time of entry, there was no effective Maori governance of the blocks, and no effort appears to have been made by Electricity Department officials to ensure that the new and inexperienced trustees were aware of their rights to compensation. By so doing, the Crown breached its duty of active protection.
- (c) Several Government departments – Maori Affairs, Lands and Survey, and the Forest Service – were specifically involved with these lands, but no evidence has been found to indicate that they made any effort to ensure that the owners submitted claims for compensation. The public works legislation in force at the time did not require the Maori Trustee to act to protect owners’ interests where land was multiply owned and vested in trustees or in a Maori incorporation. It should have. Once again, this breached the Crown’s protective obligations towards Maori.

- (d) Even when the Electricity Department was prepared to offer the Maori owners an ex gratia payment, their plea for compensation in 1982 being by then statute-barred, the Treasury opposed such a payment. This was a very narrow, legalistic interpretation of draconian legislation and it failed totally to appreciate the dimensions of this Maori grievance. It was out of keeping with the partnership inherent in the Treaty and represented a failure by the Crown to act reasonably and in good faith.
- (e) The failure of Electricity Department officials to consult with the Maori owners when planning the route of the 220-kilovolt transmission line meant that there was no consideration given to the protection of wahi tapu along the route. This further breached the Crown's duties of active protection and consultation.
- (f) The restrictions on tree height in the protection strip along the transmission line effectively removed a substantial area from actual and potential commercial forestry production in a rugged district where there is little land for viable economic development. In this regard, the Crown has been in breach of the principle of mutual benefit and the Maori right to development.

CHAPTER 17

PUBLIC WORKS ACQUISITIONS IN THE TARAWERA TOWNSHIP

17.1 INTRODUCTION

The Wai 639 claim was filed in November 1996 by Nigel Baker on behalf of the descendants of Pane Te Kanga, an original owner of the Tarawera and Tataraka blocks under the 1870 Mohaka–Waikare agreement. It concerns the Ministry of Works’ acquisition of whanau lands in the Tarawera township on the Napier to Taupo highway in the 1970s. Prior to its hearing, the Crown objected to the inclusion of this claim in the Mohaka ki Ahuriri inquiry, arguing that it had in fact already been settled in 1995. Crown counsel invited the Tribunal to decline to inquire into the claim under section 7 of the Treaty of Waitangi Act 1975 on the basis that an adequate remedy already existed: namely, the 1995 settlement. We decided, however, to proceed to hear the claim and to issue our findings on its status in our report. In this chapter, we outline the historical subject matter of the grievance and the context of the Crown’s objection and comment on both.

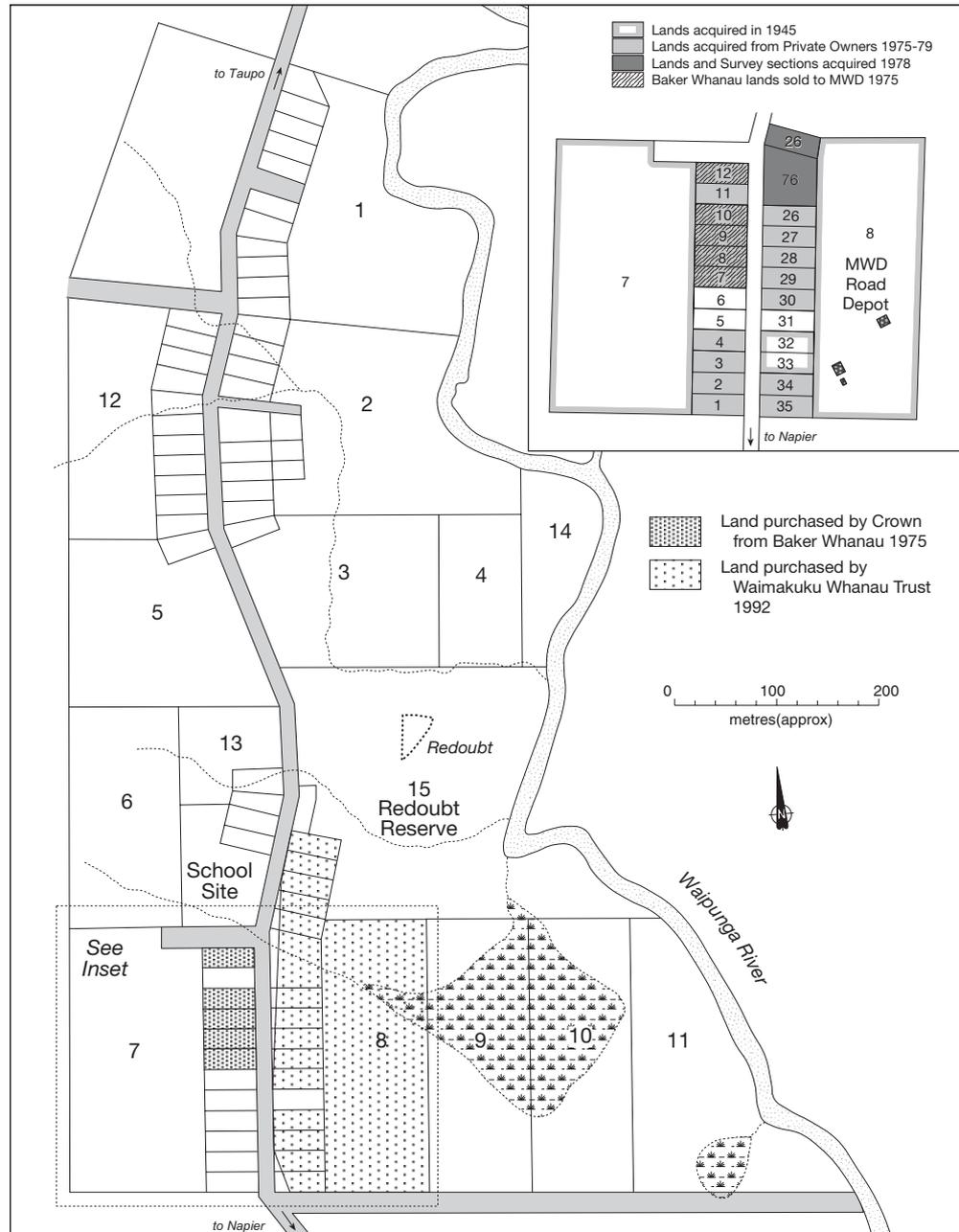
17.2 HISTORICAL BACKGROUND

The Tribunal commissioned a research report into the matters raised in the Wai 639 claim from staff member Richard Moorsom. The result was ‘Raupatu and the Paper Township: Takings for the Tarawera Road Depot’, which we relied upon for the following narrative.¹

The lands subject to the Wai 639 claim are located at Tarawera, a small locality inland of Te Haroto on the Napier to Taupo highway. Tarawera sits in the valley of the middle Waipunga River and was the site of Ngati Hineuru settlement and cultivation when the missionary Colenso visited it in the late 1840s. It lay along the track of a major communications route between the interior and the sea. After the land was confiscated in 1867, the Crown chose to keep 2000 acres of land along this ‘corridor’ to secure what became a key strategic communications route in the unsettled period of the late 1860s and early 1870s. In doing so, the Crown kept the majority of the low-lying land in the vicinity and, with it, the majority of Ngati Hineuru’s settlements and cultivations.²

1. Document R10

2. Ibid, pp3–4



Map 57: The Tarawera township; inset, Ministry of Works and Development acquisitions

In the early 1870s, Tarawera was a ‘hive of activity’, and in 1873 the Crown laid out a small township with 69 town and 12 suburban sections (map 57). However, as Moorsom put it, the township was ‘stillborn’, with road construction work quickly completed and the resident garrison being reduced and then completely withdrawn in the years after the campaign against Te Kooti ended in 1872. Land within the Crown block was let for sheep farming, but this activity had all but ceased by 1920, leaving the area virtually devoid of permanent

occupants. The advent of native timber milling in the wider district from 1936 saw an influx of people to the township, but with the exhaustion of this resource in the early 1970s, a second rapid exodus occurred.³

Throughout this time, however, the Government employed workers to undertake routine maintenance of the Napier to Taupo road. These men lived in cottages placed along the highway, several of which were located at the Tarawera township. Owing to a period of major road reconstruction in the area in the 1960s, the Tarawera road camp was expanded, and, by 1964, it included three houses and 12 single men's huts. In the late 1960s, with the major road works completed, Ministry of Works officials favoured retaining a camp at Tarawera because of what they saw as the likely ongoing need for local road maintenance. Thus, the camp and its facilities continued to be gradually expanded and upgraded into the 1970s, and, by late 1974, the Ministry had made plans to utilise more of the flat land surrounding the camp for 'depot development'.⁴

In 1969, Ministry officials had come to realise that some of the Tarawera camp encroached on surrounding, privately owned sections. In fact, the ownership pattern in the township in 1974 was, according to Moorsom, a 'patchwork mix of public and private titles'. The encroachments did not overly concern officials at the time, but in late 1973 the private sale of a section adjoining the depot entrance bothered the resident engineer, who thought that it might stimulate people's interest in purchasing land in the area. 'If this trend continues,' he wrote, 'we may well be placed in an embarrassing situation by having to vacate part of our depot. Also we may have to pay considerably higher prices for land which had token value only.'⁵ The engineer thus recommended that a purchasing programme be urgently commenced with the aim of expanding the land assigned to the depot from 16.7 to 28 acres, thus forming a rectangular block straddling the highway at the southern end of the paper township. Moorsom observed that the proposed expansion 'went well beyond the immediate need to secure the existing encroachments'.⁶

In the Ministry's purchase zone on the eastern and western sides of the highway, there were 22 town sections (designated 'T') divided amongst 13 separate private owners (map 57). The sections on the western side included five owned by Baker whanau members: sections T7 to T10 (owned by Thomas Henry Baker) and section T12 (owned by Winnie Baker). Together, they totalled 1.25 acres.⁷ In September 1974, the Valuation Department assessed the land values of the 22 sections as low, taking no account, according to Moorsom, 'of the private buying interest in the land which had prompted Works to take the initiative'. After a lapse in momentum, the Ministry wrote to half a dozen landowners in March 1975 asking if they would be prepared to sell their sections, since 'the Crown is desirous of acquiring additional

3. Document R10, pp 4-5

4. Ibid, pp 5-7

5. Resident engineer to district property officer, 22 July 1974 (as quoted in doc R10, p 11)

6. Document R10, pp 9-12

7. Ibid, p 9



Fig 33: The Tarawera Hotel and stockade, circa 1880. Photograph by Herbert Deveril.
Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (F-2671-¼).

land for the Ministry's Depot at Tarawera'. Other owners were approached later – either in person or by letter – and the majority of the sections were sold, apparently willingly, by early 1976.⁸

The Baker whanau sections were all purchased by the end of 1975. Sections T7 to T10 were sold by Thomas Baker for \$400, plus \$20 towards his legal costs, which represented a slight increase on the valuation of \$380. Winnie Baker sold section T12 at roughly the same time for \$115, plus \$20 towards her legal costs (again, a slight improvement on the valuation of \$100). It seems that Thomas was not written to first and that the negotiation to sell sections T7 to T10 was carried out face-to-face. Winnie was sent a letter, but since no reply appears on file and since she signed the sale agreement in the presence of the land purchase officer five days after Thomas had, Moorsom concluded that the sale of T12 was also negotiated verbally.⁹

At this point, it is worth noting how long the sections had been in the possession of the Baker whanau. Thomas Baker had bought sections T7 to T10 privately in 1967, while Thomas Baker senior had purchased T11 and T12 in 1936. Winnie Baker had inherited these latter two sections in 1957, and while she kept T12, she sold T11 within two months.¹⁰ As Moorsom observed, the 1936 purchase probably related to events described in chapter 10 of this report: 'The purchase may well have formed part of the Baker whanau's survival strategy.' The repartitioning of the Tarawera block in 1927 and 1928 'drastically reduced the whanau's stake'

8. Document R10, pp 13–16

9. Ibid, pp 16–17

10. Ibid

in Tarawera 5A, which lay to the south of the Tarawera township.¹¹ The Baker whanau's loss of Tarawera 5A was, inter alia, the subject of the 1995 settlement with the Crown that Crown counsel contended also settled the Wai 639 claim. We return to this in detail below.

In addition to the sales made with the agreement of the section owners, the Ministry of Works also pursued a couple of unwilling sellers for some time in the late 1970s before essentially giving up.¹² One further section was in fact taken by compulsory acquisition, but only because no current owner could be found.¹³ Already by March 1976, however, some Ministry officials were questioning why such a large area was needed for the depot and overseer's house. A district planning staff member made the point that, while a full 20 acres had been acquired, only half of this area was in fact to be designated for the depot and housing. The district planning officer concurred and suggested that the land purchasing should stop, 'until we know what we are buying all this land for. I can't see any justification for this from the operational and planning points of view.' Despite this, the purchasing continued as before, with one of the aforementioned unwilling owners being pursued, even though the sections concerned (T5 and T6) were on the western side of the road and thus outside the designated depot area.¹⁴

17.3 THE NATURE OF THE CLAIM

The Wai 639 claimants listed a number of 'specific grievances' that they say constituted breaches of Treaty principles, namely:

- that the 1975 acquisitions were not 'essential' as claimed in that operations ceased just sixteen years later
- that the Baker whanau suffered discrimination in that its lands were taken and not others
- that on the cessation of Ministry of Works operations at Tarawera the sum sought as part of the offer back provisions (\$220,000) under s40 of the Public Works Act was grossly inflated
- that the Baker whanau has lost this land on three separate occasions; through confiscation in 1866 [*sic*], through the ratification of the Maori Land Claims and Maori Lands Adjustment Act 1929 [*sic*]; and through the 1975 Public Works acquisition.

The claimants explained that, when Works Consultancy Services advised them in 1991 that the now-closed depot site was available for repurchase, 'it was concurrently being marketed vigorously'. As a result, they stated that the property was bought by them (in the form of the

11. Ibid, p16, n 50

12. Ibid, pp 19–20

13. Ibid, pp 20–21

14. Ibid, pp 23–25

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Waimakuku Whanau Trust and with Te Puni Kokiri mortgage assistance) ‘under pressure’. In compensation, the claimants sought, among other things, the writing-off of the mortgage (which had since been transferred to the Housing Corporation of New Zealand).¹⁵

The Wai 639 statement of claim then went on to argue why the claim was unaffected by the 1995 settlement with the Crown. We return to this below.

17.4 LEGAL SUBMISSIONS ON THE PUBLIC WORKS ACQUISITIONS

17.4.1 Claimant Submissions

In closing submissions, claimant counsel focused heavily on the issue of the 1995 settlement. Again, we address this below. But he also reiterated the concerns outlined above from the statement of claim, adding that the claimants:

should never have been put in the position of having to purchase land back firstly because the land should never have been taken in the first place and secondly because once the land was no longer used for the purpose for which it was taken it should have been returned at cost or even at no cost.

The claimants contend that they have been put to enormous expense due to Crown inaction and should be reimbursed.¹⁶

Counsel also made some more general submissions on the Public Works Act 1928, which was in force at the time that the Baker land was purchased in the 1970s. He argued that the purchases were ‘illegal in terms of the Public Works legislation as they were not required for an essential purpose’. He made this statement despite acknowledging that ‘the element of essentiality later purported [*sic*] into the Public Works Act 1981 was not present in the 1928 legislation’. However, he submitted that ‘that principle is the basis of the legislation’.¹⁷

17.4.2 Crown submissions

In making its closing submissions on the Wai 639 claim, the Crown would only reiterate its view that the claim had already been settled.¹⁸ Crown counsel did, however, make some more general comments on public works takings. Counsel submitted that five matters in particular needed to be considered by the Tribunal in assessing public works takings (see also sec 15.5.2):

15. Claim 1.52, p 2

16. Document x37, p 9

17. Ibid, pp 10–11

18. Document x52, pp 7–8

- ▶ Was there compensation?
- ▶ Was there consultation?
- ▶ Were other sites considered?
- ▶ Were alternative forms of tenure considered?
- ▶ Were the owners left with sufficient lands for their present and reasonably foreseeable future needs?

Counsel conceded that Treaty breaches could occur if the Crown failed to offer surplus lands back to the former Maori owners or their descendants. However, he added that he had seen no convincing evidence before this Tribunal 'establishing that land has been improperly retained'. While counsel noted that some of the claimants had been critical that land had been offered back at its market value, he submitted that it was appropriate that the value of any improvements should be included in the offer-back price, since 'Improvements and added value to land held for public works have generally been created by the capital and energies of the whole community through public ownership.' He noted the Crown's discretion to offer land back at less than market value but added that 'there is insufficient evidence for the Tribunal to make findings that the claimants are unable in fact to respond to offer back opportunities'.¹⁹ In conclusion, counsel endorsed the observation of the Tribunal in the *Ngai Tahu Ancillary Claims Report 1995* that 'the circumstances of each case need to be considered in order to come to any conclusions with regard to a breach of Treaty principles'.²⁰

17.4.3 Claimant submissions in reply

In reply, claimant counsel noted that the Crown had not made any submissions on the detail of the Wai 639 claim but had made general submissions on public works claims in the inquiry. Counsel argued that the relevant issues mentioned by Crown counsel, such as the consideration of alternative sites and the adequacy of compensation, were indeed key issues in the Wai 639 claim. Additionally – and in contradiction of the references to a section 40 offer back made in the Wai 639 statement of claim – counsel submitted that:

It . . . is clear that there was no offer back made of land taken in this case and indeed the evidence is that the former owners through their living representatives had to form a vehicle to purchase that land as it became available and entered into negotiation with the Crown's agencies to fix a purchase price just as any purchaser would have done. No favourite status or favoured purchase terms were offered to the purchasers who, the evidence shows, had to obtain mortgage finance to secure what they saw as their own land.²¹

19. Ibid, pp 11, 14–15

20. Waitangi Tribunal, *Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995), p 363 (doc x52, p15)

21. Document v7, p 36

17.5 TRIBUNAL COMMENT

The following comment is offered for the sake of completeness and has no bearing on the findings we make below on the extent to which the Wai 639 claim has already been settled:

- (a) It is clear that the Ministry of Works purchased more land than it needed for its depot at Tarawera. Furthermore, its overall rationale for acquiring the land seems to have been muddled. Originally, it made the somewhat dubious assertion that it was tidying up its encroachments and keeping one step ahead of a potentially growing market interest in the area. Later, it said that it needed to buy land which officials soon pointed out was in excess of its requirements.
- (b) It is also correct that the true market value of the land may not have been considered by the Valuation Department at the time and that the valuations may therefore have been somewhat on the low side.
- (c) The charge that the ‘takings’ were not ‘essential’ has largely been covered in point (a) above, particularly as it relates to the Baker sections on the western side of the road. A wider issue here seems to be whether other forms of tenure – such as a lease – should have been considered, but this argument was not raised by the claimants. Certainly, the Tribunal elsewhere has expressed the view that alternative forms of tenure should have been contemplated before the land was permanently alienated.
- (d) Altogether, however, these matters should be weighed against a number of other considerations when assessing the scale of any breach. For a start, other Tribunals have stressed that Maori land should be acquired for public works only as a last resort, but here the sections were all general land. Maori title to the Tarawera sections ceased with their confiscation in 1867, when the whole township became Crown land. The Baker sections were purchased by whanau members privately in the twentieth century. We agree that it is likely that Thomas Baker senior’s purchase of sections T11 and T12 in 1936 possibly stemmed from the then-recent loss of the Baker whanau’s interests in Tarawera 5A, but it strikes us that this cannot be a consideration in Wai 639, since it was the very subject of the 1995 Baker whanau settlement (see below).
- (e) In that context, we should add that the statement of claim and the closing submissions of claimant counsel are indeed incorrect, as Crown counsel observed, in arguing that the land was ‘lost by the whanau on three separate occasions’ (namely, through the confiscation, through the Native Land Court, and through the public works acquisition).²² After the confiscation, the Native Land Court (and, later, the Maori Land Court) never held jurisdiction over the land in the Tarawera township.
- (f) Our tentative conclusion, for the matter was not argued before us, is that an acquisition of general land owned by a Maori individual does not fall into a significantly different category from an acquisition of general land owned by a Pakeha, particularly when the two acquisitions occur alongside each other on the same terms. The

22. Document x52, p 7, n 12; see also doc x37, p 7; claim 1.52, p 2

original Maori ownership of the township land had long since ended, and while a serious grievance over the confiscation exists (which we have discussed elsewhere), the loss of the land in the 1970s is quite another matter. The situation reminds us of the findings of the Tribunal in its *Report on the Mangonui Sewerage Claim* of 1988. There, Ngati Kahu objected to the siting of a sewage treatment plant on land which had originally been alienated from them long before but which they had recently reacquired from a Pakeha farmer. The works had been proposed for some time, however, and in this context the Tribunal observed:

The principles of the Treaty require that planning should have regard to the retention of lands in Maori ownership especially, as here, where insufficient land reserves were made. In this case however the Maori owned land affected by the scheme was acquired after the works were proposed and any contest on its compulsory acquisition should be judged on the law as it stands.²³

Obviously, the Tarawera township context is quite different: the works had not been proposed when the sections were acquired and T12, in particular, had been with a member of the Baker whanau since 1936. However, we believe an important point emerges from the *Mangonui* example: namely, that the simple fact that land is owned by Maori is not the only matter that should be considered when assessing public works grievances. The fact that the land may have been reacquired by Maori and the circumstances of any such reacquisition also need to be borne in mind.

- (g) We feel bound to make the distinction between Maori land and general land because the 1995 settlement compensated the Baker whanau for the loss of their neighbouring Maori land. Furthermore, there seems to us to be no evidence that there was any discrimination against the Baker whanau in the Ministry of Works' acquisition programme. Maori and Pakeha owners of the general land purchased were treated without distinction, with the possible exception of the approaches to Pakeha landowners all being in writing (although Winnie Baker was initially approached by letter). Indeed, the owners who refused to sell were Pakeha, and, as Moorsom observed, ultimately the Ministry 'did not want the land badly enough to force through compulsory purchases'. Moorsom added that there was 'no evidence of soft-peddalling by officials on the grounds that the reluctant owners were probably Pakeha'.²⁴
- (h) Although it is clear from the evidence, we feel obliged to reiterate that these were not compulsory acquisitions and that the claimants are technically wrong to characterise them as 'takings'. On the face of it, and without firm evidence to the contrary, it seems that the sales were willingly entered into. As we have seen, where two owners refused

23. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 61

24. Document R10, p 27

to sell, the Ministry pursued them but ultimately gave up. Nigel Baker alleged that his family had been coerced into selling and had felt that they had no other option. We are not in a position to make a categorical finding on this allegation, and we agree with Moorsom that the lack of a written record of the negotiations with the Maori owners leaves a gap in our knowledge.

- (i) Some confusion exists about the section 40 offer-back provisions of the Public Works Act 1981. The claimants referred to an 'offer back' having taken place but counsel objected that it had not in fact occurred. On our understanding, the reality is that the offer-back provisions of the Act are activated only where works that were compulsorily acquired become surplus. The Crown is under no statutory obligation to offer back land acquired on a 'willing buyer, willing seller' basis. (To add further to the confusion, recital 7 of the 1995 deed of settlement referred to the depot site having been purchased by the claimants 'pursuant to the offer back provisions of the Public Works Act 1981'.²⁵)
- (j) Furthermore, the claimants did not adequately explain which particular properties they had reacquired and how these related to the land that they had sold in the 1970s. We understand that the Waimakuku Whanau Trust, which represented Baker whanau interests, purchased the depot property in 1992 for \$220,000. This property comprised all the land east of the Napier to Taupo highway that the Ministry had acquired for the Crown and covered just under four hectares.²⁶ There were no Ministry structures on the western side of the road where the Baker whanau sections were located. We presume that the high price for the depot land on the eastern side reflected the quality of the Ministry's improvements. In those circumstances, it is not really open to the claimants to state that they paid \$220,000 reacquiring what they had lost in the 1970s. Clearly, the 1992 purchase would have included lands bought by the Crown from other private owners in the 1970s on the eastern side. We presume that these owners or their descendants were not 'offered back' the land either.
- (k) Nigel Baker said that 10 properties 'adjoining' the depot complex were repurchased by the Baker whanau in 1991 for 'an average of (\$500) Five hundred dollars each'. He added that they had originally been purchased from the family for \$135 each. Even if these properties included the sections on the western side of the highway that had been bought from the Baker whanau in the 1970s, no Baker land was included in the depot site on the eastern side of the highway, which had been bought for \$220,000 and was subject to the mortgage to HCNZ. Mr Baker added that in 1994, as well as the old Tatarakina mill site, his family had purchased township sections 1, 2, 3, and 4 from Landcorp, in each case purchasing the land as the Waimakuku Whanau Trust.²⁷

25. Paper 2.135(a)

26. Certificate of title, Hawke's Bay registry, P1/543

27. Document X37, p 8; doc R32, pp 5-6

(Counsel added that the land was bought for a total price of \$2810.). Again, it was not at all clear to us how these lands related to the original Baker whanau sections T7 to T10 and T12. Mr Baker asked for all these recent purchase expenses to be reimbursed (including the large mortgage for the depot purchase being written off), but the grounds for these requests were not made clear to us.

- (1) Finally, we need make mention of claimant counsel's assertion that the purchases in the 1970s were 'illegal' under the Public Works Act 1928 because the land acquired was not essential for the work in question (even though references to actual takings needing to be 'essential' did not enter the public works legislation until 1981). First, on the strict matter of legality, we think that counsel's concession that the concept of 'essentiality' did not enter the legislation until 1981 speaks for itself. Secondly, we think it rather odd that any sales by ostensibly willing agreement should be labelled 'illegal'.

In sum, therefore, we have identified a grievance with respect to:

- ▶ the excessive amount of land acquired by the Ministry of Works in the 1970s;
- ▶ the suggestion that the valuations in 1974 seem to have taken no account of the then-current market; and
- ▶ the failure of the Ministry to consider acquiring leasehold rather than freehold tenure.

It remains for us then to assess whether Wai 639 has in fact already been settled as part of the 1995 settlement.

17.6 THE 1995 SETTLEMENT

The Wai 147 claim was filed with the Tribunal in May 1990 by Henry Baker and his son Nigel Baker. It alleged grievances with respect to the Baker whanau's loss of the Tarawera 5A block between 1929 and 1970 during the title disruption that we outlined in chapter 10. In 1992, the claimants sought to negotiate their claim directly with the Crown. Then, in October 1994, as the Waimakuku Whanau Trust, Nigel Baker and other Baker whanau members put in a further claim, Wai 491. This concerned Tatarakina 2A, which was lost at the same time as Tarawera 5A. The claimants described themselves as 'the descendants of Rihi Nene', who had been the owner of Tatarakina 2A and Tarawera 5A up until her death several years before the lands were lost.²⁸ The Wai 491 claimants sought compensation for the loss of Tatarakina 2A and the reinstatement of themselves to the title to the land. Presumably because of the subject matter of the Wai 147 claim, the claimants did not seek redress for the loss of Tarawera 5A.

We should explain at this point that Rihi Nene, of Ngati Hineuru, was the second wife of Thomas Baker, who was of Ngati Raukawa. Nigel Baker and other whanau members descend from Thomas and his first wife, Parai Rotohiko, of Tuhoe. Thus, while they do not actually descend directly from Rihi Nene, their forebears nevertheless succeeded to her interests in

28. According to the claimants, Rihi Nene died in 1923: see claim 1.54, p 2.

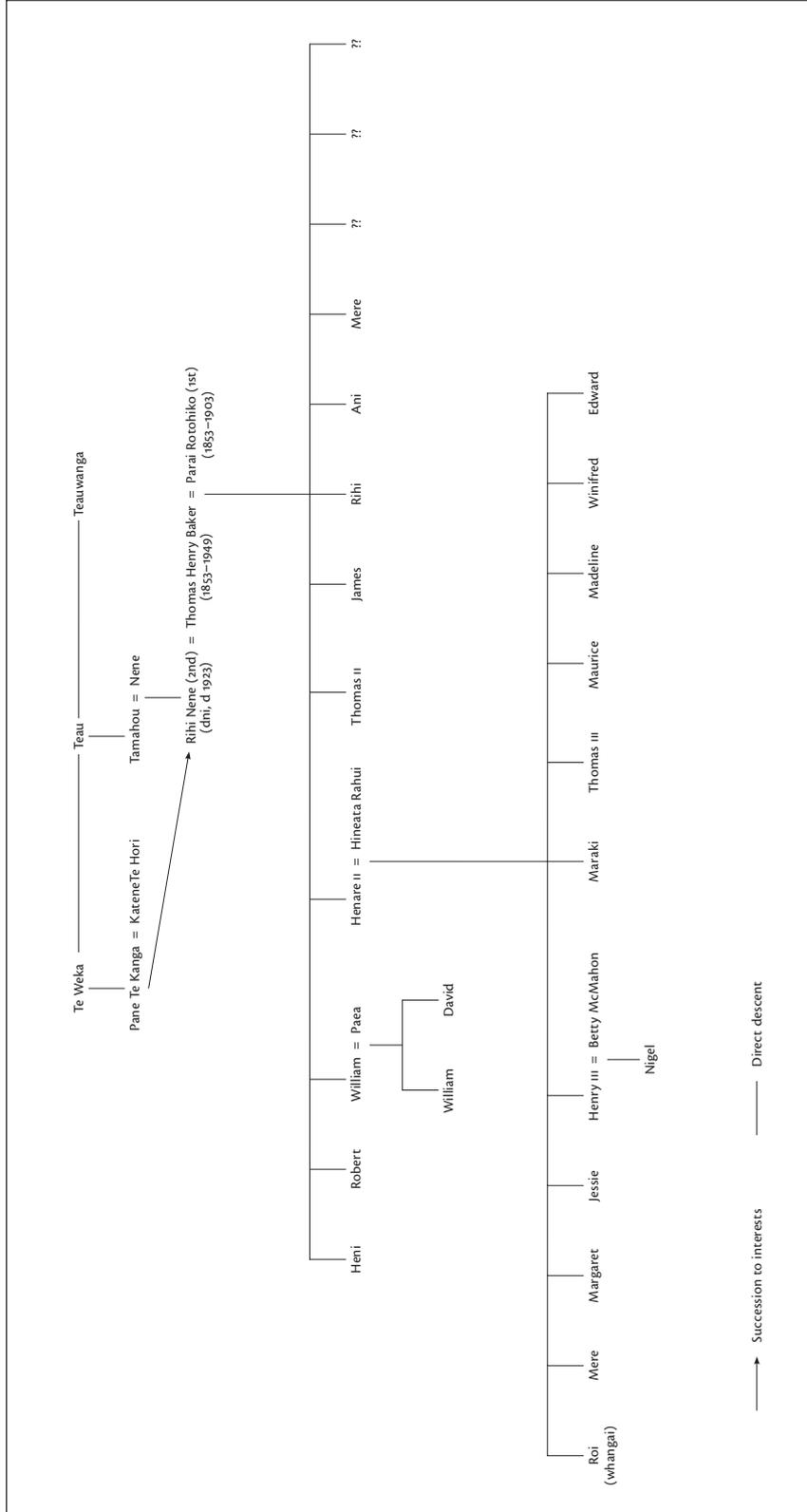


Fig 34: Baker family whakapapa.

Source: documents B32, J29, J11; National Archives document AA9V997/H29 (see n 49, p 607); Judges James W Browne and H Carr, 'Report and Recommendation on Petition No 66 of 1936, of W Baker and Others, Petition No 262 of 1936, of Kaperiera Te Pohe and Others, and Petition No 301 of 1936, of Matewai Utiera and Others, re Tarawera Block, 21 September 1939, AJHR, 1939, G-6A; whakapapa charts accompanying correspondence, Nigel Baker to Dean Cowie, 8 February 1998, Waitangi Tribunal file Wai 639/0.

Tataraakina and Tarawera 5A.²⁹ Rihi was the daughter of Tamahou, the first cousin of Pane Te Kanga, whom the Wai 639 claimants say they are descended from (see fig 34).

In May 1995, Cabinet agreed to accept the Wai 147 claim for direct negotiation and authorised the Minister in Charge of Treaty of Waitangi Negotiations to conclude a settlement. As an aside, we presume that this was one of the last occasions when such an individual whanau claim was accepted for direct negotiation by the Crown. Crown policy for some years now has been to conclude settlements with 'large natural groupings' only, and the Baker whanau would currently not meet this requirement.

All that we know about the negotiated settlement is contained in the words of the deed of agreement itself, which was signed by representatives of the Crown and the Waimakuku Whanau Trust on 20 December 1995.³⁰ It was noted that the claimants had a grievance concerning the loss without compensation, for 41 years, of Tarawera 5A. The Crown expressed regret for this. It was further noted that 'The Trust also has an interest in Wai 491, a claim to Tataraakina Block (No 2).' (It is altogether unclear to us what was meant by the trust having an 'interest' in Wai 491, since trust members and the trust itself were the only named claimants.) In any event, the deed clarified just whom the trust represented:

The Trust confirms that it is the legitimate representative of the descendants of Thomas Baker (whose three children, Robert, Mary and William Baker inherited interests in the land from their step mother, Rihi Nene) and that it has the mandate from those people it represents to agree to this settlement on their behalf and enters into this Deed with their full authority, knowledge and blessing.

An important section of the deed contained the recitals relating to the HCNZ mortgage. It was noted that the trust had purchased the depot property in 1992 with a loan from the Iwi Transition Agency, and that the loan had been transferred to HCNZ in 1993. Because the trust's mortgage repayments were in arrears, the deed noted that HCNZ wished to call up the loan and have the large part of the settlement moneys deducted for this purpose. It was then noted that the trust had advised the Crown's negotiators that there was 'a dispute regarding the quantum to be paid to HCNZ' and that the trust had stated that 'a condition of settlement is that the settlement of [its] claim is kept separate from [its] dispute with HCNZ and the Crown agrees to this condition'.

As a result, under the principal agreement:

- ▶ the Crown would apologise for breaching the principles of the Treaty of Waitangi;
- ▶ the settlement would be kept separate from any issues relating to the HCNZ loan to the trust;
- ▶ no deductions would be made from the ex gratia sum; and
- ▶ the trust would be paid \$375,000.

29. See doc R32; paper 2.135(a)

30. Paper 2.135(a)

17.7

Of vital importance to our current deliberations was also the following recital in the operative part of the agreement:

This Deed constitutes the entire agreement between the parties and will form the full and final settlement between the Crown and the Trust of all the Trust's Treaty of Waitangi claims, however arising, including settlement of Wai 147 and of the Trust's interests in Wai 491. The claimants agree that this settles all aspects of their claims including costs, legal or otherwise.

Shortly afterwards, in February 1996, Crown and claimant counsel filed a joint memorandum with the Tribunal briefly detailing the settlement and asking that the Tribunal's claim register be amended with respect to both Wai 147 and Wai 491 to record this.³¹

17.7 THE FILING OF WAI 639 ET AL AND THE CROWN'S OBJECTION

On the face of it, therefore, it would seem that the deed settled all of the Treaty claims of the Waimakuku Whanau Trust or, in other words, all of the grievances of the descendants of Thomas Baker. However, it does not seem that the Baker whanau viewed matters in this way. In 1996, whanau members filed a number of new claims with the Tribunal:

- (a) Wai 601 was filed on 16 May 1996 by Winifred Kupa and Edward, Thomas, and Marire Baker. The claim was made 'on behalf of the beneficiaries of Tatarakina 2 & 5 blocks' and concerned the title disruption to those blocks in the 1920s. The claimants said that the basis for the claim was 'exactly the same as that for Wai 147', and they argued that, 'Because the Crown has already accepted a Treaty breach in respect of the circumstances surrounding Wai 147', the required research would be 'relatively straight-forward'.³²
- (b) Wai 638 was filed on 18 October 1996 by Nigel Baker on behalf of the Tatarakina c claimants in Wai 598, Wai 601,³³ Wai 602, and Wai 608. He explained that a meeting of the claimants had resolved to amalgamate the separate claims and proceed under one Wai number. He made the same comments as those appearing in the Wai 601 statement of claim about the precedent set by the Wai 147 settlement.³⁴
- (c) Wai 639 was filed on 27 November 1996 by Nigel Baker on behalf of the descendants of Pane Te Kanga. Oddly, Mr Baker said that the claim 'replaces Wai 491 lodged by the Waimakuku Whanau Trust'. Claimant counsel in Wai 639 later submitted that this statement had in fact been made in error (see below). It seems to us that this statement

31. Paper 2.135(a)

32. Claim 1.45

33. The old Tatarakina 2 and 5 partitions are now part of what is known as Tatarakina c.

34. Claim 1.51

should more logically have been inserted in the Wai 638 statement of claim, given that both Wai 491 and Wai 638 were concerned with lands contained in Tatarakina c.

- (d) Wai 640 was filed on 6 November 1996 by Nigel Baker on behalf of the descendants of Pane Te Kanga and concerned title disruption to Tarawera 10B, a block neighbouring Tarawera 5A and the Tarawera Crown block.

The Wai 639 statement of claim also included a section entitled ‘Wai 491 and settlement of the Wai 147 claim’. In this, Mr Baker referred to the Wai 491 claim as being ‘now withdrawn’. He said that, at the time of the settlement of Wai 147, he understood that attempts had also been made to settle Wai 491 but that these attempts had failed. He said that he and his co-claimants believed that ‘it would be of assistance to lodge this new claim rather than go to some considerable trouble to endeavour to correct the misunderstandings surrounding Wai 491’. One such misunderstanding, he said, was the section of the 1995 deed of agreement that referred to the settlement of the Waimakuku Whanau Trust’s ‘interests’ in Wai 491.³⁵ In other words, it seems that Mr Baker’s reaction to the ostensible settlement of Wai 491 in the 1995 agreement – to which he objected – was simply to file a new claim in its place. As we say, we believe that this claim was actually Wai 638, not Wai 639.

In directing that the Wai 639 claim be registered on 12 December 1996, the deputy chairperson of the Tribunal, Deputy Chief Judge Norman Smith, noted that ‘some disagreement’ existed between the Crown and the Waimakuku Whanau Trust over the extent to which the 1995 deed of agreement settled Wai 491. He observed that ‘any dispute regarding the interpretation or application of the deed is a matter for the parties to resolve themselves’. Judge Smith noted that the settlement had not been incorporated into legislation and he thus saw no reason why the claim should not be registered, being satisfied in his mind that the claim fell within the Tribunal’s jurisdiction and that there were no grounds under section 7 of the Treaty of Waitangi Act 1975 to disallow it.³⁶ At the same time, the judge also directed that Wai 638 and Wai 640 be registered, although he did not set out any details of the dispute about the 1995 settlement in making directions on those claims.³⁷ (Similarly, on 19 July 1996 the judge had directed that Wai 601 be registered without mentioning the 1995 settlement.³⁸)

We do not believe that the registration of the claims was, by definition, a vindication of the Baker whanau’s arguments about the scope of the 1995 settlement. We do not think that Judge Smith had the full facts in front of him at the time. Also, it took some time for the Crown to put forward its considered response to the post-settlement Baker claims.³⁹ This, it did at the

35. Claim 1.52, p 3

36. Paper 2.189

37. Papers 2.187, 2.191

38. Paper 2.154

39. The Crown’s first reaction to Wai 601 (and Wai 598, Wai 602, and Wai 608) was to undertake an analysis in order to verify whether the matters raised in the claims were indeed the same, as the claimants alleged, as those the Crown had conceded on in the 1995 settlement and could therefore proceed directly to settlement: paper 2.186.

26 February 1998 judicial conference, which was convened to discuss the arrangements for the forthcoming hearing of, inter alia, Wai 601, Wai 638, Wai 639, and Wai 640 at Te Haroto. In a memorandum tabled at that conference, Crown counsel submitted that the 1995 agreement settled 'all the Treaty claims of the descendants of Thomas Baker concerning the interests in land once held by Rihi Nene. This includes all later developments affecting those interests and their impact upon successors of Rihi Nene.' Crown counsel further invited the Tribunal to use its discretion under section 7(1)(c) of the 1975 Act to decline to hear the new Baker whanau claims. Under that provision, the Tribunal can choose not to inquire into a claim where 'an adequate remedy' exists, and counsel submitted that the 1995 settlement constituted just such a remedy. Counsel also made it clear that the Crown did not intend to 'conduct further negotiations with the Baker whanau'.⁴⁰

Claimant counsel made verbal submissions at this conference. He contended that claims Wai 147 and Wai 491 were filed by the Waimakuku Whanau Trust for the descendants of Thomas Baker and that Wai 639 was filed for the descendants of Pane Te Kanga. He added that Wai 639 was a Tarawera township public works claim but that Wai 491 was brought 'only in respect of Tatarakina 2 Block'. Counsel alleged that an invitation had been given to the Baker whanau at the time of the 1995 settlement to 'lodge further claims in respect to any grievances they may have'. As a result of the submissions of Crown and claimant counsel, The presiding officer, Judge Wilson Isaac, directed that: 'To properly consider the above matters it is incumbent upon the Tribunal to inquire fully into these issues. In doing so, the Tribunal will be in a better position to determine whether or not the claim is well founded.'⁴¹

17.8 LEGAL SUBMISSIONS ON THE 1995 SETTLEMENT

17.8.1 Claimant submissions

The hearing of claims Wai 601, Wai 638, Wai 639, and Wai 640 took place during four days at Te Haroto from 14 to 17 April 1998. On 17 April, claimant counsel advised that the Wai 640 claim would be withdrawn, since he said that the matters it raised were covered by the other claims. The Tribunal was formally advised of this in writing on 23 April 1998.⁴² By way of formal memorandum on 12 May 1998, Judge Isaac noted counsel's request for a withdrawal on the basis that 'a settlement of the grievance has been settled through other means'. He accordingly directed that 'no further inquiry will be held into Wai 640 unless the claimant advises that he wishes it to be revived'.⁴³ No such request was made.

40. Paper 2.263

41. Paper 2.265

42. Paper 2.274

43. Paper 2.275

The claimants' case in Wai 639 was heard on 17 April 1998. Counsel's opening submissions focused solely on the Ministry of Works' acquisition of the lands rather than the 1995 settlement, and therefore need not be traversed here.⁴⁴ Moorsom's evidence was similarly confined to the substance of the claim and did not investigate the circumstances of the 1995 settlement. However, Nigel Baker did make reference to the settlement. He stated that:

The lodging of this claim will be of assistance in helping to clarify the relationship between the claim and Housing Corporation in regard to issues raised by the Housing Minister in the settlement of Wai 147. The Minister was actively seeking funds from the Tarawera 5A block compensation to settle the mortgage owing on the depot property.

The issue was actively contested by the Wai 147 claimants in explaining that the relevance of the settlement was to a separate claimant group within the Baker whanau and that the issues being compensated for, related to acts of legislation.⁴⁵

By the time the Wai 639 closing submissions were heard in November 2000, claimant counsel had chosen to emphasise what he saw as the distinctions between Wai 147 and Wai 639. At that point, he mentioned that the reference in the Wai 639 statement of claim to it 'replacing' Wai 491 was in error (which is something we have tried to make sense of above). He argued that both Wai 147 and Wai 491 were claims made out on the basis of descent from Thomas Baker, but that claims Wai 601, Wai 638, Wai 639, and the withdrawn Wai 640 related to descent from Pane Te Kanga, which made them 'distinct and apart'. He also argued that references in the 1995 agreement to the HCNZ loan being a separate issue from the settlement meant that 'the Deed was not seen by the parties as settling disputes relating to that land'.⁴⁶

17.8.2 Crown submissions

As noted above, Crown counsel confined himself in his closing submissions to the issue of the 1995 settlement and did not address the Ministry of Works' acquisition of the Tarawera township lands. He said that no evidence had been produced to show that claiming through Pane Te Kanga was in any way different from claiming through Thomas Baker. The interests of the two in the Tarawera and Tataraka lands, he submitted, were not distinct. The 1995 settlement, he contended:

made clear that the contemporary commercial dispute between the Housing Corporation of New Zealand and the Waimakuku Whanau Trust over mortgage repayments would not result in any money from the settlement being paid directly to the Housing Corporation in

44. See doc R30

45. Document R32, p 5

46. Document X37, pp 3-5

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17.8.3

satisfaction of the debt. Rather the claimant group were free under the 1995 settlement to apply the settlement redress as they saw fit and the issue of the mortgage remained a matter between the Waimakuku Whanau Trust and the Housing Corporation.

Counsel added that, while ‘the fact of the mortgage dispute has been disclosed to the Tribunal no detailed evidence has been led by the claimants about the content of this dispute and the behaviour of both mortgagor and mortgagee’. He concluded by reiterating that the Crown would enter no further negotiations with the Baker whanau and that it remained open to the Tribunal to decline to inquire further into the claim under section 7 of the Treaty of Waitangi Act 1975. Counsel did offer a note of conciliation, however. He added, ‘This is not to say that members of the Baker whanau claimant group will not participate in or benefit from a settlement of all the claims of the hapu participating in this inquiry.’⁴⁷

17.8.3 Claimant submissions in reply

In his right of reply for Wai 601, claimant counsel stressed his submission that those ‘showing descent from Rihi Nene . . . are different to the persons claiming as beneficiaries in Waimakuku Whanau Trust Board Incorporated’. He explained that Rihi Nene was Thomas Baker’s second wife and that she ‘claimed interest in Tatarakina and Tarawera blocks on a descent basis totally independent of Thomas Baker, claiming ultimately through Pane Te Kawanga [*sic*] who had no connection whatsoever with Thomas Baker’. With respect to Wai 639, counsel argued that:

- ▶ the 1995 settlement involved Tarawera 5A but the Wai 639 claim involved the Tarawera township;
- ▶ the settlement could not cover Wai 639 or Wai 601 because ‘neither of those claims were in existence at the time of the settlement of the Wai 147 claim and the research had not been undertaken or completed and the matters were not known to the parties at the time of settlement’.
- ▶ it was also clear that ‘neither the Tarawera Township claim nor the Tatarakina claim of the Baker whanau relate to descent from Thomas Baker’.⁴⁸

17.9 TRIBUNAL COMMENT

We believe that Wai 639 and, for that matter, Wai 601 have indeed already been settled by the 1995 agreement, for the reasons we set out below. To some extent, however, the whole debate is something of a distraction. Even if Wai 639 and Wai 601 had not been settled, it is clear that

47. Document x52, pp 7–8, including nn 13–14. In regard to Wai 601, Crown counsel submitted that the Crown considered this claim settled by negotiation; p 9.

48. Document v7, pp 34–35

they could not now be settled individually. The Crown's policy is to settle with large natural groupings, and we support this. Claimant counsel in Wai 638 et al even agreed, as we noted in chapter 1, that settlement should be made at the hapu rather than the whanau level. And, besides, Crown counsel made the point that there is no bar to the Baker whanau participating in what the Crown envisages will be an overall settlement. We may well differ with the Crown as to how many 'large natural groupings' exist in this inquiry, but our consistent position is that individual whanau claimants should not be treated separately from the entire class of persons who suffered the particular losses. A possible exception to this rule should be where matters are truly ancillary, and we agree that the Wai 639 claim fits that category. However, as we have detailed in the first part of this chapter, we do not believe that there is much substance to the claim and we also believe that the claim was settled in 1995 anyway.

In support of the latter statement, we make the following comments:

- (a) The key issue is really the claimants' arguments about lines of descent, but we could find nothing to convince us of their arguments. By their own evidence, the successors of Pane Te Kanga and Rihi Nene, on the one hand, and the descendants of Thomas Baker, on the other, are the same people. We make the distinction between 'successors' and 'descendants' because no details of any descent from Pane or Rihi were provided to us. Instead, it seems that Rihi was a first cousin (once removed) of Pane and succeeded to her interests by will.⁴⁹ Then, after Rihi's marriage to Thomas Baker and upon her own death, Thomas and his children inherited her interests. In other words, the Wai 639 claimants obtained their interests in the Tarawera and Tatarakaia lands through two wills rather than by direct descent. Rihi was stepmother to the part-Raukawa, part-Tuhoe children of Thomas Baker and his first wife, Parai Rotohiko. Rihi herself had no children, and the claimants have thus confused matters by making claims of descent from her or from Pane, or from both. Under questioning at Te Haroto from counsel for Wai 299, Nigel Baker admitted that, in strict whakapapa terms, he was not Ngati Hineuru himself.⁵⁰
- (b) Thus, it seems clear enough that the claims of descent along different lines of whakapapa cannot be substantiated. The 1995 deed settled all the claims of the descendants of Thomas Baker, 'however arising', and that would seem to be as far as the matter goes.
- (c) The Crown is partly at fault for the ongoing confusion, however, for allowing such a loosely worded deed of agreement. For example, no geographic area was specified, and the reference to the Waimakuku Whanau Trust's 'interests' in Wai 491 being settled was also odd. The only explanation for this that we can think of is that it was

49. See National Archives document AAFV997/H29 detailing Ngati Hineuru whakapapa for the Tarawera block investigation of title in 1925. No descendants of Pane Te Kanga are depicted on the whakapapa, although its cut-off date is unclear. If she had no issue, it would explain why Rihi succeeded to her interests. This was submitted to us, but it was not placed on the record in order to preserve the confidentiality of the whakapapa contained within it.

50. Cross-examination of Nigel Baker by Maui Solomon, seventh hearing, 15 April 1998, tape 4

believed that there were other claimants in Wai 491 apart from the trust. It also was not made clear in the deed why the HCNZ loan aspect was kept separate. We think it is clearly a case of the claimants having asked the Office of Treaty Settlements that they not be forced to apply their settlement moneys to paying their debts to HCNZ and the Crown having agreed. The claimants now say that this was because it was recognised that they could come back and make further claims about other matters. But this is fundamentally belied by the clause in the deed saying all their claims are settled, 'however arising'.⁵¹

- (d) As can be seen, confusion has existed about the status of Wai 491. The 1995 agreement purported to settle the trust's interests in it. The 1996 Wai 639 statement of claim described it as 'now withdrawn' and was said to replace it. Claimant counsel, in closing submissions in 1999, reiterated that Wai 491 was 'withdrawn' after the 1995 settlement but added that the reference to it being replaced by Wai 639 was incorrect. To avoid any lingering confusion, we can confirm our view that the clear intention of the 1995 agreement was to settle this claim and that any argument about its withdrawal and replacement is beside the point.
- (e) The best construction that can be placed on the history of the Wai 639 claim is that its prosecution resulted from a series of misunderstandings. For example, Mr Baker quoted in his statement of claim a letter from the Office of Treaty Settlements that he said invited him to make claims under the names of other ancestors. The statement of claim refers to the letter as attached, but it was in fact never included. We have now obtained a copy of the letter from the Office of Treaty Settlements and the proper context of the remarks can be assessed. In the letter, the writer advised Mr Baker that:

Our view remains the same as that expressed to you in previous correspondence on this matter. The settlement covers all the descendants of Thomas Baker and settles their Treaty of Waitangi claims comprehensively. Those members of the whanau not connected to Thomas Baker are not affected by this settlement.

To the extent that beneficiaries can whakapapa back to Thomas Baker, their claims are settled. However, where they can whakapapa back to a separate ancestor, there is nothing to prevent them being part of a claimant group originating from these separate ancestral links.⁵²

It seems that Mr Baker took from this that he could change the name of the ancestor from whom he claimed descent and file additional claims, but we do not see how

51. While we are clarifying matters, we might also observe that claimant counsel's statement in his reply that the Tarawera township had nothing to do with descent from Thomas Baker is rather odd, because Thomas senior bought sections T11 and T12 in 1936.

52. Simpson to Baker, 2 August 1996

the context of the letter possibly suggests this.⁵³ We believe that what the Office of Treaty Settlements had in mind was the usual occurrence of claimants having claims in unconnected districts. For example, we can think of a claimant in Gisborne who is also a claimant in Whanganui through her whakapapa connections. We do not believe the reference in the letter was to identical people pursuing additional settlements over neighbouring blocks by claiming descent from ancestors hardly removed from each other in the web of whakapapa. Moreover, as we have seen, it is misleading for the claimants to claim descent from Pane Te Kanga and Rihi Nene because their whanau succeeded to the interests of those people by marriage and will.

- (f) We do not know what legal advice was available to Mr Baker and his fellow signatories to the 1995 settlement as to the effect of that agreement. However, a settlement was reached and a sum of \$375,000 was paid. (Invested wisely, that sum would today have compounded to a significant amount.) Furthermore, the Crown has recently expressed its support for members of the Baker whanau participating and sharing in the eventual settlement with the wider claimant community. In short, and taking a view of matters as a whole, we do not think that the legal advice received at the time or any ambiguity in the settlement deed's wording is a mitigating factor that would allow the Wai 639 claimants to argue that they had not received fair treatment.
- (g) This brings us to the matter of the depot property subject to the HCNZ mortgage. It seems that Mr Baker has not serviced the mortgage in the hope that a settlement of the Tarawera township issue would see him reimbursed for his expense in taking out a mortgage to purchase the property. The Minister of Housing had agitated for the 1995 settlement moneys to be applied to servicing the debt, but as we have seen, the claimants objected, and the Office of Treaty Settlements agreed to the deed being worded in such a way that the claimants could apply the moneys as they wished. Housing officials sought money from the Bakers directly, but in one 1996 letter forwarded to the Tribunal, Mr Baker told HCNZ that the 1995 settlement moneys had been 'frozen by the beneficiaries of wai 147, on the grounds that the crown should settle the MOW property issue with the rightful claimants and not from compensation entitled to other persons'.⁵⁴ In other words, the Bakers refused to pay the mortgage, despite having the money to do so from the 1995 settlement, on the grounds, now well traversed in this section of our report, of separate claims and lines of descent.

53. For example, a note left by a Tribunal staff member in November 1997 reveals the confusion Mr Baker may have been under. At that time, Mr Baker advised that he had formed the Henry Baker Trust to act as the claimant body for Wai 639, since he felt that 'making a claim under a different tipuna and with a different trust should solve the complications with the Wai 147 settlement': Dean Cowie, filenote, 24 November 1997, Waitangi Tribunal file Wai 639/0, vol 1.

54. Baker to general manager, HCNZ, 16 June 1996, Waitangi Tribunal file Wai 639/0, vol 2

- (h) Advice to the Tribunal from HCNZ officials has been that the non-servicing of the mortgage has led to the debt being substantially greater than the value of the property.⁵⁵ HCNZ has refrained from calling in the mortgage until the publication of this report. We acknowledge HCNZ's forbearance in this matter, given the inevitable delays in issuing such a comprehensive report, and we can only say that we would have severed the Wai 639 claim from the rest of the inquiry and dealt with it much earlier if it had been at all practical to do so.
- (i) Another reason that HCNZ did not call in the mortgage was undoubtedly because there was a section 27B memorial on the title to the land. (Under section 27B of the State-Owned Enterprises Act 1986, the Tribunal can order the return to Maori claimants of certain land held by a State enterprise.) HCNZ officials have expressed a concern that, if the mortgage were called in and the property sold on the open market, uncertainties caused by the memorial would make it difficult for them to attract a fair price.⁵⁶ HCNZ would thus undoubtedly like us to direct that the memorial on the former depot property now be lifted. However, such a course would mean the property could not be sought by the wider body of claimants in settlement of the overarching claim. In the circumstances, therefore, it would be inappropriate for us to make such an order at this time.
- (j) Mr Baker himself has continued to make representations to the Tribunal on the matter and has sought an urgent report on Wai 639 so that he and his fellow claimants can maximise their 'economic opportunities'. Mr Baker made this request in a letter he wrote to the Tribunal's director on 25 May 2001, in which he also noted that:

Certain claimant members are confused over recitals contained in a previously settled claim (wai 147) which refers to issues associated with Tarawera 5a Block.

The recitals referred to, state that the agreement is full and final of all issues pursuant to one, Thomas Baker. The problem is that the issues actually settled under the agreement referred to, had nothing to do with Thomas Baker. Reference to Thomas Bakers interests lie within the Tarawera Township claim (wai 639) and are pursuant to Public Works requisitions.⁵⁷

What this shows us is that there is, amongst the Baker whanau, either an ongoing misapprehension about the effect of the settlement they freely signed up to in 1995 or a simple unwillingness to be bound by its terms. The matter is inevitably academic, however, because our assessment is that the claim lacks substance, and we believe that,

55. For example, John Cooper, senior recovery specialist, HCNZ, to registrar, Tribunal, 18 August 1997 (Waitangi Tribunal file Wai 639/0, vol 1)

56. Dean Cowie, filenote of conversation with John Cooper, HCNZ, 12 November 1997, Waitangi Tribunal file Wai 639/0, vol 1

57. Paper 2.412

even if the claimants were able to secure a further settlement of the Wai 639 claim, it would not be of the order needed for them to pay off their mortgage.

- (k) We are also mindful that the land was not Maori land, having become Crown land in the Mohaka–Waikare confiscation of 1867. We repeat that the Ministry of Works depot land subject to the HCNZ mortgage lies to the east of the Napier to Taupo highway and comprises all the Crown's acquisitions on that side. The sections owned by members of the Baker whanau and acquired by the Crown in 1975 were all general land on the other side of the road (map 57).

17.10 FINDINGS

In light of our conclusion that the Wai 639 claim has already been settled, we accordingly have no findings to make on breaches of the Treaty.

CHAPTER 18

ENVIRONMENTAL ISSUES

18.1 INTRODUCTION

In this chapter, we first look generally at the effects of the modification of the local landscape, flora, and fauna arising from the colonists' farming and acclimatisation practices before discussing the consequences of these effects for Maori. In addressing these matters, we are responding to some claims before us, but we do not take our analysis or findings too far, since these same issues are before the Tribunal in much greater depth in the Wai 262 indigenous flora and fauna claim (in which Ngati Kahungunu are amongst the claimants). This chapter should thus serve as a preliminary consideration, undertaken within the context of this district inquiry.

18.2 ENVIRONMENTAL MODIFICATION AND CONTROL

18.2.1 Erosion and sedimentation

Erosion is a natural process that can modify a landscape without human intervention. In Hawke's Bay, the primeval landscape had already suffered considerable damage before the coming of human settlement, caused by natural erosion owing to adverse weather conditions such as prolonged droughts and periodic storms. These two typical weather patterns affect the Hawke's Bay climate and, in particular, the pattern of rainfall. The more usual pattern is a prevailing series of anticyclones (high-pressure systems) and depressions (low-pressure systems) coming in procession across the Tasman Sea from the west. The rain-bearing fronts of low-pressure systems usually dump most of their moisture in the ranges before reaching Hawke's Bay, and rainfall on the coast is thus lower. The north-west to westerly winds are frequently dry and warm, and summer drought is common in the coastal areas. Most of the rainfall comes in winter, often in the form of storms from the north-east or the south. The cumulative effect of accelerated soil erosion and sedimentation causes dramatic changes in the flow regimes and physical characteristics of Hawke's Bay rivers in their lower courses.

Prolonged drought and lightning strikes could start fires in native forests, though Maori fires also contributed to the destruction. By 1840, the original forest had been reduced to fern and scrub, with small scattered patches of bush on a coastal strip, approximately 10

kilometres wide, in the Mohaka Valley from Te Hoe to the Ripia River, and on the tops of ridges. The rest of the interior was covered by a mix of softwood and podocarp-hardwood forest, with beech predominating in the high country.¹ It was this scrub and fern country, along with the adjacent bush, that was systematically destroyed by the pioneer pastoralists in a combination of uncontrolled and repeated burning and heavy grazing, even on the steepest of hills. The unprotected soils beneath were easily dislodged, particularly at times of heavy rainfall. Herbert Guthrie-Smith provided a graphic description of how heavy rains accelerated soil erosion at Tutira:

During heavy rainfalls on Eastern Tutira the numerous oozes, leakages and damp, consequent on alternate bands of marl and limestone, become surcharged with water. The super-saturated subsoils burst with their weight of wet, chasms of many feet in depth are created, the hillsides spew forth mud; under runners become gulches, or, choked with debris, spill on the hillsides their streams of silt, torn turf, and curious rough-rolled balls of clay.

Eastern Tutira, indeed, after a violent 'buster', appears to have been weeping mud. From the edges of all ancient slips the water-sodden fringes drip with clay; new red-raw wounds smear the green slopes, scalp-shaped patches detach themselves, slipping downward in slush and turf. Sometimes a whole hillside will wrinkle and slide like snow melting off a roof, its huge corrugations smothering and smashing the wretched sheep, half or wholly burying them in every posture. Sometimes a slip rushing down a steep incline will temporarily block the creek below, piling itself up until again washed away, and leaving on the opposite slope, yards above the stream, a curious plaster mark of dirt. Gluey streams, hardly moving faster than glaciers, from whose tenacious mud bogged sheep have to be extricated hoof by hoof, make the hillsides a terror to shepherds. After a 'southerly buster' or a 'black nor'easter' of three or four days' uninterrupted torrential rain, I have counted on a two-mile stretch of hillside over two hundred slips great and small, new or newly scoured out. Seven or eight times since [1882] the grasses and sedges of the valleys around the lake [Tutira] have been overlaid by mud varying in depth from six inches to a couple or three feet. Huge masses of solid hill have slid on to the larger flats. Fencing is buried, roads and bridges washed away, culverts destroyed, stock bogged or caught and buried in the displaced masses of earth.²

In figure 35, we reproduce Guthrie-Smith's graphic illustration of the effects of erosion on hills denuded of forest and deposition in the lower reaches of the Arapaoanui River.

The geographers Cumberland and Fox explained the situation in more general terms:

The . . . jumbled hill country east of the ranges is carved from weak rocks, including soft yellow sandstones, thick beds of greasy blue papa, dark grey mudstones, occasional crumbly limestones, and harder layers of shell rock. They have been deeply, but irregularly, cut by

1. Document M12, p 5

2. Herbert Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th ed (Wellington: AH and AW Reed, 1969), pp 36-37

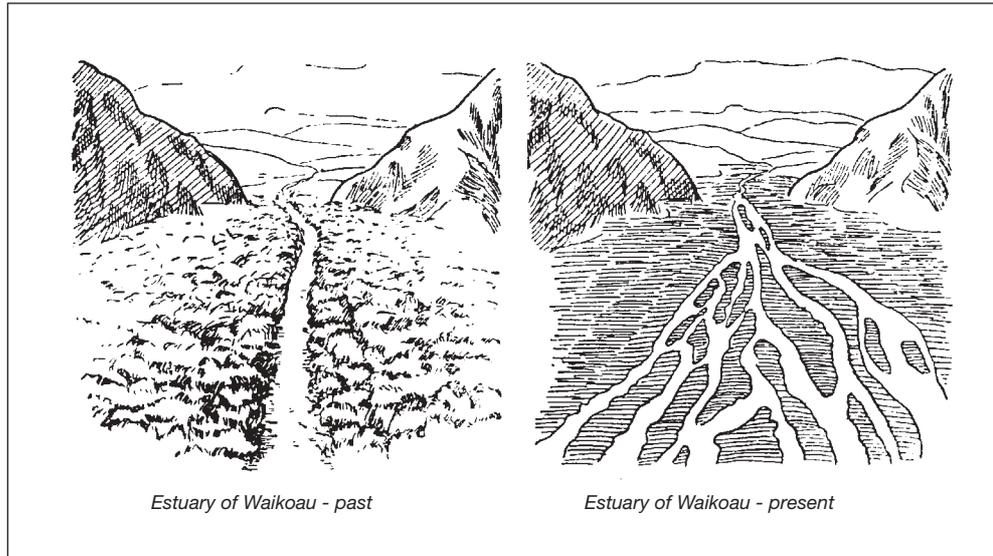


Fig 35: Landscape change at Arapaoanui. Source: Herbert Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th ed (Wellington: AH and AW Reed, 1969), p 198.

a loose network of streams into steep-sided hill country where, although elevation is not great, slopes are sharp and the surface deeply corrugated. Here are the big sheep stations; and here heavy rains, deforestation, earthquakes, and the slippery unconsolidated mudstones combine to produce New Zealand's most serious soil-erosion problems.³

They went on to explain that, although the region had the lowest average rainfall in the North Island, it was prone to random cyclonic storms tracking in from the north and north-east, which often originated as tropical cyclones. These produced high-intensity rainfall, large amounts of run-off and consequent flooding. One example was the 'Anzac Day Storm' of April 1938, when 39.4 inches (1003mm) of rain were measured over three days.⁴ Cumberland described the effects of sedimentation in the Esk Valley near Tangoio a year or two after the Anzac Day storm and floods:

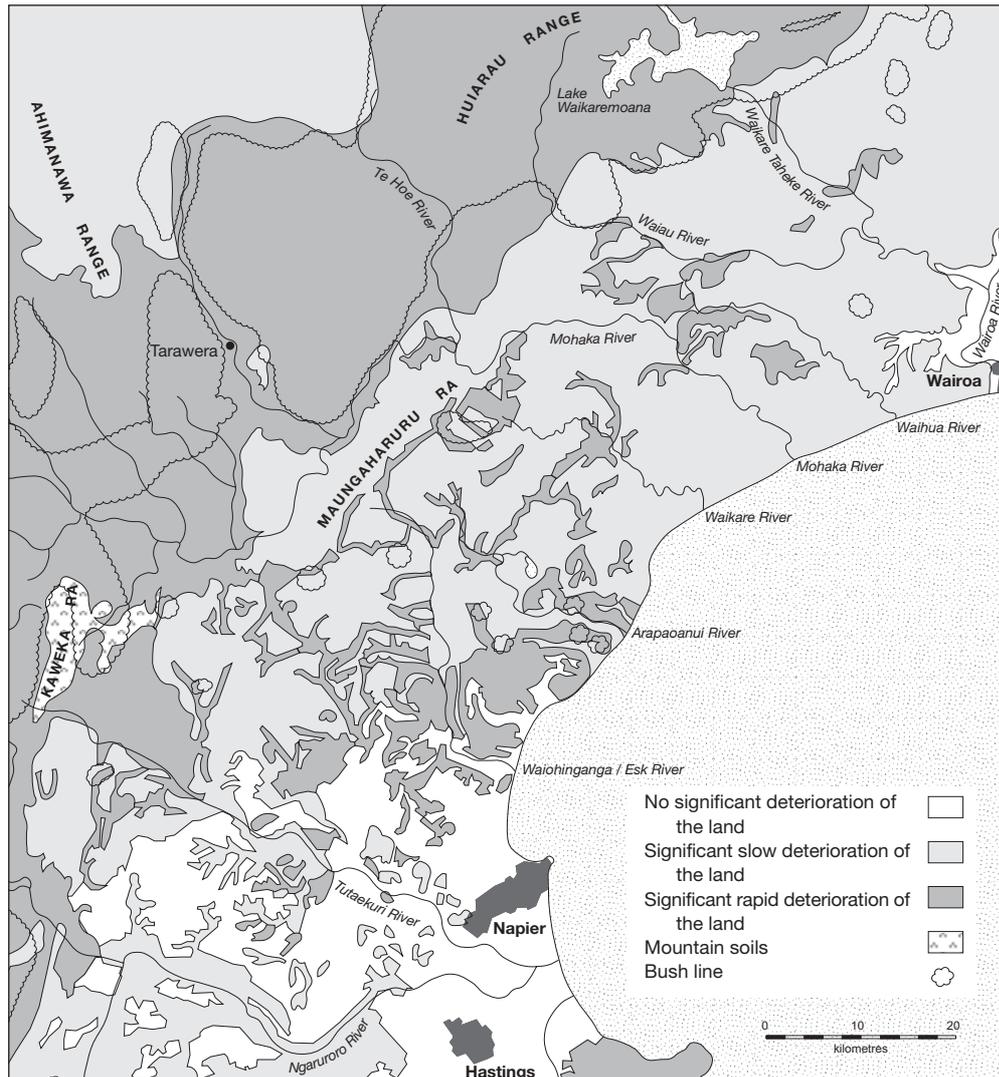
The lower Te Ngaru valley flat is still occupied by a spread of silt and rock with tree stumps, telegraph poles and willow trees all buried deeply in debris. The present road is newly constructed above its former site. There are abandoned houses and the landscape is generally one of decrepitude. The Tangoio School is a new structure out on the silted flat. For neighbours, it has two or three erect, lone, derelict chimney stacks – remnants of former habitations washed away or silted out – and a few Maori hovels with maize and potato patches on the new brought 'soil'. The placid wizened Esk is now crossed by a temporary

3. Kenneth Cumberland and James Fox, *New Zealand: A Regional View* (Christchurch: Whitcombe and Tombs, 1964), p 140

4. Ministry of Works, Town and Country Planning Division, *National Resources Survey Part VI: Hawke's Bay Region* (Wellington: Government Printer, 1971), p 15

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18.2.1



Map 58: Soil erosion in Hawke's Bay.

Source: LI Grange and HS Gibbs, *Soil Erosion in New Zealand, Part 1*, DSIR Soil Bureau Bulletin 1, 1946.

bridge while a new structure is being erected. Along the Esk valley road, silt is feet high along its margins and logs are cluttered around stout, old, partly silted willows. Blue gums look disproportionately short and stumpy. Side roads are of silt – loose, yellow-white and wavy. All fences are new; old fences are buried with the old road and are only infrequently to be seen. A petrol pump is now buried deep with a flower garden laid out around the glass bowl on top of it. In the lower Esk valley, 1,750 acres were in 1938 silted up to an average of at least three feet six inches and a depth of six to ten feet has been found over wide areas.⁵

5. Kenneth Cumberland, *Soil Erosion in New Zealand*, 2nd ed (Christchurch: Whitcombe and Tombs, 1947), pp 57–58

The scars caused by that deluge were still visible when Cumberland and Fox were writing 20 years later. More recently, Cyclone Bola had a similar devastating effect in 1988, and the scars are still evident today.

18.2.2 Acclimatisation

The pioneering phase of pastoralism saw vast tracts of land, including existing patches of native grasses and surrounding fern, manuka, and low bush, burnt off, though much of the rugged hill country of the interior remained in heavy bush. After the burn-off, the farmers or runholders sowed imported grass seed to create new pasture in the ash and hard-grazed their sheep and cattle to control regenerating fern and manuka. They did little to improve the pastures permanently by cultivating crops or to enclose the runs by fencing them. We set out below a description of this by Cumberland and Fox, based on Guthrie-Smith's *Tutira*:

Tutira was first leased in 1873. It was then a huge stretch of ridge and valley, of steep country, sheltered depressions, and sandstone gorges – a vast expanse of bracken and tutu. . . . In 1873 a flock of four thousand Merino wethers was turned loose into the waste of tall fern, and from that dates the initial, but still continuing, struggle to replace the natural vegetation with a sward of grasses suitable for sheep. The original cover had to be 'stamped, jammed, hauled, murdered into grass' until, about the turn of the century, Tutira was capable of carrying a flock of more than 21,000 sheep. Grassing was achieved only after many years, and despite many pitfalls and great disappointments. The principal tool of the runholder was the process known as 'fern-crushing'. This involved firing the tall matted growth of fern and turning hungry Merino wethers on to the blackened surface as soon as fresh green fronds of fern appeared. Occasionally grass seed was broadcast. In most cases the fern took possession again in three to seven years. But its accumulated bulk diminished and each successive 'crop' was less capable of producing the 'ranging, roaring conflagrations of early days'. The process of burning and of subsequent crushing by emaciated flocks was repeated many times before the sovereignty of the fern was broken. Fern-crushing was a method of subjugating the natural cover of vegetation by brute force and at the cost of much effort and suffering on the part of the station holder, the stock, and the land itself.⁶

But times changed, and by the time Guthrie-Smith published *Tutira* in 1921, the pioneering phase of slash and burn was coming to an end.⁷

However, the devastation that has resulted from the pastoralists' slash and burn was not their only contribution to the destruction of the natural environment. An equally serious

6. Cumberland and Fox, pp 143–144

7. We might add that, while Guthrie-Smith regretted the destruction and its effects, he also – like other pastoralists – enjoyed it, and even regretted that he could not repeat the experience. As he wrote, 'alas! that the run cannot once more be broken in; alas! indeed, that the past years cannot be relived; a fire on a dry day in a dry season was worth a ride of a thousand miles': Guthrie-Smith, *Tutira*, p 231.



Fig 36: An impression of devastation caused by erosion in Hawke's Bay – the Devil's Elbow on the Napier to Gisborne highway, 1939 (see also fig 15). Ink on paper by Alexander McLintock. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (c-053-012).

problem was caused by their 'acclimatisation' of exotic animals and plants, as it was quaintly called. Of course, the first Polynesian settlers in New Zealand were also avid acclimatisers, bringing with them kumara, yams, gourds, and taro, which survived New Zealand conditions, and other exotic fruits and vegetables that did not. They also brought the kiore and the kuri.⁸ Likewise, the Pakeha colonists of Hawke's Bay and elsewhere in New Zealand were determined to establish familiar flora and fauna from 'home'. A good example is Colonel George Whitmore, the victor of Omarunui, who unleashed an assault of another kind in 1861 when he released what were to become some of Hawke's Bay's most notorious pests and noxious weeds: rabbits, blackberry, and gorse.⁹ In 1868, an acclimatisation society was formed in Hawke's Bay. At the time, the acclimatisation movement was receiving official backing from the Crown: Governors Grey and Bowen and Premiers Weld and Stafford expressed their support and a series of provincial and central government animal protection Acts were passed. The Protection of Animals Act 1867, for example, gave statutory protection, not to indigenous species but to exotic European game species that had been or might be introduced.¹⁰ Many of the introduced species proliferated wildly in the pristine conditions and better climate of the new colony. Of course, it could be said that many of the new species were

8. Margaret Orbell, *The Natural World of the Maori* (Auckland: William Collins Publishers, 1985), pp 115–116

9. Miriam Macgregor, *Early Stations of Hawkes Bay* (Wellington: AH and AW Reed, 1970), p 192

10. Ross Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington: Bridget Williams Books and Department of Internal Affairs, 1993), p 2



beneficial and, if the colony were to progress as an agricultural economy, necessary. Examples of beneficial species were the English grasses that either gradually replaced or complemented native grasses. But it was neither necessary nor desirable to introduce blackberry or gorse. Blackberry in particular became an almost ineradicable curse over much of the burnt-off hill country, and before long Maori landowners were being penalised for failing to control it on their land. The plant was especially damaging on coastal blocks where the scrub and fern cover had been burnt off, such as Tangoio and Arapaoanui: according to environmental consultant Edryd Breese, the presence of blackberry on the latter block was to ‘contribute to the downfall of both Maori and Pakeha farmers’.¹¹

The settler acclimatisation societies did not even confine themselves to the mother country when looking for places from which to import species, and recklessly imported whatever took their fancy. In addition to rabbits, they brought in several varieties of deer, the aggressive mynah from India, and the possum from Australia. When the rabbit multiplied at a stunning rate, the settlers brought in ferrets, stoats, and weasels to ‘control’ them. But these creatures were not content to feed off the young rabbits and tackled delicate native birds as well. The ‘acclimatisation’ of exotic pests added to the destruction of the native fauna and flora that was already being caused by the settlers’ fires and stock.

11. Document M12, pp 28, 34

18.2.3 Environmental controls

As we have noted, the pioneer colonists of Hawke's Bay wanted to remodel their new landscape by converting bush, fern, and scrub into lush pastures, populating those pastures with sheep and cattle, and decorating them with imported flora and fauna. They sought to tame the rivers and to drain the swamps. But, as we have emphasised, many of their practices exacerbated rather than solved the problems of 'nature'.

The periodic flooding of the rivers running through lowland Hawke's Bay was a situation that had concerned European settlers ever since Colenso was washed out of his mission station at Waitangi in 1847 by the Tutaekuri River (see ch3). By 1867, following more floods, local settlers were exploring ways to control the flow of the Tutaekuri River and, in particular, to raise funds for river works. In another flood reported by the *Hawke's Bay Herald* on 13 February 1869, all the rivers were running high when the Tutaekuri broke through near Waitanoa and flowed into the Ngaruroro. In this flood, the principal losers were 'the natives at Pakowhai and Pakipaki, who lost large quantities of wheat and other crops'. For Pakeha settlers, the main impact was 'the feeling of insecurity created by these floods, which prevents the advantageous occupation of 5000 acres of rich alluvial lands near Napier'. An editorial in the *Hawke's Bay Herald* commented:

It may well be doubted, in the light of modern experience whether the Ahuriri and Meanee [*sic*] plains have not, after all [is] said and done in regard to their acquisition, been occupied for the purposes of civilisation a century too soon. For ages the formation of those flats has been going on by slow but sure degrees. Every successive overflow of adjacent rivers, the Tutaekuri in particular, has left a layer of deposit, more or less rich in quality. By this process the land prior to its beneficial occupation [ie, by Pakeha settlers] was being gradually raised. . . .

But whether these lands have been occupied prematurely or not, is really of very little consequence. They are occupied; their occupants are menaced with a serious danger; and the important question forces itself on public attention – How is that danger to be averted? By what means can confidence be again inspired, and those rich alluvial flats become in reality smiling fields?¹²

This passage illustrates an essential difference between Maori and Pakeha attitudes to their physical environment in colonial New Zealand. Maori had learned to live with, and belonged to, their home territories, knew and understood their resources, and coped with natural events such as floods when they occurred. By contrast, Pakeha settlers were determined to control the rivers and talked of cutting new channels for the Tutaekuri, constructing stopbanks, and transforming the land into productive use. By 1874, the first stage in this process saw the completion of a stopbank on the north side of the Tutaekuri from Otatara to where it

12. *Hawke's Bay Herald*, 13 February 1869 (doc x57, p3428)



Fig 37: Bridge over the Mohaka River on the Napier to Wairoa road being inundated by floodwaters prior to being washed away in the 1938 flood. Photographer unknown. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (F-68554-½).

formerly turned north into Te Whanganui-a-Orotu at an area called Powdrell's Bend by the settlers (see ch15).

These early floods were largely a consequence of the age-long process of natural erosion, enhanced by periodic storms. But, by the end of the century, the pastoral farming practices that we have detailed were beginning to exacerbate the natural erosion, and some of the more prescient of the settlers were starting to notice what was happening, as we see from a paper published in 1898 by Henry Hill. In 'On the Hawke's Bay Plain: Past and Present', Hill reviewed the 1893 and 1897 floods. In the 1897 flood, the waters of three rivers had broken through the shingle bank at a point just north of Awapuni. The Maori way to deal with such floods, as recounted by Colenso, was to cut a passage through the shingle bank. Hill noted that in the 1840s 'the plain as now known was really not occupied by the natives. Their settlements were mostly along the sea-beach.' In other words, Maori avoided low-lying potential flood channels, although such areas were regularly visited for eels and birds, and for raupo and flax. Hill also noted that the Waitangi Creek 'differed widely from what it now is. At high water canoes and small boats could be taken through it, but at low water the place where the old traffic bridge [Meeanee Bridge] stood before the recent flood could be crossed without wetting one's boot tops.'¹³

13. Henry Hill, 'On the Hawke's Bay Plain: Past and Present', *Transactions and Proceedings of the New Zealand Institute*, vol 30, June 1898, pp 521–522

However, by the end of the nineteenth century, not only were there changes in river channels but flooding was more severe, because the loss of vegetation cover in river catchment areas contributed to greater rates of run-off, as Hill pointed out:

The diminution of forest lands, clearing, burning, and grassing of fern lands, and the drainage of swamps have increased the tendency to quicker movement of the surface waters, and every act of the settler as he moves further and further back towards the watershed of the country operates in a like manner . . . There are places where the land has been raised 3 ft and even 4 ft and hundreds of acres have been covered with silt to a depth of 18 in or more . . . The rapid diminution in the slope of the river-bed between Omahu and Pakowhai and between Redcliffe and Meeanee causes a sudden accumulation of water in the low-lying areas, and the waters are so heavily laden with sediment that deposition begins at once.¹⁴

Hill also suggested a solution, assuming that the storm pattern in Hawke's Bay was such that short-term, high-intensity rainfall would continue. He wrote that the floods would get worse if the denudation of vegetation in the river catchment areas continued, unless:

the settlers themselves replace in certain areas what has been in too many cases wantonly destroyed. I refer to the destruction of scrub and small bush area. Planting along the banks of rivers and streams is becoming a necessity, and were this carried out in the upper parts of the river basins in Hawke's Bay it would be one sure and economical way of retarding the flow of water into the river at times of excessive rainfall.¹⁵

Hill's advice was not heeded, and over the ensuing decades, the flooding and erosion of the hill country continued. Indeed, it was not until the 1930s and the natural disasters of that decade – first, the 1931 Napier earthquake and then the 1938 floods – that the Hawke's Bay public became aware of the relentless effects of erosion. These events coincided with a wider realisation abroad of the dangers of human-induced erosion, most notably in the United States, where President Theodore Roosevelt initiated projects to combat the effects of dust-bowl erosion. Then, in New Zealand after the Second World War, a young English geographer, Kenneth Cumberland, impressed by the recent devastation of the 1938 flood, began to publicise the widespread effects of erosion with the publication in 1947 of *Soil Erosion in New Zealand: A Geographic Reconnaissance*.

By 1941, there had been some official recognition of the problems in the country, and the Soil Conservation and Rivers Control Act of that year was passed in an attempt to deal with them. The Act set up a structure of catchment boards and the Soil Conservation and Rivers Control Council. In the mid-1940s, in the absence of the sort of detailed information that was needed for developing policy, the Soil Bureau of the Department of Scientific and Industrial Research undertook a comprehensive national survey of the types of soil erosion in relation

14. Hill, p 524

15. Ibid, p 527

to vegetation and land use.¹⁶ Map 58 is derived from this survey and gives a generalised picture of the potential for soil erosion in central Hawke's Bay. On the lowlands, the risk was not so much erosion but the deposition of flood debris and related damage caused by uncontrolled run-off in the hill country catchment areas of rivers. Over a large part of the region, a significant risk of rapid deterioration of land quality was identified, and 'urgent action' was required: 'to continue farming without remedial measures will in the long run ruin a good deal more of the country and at the same time cause serious damage to the low country'.¹⁷ On the remaining area, there was a continuing risk of deterioration, and this also required careful management if existing levels of sheep and cattle were to be maintained in the Hawke's Bay hill country.

In the late 1880s and 1890s, some attempts to arrest the destruction of native bush were made, largely through the efforts of urban scenery preservation societies and by setting aside national parks, following an American model. But, according to Galbreath, 'the colonist's imperative to clear the land and acclimatise the things of the old homeland had not lost its force'. In 1913, a royal commission enunciated the 'broad principle' that 'no forest land. . . which is suitable for farm land, shall be permitted to remain under forest'.¹⁸ That 'principle' was as strong in rural Hawke's Bay as it was elsewhere in the farming regions of the North Island.

It was not until most of the native bush had been destroyed that it became evident that forest cover would need to be reinstated over much of the hill country, albeit using exotic species. We discuss these plantings in chapter 19, noting there that they were late to come to Hawke's Bay. Indeed, it was not until the 1950s when the New Zealand Forest Service attempted to combat the serious erosion problems by planting exotic tree species on Crown land in the Waiohinga (Esk) River catchment area and in the Mohaka district. A number of private landholders also planted exotic trees (mainly pines but also some eucalypts) in areas where the erosion was worst. With the ending of the logging of indigenous forests in the 1970s, the remnant bush on both Crown and Maori blocks in the ranges has been managed as protection forest. The devastating effects of Cyclone Bola in 1988 accelerated tree planting on eroded hills, and this has formed a modern patchwork landscape of pasture and pine forest. But it would be tempting fate too much to assume that the likes of Bola and its effects will not be seen again.

If we shift our focus from erosion to acclimatisation, we find a similar delay in recognising the dangers of letting loose exotic species of flora and fauna. Although there was a growing

16. LI Grange and HS Gibbs, *Soil Erosion in New Zealand: Part 1 – Southern Half of the North Island* (Wellington: Department of Scientific and Industrial Research, 1946)

17. *Ibid*, p 28

18. 'Report of the Royal Commission on Forestry', AJHR, 1913, C-12, p xx (quoted by Galbreath, p 5). Similarly, William Pember Reeves told Parliament in 1893 that, with respect to the Forty Mile Bush, 'the destruction of the forest was unhappily a matter of necessity. There the country was suitable for settlement and the bush must go' (quoted in Paul Hamer, 'Nature and Natives: Transforming and Saving the Indigenous in New Zealand', MA thesis, Victoria University of Wellington, 1992, p 112).

recognition of the need to preserve native species, especially birds, from about 1890, with several species of birds and the tuatara lizard being given protection under the Animals Protection Acts of 1880 and 1907, there was no concerted conservation movement until the First World War. The dangers caused by the acclimatisation of exotic species were recognised only when particular varieties got out of hand. The rabbit menace was identified as early as the 1880s, but it was not until the 1920s that protection was removed from possums and deer and control measures were introduced.¹⁹

We conclude this section of our report by asking whether there have been any significant improvements in the control of erosion and pests since the passing of the Soil Conservation and Rivers Control Act in 1941 and the Wildlife Act in 1953. Breese's evidence on environmental impacts noted that, despite considerable work to control rivers, stabilise the hill country through reforestation, and apply fertiliser by aerial topdressing (though this in turn was largely responsible for the eutrophication of lakes and rivers), nature has continued to take its revenge – as demonstrated by Cyclone Bola.²⁰

Another claimant research report, one prepared for the Mohaka River inquiry, criticised the Crown for being slow to act to arrest erosion. Researcher George Thomson wrote that, as early as 1906, Government geologists were 'warning that unabated clearfelling of some catchments on the East Coast would result in major erosion'. He quoted two geologists, Henderson and Ongley, as issuing another warning that the downstream effects of deforestation would be: 'Greatly increased sheetwashing of the soils; great increase in the number of slips, slumps and rain gullies; aggradation of the stream bed; wandering of the streams over valley bottoms; burying of culverts and bridges; and more severe and frequent flooding.'²¹

The geologists recommended that remaining areas of native bush in headwater valleys should be protected and that reforestation should occur. However, as Thomson pointed out, large areas of bush and scrub were still being cleared in the Mohaka and Waiau catchment areas, either by the Crown or with Government permission, as late as 1985, and reforestation did not start until the 1950s.²²

We should add that the dangerous consequences throughout the country of unchecked and rapid bush clearance were known, if not widely accepted, much earlier. In 1874, the Prime Minister, Julius Vogel, introduced the New Zealand Forests Bill to Parliament. Its preamble explained that the Bill was 'to make provision for preserving the soil and climate by tree planting, for providing timber for future industrial purposes, [and] for subjecting some of the native forests to skilled management and proper control'. However, the Bill's opponents

19. Galbreath, pp 17,40

20. Document M12, p 8. 'Eutrophication' is a term we use several times in this chapter. It means the enrichment of a waterway by nutrients, leading to a dense plant population, the decomposition of which kills animal life through depriving it of oxygen.

21. Document A29, pp 111–112

22. Ibid, p 112

outnumbered its supporters in Parliament, and it passed only in modified form.²³ The prevailing opinion over the Bill was probably that found in the *Southland News*, which wrote that 'in this colony the object is to put cornfields in the place of forests as fast as possible'.²⁴

Like Thomson, Breese also argued that the Crown was slow to act to arrest erosion. Though aware of the problem as early as 1900, and periodically reminded of it by major floods in 1924 and 1938, it was not until 1941 that Parliament passed the aforementioned Soil Conservation and Rivers Control Act, and not until 1951 that work was undertaken to control the Esk River catchment area. But, even after this, Breese argued, the Crown encouraged land use policies that were 'unsustainable both economically and environmentally'. These policies included providing fertiliser subsidies and marginal lands funding land development loans and setting supplementary minimum prices. Such actions encouraged more intensive farming, even on marginal land, and that in turn promoted further erosion, the sedimentation and eutrophication of Lake Tutira and other water courses, and the further loss of indigenous forest. The disastrous effects of Cyclone Bola in the district in 1988 were but one consequence of decades of inappropriate land use.

As well as neglecting to protect the land, the Crown also failed to safeguard coastal waters and reefs, which were damaged by sediments. It also failed to comprehensively protect indigenous fauna until the passing of the Wildlife Act 1953, although, according to Breese, there have since been considerable efforts put into pest control, and rabbits, goats, deer, and possums are not as significant a menace as they were earlier.²⁵

We move now to consider what Maori may have contributed to the degradation of the environment during the period of colonisation, and how they may in turn have been affected by it.

18.3 MAORI AND THE COLONIAL ENVIRONMENT

As with the economy, so too with the environment: Maori quickly adapted to and took advantage of new methods of farming and newly introduced plants and animals. Like the European colonists, they were probably unaware for some time of the accompanying environmental dangers. Certainly, Maori became enthusiastic hunters of pigs and deer, which provided a welcome addition to their food supply. Maori contributed less to erosion through slash and burn simply because they retained so little land on which to practise it. Their lack of capital to develop land was a reason why there was some regeneration of fern, manuka, and bush on

23. Graeme Wynn, 'Conservation and Society in Late Nineteenth-Century New Zealand', *NZJH*, vol 11, no 2, October 1977, p 126

24. *Southland News*, 13 August 1874 (quoted in Hamer, p 73)

25. Document M12, pp 34, 36-43

former runs that reverted to them – for instance, those on Tarawera and Tatarakaia. That, of course, was no bad thing so far as soil erosion was concerned. And, when those two blocks were finally developed in the 1970s, that development combined farming and forestry in a more environmentally conscious manner.

If Maori did not make a great contribution to erosion and environmental degradation, they certainly suffered more than their share of distress as a result of it. Some Maori land, such as the Tangoio and Mohaka blocks, was adversely affected by blackberry infestation, and the regulations imposed in the interests of weed control further increased their difficulties in farming the land.²⁶ If the remnants of the hill country that they retained suffered erosion, especially during heavy rains, so also did their lowland kainga and cultivations. Tangoio was periodically devastated by floods, most notably in 1938, as we have already noted. Obviously, there were storms and floods before the Europeans came, but it is doubtful if any were as devastating as those that were aggravated by settler-induced erosion. After all, when Maori had fewer fixed habitations in the early nineteenth century, they could simply move away from flood-inundated land, as we noted above.

But, so far as Maori were concerned, it was not simply a matter of being similarly affected as European colonists. The invasion of Hawke's Bay by Pakeha people and exotic plants and animals was in many ways at the expense of Maori people and indigenous flora and fauna. Our colonial literature is replete with Darwinian prognostications, usually in the form of Maori 'proverbs', that, with the coming of European plants and animals, the indigenous species – indeed, even Maori themselves – would be exterminated. This belief was usually summed up by the often quoted 'proverb' that 'just as the European rat exterminated the Maori rat, so would the European exterminate the Maori'. We shall postpone to the next chapter the question of the predicted extermination of the Maori, but we can note here that the Maori rat was exterminated, at least on the mainland, as was the Maori dog. A considerable number of other species were also exterminated during the colonial period, just as other species had been exterminated by Maori before the coming of the Europeans. For this reason, there is not much point in blaming one side or the other, though we note that some introduced pests, such as possums, stoats, and weasels, played a hitherto unexpected part in the extermination or severe reduction of native birds. The introduction of trout has severely reduced a number of species of indigenous fish, though Maori have become trout fishermen as well as pig and deer hunters. But we do not need to examine these issues in detail since they are not the subject of claims before us and they will, as we noted, be fully investigated in the Wai 262 inquiry.

26. Document M12, p 34

18.3.1 Maori food and medical resources

Before the advent of the timber mills, the available employment – mainly shearing – was seasonal in nature, and people had somehow to make ends meet throughout the winter months. Rangiaho Te Hata, who lived in the Te Haroto community, explained: ‘When the shearing season finished our people were paid, they all went to firms like Williams and Kettle to stock up for the winter. They bought flour, sugar, butter, all the basic stuff. That had to last us through the winter.’²⁷ After buying bulk supplies, Selina Sullivan explained, ‘then you got to go and look for your meat and other stuff off the land. The land provided.’²⁸

Wiari Anaru and Aperahama Sullivan of Ngati Tu enjoyed hunting pigs and deer, which they were able to do all year round. As well as hunting for themselves, they would hunt specifically for certain occasions, such as a hui or a tangi.²⁹ Te Hata Kani i shot ducks, pheasants, rabbits, and hares at Arapaoanui.³⁰ In their youth, many of the claimants recalled their tipuna setting waka (small water troughs with snares fixed over them) to catch kereru. Mere Kingi Ratima recalled eating not just kereru but also pheasant, tui, and pukeko.³¹ Bevan Taylor told us that many of the whanau at Tangoio kept fruit trees and that, when the fruit and wild blackberries were ripe, everyone would preserve fruit and make jam.³² Kuia Gray said that they also ate karaka berries, which, although poisonous, were just like peanuts once they had been boiled for hours, washed, and dried.³³

As well as providing kai, the bush was also a valuable source of medicine, or rongoa. Mrs Ratima and Heitia Hiha identified and explained the use of a range of medicinal plants, such as kawakawa leaves, kowhai bark, flax, dock leaf and roots, kopakopa leaves, koromiko, tutu, korau, karamu, and even cobwebs. Generally, these rongoa would either be boiled down and taken or used for bathing or applied in a variety of ways – from healing sprains and fractures, clearing away a mother’s afterbirth, cleaning and healing wounds, and stemming the bleeding of bad cuts to treating aches and pains, diarrhoea, and constipation. Rongoa was held in appropriate reverence, and Mrs Ratima told us that it was ‘important to bless it before the patient uses it’.³⁴

With regard to the sea’s resources, we heard that all manner of kaimoana were plentiful right along the coast from Tangoio north, with certain reefs being excellent for one species or another. Mr Taylor told us that the kaimoana collected were kina, paua, kuku (mussels), and koura (crayfish). ‘It was not uncommon’, he said, ‘to have seen whanau groups from the local hapu and as far away as Ngati Pahauwera, Heretaunga and further afield, gathering kuku

27. Document M16, p 3

28. Document M18, pp 1–2

29. Document J43, p 2; doc J45

30. Document J40, p 3

31. Document J39, p 1

32. Document J48, p 3

33. Document J41, p 6

34. Document J39, pp 2–3

from the rocks at the mouth of Te Ngarue.³⁵ This was reiterated by Rere Puna, who stated that, when the season was right at Arapaoanui, ‘people came from all over to Ngati Tu to fish and collect kaimoana’.³⁶ And Guthrie-Smith’s informant Te Hata Kani described the coastal waters from the Waikare River mouth to Cape Kidnappers as his ‘fishing paddock, handed down to him from his ancestors’.³⁷

Eels were another extremely important food source. As we noted in chapter 9, Lake Tutira was teeming with them. According to Mr Puna, who would either go round the lake in a boat with a mataurau, or multi-pronged spear, or would use a hinaki at the lake’s outlet, Tutira had ‘the best eels in New Zealand’.³⁸ Mr Taylor told us that the old people called Lake Tutira ‘ko te waiu o tatou tipuna’, or ‘the milk of our tipuna’.

18.3.2 Impact on Maori of environmental changes

Maori have often complained about trout diminishing the number of native species and interfering with their eel fisheries, but the draining of swamps and the eutrophication of rivers and lakes has also had this effect. A notable example was the destruction of the Maori eel fishery in Lake Tutira. In the 1890s, the draining of the swamp was begun, and this led to changes to the lake and its food resource of eels and kakahi. Guthrie-Smith explained as follows:

It will be a change consequent not on strictly natural processes but by reason of the great drain dug in the nineties to connect the Papakiri which used to filter through or overflow the Big Swamp with Tutira Lake. This drain has become in a quarter of a century gouged and gutted into a considerable watercourse. Silt which previously had been precipitated on the surface of the swamp is now carried direct to the lake. At the mouth of the drain there has been already created a long sand-spit; the northern bay of the lake is rapidly filling up, and must ultimately become dry land. The stream which now passes into the lake and out again some 60 yards distant is destined in the not far distant future to discharge itself directly, without comminglement with the waters of the Lake.³⁹

Sedimentation has continued, and in the period from 1925 to 1963 the lake bed has been built up by 1.1 metres. With the increasing use of aerial topdressing of pastures since the 1950s, the run-off of nutrients has led to severe eutrophication in the lake, the deterioration of fisheries (both eel and introduced trout), and invasion by water weed and algal growth. Breese, in his evidence to the Tribunal, commented: ‘Lake Tutira is in extremely poor

35. Document J48, pp 5–6

36. Document J42, p 4

37. Guthrie-Smith, map facing page 74. A line was drawn on the map by Te Hata Kani some way offshore to ‘mark the division between what he thinks the King should claim’ (that part outside the line) and his own waters. We reproduce this map as map 8 on page 45.

38. Document J2, p 7

39. Guthrie-Smith, p 20



Fig 38: Tauranga-koan on Lake Tutira, circa 1939. Photograph by John Pascoe. Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (Making New Zealand collection F-1912-¼).

environmental health.’ Some attempts have been made to alleviate the problems by diverting the Papakiri Stream away from the lake directly to the Tutira Stream, although this reduction in the fresh water flowing into the lake may contribute further to eutrophication. There has been increased planting around the lake margins to reduce the run-off rate from the surrounding hills, but the large flax swamps of the northern shores have mostly gone, having

been drained and transformed into pasture. The reduction in the quality of the aquatic habitat of the lake has led to a complete loss of the kakahi beds, and the eel fishery has been reduced by licensed commercial harvesting and a management regime that favours trout fishing.⁴⁰ Offshore fisheries have also been damaged. For instance, in 1994 the Hawke's Bay Regional Council found that coastal waters from Whirinaki Bluff to Tangoio Reef had faecal coliform levels in excess of Health Department guidelines for shellfish gathering.⁴¹

Whereas Maori found that their fisheries were seriously affected by environmental changes, their loss of land ownership did not impact on their access to, and enjoyment of, other resources. The stories of hunting and gathering we heard demonstrated that Ngati Tu, for instance, continued to range over an expanse of territory which was, legally speaking, no longer their own. For example, Mr Taylor stated that: 'Since the time of the Confiscations in 1867 and into the 1950s the Confiscations did not deter the Maori from continued use of and access to their traditional food resources on the Mohaka Waikare blocks.'⁴²

When the Tribunal questioned Mr Taylor on this point, he explained that members of his and his parents' generations had not known exactly which bit of land had been taken, sold, or retained, and so they had simply gone to various places to hunt or gather rongoa as they always had. He added that many Pakeha farmers had no objection to this and that some, such as Guthrie-Smith, became great friends of Ngati Tu. He felt that the situation had become more difficult since the 1950s, with not as much bush and scrub and with farmers being less prepared to accommodate Maori in accessing the land. However, he said that the tribe continued to access its resources today, regardless of who owned the land.

Despite the self-sufficiency of some Maori communities in Hawke's Bay and the ongoing access to resources noted by Mr Taylor, many Maori undoubtedly suffered hardships as various environmental impacts affected traditional food sources. We have already discussed Lake Tutira. Ngati Tu lost another fishery earlier in the century when the Tangoio Lagoon was raised and drained by the Napier earthquake on 3 February 1931. The loss of the lagoon also resulted in the disappearance of the large number of waterfowl the lagoon supported. It had, in the opinion of Harata Taurima, 'a big effect on our food resources'.⁴³ Mr Taylor told us that there had also been 'general damage to the land'.⁴⁴ As the Tribunal has noted in its *Te Whanganui-a-Orotu Report 1995*, with respect to the loss of the Ahuriri Lagoon in the 1931 earthquake, 'There is no record of any special consideration being given as to how to recompense local hapu, who had sustained serious losses of traditional resources in the Ahuriri Lagoon, as well as a "great sense of spiritual loss"'.⁴⁵ Richard Boast, who presented historical evidence on behalf of Ngati Tu, told the Tribunal in response to a question that he was

40. Document M12, pp 11, 16–17

41. *Ibid*, p 33

42. Document J51, p 4

43. Document J44, p 4

44. Document J51, p 9

45. Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995* (Wellington: Brooker's Ltd, 1995), p 114

unaware of the tribe receiving any special compensation for the loss of their mahinga kai at Tangoio.

Perhaps more devastating altogether than the 1931 earthquake for the people at Tangoio was the flood of Anzac Day 1938, which we have now referred to several times. Some severe flooding had already occurred in the summer of that year, but the flood which followed was ‘one of the most disastrous floods in the memory of Hawke’s Bay’.⁴⁶ The Esk River valley and the area around Tangoio were particularly hard hit, with substantial stock and pasture losses and the silting up of large areas of land. Mr Hiha told us that houses were buried in mud up to the window sills, the bridge was washed away, and crops were ruined.⁴⁷

The raising of the lagoon, however, led to a major project by the Department of Public Works to reclaim the land.⁴⁸ Under the scheme, which commenced in mid-1934 and went on for several years, relief workers were employed to dig drainage ditches. Te Hata Kani II told us that he worked long hours at the Ahuriri Lagoon: ‘We dug drains four feet wide and three feet deep with a hand shovel.’⁴⁹ But for this back-breaking work he is unlikely to have been remunerated at the same level as his Pakeha counterparts (at least until the Labour Government put matters to right in 1936). The policy of the Government of the day was to pay Maori at a lower rate for such work, ‘on the argument (for which Ngata was responsible) that many were normally unemployed in any case and could “live off the land”’.⁵⁰ The irony, of course, is that the loss of their mahinga kai, such as the Ahuriri and Tangoio Lagoons, reduced their ability to do this. Heitia Hiha stated that Maori workers on the drainage scheme, such as his grandfather and matua whangai, were paid half the rate of their Pakeha counterparts.⁵¹

There is obvious irony in Maori being employed on drainage schemes to reclaim important mahinga kai like lagoons. It was the same with farm labourers. Claimant Willie Bush, who spoke at Te Haroto, told us that he had spent much of his working life ‘fencing myself out of my own land’.⁵² Similarly, forestry, while providing employment (as we discuss in the next chapter), also robbed Ngati Hineuru of their ‘food cupboard’, as Kahuiariki Bartholomew described. Having given them employment, it also ultimately left them with no work whatsoever. Rangi Waamu was employed at the Gardners mill for some time and was perfectly aware of what was happening:

I started at the timber mill around the year 1950. That was my first job. I was there for about six years I think, and of course it was just getting to the stage where the bush was starting to diminish, because they had been getting native timber all those years and you know it

46. FR Burnley, ‘Hawke’s Bay, Extracts from Reports of Commissioners of Crown Lands’, AJHR, C-1, 1939, p 36

47. Document J47, p 5

48. *Te Whanganui-a-Orotu Report 1995*, p 118

49. Document J40, p 4

50. Michael King, ‘Between Two Worlds’, in *The Oxford History of New Zealand*, ed Geoffrey W Rice, 2nd ed (Auckland: Oxford University Press, 1992), p 293

51. Document J47, p 1

52. Oral testimony of Willie Bush, Te Haroto Marae, 29 January 1997

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was running out, and there was no purpose for the mills anymore. I wasn't there when it closed, but I could see that was going to happen. That's why I left . . .⁵³

Mrs Bartholomew was also aware of the false economy created by the mills and the irony that Maori were not in control of a situation that was taking place on their own lands:

The mills gave year-round employment to the men of Te Haroto. Being static meant the children attended school regularly and the families enjoyed a fortnightly wage. [But] trees disappeared at an alarming rate and bird life became scarce as their habitat was ruthlessly destroyed. Pigs and deer retreated just ahead of the fast disappearing native trees, then rabbits infested the scoured land. White and Gardner ran the mill jointly. Though we knew the bush land belonged to Hineuru feelings of animosity were not made public.⁵⁴

Altogether, therefore, there was a clash between Pakeha and Maori values relating to their natural and created environment. This was especially so in the 1800s, but despite growing Pakeha interest in conservation, it was a pattern that continued into the twentieth century. Pakeha generally wanted to convert the bush into 'smiling' pastures decorated with the flora and fauna of home. While accepting the utility of much of this, Maori wanted to retain their traditional taonga on at least the lands that remained. But flora and fauna do not respect the boundaries set out by surveyors or prescribed in certificates of title. In the mixing that occurred, there was something of a Darwinian survival of the fittest, though that was also influenced by European intervention in the name of science, economics, and sport. When rare native species of birds were finally protected, Maori were subject to prosecution for culturally harvesting their own endangered species. The Treaty of Waitangi promised to protect Maori fisheries and other taonga, but this guarantee was frequently ignored by the settlers and public authorities in the headlong rush to 'develop' the farming economy and acclimatise exotic species. One man's development became another's poison.

18.4 LEGAL SUBMISSIONS

18.4.1 Claimant submissions

While most of the claimants referred to losses of land and resources, and to their concerns about environmental degradation generally, many of their comments were incorporated into their grievances about their poor socioeconomic standing and the marginalisation that they experienced by the end of the twentieth century. These issues are addressed in the next chapter.

Wai 299 counsel made specific submissions on the environmental effects of the Crown's

53. Document M30, p 5

54. Document M27, pp 24–25

activity. He began by reiterating how the Maori of the Mohaka–Waikare district had ‘relied utterly upon the land and the sea for their continued existence’.⁵⁵ Counsel then discussed the environmental changes that have occurred since 1867, largely on the basis of the report submitted by Breese that we quoted above (see sec 18.2.2). This noted that little of the pre-1840 vegetation cover of the Mohaka–Waikare district remains today, having been replaced by pasture and exotic forestry, and that, as a consequence, the land has become ‘extremely prone’ to erosion, flooding, and siltation. These effects have been particularly damaging to Maori resources, especially in such prized locations as Lake Tutira, which was famed for its adjoining flax swamps, kakahi, water fowl, and eels. These resources have been largely destroyed, and it has been much the same story with other waterways. The environmental changes included: the loss of indigenous fauna, forest, and scrub; the depletion of soil fertility; accelerated erosion and mass movement; the sedimentation of lakes and rivers; infestations of noxious weeds and pests; reductions in water quality of lakes and rivers; the loss of aquatic habitats in lakes and rivers; and the pollution and sedimentation of coastal waters by sewage.⁵⁶ Consequently, Maori suffered from the loss of significant cultural resources used for weaving, medicine, and building; the degradation of food resources and cultivation land; and the loss of livelihood due to noxious weeds and pests. Counsel also quoted from Breese’s assessment of the Crown’s role as ‘regulator’ of the environment. In summing up, counsel said that the Crown had failed to exercise its kawanatanga function to regulate damaging land use policies and to ameliorate environmental damage.

18.4.2 Crown submissions

In response to this submission of Wai 299 counsel, the Crown also made a submission on environmental change. Crown counsel described the claimants’ argument that the Crown was responsible for the major changes to the physical environment through the practices it encouraged as being ‘ill-informed in several respects’.⁵⁷ Counsel referred to reports from missionaries Colenso and Williams telling of fires and floods in the region in the 1840s – well before there was any Government presence in the area. Then, counsel argued, even though the greater part of the Mohaka–Waikare district remained in Maori ownership, those owners chose to lease the land to European pastoralists, and that ‘necessarily meant a radical modification of the existing vegetation and consequential soils and catchment stability’. Thus, ‘by the time the land passed out of Maori control, the pre-European environment had already been heavily modified’. Crown counsel accused Breese of inaccuracy, particularly by exaggerating the extent of forest cover still existing in 1840. In support, he cited a recently published study by a Dr Patrick Grant which he said showed that the Hawke’s Bay forest had all but

55. Document x39, p 121

56. Ibid, pp 122–123

57. Document x52, p 40

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disappeared by 1840, although numerous scattered but small patches of bush remained and were a significant resource for local Maori. Crown counsel admitted, however, that there was more forest cover on the inland side of Maungaharuru, though he suggested (referring to Moorsom's report) that Maori owners willingly allowed this to be milled to get the royalties. Finally, Crown counsel briefly defended the policy of permitting landowners 'greater freedom in making use of their property' as 'facilitating patterns of land use which were then regarded as being in the interests of economic development'.⁵⁸ Counsel did not make any comment on the detailed list of alleged Crown omissions in Wai 299 counsel's submission. Nor, we should add, did Crown counsel lead any evidence in response to the witnesses appearing for the claimants.

18.4.3 Claimant submissions in reply

Counsel for Wai 299 made no submissions in reply relating specifically to environmental degradation.

18.5 TRIBUNAL COMMENT

We received some lengthy submissions on environmental issues from the claimants and some comment from the Crown. While we have no doubt that many environmentally harmful farming practices occurred under Government sponsorship or support in the nineteenth century – such as the slash and burn methods of the early pastoralists – we accept that the dangers of such land uses were not always well understood at the time. Thus, while it is clear that the Crown actively encouraged those destructive practices in what it saw as the interests of the economy, it would be wrong to judge Crown actions or omissions by the standards expected in environmental management in the twenty-first century. We also accept the Crown's argument that most of the lowland bush and a substantial part of the bush on the seaward-facing hill country had been destroyed by 1840.

The question is really when the Crown should have both recognised the deleterious effects of the absence of controls in land management and taken action to ameliorate the situation. We note in this regard that the Crown had a duty under the Treaty to use its kawanatanga authority in a responsible and reasonable way to protect New Zealand's land and resources. It also had a Treaty obligation specifically to protect Maori taonga, such as the eel fishery at Lake Tutira. In considering the evidence in our inquiry district, we conclude that the Crown was tardy – by several decades – in beginning to take effective measures to address the problems of environmental degradation. We know that Henry Hill, for example, was stressing the urgent need to take measures to reverse the erosion of the hill country and the flooding of the

⁵⁸. Document x52, p 43

plains in Hawke's Bay in the 1890s. And, in 1921, Guthrie-Smith explained how the regular heavy rains were seriously eroding the Tutira hillsides that had been stripped of all natural vegetation to make way for grazing sheep. The enactment of soil conservation legislation came as late as 1941, however, and only after the disastrous 1938 flood, which devastated the community at Tangoio. We consider that the Crown should have been doing much more in the first decades of the twentieth century to ensure that the damaging effects of the erstwhile slash and burn methods did not impact overly on the land in general or, specifically, on the little Maori land that remained.

We do not accept all of the arguments of the claimants about the other detrimental aspects of the pastoral economy. The more intensive farming of the twentieth century brought some benefits as well as disadvantages – for example, the introduction of aerial top-dressing for high-country pastures helped to arrest, if not completely eliminate, soil erosion. But the runoff of nutrients was largely responsible for the eutrophication of lakes and waterways, and especially the prized waters of Lake Tutira. In failing to bring this under control until too late, the Crown failed to arrest the destruction of an important Maori fishery. The pollution of waterways has also been destructive of some coastal fishery resources, as has the outfall from processing industries. Once again, the Crown was simply late in adopting appropriate controls, rather than totally neglectful of its Treaty responsibility.

We make no comment on the Crown's response to the destruction of native plants and animals, since, as we have said, such analysis will best be carried out by the Wai 262 Tribunal. We observe merely that it seems clear that native flora and fauna are – for cultural, medicinal, spiritual, and other reasons – Maori taonga and the Crown had and has a Treaty responsibility to protect them and to protect Maori access to them.⁵⁹ It also had the same responsibility to safeguard Maori ownership of, and – failing that – Maori access to, wahi tapu and urupa. For Maori, a loss of things cultural or spiritual, including access to resources and wahi tapu, can impinge on their sense of wellbeing as much as the loss of mundane material things.

18.6 FINDINGS

We find that the Crown, in its failure adequately to protect the Mohaka ki Ahuriri environment and the traditional Maori use thereof, breached the principles of the Treaty of Waitangi. We find that the Maori people of Mohaka ki Ahuriri were prejudiced thereby.

59. We note that the protection of certain native species and the protection of Maori access to those species may, on occasion, be in some conflict. Sound judgement on this issue was exercised by the Rekohu Tribunal, which considered the matter in regard to Moriori and Maori claims to rights of cultural harvest of protected species such as the albatross. That Tribunal found that the Department of Conservation's protective role was consistent with the Treaty, since 'the risk is too great to allow for any major departure from the current state of control' and preserving the species served equally to protect 'the Moriori and Maori identity and way of life': Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 270–271.

More specifically, we find that:

- (a) The Crown would have been aware by the late nineteenth century of the environmental degradation occurring in Hawke's Bay as a result of the slash and burn practices of European pastoralists. It would have known that this damage was leading to accelerated erosion, flooding, and sedimentation and that it was exacerbated by the spread of noxious plants and animals. Controls were eventually put in place, but these have often been too little and too late. The Crown has thus failed to exercise effectively its kawanatanga duty under article 1 of the Treaty, and Maori have been prejudiced thereby. This failure had a negative impact on the resources that Maori treasured and the little land that they retained.
- (b) The Crown has a duty under article 2 to actively protect forests, fisheries, and other taonga. We consider that, at Lake Tutira, at the polluted coastal reefs at Tangoio, and at other places, the Crown has failed in this duty.

CHAPTER 19

SOCIAL AND ECONOMIC IMPACTS

19.1 INTRODUCTION

We begin this chapter with a brief description of the new Pakeha colonial society in Hawke's Bay in the nineteenth century and how Maori responded to it. We then review the developments in land use in Hawke's Bay, from the initial pastoral farming and exploitation of indigenous forests to the planting of the hill country in exotic forests from the 1950s. We also focus on Maori participation in this development. We refer briefly to Maori urbanisation and to the lack of employment that drove people from their rural communities into the towns. We then discuss Maori health and education and, finally, Maori housing in Hawke's Bay. We note, however, that it is seldom possible to get statistics and other quantitative information on these issues that relate specifically to our inquiry district. For the most part, we have to make do with samples of information and qualitative judgements. Nevertheless, we think that we have enough for a representative portrait, if not for definitive conclusions.

19.2 PAKEHA SOCIETY IN HAWKE'S BAY

As we discussed in our previous chapter, there was a strong move by the colonists to 'acclimatise' the flora and fauna from their homeland. This was part of the wider purpose of colonisation: to recreate in the new colony the society of 'home'. So powerful was that symbol that Pakeha New Zealanders, including many born here, continued to refer to Britain as the 'home' until well into the twentieth century. If they modified their objective at all, it was in the direction of improvement: they entertained the notion that they could found in New Zealand a 'Better Britain', usually envisaged as a Britain without class distinctions and extremes of wealth and poverty. The founders of the New Zealand Company settlements, the source of many of the pioneer colonists of Hawke's Bay, envisaged this when they tried to found settlements without the very upper and lower echelons of the British class system.

As it turned out, Hawke's Bay did become a kind of stratified, class-based society, if not quite that envisaged by the New Zealand Company, which had applied a plan designed by Edward Gibbon Wakefield. Under that plan, the price of land would be kept high enough to prevent working-class families from buying their own land until there was a surplus of

labour, at which point the land prices would be lowered.¹ What made Hawke's Bay different was the success of pastoralism. Most of the pioneer pastoralists were middle class, usually with a commercial, professional, or military background. They had either a degree of wealth or access to wealth through colonial, English, or Scottish banks, or through moneylenders such as Algernon Tollemache. But it was not a closed society, since others of more modest position and means could, by dint of hard work and shrewd investment, acquire sheep and land, more especially if they could exploit Maori. And, once they had wealth and broad acres, they could be admitted to the ranks of the 'squattocracy', which comprised Hawke's Bay's 'upper class'.

There were also the lesser ranks, who in English terms would have been designated 'lower middle class' or 'working class', though these designations were never happily accepted. They included old whalers from pre-1840 days who stayed on, sometimes as publicans, traders, or landowners. New immigrants included some 'yeoman' farmers whom the provincial government tried to settle on small farms on the Heretaunga Plains. There were skilled craftsmen, who provided the variety of services required in any pioneer settlement. Then there were manual labourers who worked on pastoral runs (as shepherds, drovers, or carriers) or on various public works. Hawke's Bay had the outlines of the three-tiered English class system, with a landed gentry, a commercial and professional middle class, and a skilled and unskilled working class. But the society more closely resembled the squattocracy of colonial Australia than that of Britain. Class and position depended more on money than inheritance and background. In Hawke's Bay, as in the South Island and the pastoral colonies of eastern Australia, the sheepmen were the kings of the castle.

As we have already noted, nearly all of the leading participants in Hawke's Bay politics and Maori affairs were pastoralists with considerable landholdings. They quickly established substantial colonial mansions and usually had town houses in Napier. They and their wives dominated Hawke's Bay 'society', managed important events such as horse races and agricultural shows and the local fêtes and balls, and kept up their associations with 'home'.

Needless to say, the future of the squattocracy depended on the good fortunes of the pastoral industry, which in turn depended on the price of wool. Depressed wool prices during the 'long depression' of the late nineteenth century, combined with overextended credit to support an affluent lifestyle, endangered many a landed estate. Although a lot of the pioneer families survived, others had to get out or subdivide their land. The coming of refrigeration made smaller, more intensively farmed estates viable. The process continued through the twentieth century, especially in lowland Hawke's Bay, where horticulture and viticulture further reduced the size, though not necessarily the prosperity, of holdings. There was an expansion of processing, light industry, and commerce, and with that an expansion of the middle class. Despite the continued domination of farming in the provincial economy, the

1. John Miller, *Early Victorian New Zealand: A Study of Racial Tension and Social Attitudes, 1839-1852* (Oxford: Oxford University Press, 1958), p 4

majority of the population became concentrated in and around Napier and its rapidly growing rival, Hastings. There was a gradual spreading of wealth. The ‘squattocracy’, if we can continue to use the term at all, had to share the limelight with the ‘captains of industry’, though both groups were a distinct minority by the end of the twentieth century in what was a less structured, less class-oriented society. Money, residential location, private or public schooling – these factors still allowed for some distinctions, though they were scarcely enough to matter much.

This Pakeha–New Zealand society of Hawke’s Bay differed considerably from that of Britain, from where many of their pioneer ancestors had come. By the late twentieth century, nearly all the settlers, whether moderately rich or slightly poor, had a greatly improved standard of living: better health and education, better housing, and all sorts of modern conveniences undreamed of by their nineteenth-century ancestors. Those pioneers thought they were bringing ‘civilisation’ to the wilderness; today, many of their descendants most likely think that they succeeded.² But did they succeed in incorporating Maori into this vision?

19.3 MAORI IN COLONIAL SOCIETY

The Victorian founders of the British colony in New Zealand believed that the two races could be rapidly amalgamated. That amalgamation was meant to be a one-way process, whereby Maori, who had already demonstrated a capacity for ‘civilisation’ that was unusual for ‘native’ peoples, could be rapidly assimilated into British colonial society. They would become brown-skinned Britons. This view pervaded many of the early official policy statements. It is implicit in Lord Normanby’s instructions to Hobson and, indeed, in the English text of the Treaty of Waitangi, with its promise to Maori of the rights and privileges of British subjects. Early governors such as Sir George Grey assumed that the two races were rapidly being amalgamated, ‘insensibly forming one people’, as Grey put it in one dispatch.³ This ‘one New Zealand’ assimilation policy was to remain the essence of Maori affairs policy for over a century – until, in fact, the early 1970s, when it was replaced by policies of encouraging Maori self-determination.

The trouble was that Maori seldom saw things in this way. They preferred to retain their social and cultural identity in an essentially bicultural New Zealand. They saw in the Maori text of the Treaty, with its promise to respect their tino rangatiratanga, a justification for this status. In other words, Maori wanted to retain their identity as Maori, and resisted amalgamation.

2. For example, in 2001 *North and South* magazine published a story on Hawke’s Bay’s prosperity entitled ‘The Bountiful Bay: Let the Good Times Roll’: *North and South*, April 2001, no 181, pp 32–42.

3. Grey to Earl Grey, 7 February 1852 (quoted in Keith Sinclair, *The Origins of the Maori Wars* (Wellington: New Zealand University Press, 1957), p 42)

Nevertheless, if we look at some of the statements made by Maori leaders during McLean's negotiations for the Ahuriri and Mohaka blocks in 1851 and later, they seem to support amalgamation. The chiefs seemed to be selling land in exchange for settlers and, as Crown researcher Lindsay Head put it, for 'citizenship'. The behaviour of some of these chiefs following the sales, when they exchanged the purchase proceeds for fine clothes, imported luxuries, horses and coaches, and other trappings of the squattocracy, seemed to indicate that they had become 'civilised', even perhaps part of that colonial gentry. Some, such as Tareha, who became a member of the House of Representatives, certainly moved in that society. As we explained in chapter 15, so too would members of his extended family. Two of Tareha's sons were important men of affairs – Kurupo even established a golf course on 100 acres of Waiohiki land, which later became the Napier Golf Club course. And as we also related, Tareha's niece, Airini, married George Donnelly and became one of the *grand dames* of squatter society. A considerable number of Hawke's Bay settlers, from the squatters down to the old whalers, had Maori wives. Such examples of intermarriage were eagerly seized on as evidence that the amalgamation of the races was coming about.

But was it? We have to be careful not to read a sociological trend into one or two examples. The indulgences of the land-selling chiefs were not evidence of successful assimilation but a sorry charade that lasted until the land and the credit based on it ran out. In any case, appearances did not constitute all of reality, since, even with their conspicuous consumption, the chiefs were still trying to achieve old goals. They were intent on asserting their traditional mana in new circumstances and with new means, but in trying to ride the waves of colonisation and civilisation, their waka were wrecked. They had become the victims of market forces and consumerism. This was true of all other Maori, though they were affected to a lesser extent, since little of the proceeds from the land sales had filtered down to them in the first place. They retained so little land that they could not even become successful small farmers. Nor until about the 1940s did Maori become full-time labourers. In the first two decades of the twentieth century, they became, in the language of the European class system, a 'rural proletariat', before increasingly becoming, from the 1930s, an 'urban proletariat'.⁴ But for most of the time, both in their agriculture and in newer occupations (such as working in road gangs and shearing), they retained their communal practices of old. Despite outward appearances, the two societies, Pakeha and Maori, continued to work and live separate lives, in separately located communities, until well into the twentieth century when urbanisation brought them into much closer association.

Moreover, if we look more deeply at what was happening to the personal lives, not just of the chiefs, but of all Maori, we find a much more disturbing situation. This was quite often recognised by officials in Maori administration, though the 'solutions' they proposed were seldom satisfactory. We discuss several aspects of the Maori social and economic

4. Michael King, 'Between Two Worlds', in *Oxford History of New Zealand*, ed Geoffrey Rice, 2nd ed (Auckland: Oxford University Press, 1992), p 290



Fig 39: Airini Donnelly, circa 1875.
Photograph by Samuel Carnell.
Reproduced courtesy of Alexander
Turnbull Library, Wellington, New Zealand
(S Carnell collection, G-22134-¼).

situation below, including in particular Maori health, employment, education, and housing. First, though, we outline the changing nature of the rural economy of Hawke's Bay, since the development of a pastoral and then an agricultural economy offered opportunities – in theory – for Maori land development and prosperity.

19.4 THE DEVELOPMENT OF THE RURAL ECONOMY

19.4.1 Farming

As we noted in early chapters of this report, as European pastoralists drove their flocks north from Wairarapa or brought them up the coast by boat, there was a rapid occupation of pastoral land from the south. The original pastoralists made their own arrangements with Maori, whom they paid 'grass money' for the right to pasture their sheep. Then, the Crown purchased the Ahuriri and Mohaka blocks and provided them with an opportunity to take out licences on the best of the coastal land. The pastoralists were slower to occupy the hill country in between, though they had occupied much of this by the time it was taken as the Mohaka–Waikare confiscation district in 1867. Under the Mohaka and Waikare District Act 1870, the pastoralists could get legal leases over the blocks that were returned to Maori, or they could lease or buy land that the Crown had retained on the ground that it had been confiscated or bought prior to the confiscation. As yet another alternative, some were able to lease or buy land under the Native Lands Act 1865. In one way or another, by the late 1800s

European pastoralists occupied most of the land in our inquiry district, usually under short-term leases of up to 21 years. Their pastoral runs had by the 1870s spread to the inland border of Hawke's Bay, and beyond.

We can describe this pioneering phase of pastoralism as a 'slash and burn' economy. Pastoralists burnt off native grasses and scrub, sowed new pasture, and hard-grazed their sheep and cattle (see ch18). As the term of leases neared expiry, they reduced sheep numbers and cut back expenditure, and some in the marginal country of the interior abandoned their runs altogether. This happened to Anderson's huge Te Haroto Station, which at one stage covered most of the Te Haroto, Tarawera, and Tataraka blocks. The station was running up to 24,000 sheep at the turn of the century, though by the time the lease expired in 1915 this number had been halved.

By then, the character of pastoralism was changing. It was no longer dependent on wool and the rendering down of surplus sheep. The development of refrigeration from the late 1880s allowed pastoralists to intensify farming and breed sheep suitable to be slaughtered and have their frozen carcasses exported to Britain. Beef cattle farming could also be increased and combined with sheep farming. Though the high country runs were unsuitable for fattening of stock, they could at least be used for breeding sheep and cattle, which would then be 'finished off' by lowland grazing. Freezing works were established near Hastings and the port of Napier was enlarged to handle exports, though it had to be reconstructed after the Napier earthquake.

The intensification of pastoral farming was also facilitated by Crown purchases of Maori land before, during, and after the First World War and by the settlement of returned (mainly) Pakeha servicemen on much of this land. Some station owners carried out their own closer settlement schemes. Guthrie-Smith, for example, subdivided much of his run for returned servicemen from the war. Since then, the runs have gradually got smaller and have been more intensively farmed, but they remain combined sheep and cattle farms. Because of the rugged nature of most of the hill-country land and the continuing problem of erosion, farms there have seldom been highly profitable except for occasional windfalls of high prices for wool and meat. Nevertheless, the pastoral industry has remained the backbone of the Hawke's Bay economy, though that is due in large measure to the richer pastoral land to the south of our inquiry district.

There have been other kinds of farming, of course, though these too have been more profitable outside our inquiry district. The other great mainstay of North Island farming, dairying, has not been prominent in Hawke's Bay, save in some of the southern parts of the province and on small pockets of land within our inquiry district. These latter areas include the lower Mohaka Valley, the Waiohinga-Esk Valley, and, for a time (as we related in chapter 15), land around Waiohiki. However, dairying has largely given way to even more intensive farming in lowland Hawke's Bay, notably horticulture, orcharding, and viticulture, which now

make a substantial contribution to the rural economy. These in turn have required the development of processing industries, notably the Wattie's (now Heinz) cannery near Hastings and numerous wineries.

19.4.2 Forestry

Forestry of one kind or another has always been a major contributor to New Zealand's rural economy. Initially, the cutting of the great indigenous forests of the North Island was regarded as a necessary prerequisite for the establishment of family farms.⁵ The best of the timber could be salvaged for building purposes, with some of the remainder used for fencing. What was left after that was simply burnt off in massive fires and the ashes were then seeded. The scars of the burning, in the form of left-over logs, disfigured the hillsides until well into the twentieth century. Though much of the Hawke's Bay bush had been burnt in the days before European, and even Maori, occupation, good stands of bush remained in the interior. Hawke's Bay was too far south for the majestic kauri, but there were good supplies of rimu, totara, matai, red beech, and kahikatea on Tarawera and Tatarakaakina and other inland blocks.

The milling of native timber began with the most accessible forests. Around 1900, a mill was established to cut the Te Pohue Forest, near the southern boundary of the Kaiwaka block on the Napier to Taupo highway, and in combination with another mill at Lake Tutira, it produced in excess of one million feet of timber a year. It eventually closed in about 1921, but in 1922 Robert Holt and Sons established a mill on 3000 acres of bush in the Kaiwaka block that it had bought from the Donnellys' Ohurakura Station. That mill continued operations until 1959.⁶ Further inland, the Gardners established their first mill about 1920, though it was not until 1936 that they began full-scale operations at Te Haroto.⁷ By the end of the 1940s, Gardner and Sons had two mills operating, one at Te Haroto and one in the Waipunga Valley. An associate firm, McLeod and Gardner, had a mill near Pohokura; and FG Ware (later Odilins) was logging on the Tarawera 3 block. At the same time as logging was reaching a peak on Tarawera in the 1950s, it was just beginning on Tatarakaakina, where Tuck Brothers Limited was starting up the Tatarakaakina Milling Company and Fletchers was also to establish a mill. Milling on the Tatarakaakina block continued until the 1970s.⁸

The realisation that continued felling and burning of the native bush was promoting erosion did not stop selective cutting until virtually all of the millable timber had been removed. But the erosion did demonstrate that reforestation would be necessary. Exotic forestry was late in coming to Hawke's Bay. Although private plantations of exotic trees were commonly

5. See Rollo Arnold, *New Zealand's Burning: The Settler's World in the mid 1880's* (Wellington: Victoria University Press, 1994), ch 11

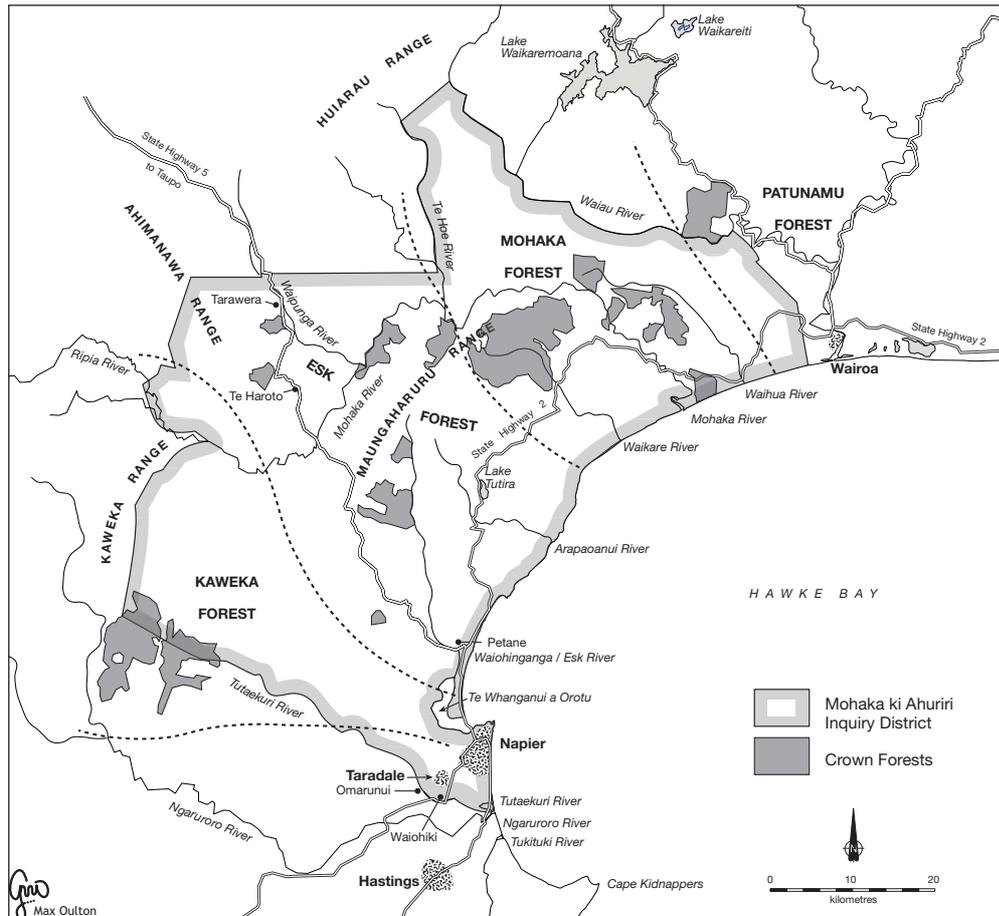
6. Document M12, p 23

7. Document J28, p 235

8. Document R3, p 279

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19.4.2



Map 59: Crown forest areas

established on a small scale on private farms, there was no State forestry in Hawke's Bay for some time after State plantations had been established elsewhere. A State nursery was established at Whakarewarewa, Rotorua, in 1896, and it was from there that the first forests, mainly of *Pinus radiata*, were established on the volcanic plateau. By 1918, nearly 8000 acres of plantations had been established at Whakarewarewa and Waiotapu.⁹ Those plantations were massively increased as a way of providing employment during the Depression years. There was no proposal for the State to plant an exotic forest in Hawke's Bay until 1945, when Forest Service official G Hosking recommended the planting of the Esk soil conservation reserve, largely as a response to the erosion that had followed the disastrous flood in the Esk Valley in 1938. However, no progress was made on the matter until 1954, when blocks of Crown land in the Mohaka–Waikare district were set aside for planting. The Esk and Mohaka State Forests were subsequently planted on this proclaimed land (map 59). As Richard Boast pointed out, no consideration was given at that stage to planting Maori land in exotic forests,

9. MM Roche, *Forest Policy in New Zealand: An Historical Geography, 1840–1919* (Palmerston North: Dunmore Press, 1987), p 62

although this was later done for parts of the Tarawera and Tataraka blocks, as we indicate below.¹⁰

The processing of agricultural and forestry products provided investment and employment opportunities for the region's growing population, which was increasingly concentrated on the coastal lowlands and particularly in the rapidly expanding twin cities of Napier and Hastings. We consider next how Maori shared in these developments, bearing in mind that it was such a prospect that encouraged their forebears to sign the Ahuriri and Mohaka deeds in 1851.

19.5 MAORI PARTICIPATION IN THE RURAL ECONOMY

We need to assess whether those Maori who so readily agreed to the sales of Ahuriri and Mohaka, and their offspring, did indeed enjoy the prosperity that they were assured would follow the coming of the European settlers. In selling some land, they could follow the example of European settlers and develop their remaining lands. As we noted in our discussion of Treaty principles in chapter 2, the Crown had a dual responsibility: to reserve sufficient lands for Maori needs and to assist Maori in developing that land. We have already discussed the Crown's role in the loss of reserved land. Since so little land was preserved in Maori ownership over the years, Maori were severely handicapped in successfully farming that remnant of land. Nevertheless, we still need to assess how effectively the Crown did assist Maori to develop the land that remained in their ownership.

19.5.1 Maori agriculture

All over the country, Maori responded enthusiastically to the coming of European settlement, quickly adapting their traditional form of agriculture to new European crops such as potatoes, wheat, barley, and maize, and a variety of fruits and vegetables. Through the 1840s and into the 1850s, Maori were the main suppliers to new townships established at Auckland, Wellington, and New Plymouth. In turn, much of that produce was re-exported to the Californian and Victorian goldfields. A good deal of it came from Maori suppliers on the East Coast, though probably more from Poverty Bay than Hawke's Bay. Being able to participate more fully in this activity was an important consideration for the Maori who sold the Ahuriri and Mohaka blocks – they looked forward to the new opportunities that the promised town at Napier would provide. This town would offer them the opportunity to sell produce, just as Auckland and Wellington had done for other Maori more handily placed.

The extent of Maori participation in the new Hawke's Bay agricultural market has not been explored by claimant researchers, but there is some scattered information available. Despite

10. Document j28, p 237

the sale of the Ahuriri block to the Crown, Maori still retained some fertile pockets of land around the edges of the block, including the Heretaunga Plain and the Waiohinganga Valley. However, subsequent Crown purchases in the later 1850s and various private purchases under the Native Lands Act 1865, including the acquisition of some 20,000 acres of the Heretaunga block in 1870, severely depleted the area available for Maori agriculture. In effect, Maori became occasional sellers of surplus produce rather than regular contributors to the commercial agriculture of the province.

Despite their limited amounts of suitable land, Maori did continue to grow arable crops and sometimes had a small surplus for sale. In 1878, Hawke's Bay resident magistrate Samuel Locke reported that large quantities of grain had been grown by Maori in the past year, though he failed to specify what the crops were or whether any of the produce was sold.¹¹ Two years later, Wairoa resident magistrate E Baker noted that Maori in the district were getting a good price for their maize from European storekeepers, 'to whom' he wrote, they 'were deeply in debt'.¹² In 1886, the resident magistrate at Napier, Captain George Preece, reported that large quantities of wheat and oats – 72,600 bushels – had been grown by Maori principally on the Heretaunga flats and that they had grown other crops largely for their own consumption.¹³ A year later, Preece reported that 'large quantities of wheat and oats' had been sowed but that the crops had not been very good owing to drought. A 'fair amount' was harvested at several settlements.¹⁴ By 1890, however, the situation had improved and Preece informed the Native Department that Maori were responsible for 'by far the largest amount of wheat produced in the district and a fair quantity of oats and potatoes'.¹⁵ Maori in the Wairoa region were also growing wheat, oats, and maize on a similar scale.¹⁶ However, in 1896 Maori crops in northern Hawke's Bay were again severely affected by drought, though Ngati Kahungunu at Petane were said to have:

Considerable cultivations of maize, oats, potatoes, with patches of kumaras, pumpkins, melons etc. With the exception of potatoes (which are a partial failure owing to the very dry season) the crops are looking well, the oats have been harvested in excellent condition, and are now being converted into chaff, for which they have a ready sale.¹⁷

The drought was probably responsible for much of the fall-off in the land set aside by Maori in Hawke's Bay county both for the cultivation of potatoes between 1891 and 1896 (down from 622 to 266 acres) and for the cultivation of wheat over the same period (from 3352 acres to a mere five acres).¹⁸ The census returns listed these and other crops in cultivation

11. Locke to under-secretary, Native Department, 8 July 1878, AJHR, 1878, G-1A, p 3
 12. Baker to under-secretary, Native Department, 15 May 1880, AJHR, 1880, G-4, p 11
 13. Preece to under-secretary, Native Department, 11 June 1886, AJHR, 1886, G-1, p 16
 14. Preece to under-secretary, Native Department, 6 June 1887, AJHR, 1887, G-1, p 14
 15. Preece to under-secretary, Native Department, 26 June 1890, AJHR, 1890, G-2, p 8
 16. Preece to under-secretary, Native Department, 11 June 1886, AJHR, 1886, G-1, p 16
 17. Turnbull to Department of Justice, 27 April 1896, AJHR, 1896, H-13B, p 6
 18. Document 04, p 23



Fig 40: View of the settlement of Te Pohue, 1925. Photographer unknown.
Reproduced courtesy of Alexander Turnbull Library, Wellington, New Zealand (F-41847-½).

until 1911. Overall, they recorded considerable fluctuations, with acreages under cultivation in 1901 comparable to those of 1891, but the two subsequent censuses – those for 1906 and 1911 – showed considerable reductions. John Hutton researched socioeconomic issues for the Ahuriri claimants and noted these sudden shifts, though he said that it was impossible to say whether they were related to ‘radical economic change, or simply poor methods of enumeration’.¹⁹ (He did not consider climatic changes as another alternative.) However, Hutton did describe a significant overall decrease in cultivated acreages from 1886 to 1911, a decline that he suggested was ‘a good indication of growing land shortages and a shift to wage labour’ but that also may have been caused by a shift in land use from arable agriculture to pastoralism.²⁰

We do not have census figures for Maori cultivation acreages after 1911, though it seems likely that part-subsistence, part-commercial agriculture was continued around the main Maori settlements of coastal Hawke’s Bay: at Wairoa, Mohaka, Tangoio, Petane, and Waiohiki. Hutton suggested that the commercial component gradually diminished as Maori agriculture became ‘increasingly focused [on] the provision of food for the land-owners’ consumption, with meagre surpluses providing some additional income’.²¹ In high-country

19. Ibid

20. Ibid, p 24

21. Ibid, p 25

settlements such as Te Haroto, Maori were lucky if they could grow sufficient crops of potatoes and other vegetables for their subsistence. Natural disasters such as floods, droughts, and the 1931 earthquake could, as Hutton put it, cause 'havoc' in Maori communities that 'lived on the edge of impoverishment'.²² Many Maori families lived from hand to mouth, relying on cheques from seasonal employment or on cash crops to pay their debts to the storekeepers. Their precarious position was explained by a Major J Power, a Red Cross agent, following the Napier earthquake:

For years past . . . the small Maori farmer had been accustomed to carrying on from cheque to cheque . . . on credit given by the various stock and station agents against the following season's cheques. The agents, from long dealing and experience with Maori clients, had made advances in goods and necessities of sometimes 50 per cent, sometimes more, of the anticipated following season's cheque, and the fact that the arrangement had been general over so long a period was proof that the obligations were met in due course . . .

Prior to the earthquake the general depression led to a tightening up, the severe drought in Hawke's Bay added to the agents' difficulties, and when the smash of 3rd February came along the small Maori farmer found that his credit had gone completely. As a result he is faced at the moment with the work of re-sowing his pasture lands; grass seed he cannot buy, and, generally speaking, credit of the sort he has for so long relied upon is no longer available to him, not because the agents had lost faith in him as a trier, but because their resources were strained to the utmost.²³

Although Maori grain production lasted longer in Hawke's Bay than in most other North Island districts, it had no long-term future when compared with the bonanza grain growing being developed after the 1870s by European farmers on the Canterbury Plains, who had the benefit of American machinery. With the exception of some tomato growing at Petane in the 1940s as part of the war effort, and some small holdings south of our inquiry district that were provided with land development assistance in the 1930s, there was little scope for Maori to carry out arable agriculture on a commercial scale, largely because the amount of suitable land remaining was so limited.²⁴ Maori turned from growing the crops to processing them, as workers in the canneries.

Despite this, Maori communities such as that at Te Haroto continued to cultivate much of their own food. Ngati Hineuru witnesses talked about their gardens, where the staple crop was potatoes. Rangi Waamu said they were mostly 'Maori potatoes, parakaraka, very hardy type of potatoes. They grew kumara, but kumara never used to grow very well, you know up there, our place was too cold.'²⁵ Rangiaho Te Hata, like a number of other witnesses, explained

22. Document 04, p 29

23. *Evening Post*, 18 April 1931 (as quoted in doc 04, p 29)

24. Document 04, p 31

25. Document M30, p 3

that the planting and harvesting of the gardens was a communal effort, with the whole tribe participating on shared land.²⁶

Finally, in this section, we note that the arable agriculture that we have described usually formed only one of the economic activities of local Maori. For example, most of the men had other occupations and some also participated in the pastoral industry in various ways.

19.5.2 Maori pastoralism

In chapter 4, we discussed Maori involvement in the blossoming pastoral industry in Wairarapa and southern Hawke's Bay. At that stage, though Maori were letting their land under 'grass money' leases, they were also being employed on the runs as general labourers or shearers. Because sheep were in short supply and therefore expensive, Maori had little opportunity to commence pastoral farming themselves. As well, various factors – Crown and private purchases of land under the Native Lands Acts, Native Land Court sittings, the war, and confiscation – hindered Maori from concentrating on farming themselves. The rapid expansion of available credit also removed some of the incentive for Maori to farm. It was not until the later nineteenth century that we see Maori making any significant attempts to become pastoralists themselves, but by then the best pastoral country was gone from their control.

The reports of Government officials referred to above sometimes mentioned Maori possessing sheep – for instance, Preece said in 1886 that Maori owned 'a large number' – some 20,000 – scattered about in small flocks.²⁷ But we get more certain statistics from the official sheep inspectors' reports, which Boast quoted. He provided tables for the years 1886 and 1896 for the Mohaka–Waikare district. The 1886 list named 27 stations and total flocks. Between them, the stations owned 163,830 sheep, a small proportion of the total of 2,559,938 sheep in the Wairoa, Hawke's Bay, Waipawa, and Patangata counties.²⁸ This is a useful reminder of the insignificance of the Mohaka–Waikare district in the pastoral economy of the wider Hawke's Bay province. None of the pastoralists named in the 1886 return had a Maori name, although at least one, George Donnelly of Kaiwaka, was of course married to a Maori. Donnelly was one of the largest pastoralists in Hawke's Bay, and, as we noted in chapter 9, he acquired a large slice of the Kaiwaka block after his wife's death. Because Maori in the district almost certainly owned sheep, it is likely that at that time the sheep inspectors simply did not bother to inspect and count them. However, by 1896, 32 of the 63 pastoralists named for Mohaka–Waikare had Maori names, though they did not own anywhere near half of the sheep. Out of the total of 180,070 sheep, Maori owned a mere 12,219 (and that is only if you include one company, Pearse, Ihaka and Company, which owned 2020 sheep, though it is unclear whether or not

26. Document M16, pp 3–4

27. Preece to under-secretary, Native Department, 11 June 1886, AJHR, 1886 G-1, p 16

28. Document J28, pp 133, 137

this company was Maori owned). Maori-owned flocks varied in sheep numbers from 14 to 1381; European flocks varied from 18 to 25,179.²⁹

Some Maori had also accumulated sizeable flocks on land south of the Mohaka–Waikare district. For instance, Renata Kawepo (in partnership with Broughton) ran 7000 sheep on a property near Hastings, and by 1893 Te Roera Tareha had 1395 sheep at Waiohiki.³⁰ Boast did not provide returns for later years, but it is unlikely that there was a substantial increase in Maori sheep ownership, except where Maori whanau took over previously leased land once the leases had expired.

Moorsom provided some useful detail on this development. He discussed the most conspicuous example: Anderson's huge Te Haroto Station, which encompassed some 150,000 acres at its peak around 1900. It was then running some 24,000 sheep, though this number was subsequently halved. However, the area grassed reached only some 7000 acres by 1907, and this area was gradually reduced still further through neglect to about 5500 acres by the time the lease was surrendered in 1915. One of the conditions of the lease was that the Maori lessors would have the right to occupy – and even farm – portions of the run. Some of these lessors, according to Moorsom, began to acquire sheep in the 1890s. They included Thomas Baker, formerly of the Armed Constabulary, who acquired rights through his marriage to Rihi Nene (as we have related elsewhere). Baker managed to keep his flock intact, and while the station's flock decreased during the last years of the lease, his flock rapidly increased, as did the flock of another local notable, Hape Nikora, who had between 1500 and 2000 sheep by 1909. Baker and Nikora continued to increase their flocks after the expiry of the lease. The Te Pohe, Utiera and Raihana whanau also built up flocks of several hundred.³¹ There were some 5000 sheep on the Tarawera, Tatarakina, and Te Haroto blocks by 1922, but thereafter the numbers declined. Moorsom explained that the decline was due largely to the title revisions we discussed in chapter 10. The whanau we listed above found their titles disrupted and their land entitlements severely reduced, or transferred to other blocks. Their brave efforts to establish family farms were so severely disrupted that in the end most of them abandoned farming altogether. By 1930, according to Moorsom, the number of Maori-owned sheep on Tarawera and Tatarakina had declined to 1125, less than a quarter of the number in the early 1920s.³² When the 1951 royal commission came to examine the situation, there were hardly any Maori families left in occupation in the two blocks. Pastoral farming had thus virtually disappeared from the two most substantial blocks still in Maori ownership in the whole of the Mohaka–Waikare district, thanks largely to the Crown's repeated blunders over titles. However, the Crown did subsequently assist the Maori owners with land development schemes. We return to this topic below.

29. Document J28, pp 138–139

30. Ibid, p 135

31. Document R3, p 262

32. Ibid, p 263

There were other Maori attempts at pastoral farming elsewhere in our inquiry district. Most of the land in the returned seaward blocks of the Mohaka–Waikare district had already been occupied by pastoralists before the confiscation. Since the Pakeha pastoralists were able to obtain legal leases over returned blocks, and since little land was reserved for Maori in the alienated blocks, there was also little land that Maori could use for their own pastoral farming. However, it seemed that they would get better opportunities on the expiry of the initial 21-year leases, when some of the Maori owners hoped to resume control of their land and farm it themselves. Maori owners in Mohaka and Waihua hoped to do the same. This new determination of Maori owners to farm the land was, as Boast put it, ‘strangled at birth by the Crown’s aggressive purchasing programme’.³³ When the Crown resumed purchase operations, the owners were usually divided into sellers, who were mainly absentees, and non-sellers, who tended to live locally and wanted to develop the land themselves. However, the residents were sometimes prepared to sell some of their land to get capital to develop the remainder. One such example, picked out by Boast, was Te Waka Puna, who sold his interests in a number of blocks and raised about £2000 by 1913 (see ch 9). Puna used this to develop a family farm on the Awa o Totara block. But, as Boast goes on to emphasise:

for most owners the ambitions of the Puna family must have been out of the question. For many owners, in fact, the rental income probably could only provide a supplement to ordinary income, or a bonus that could be used to settle shopkeepers’ accounts: other income would have to be gained by wage labour elsewhere. Indeed, far from generating capital accumulation from their land, the Mohaka–Waikare owners had difficulty in meeting rates and other ordinary costs of land ownership.

Boast suggested that, although in theory Maori owners had the option of farming their land themselves, ‘this was a practicable option for only a few’.³⁴ The main problems they faced were a lack of capital, land title difficulties and expenses, and ‘the appalling environmental decline of much of the Mohaka–Waikare region’, which was due to the farming practices we have discussed above.³⁵

So far, our discussions of Maori attempts at pastoralism have been largely concerned with sheep farming. But, in selected lowland localities, there was also some dairying. According to Hutton, there were signs of an increase in the number of dairy cows in the region from 1906, though the extent of this development after 1911 cannot be detailed from census returns. In the inter-war years, it was common to run a few dairy cows in conjunction with cropping on small farms, some of which were provided with land development assistance in the 1930s.³⁶ During our Waiohiki hearing, we were told of the dairy farming in that locality, with various

33. Document J28, p 140

34. Ibid, p 143

35. Ibid, pp 143–144

36. Document O4, pp 34–35

farmers supplying cream to the local butter factory. Dairying was also attempted on a larger scale in connection with Ngata's Mohaka land development schemes (see ch13). By October 1933, there were 31 dairy farms (or units) on the Mohaka scheme, together milking 619 cows. That meant that each unit was milking only about 20 cows – not enough for a farmer to make a living when butterfat was returning no more than sixpence per pound. By 1943, there were 63 units on the three Mohaka schemes, but thereafter the farms gradually failed, being too small and too overloaded with development debts to be viable family farms.³⁷

Until the 1930s, the Crown did nothing to resolve the many problems facing Maori who attempted to farm their remaining land. The Crown had been content to use pre-emptive purchase proclamations to eliminate competition from private purchasers and keep prices down and to hold the owners to ransom until most caved in and sold. Any remaining land was partitioned off for the non-sellers, but it was seldom sufficient for a viable farm. When Ngata finally got access to State funds for Maori land development, there was insufficient land left in the seaward Mohaka–Waikare blocks for him to start his development schemes, though he did of course initiate the Mohaka schemes and provide some assistance for individual dairy farmers elsewhere. (It was only much later that further development schemes – such as the Tarawera Farm in the 1950s – were initiated.) In the end, Maori pastoral farming on the seaward returned blocks was no more successful than the attempts of the Baker and other whanau in the inland blocks. As for those Maori not scratching out a living on their own farms, their participation in the pastoral industry was restricted to casual labouring and shearing on Pakeha pastoral runs.

19.5.3 Maori participation in forestry

Traditionally, Maori were adept at exploiting their forests. Despite being restricted to stone tools, they felled large trees and fashioned the trunks into ocean-going canoes or timber for houses. With the arrival of Europeans, Maori gained access to steel tools and soon became involved in felling trees for the spar trade or shipbuilding. Although we have come across no evidence of Maori involvement in the early spar trade in Hawke's Bay, they were later employed in bush work for settlers, cutting timber for buildings, fencing, and firewood, and in clearing bush for farming. But there was little bush left on the coastal lowlands, and it was not until the twentieth century that the bush of the interior highlands was milled. As European companies milled the native timbers of the inland blocks such as Tarawera and Tatarakina, local Maori formed a substantial portion of the labour force, though they appear to have had little involvement in the ownership or management of the industry. The only evidence we have received of Maori ownership of timber mills was a comment by Selina

37. Document J16, p183; doc J30, p121

Sullivan that her father in law owned a sawmill for a time but had to sell it to the Gardners 'because of the rates owing on his property'.³⁸

By 1945, Gardners' Te Haroto sawmill was producing two million feet of timber annually and, according to Boast, was 'a vital source of employment for the Te Haroto community'.³⁹ This may have been so, but Moorsom questioned whether Te Haroto Maori gained much employment from the mill. He recorded that, between 1936, when the Gardner mill began operations, and 1945, the local Maori population actually decreased from 108 to 61. In contrast, the Pakeha population at Te Haroto increased 'dramatically' from 10 to 120 over the same period. Although Maori numbers later recovered, moving back towards the 1936 level by 1951, Pakeha numbers increased even more in that year and constituted 60 per cent of the Te Haroto population. In Moorsom's words, 'It seems that most of the new jobs went to incoming Pakeha . . . Logging and milling native timber were an enclave industry with a moving frontier and brought in a large part of [their] workforce from outside.'⁴⁰ As these figures illustrate, Maori in such settlements as Te Haroto were having to migrate elsewhere for employment. Mainly, they moved to other rural areas for labouring jobs such as shearing, fencing, and scrub-cutting, but a few went to urban centres such as Napier and Hastings to work on the wharves, in food processing, or in freezing works (see also sec 19.5).⁴¹

Some timber was logged on 10,000 acres that the Gardners had purchased or leased from the Maori owners who were forced to alienate the land to meet long-standing survey debts.⁴² But where native timber was milled on Maori land, the timber companies appear initially to have purchased cutting rights from the Maori owners. Then, from 1953, the New Zealand Forest Service, a Government department, collected royalties on the owners' behalf and paid them to the Maori Trustee, who eventually distributed them to the owners. According to Moorsom, the Forest Service did little more than supervise sales contracts already in place, at least as far as the Tarawera block was concerned.⁴³ It did, however, grant new licences for cutting timber on Tatarakaia up to 1972.⁴⁴ Although it was usually some years before they were paid out, timber royalties provided Maori owners with valuable supplementary income. Indeed, as Moorsom pointed out, timber royalties were a major source of income for Tarawera owners for some years in the 1950s and for Tatarakaia owners through the 1950s and 1960s.⁴⁵ But this income was paid out to individual owners, not invested, and it diminished as the timber was cut out. Moorsom concluded: 'By the time the native timber resource was exhausted in the early 1970s, community savings were precisely nil and none of the

38. Document J28, p 235

39. Ibid

40. Document R3, p 265

41. Ibid, p 266

42. Ibid, pp 247-248, 265

43. Document R9, pp 28-29

44. Ibid, pp 33-34

45. Ibid, p 38

considerable income generated had been applied to development purposes.⁴⁶ The owners were left with cut-over bush that was being ravaged by possums and other pests and that was, for the most part, too rugged to be converted into farming land. However, part of the cut-over bush was planted in exotic forest.

We noted above the late arrival of exotic forests in Hawke's Bay. It was not until the mid-1950s that the Esk and Mohaka State Forests were established on Crown land. It was not until 1968 that the Forest Service began to consider establishing exotic forests on Maori land, which it saw as a way of expanding forest production for a proposed pulp and paper industry. At that time, the Forest Service had some 76,000 acres of exotic forests planted on Crown land, but it wanted to boost planting to some 100,000 to 150,000 acres to feed the proposed pulp and paper mill in Hawke's Bay. (The mill was eventually constructed at Whirinaki.) In 1969, the Forest Service proposed to plant some 8000 acres of exotic forest on the Tarawera and Tataraka blocks, alongside land then being developed for pastoral farming. The proposal was negotiated with various other Government departments, including Maori Affairs, before it was put to a meeting of owners in June 1969. By then, the service envisaged planting 17,000 acres, with the Government paying a peppercorn rental until logging began in about 20 years, when the owners would start to receive 14 per cent of the revenue from the forest. The owners unanimously approved the proposal.⁴⁷

But the scheme did not get under way for some time because of complex arguments between the various Government departments, including the Treasury, over costs, revenues, and the allocation of land to forestry, as opposed to further pastoral land development. The details are set out in Moorsom's report and need not be noted here. In December 1970, the Forest Service secured a timber licence to begin clearing the land in preparation for planting. Terms were then agreed, and were essentially the same as those approved by the owners in 1969. The project was initiated with a ceremonial tree planting in July 1972. In the meantime, the Maori Land Court had set up a trust – to be known as the Awahohonu Forest Trust – and it was this body that negotiated and eventually signed a formal lease agreement with the Forest Service for the management of the forest. Although the agreement preserved the basic conditions that had been agreed to in 1970, several new provisions were introduced. These provided for a lease of 90 years, over an area now extended to 20,827 acres. After 1984, either party was to have the right to propose changes to the rental and stumpage rates at minimum five-year intervals. Terms for the final 20 years, including renewal or termination, were to be negotiated during the preceding 10 years. All millable timber was to remain the property of the trust, and the Forest Service was to assist in realising its value. Several management obligations were imposed on the Forest Service, including the safeguarding of wahi tapu,

46. Document R9, p38

47. Ibid, pp 116–117



Fig 41: Newly planted pines at Tarawera. Photograph by Evelyn Stokes.

urupa, areas of natural beauty, and unique vegetation; the protection of indigenous wildlife; and protection against soil erosion and flooding.⁴⁸

Under the guidance of some of the trustees, the Tribunal made a visit to the now mature forest during the first Te Haroto hearing in January 1997. We have some doubts as to whether the forestry scheme has provided sufficient opportunities for the owners generally, either in management or for daily employment. As Moorsom noted, there was ‘no explicit provision [in the lease] for participation in the business itself, such as co-ownership, fostering ancillary businesses and technical training assistance’.⁴⁹ But we recognise that the forest is clearly an asset of considerable value. It is a good example of the kind of cooperation between a department of State, representing the Crown, and trustees, representing the Maori owners, envisaged by the Treaty of Waitangi. It is a pity such cooperation in the development of a landed asset did not start much earlier – indeed, from the beginning.

There were also Forest Service proposals for other exotic forest plantations on the Tataraa-kina block, though as it turned out these were taken up with a private forestry company instead. When the scheme was first investigated in 1974, Fletchers had already obtained a lease of some 400 hectares in the eastern part of Tataraa-kina, adjoining their Ngatapa Station.

48. *Ibid*, pp 121–123

49. *Ibid*, p 129

This leased area was already planted. In 1980, Fletchers and the Tatarakina c Trust agreed to extend Fletchers' lease to some 800 hectares of Tatarakina. This agreement was confirmed in 1982 when a lease for 996 hectares was signed with Fletchers.⁵⁰ Fletchers' project complemented the land development scheme that was then proceeding on Tatarakina.

Apart from the two forestry schemes just discussed, Maori have not got much out of the development and harvesting of exotic forests in our inquiry district, other than a limited amount of low level employment. As was the case with the milling of native timber by Gardners at Te Haroto, the bulk of the jobs – both managerial and manual labouring – appear to have gone to outsiders. There is a similar issue in the Mohaka forest. During a site visit at Mohaka, the Tribunal was informed by an unemployed local man that men from Northland had been brought in to work the Mohaka forest. According to evidence presented by Tureiti Moxon, only 12 of the 91 employed in the Mohaka forest in 1994 were Ngati Pahauwera (see ch 13).⁵¹ The lack of employment for local Maori in farming and forestry were reasons why many had to look elsewhere for jobs, and especially why many of them migrated to the towns and worked at nearby processing works.

19.6 IMPACTS ON MAORI

19.6.1 Employment

From time to time, we have made incidental comments on Maori employment, which was largely a necessary supplement to their subsistence farming. There is no systematic study of Maori employment in our inquiry district, nor are there statistics on which to build a study. However, there is sufficient qualitative material and information in research reports by Boast, Moorsom, and Hutton to enable us to sketch a broad picture of Maori employment in the region. The Maori contribution to the rural economy was graphically described by Sir Apirana Ngata in 1928:

When they cracked up the pakeha 'pioneer' who carved a home out of the forest primeval they forgot the Maori who packed the pioneer's goods to his shack, who cut tracks, who felled, burnt, sawed and fenced the forest clearing, docked, shore, dipped and crutched his sheep, drove stock to market, killed the beasts in the works, carted out the wool and so on. The Kauri-gum fields of the north, the timber mills everywhere, the railway and road works, the forest plantations and so on tell the story of Maori labour under pakeha supervision with pakeha money.⁵²

50. Document R9, pp 130–131

51. Document N8, p 25

52. Ngata to Buck, 6 May 1928, in *Na to Hoa Aroha: From Your Dear Friend: The Correspondence between Sir Apirana Ngata and Sir Peter Buck, 1925–50*, ed MP K Sorrenson, 3 vols (Auckland: Auckland University Press, 1986–88), vol 1, pp 91–92 (doc 04, p 15)

With the exception of gum digging, that description could have applied to our inquiry district.

Until the 1940s, Maori employment was overwhelmingly intermittent, seasonal, and rural. Shearing was certainly a big source of employment for Ngati Tu in the summer months. Bevan Taylor recalled the variety of seasonal work his community was involved in:

It was mainly shearing in the summer. In the winter months, fencing, scrub cutting, forestry and working on the roads for what was known as the Ministry of Works. In between that work we would work as general hands on the neighbouring farms.⁵³

Mr Taylor's parents were away from home for four to five months every year while his father worked as a shearing contractor, and Mr Taylor eventually worked for the whanau shearing gang himself upon leaving school.⁵⁴ Likewise, Aperahama Sullivan was looked after by his grandfather while his parents were out shearing, and when the shearing finished he and his parents moved to Te Haroto, where his father had work at the timber mill. When he was only 13, Mr Sullivan began working in a shearing gang, after which he found employment largely in forestry.⁵⁵

Large pastoral farms were also an important source of employment for local Maori. Heitia Hiha said that he used to move from camp to camp as a young child as his stepfather found work cutting scrub and fencing.⁵⁶ Similarly, Kuia Gray and Rere Puna were both raised as whangai of Patumoana Anaru, their uncle and great-uncle respectively, who worked as a shepherd and a drover. The children went with Patumoana all around Hawke's Bay, staying in tents.⁵⁷ We also heard how Rangī Taurima worked as a general farm hand as well as on the wharf; how Harata Taurima's father worked as a general hand for the Pakeha farmer McKinnon; and how Rere Puna worked at a variety of jobs on the land (such as drover and packhorseman).⁵⁸

During the inter-war years, the position of Maori became more precarious, particularly with the onset of the Depression. Maori tended to be the first to be put off work and, until 1936, when the Labour Government righted the situation, they were paid lower unemployment benefits than Pakeha (see also sec 18.3.2). They were also badly hit by the 1931 earthquake. But the Second World War radically altered the situation – the need to replace servicemen overseas and the demand for full production on farms, processing works, and factories dramatically reduced unemployment. With the opening of the Pacific War in 1941, New Zealand was called on to supply foodstuffs to the American forces, and this resulted in a rapid expansion of Wattie's food processing factories and the Whakatu Freezing Works.

53. Document J48, p 5

54. Ibid, pp 2–3

55. Document J43, pp 1–3

56. Document J47, p 3

57. Document J41, p 1; doc J43, p 1

58. Document J46, p 2; doc J44, p 3; Rere Puna, first hearing, 12 November 1996

Maori men and, for the first time, women supplied much of the required labour and were, moreover, employed full-time. By the end of the war, Maori were in ‘full employment’, a situation that lasted through the prosperous 1950s and 1960s. But they were fully employed mainly in unskilled occupations and were thus the first to suffer in periods of economic uncertainty and recession, such as in the 1980s, when large-scale employers like the Whakatu Freezing Works were closed or downsized.

Maori supplemented their earnings by continuing to use natural resources, as many witnesses recounted to us, although we note that these resources were increasingly reduced as land loss affected access. This was discussed in more detail in the previous chapter.

19.6.2 Urban migration

We were everywhere told, often with considerable nostalgia, of the migration of Maori from rural kainga to the towns, especially Napier and Hastings. Frequently, this migration was seen in terms of loss. As Dave Kinita from Te Haroto described it, ‘Today the people are like pellets from a shotgun blast, sprayed in all directions, no aims, no goals, no mana.’⁵⁹ As we have related, rural Maori increasingly lost access to the surrounding lands and forests and found few opportunities for employment, except on a seasonal basis. More intensive Pakeha farming techniques meant that the old frontier was closing forever. The finality of the alienation of land was being rammed home. And, when the rural lifestyle could no longer sustain the community, urban migration became more attractive.

There were other reasons for migration, many of them of a social nature. People without regular local employment could not maintain their family homes to an adequate standard – as was revealed by the 1938 survey of housing at Te Haroto, which we discuss later. Periodically, the communities suffered from a variety of natural afflictions. The damages caused by the Napier earthquake were not confined to Napier and devastated rural settlements throughout Hawke’s Bay. The 1938 flood in the Esk or Waiohinga Valley virtually destroyed the Tangoio settlement and is remembered to this day. There was another devastating flood in the valley in 1963, and other areas such as the Tutaekuri Valley were also badly affected. Flood control measures such as stopbanks could also have negative impacts on Maori communities, as we related in chapter 15 and noted in the previous chapter.

Though Maori were living mainly in a number of pa, or rural settlements, such as Te Haroto, Raupunga, Mohaka, Tangoio, and Waiohiki, some had begun to split off and buy or rent separate houses in urban districts. As early as 1926 there were a number of Maori-owned houses in the predominantly working-class Napier suburb of Westshore.⁶⁰ Maori migration to such suburbs increased during the 1930s and was further encouraged by the full employment and State housing policies of the first Labour Government. The Department of Maori

59. Document M23, p 8

60. Document O4, p 59

Affairs enticed Maori to move to the towns by offering its own targeted housing in addition to State housing (although, according to Hutton, State houses did not become available to Maori until about 1950).⁶¹ Another factor pushing Maori towards urban areas was the Town and Country Planning Act 1953, which effectively restricted the building of homes on papakainga land. Section 3(1) allowed local authorities to classify land according to the ‘purposes for which they are best suited by nature or for which they can best be adapted’. In effect, a local authority had the power to zone land as it saw fit: rather than papakainga land being zoned a housing area, for example, it could be zoned rural land and restricted as to subdivision and housing density. In a criticism of the legislation, Sir Apirana Ngata’s son Henare argued that ‘the zoning of Maori land is not always done with the best interests of the Maori owners in view’.⁶²

During the war, the Government also encouraged Maori, sometimes even directed them by ‘manpower’ controls, to take up urban employment. But most did not need to be pressured at all, since they were going to superior accommodation, full-time employment, and a more exciting environment. Some today may forget these things and treasure memories of their old homes and surroundings. But the golden days of their youth were in fact blighted by poverty and poor health, including such usually fatal curses as tuberculosis, a disease that flourished in conditions of poverty.

The full employment of the post-war years began to falter in the 1970s and disappeared with the restructuring of the 1980s, when Maori unemployment rose above double-digit levels. Until then, according to Nigel Hadfield of Ngati Parau, urbanised Maori led a comfortable existence: ‘The money was good, the cities were exciting, life was easy. They expected the gravy train would last forever, the new Marae became the pub, the whanau back home can look after the ancestral lands.’⁶³

The economic reforms bit hard at Maori labourers and process workers. The majority of the 2000 made redundant in 1986 at the Whakatu works, for example, were Maori. Claimant witness Haami Harmer attempted to illustrate the plight of urban Maori today by contrasting two adjacent Napier communities: predominantly Pakeha, middle-class Taradale and significantly Maori, working-class Maraenui. Taradale, he said, had four banks, a library, and six doctor’s surgeries, whereas Maraenui had no banks, no library, and only one doctor’s surgery. The unemployment rate in Maraenui was also much steeper (we have already described that suburb in our *Napier Hospital and Health Services Report* as a ‘deeply deprived zone’⁶⁴). Harmer asked rhetorically if this was what Ahuriri Maori had received in return for their sale of land to the Crown in 1851.⁶⁵

61. Ibid, p 70

62. H K Ngata, ‘The Treaty of Waitangi and Land: Parts of the Current Law in Contravention of the Treaty’, in *The Treaty of Waitangi: Its Origins and Significance* (Wellington: Victoria University of Wellington, 1972), p 56

63. Document 021, p 6

64. Waitangi Tribunal, *Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 343

65. Document 023(d)

As we noted in our introduction to this part of the report, the claims before us do associate poverty and social deprivation with the loss of land. We shall return to this issue later in the chapter, but here we note that, despite the occasional complaints of claimant witnesses, there were no claims against the Crown over its role in promoting Maori urbanisation. So we merely note urbanisation as a consequence of the loss of land, the difficulty in profitably developing the land that remained, and the absence of significant rural employment. In any case, urbanisation was not unique to Maori; it was occurring also for Pakeha, even though they generally had better rural resources and employment opportunities. After all, they had got hold of most of the Maori land.

19.6.3 Population

It is well known that the Maori population, ravaged by unfamiliar infectious diseases, declined from its first contact with Europeans until the end of the nineteenth century. In the twentieth century, the Maori population recovered, growing slowly at first, but from the mid-1920s more rapidly – faster even than the general Pakeha population. But, even then, in terms of life expectancy and various life-threatening diseases, there remained a gap between Maori and Pakeha that has not been closed to this day.

Professor Ian Pool, an authority on Maori population, has attributed the nineteenth-century decline largely to the lack of immunity Maori possessed to infectious diseases brought by the Europeans.⁶⁶ However, he and other scholars, such as Professor Mason Durie, have noted a connection between infectious diseases and socioeconomic circumstances, including land alienation. Quite obviously, people who were forever mobile and lived in appalling makeshift conditions, whether involved in warfare or in peaceful activities such as flax-gathering, gum-digging, or attendance at Native Land Court hearings, were likely to aggravate the effects of infectious diseases such as dysentery, influenza, and tuberculosis. The latter disease, which has been described as a ‘disease of poverty’, continued to decimate the poorly housed Maori communities until the mid-twentieth century, when the appearance of effective antibiotics almost wiped it out.

We can be sure that Maori in our inquiry district were affected by the demographic and disease factors that we have mentioned in relation to Maori as a whole, though it is less certain whether they were better or worse off. We begin our discussion by noting the population statistics, such as they are. From 1874 until 1901, the Maori population was recorded on a tribal basis in separate Maori censuses compiled by district officers. The following total district figures have been compiled by Boast from these returns:

66. Ian Pool, *Te Iwi Maori: A New Zealand Population, Past, Present and Projected* (Auckland: Auckland University Press, 1991), pp 44–45; see also Mason Durie, *Whaiora: Maori Health Development* (Auckland: Oxford University Press, 1998), ch 3

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19.6.3

Year	Wairoa*	Hawke's Bay [†]
1874	3481	1870
1878	2530	1690
1881	2276	1635
1886	2131	1669
1891	2435	2117
1896	1766	1777
1901	1991	2179

* The Wairoa district included most of the Mohaka–Waikare district, and the lower Mohaka valley.

† The district south of the Tangoio River was included in Hawke's Bay.

Maori population in Wairoa and Hawke's Bay, 1874–1901.

Source: 'Census of the Maori Population', AJHR, various dates (doc J28, pp125–126).

The New Zealand census figures for the Maori populations of Wairoa and Hawke's Bay counties, including boroughs and cities, covered our inquiry district, but Wairoa extended north to include the town and Mahia Peninsula, and Hawke's Bay extended south to include Hastings, the Heretaunga Plains, and Cape Kidnappers. These boundaries remained in place until the 1960s.

Year	Wairoa	Hawke's Bay	Total
1906	2266	1505	3771
1916	2536	1194	3730
1921	2906	1396	4302
1926	2809	1666	4475
1936	3720	2249	5969
1945	4364	3065	7429
1951	4700	3651	8351
1961	5275	5967	11,242

Maori population in Wairoa and Hawke's Bay, 1906–1961

Source: New Zealand census returns for the years given.

Subsequent boundary changes make it difficult to compare district figures, but the following results cover approximately comparable areas since 1991:

Area	1991	1996	2001
Wairoa district	5322	5421	4935
Central Hawke's Bay district	2178	2697	2661
Hastings district	13,611	15,027	15,372
Napier City	7101	8484	9069
Total	28,212	31,629	32,037

Maori population in Hawke's Bay, 1991–2001.

Source: Department of Statistics, *1991 Census of Population and Dwellings: Iwi Population and Dwellings* (Wellington: Department of Statistics, 1993); Statistics New Zealand at:

<http://www.stats.govt.nz/>, downloaded 18 July 2003.

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Since 1991, the definition of ‘Maori’ has included both ‘ethnic’ group and any Maori descendant. The above figures are based on the ethnic definition: that is, people who wish to identify as Maori.

Because of the different ways of categorising Maori, the doubtful accuracy of some of the early census returns, and frequent inter-census migration, it is virtually impossible to make any worthwhile generalisations about Maori demography in Hawke’s Bay, let alone in our inquiry district. However, the general trend has seen the population declining in the nineteenth century, fluctuating in the early 1900s, gradually increasing from the 1920s on, and then more rapidly increasing in the 1950s and 1960s. A similar pattern has occurred in the total New Zealand-wide Maori population.

The Maori population of the Hawke’s Bay–Wairarapa region, the takiwa of Ngati Kahungunu, has been compiled by RJ Lowe from the New Zealand census reports:

Year	Population	Year	Population
1886	4744	1916	5562
1891	5497	1926	6122
1896	4413	1936	8641
1901	5166	1945	9969
1906	5426	1951	11,560
1911	5604		

Maori population in Wairoa and Hawke’s Bay, 1886–1951.

Source: RJ Lowe, *Te Puawaitanga o Nga Iwi, 1874–1951* (Wellington: Department of Maori Affairs, 1989), p 50

These figures include only those Maori still resident in their home region, but by the 1950s migration to other urban areas was well underway.

Since 1991, the national census has recorded the tribal affiliations of the Maori population and it was the source for the figures below for iwi affiliation to Hawke’s Bay–Wairarapa tribes:

Iwi affiliation	1991	1996	2001
Hawke’s Bay–Wairarapa iwi not further defined	249	594	741
Ngati Kahungunu ki Wairoa	2274	3465	14,661
Rongomaiwahine	NL	1254	2322
Ngati Kahungunu ki Heretaunga	1167	1350	6912
Ngati Kahungunu ki Wairarapa	141	1047	5130
Ngati Kahungunu ki Whanganui a Orotu	NL	NL	1704
Ngati Kahungunu ki Tamatea	NL	NL	588
Ngati Kahungunu ki Tamakinui a Rua	NL	NL	249
Ngati Kahungunu (area not specified)	41,778	40,380	24,729
Rangitane (Hawke’s Bay–Wairarapa)	156	378	1197

NL – not listed

Population of Hawke’s Bay and Wairarapa iwi, 1991–2001.

Source: Department of Statistics, *1991 Census of Population and Dwellings: Iwi Population and Dwellings*, pp 15–16; Statistics New Zealand at <http://www.stats.govt.nz/>, downloaded on 18 July 2003

From our calculations, it can be seen that 56,298 Maori identified as Ngati Kahungunu (including Rongomaiwahine) at the 2001 census, making it the third largest iwi behind Ngapuhi and Ngati Porou. But not all Ngati Kahungunu lived in the tribal takiwa: for example, only 31 per cent of them lived in the Hawke's Bay Regional Council area, while a further 11 per cent lived in the Auckland Regional Council area and 16 per cent lived in the Wellington Regional Council area. (The latter region includes the Wairarapa, but only a quarter of Ngati Kahungunu living there were Ngati Kahungunu ki Wairarapa.) Thus, we can calculate that approximately 35 to 40 per cent of Ngati Kahungunu live within the tribal takiwa, and almost a quarter live in Auckland and Wellington.

19.6.4 Health

We turn now to issues of Maori health, which we have of course thoroughly traversed in our *Napier Hospital and Health Services Report*. In addition to the population statistics, there is some commentary by officials – resident magistrates, census enumerators, and others – though this is uneven and largely confined to the late nineteenth century. For the early twentieth century, there is some information from health officials and occasional sample surveys. We use such of this material as we have found for our inquiry district. The earliest information we have comes from the missionary William Colenso, who, in the absence of trained doctors, attempted to treat Maori with his rather primitive supply of medicines and limited knowledge of disease. Colenso compiled his own census of Maori population between Ahuriri and Palliser Bay in 1847 and 1848 and said the total was 3704. In 1865, he estimated that the toll of diseases introduced by Europeans had reduced this population to fewer than 2000.⁶⁷

In 1868, George Cooper, the resident magistrate at Napier, made a sombre report on Maori health in Hawke's Bay, saying that the Maori population was undoubtedly declining. He attributed this to the 'unfruitfulness of the women', careless nurturing and feeding of children, and excessive alcoholism.⁶⁸ However, the native medical officer at Wairoa, Matthew Scott, was a little more optimistic, suggesting that children were increasing in number and that various infectious and intestinal diseases were less prevalent than previously.⁶⁹ But the degree of optimism depended on the prevalence of epidemics. In 1876, Dr Frederick Ormond reported from Wairoa that 'deaths have been numerous – measles, influenza, and other epidemics [have been] sweeping them down indiscriminately'.⁷⁰ The following year Ormond reported no major epidemics but noted that Maori continued to be afflicted by colds, fevers, asthma,

67. William Colenso, 'On the Maori Races of New Zealand', in *Transactions and Proceedings of the New Zealand Institute*, 63 vols (Wellington: J Hughes, 1869), vol 1, pp 415–416 (quoted in Waitangi Tribunal, *Napier Hospital and Health Services Report*, p 156)

68. 'Reports on the Social and Political State of the Natives in Various Districts', AJHR, 1868 A-4, pp 13–15 (doc J28, p 90)

69. Scott to Captain Deighton, resident magistrate, Wairoa, 7 April 1868, AJHR, 1868 A-4, pp 13–15 (doc J28, p 91)

70. Ormond to under-secretary, Native Department, 15 May 1876, AJHR, 1876, G-1, p 29 (doc J28, p 127)

and ‘children’s diseases’.⁷¹ In 1884, Thomas Lambert, the native medical officer for Wairoa county, issued a gloomy report:

Careful observation of the Natives during the last nine years leads me to conclude that the mortality rate is much higher than has ever been suspected, and is rapidly increasing, each succeeding generation being constitutionally inferior to the one preceding it. . . . The younger Natives are exceedingly subject to pulmonary complaints, low fevers, and scrofulous affections [*sic*], and all of these maladies seem likely to become aggravated in their offspring, who even at the age of twelve months, exhibit these diseases in their worst form.

Lambert attributed this disease and decay to changes of diet and mode of living, ‘especially as regards drink and clothing’, overcrowded and ill-ventilated dwellings, and early marriages of already diseased people. He believed that many of these problems could be prevented or reduced, but added that ‘the transmission of disease from parents to offspring can never be checked; and as this prevails to an enormous extent among the Maoris, I am forced to the conclusion that extinction *must* occur’ (emphasis in original).⁷² In all of this, we can see the relentless progression of tuberculosis, facilitated by poor living conditions.

So the reports continued, alternating between optimism in years of good crops and few epidemics and pessimism when drought and epidemics visited. But Boast noted that, in Preece’s reports in the later 1880s, ‘we hear less of Maori ill-health and more of a full participation in the economic life of the province. These reports correlate well with census records which show a marked population increase in the late 1880s.’⁷³ And, we might add, they correlate with a fall-off of the frantic land alienation of the late 1860s and early 1870s and the dislocation and dissipation associated with it. For example, when discussing the 1891 Maori census figures, a correspondent of the *New Zealand Herald* observed in reference to those Maori who had not ‘during the last five years, been subjected to the immoral and destructive influences of land-selling’ that they had ‘kept up their numbers’. ‘In former years’, he continued, ‘it has been noticed that the great decrease took place in those districts in which the natives had been detained from their settlements and their usual occupations in attending land Courts.’⁷⁴

As we noted in our table above, the census returns for Ngati Kahungunu supported this generalisation, with decreases in the population registered for 1878 and 1881 and increases for the 1886 and 1891 censuses. Mrs Moxon suggested that a similar decline for Ngati Pahauwera ‘was in fact a direct consequence of land alienation’.⁷⁵ In the 1891 census, Preece reported

71. Ormond to under-secretary, Native Department, 11 May 1877, AJHR, 1877, G-1, p 11 (doc J28, p 128)

72. Document J28, p 129

73. *Ibid*, p 130

74. *New Zealand Herald*, 26 May 1891 (as quoted in doc J16, p 154)

75. Document J16, p 157

a total increase of 706 for Wairoa and the three counties in Hawke's Bay province, though epidemics reduced that population by the time of the 1896 census. Thereafter, however, the Maori population steadily increased, though as Boast reminded us, there was continuing Maori ill health. Although there was a fall-off in deaths from measles and whooping cough, typhoid, tuberculosis, and pneumonia continued to exact a heavy toll.⁷⁶

The rise in Maori population coincided with, and was to some extent facilitated by, the health reforms promoted by Maui Pomare and Peter Buck and the Maori councils formed in 1900. The Tamatea Maori Health Council for Hawke's Bay attempted to promote improved housing and sanitation, but it was 'very poorly resourced'.⁷⁷ Poor housing was undoubtedly a contributor to ill health. We discuss this issue further in our discussion of housing below.

The wide gap between Pakeha and Maori health was revealed with the 1918 influenza epidemic, when the Maori death rate of 4.23 per cent was more than seven times that of Pakeha.⁷⁸ Though the Maori health councils continued to operate through the inter-war years, they received little assistance from the Government. In 1921, the director of Maori hygiene, Dr Peter Buck, declined the Tamatea council's application for a health inspector on the ground that the council should be self-supporting and Maori themselves should be responsible for their own health. However, he did agree to the appointment of a Maori nurse to serve the region in 1927.⁷⁹ But, as Boast has observed, in the 1930s, 'those who ventured into the Maori villages were shaken by the poverty, ill-health and substandard housing they saw'.⁸⁰ Several witnesses described the effects of tuberculosis and typhoid outbreaks. Kahuiariki Bartholomew said that, while her own family was not touched by tuberculosis, other families were 'greatly affected, and many deaths occurred'.⁸¹ It was not until the coming of the first Labour Government that there was a substantial improvement in State assistance to improve Maori health. The comprehensive Social Security Act 1938, for example, provided free medical and hospital services and other benefits. There were considerable improvements in Maori health after the war, due to improved living conditions and great advances in medical science and technology. But even today, there is a substantial gap between Maori and Pakeha health, another subject we have already explored in our *Napier Hospital and Health Services Report*.

There remains the question of whether Maori depopulation in the nineteenth century was directly caused by land alienation and whether the slow recovery in the twentieth century was related to the poverty that Maori suffered as a consequence of that land loss. We discuss this below in our consideration of claimant submissions on the issue.

76. Document J28, p 132

77. Document 04, p 46

78. Geoffrey Rice, *Black November: The 1918 Influenza Epidemic in New Zealand* (Wellington: Allen and Unwin, 1988), pp 102–103

79. Document 04, pp 46–47

80. Document J49, pp 55–56

81. Document M27, p 4

19.6.5 Education

The first formal European education of Maori was provided by the missions. We discussed the formation of missions in Hawke's Bay in chapter 3. This early schooling for Maori consisted mainly of reading and writing in Maori and instruction in the scriptures. Colenso's mission collapsed in 1852 when he was dismissed for adultery with a Maori servant. Samuel Williams opened a school at Te Aute in 1854 on land gifted by Te Hapuku to the Anglican Church for education. But the school closed in 1859 and was not reopened until after the wars in 1872. It developed into the famed Te Aute College for Maori boys, which still exists today. Williams also assisted in the establishment in 1875 of the Hukarere Protestant Girls' School. Another religious school, Saint Joseph's Roman Catholic Girls' School in Greenmeadows near Napier, was established in 1867. But, according to Hutton, these schools drew their pupils from all over the country and took 'only a few' pupils from local Maori communities.⁸²

With the wars and the rise of Pai Marire, most of the missions and their schools collapsed. The Government had tried to replace the collapsed missionary schooling with a partially State-funded system of primary school education for Maori under the Native Schools Act 1867. This State school system was guided for much of the late nineteenth century by the inspector of native schools, the energetic James Pope, and was meant to be an instrument to assimilate Maori into European ways. The teachers and their wives, invariably Pakeha until well into the twentieth century, were meant to be the prime agents of that policy. Nevertheless, they were dependent on the local Maori community both for land and some funding and to encourage their children to attend. Although the system was greeted enthusiastically in some parts of the country, the native schools were late in coming to Hawke's Bay. The earliest such school appears to have been established at Te Haroto in 1901. A second native school was established at Tangoio in 1904. In the north of our inquiry district, a State school that had been established on the south bank of the Mohaka River mouth in 1880 was reclassified a native school in 1926.⁸³ Those schools struggled for years because of the poverty of the parents and the irregular attendance of their children, the latter often due to their endemic ill-health. But from the 1930s there were signs of improvement, perhaps caused by the appearance of Maori teachers such as Edward Nepia at Te Haroto. Nepia, as we note below, weighed into the battle to improve the health and housing of the Te Haroto community, both essential prerequisites for better schooling of the children.

19.6.6 Housing

We have very little information on the state of Maori housing in early colonial Hawke's Bay. Perhaps 'housing' is a misnomer, since at that time it is unlikely that Maori had permanent

82. Document 04, p 9; and see JM Barrington and TH Beaglehole, *Maori Schools in a Changing Society: A Historical Review* (Wellington: New Zealand Council for Educational Research, 1974)

83. Document N8, p 19



Fig 42: Ramshackle house, Te Haroto, 1997. Photograph by Paul Hamer.

houses, as opposed to communal wharepuni, and even these, despite their wooden framework, were constructed with flimsy materials. Some of the chiefs may have constructed wooden houses during the land-selling boom, but it was a long time before the general Maori population had such houses. One- or two-roomed shacks, constructed with timber and corrugated iron but usually with earthen floors, were the common form of housing until the 1930s. Indeed, for some of the less fortunate, this form of 'housing' has lasted to the present day.

Evidence of the poor state of Maori housing at Te Haroto in 1936 was provided by the local school teacher, Edward Nepia, who wrote to the Native Minister to draw his attention to:

a serious state of affairs which exists here in Te Haroto. Several families, extremely poor, are living in disgraceful, unhygienic conditions and [this] requires an urgent investigation by your Health Department. One family . . . consisting of three adults and nine children, whose ages range from one to fifteen years, live in a building not fit for pigs to live in.

One cannot suppress one's feelings of repugnance and disgust at this state of affairs which should not exist in this land of plenty.⁸⁴

Nepia begged the Native Department to subsidise materials for new houses, but his request was refused, partly it seems because the department and the medical officer of health in Wellington, Dr B W Irwin, believed that the housing conditions at Te Haroto were no worse than those in other Maori settlements in Hawke's Bay.⁸⁵

84. Nepia to Minister for Native Affairs, 2 September 1936 (as quoted in doc 04, pp 57–58)

85. Document 04, p 58

	Housing and condition	Residents and main income	Health status
NS	New, two rooms, built with unemployed labour	Two pensioners, £7 10s per month	One has TB, the other 'fair'
B	Six rooms, fair standard	Two adults, 5 children, income from 'small store' and odd jobs	Husband probably has TB
C	One room shack, 'a hovel'	One man, nine children, £4 per week mill wage	Wife recently died of TB, 'signs of TB' in family
B	Two rooms, 'not very good'	One pensioner, one child, £6 10s per month	Not stated
B	Four rooms, substandard	Two pensioners, husband 'on relief', pensions being negotiated	Wife has per week TB, 'unsound heart'
B	Two rooms, 'roughly built'	Two adults, four children, family away in Hastings nine months	Husband has TB, 'bad heart'
C	Two rooms, 'old and dilapidated'	One pensioner, two daughters with five children, pension of £3 15s per month	Pensioner in poor health
C	Two rooms, 'old and dilapidated', being relocated	One adult, one child, £4 per week mill wage	Good health
C	One roomed 'shack'	Two adults, two children, £4 per week mill wage	Good health
B	Two rooms, 'fair'	One adult, two children	Not stated
B	Three rooms, old and 'drab'	One adult, two teenagers, casual labour	Good health
B	Four rooms, needs minor repairs	Two adults, six children, currently living at Te Pohue	Husband healthy, wife with TB
B	Two rooms, in disrepair	Two adults, school teacher and family, about £4 per week farm labour	Husband healthy, wife with TB
C	Two rooms, poor repair	Two adults, £4 per week mill wage	Good health
B	Two rooms, old, poor repair	Two adults, three children	Wife has TB
C	Four rooms, unlined	Two adults, two children £4 per week mill wage	Husband good, wife 'only fair', children good
C	Four rooms, galvanised iron, unlined	One pensioner, son and family periodically, pension £3 15s per month	Fair health
C	One-roomed hut, 'a disgrace'	Two adults, eight children, £4 per week mill wage	Not stated

A: Average European standard B: Just short of European standard C: Unfit for habitation or close to it NS: Not stated

Te Haroto housing survey, June 1938

However, as a result of further requests from Nepia, a housing survey was carried out by John Te H Grace in Te Haroto in 1938. Grace reported:

The housing conditions there are very bad. . . . With the exception of three or four all these houses should be condemned – if they are not already so. It would appear that these bad conditions have been brought about in the first place by poor circumstances of the people in the pa, and secondly by the absence of desire to better their living conditions and have better homes.⁸⁶

Moorsom examined Grace's report in detail and compared his findings with his survey data and other information. In Moorsom's view, Grace's assessment was 'undermined on several points by his own survey data'. For example, Moorsom noted that 'A fair number of those living in sub-standard housing did indeed indicate their desire for assistance to improve or replace them.' And, though Grace had said that 'the men are nearly all employed', Moorsom pointed out that 'a fair proportion of the households actually depended on old age pensions for their income'. Moreover, most of the employed men worked elsewhere rather than at the Te Haroto mill, thus 'pulling the able-bodied men and sometimes whole families out of the community'. But no matter how and where they earned their income, the Te Haroto people seldom had any left over for improving their houses. Though Grace and other commentators of the time tended to attribute the poor housing and living conditions to profligate expenditure on alcohol and cars, Moorsom said that Grace's survey found only one case of such extravagance – and that in a large family where the wife had recently died of tuberculosis. To illustrate his point, Moorsom compiled a table of Te Haroto housing based on Grace's survey. Since this so clearly relates the condition of housing to income (or the lack of it) and to health, we reproduce the table below.⁸⁷ In our view, this table speaks for itself. Moreover, as Irwin's observation above suggests, it would seem that the housing at Te Haroto was on a level with the housing at other Maori kainga such as Tangoio, Waiohiki, and Mohaka.

Prompted by an outbreak of typhoid at several Maori settlements in 1941, another survey was carried out in 1942, though this time it looked at Maori housing in the whole Hawke's Bay region. The survey examined 261 houses in 21 'pa' in the region and found that 63 per cent of them either needed costly renovations or should be demolished. It also considered that 84 per cent of the houses were below a 'satisfactory' standard. But, because of the Second World War, there was little that the Government could do to deal with the housing problem. Give or take a few notable exceptions, such as the Tareha 'mansion' near Waiohiki, we think that there was little difference between the housing at Te Haroto and that at other kainga.

We conclude by noting that the State and Maori Affairs housing schemes, started by Labour but continued by the National Government after 1949, greatly improved living conditions for those Maori who joined the urban migration. Yet, the downside for those migrants

86. JH Grace to registrar, Ikaroa Native Land Court, 18 June 1938 (as quoted in doc R3, p 267)

87. Document R3, pp 268–270

was that they lost the warm community relationships that they had enjoyed beforehand, since the new urban houses were ‘pepper-potted’ through the new urban suburbs to conform with the Government’s long-standing assimilation policy. Those who remained in rural areas often remained in poor housing, as we saw during our hearings at Te Haroto, where some of the houses must have pre-dated Grace’s 1938 survey, and at Raupunga, where we found dwellings with dirt floors.

We emphasise that this incomplete survey of Maori health, education, and housing cannot provide more than a glimpse into the sociology of the claimant people. Bearing in mind that the claimant evidence did not go beyond the memories of their witnesses and several research reports (such as those by Boast and Moorsom), which were mainly concerned with land issues anyway, there is no more we can do. We come back to this in the findings section of this chapter.

19.7 LEGAL SUBMISSIONS

We now summarise the submissions on the social and economic impacts of land loss that we received from the three major claimant groups: Nga Hapu o Ahuriri (Wai 400), the Mohaka–Waikare confiscation claimants (Wai 299), and Ngati Pahauwera (Wai 119). We then review the Crown’s responses to these.

19.7.1 Claimant submissions

The Wai 400 statement of claim was focused on the 1851 purchase of the Ahuriri block and the Crown’s alleged failure to provide sufficient reserves. The claimants asserted that, by undermining the rangatiratanga of the Ahuriri hapu, the Crown failed to prevent the subsequent alienation of most of their remaining land. This was a consequence of ‘the post-1865 individualisation of title, the introduction of economic concepts of debt and debt enforcement and the general introduction of those aspects of British law inimical to the interests of Ahuriri hapu’. As a result:

the Ahuriri hapu had lost the power to enforce their relationship with the Crown and settlers, their economic base was radically eroded by 1900, and by 1910 Ahuriri hapu depended on waged labour under Pakeha employment, subsistence farming and credit. Ahuriri hapu were therefore subject to economic deprivation, poor health and general social dislocation.

The statement of claim went on to assert that, through the twentieth century, the Crown’s policies had failed to ameliorate health, education, and housing, so that the hapu were ‘still

today socially, politically and economically marginalised in comparison with the Pakeha population of Ahuriri'.⁸⁸

Wai 400 claimant counsel's closing submissions presented the aftermath of the 1851 transaction in a chronological framework, dealing with the 1850s at some length and later periods more briefly. The submission was introduced by the statement that, in entering into the 'Treaty of Ahuriri', the Maori of Ahuriri 'envisaged a partnership, an environment where they would be able to advance and enhance their lives'. But this did not happen. 'In its place, Ahuriri Maori have suffered landlessness, economic marginalisation, and social deprivation. The cause of this inversion has been the acts and omissions of the Crown.'⁸⁹ The discussion up to about 1930 was concerned largely with the alienation of further land to the Crown or private purchasers under the Native Land Acts, mainly in order to meet debts. The land lost included Omaha, 'a significant centre of tribal identity' (just outside the inquiry district), which was alienated as late as 1909. 'The loss of these lands,' the submission continued:

was part of a vicious cycle, with poverty resulting from these alienations forcing further land-loss, resulting in greater poverty. The further loss of these lands, combined with a lack of any Government support, paralysed Maori development in the region.⁹⁰

Any land that remained was used for subsistence farming and a few cash crops and was insufficient for the land development schemes of the 1930s.

Ahuriri Maori, who were also affected by the Depression, suffered widespread poverty. Their ill health was directly attributed to their poverty, which, in turn, according to claimant counsel (and as we also quoted in chapter 5), was 'a direct result of the loss of their lands since 1851'.⁹¹ The submission further argued that post-Second World War urbanisation and fuller employment, though accompanied by some improvement in health and housing, brought cultural alienation and deprivation. Later, when large-scale employers such as the freezing works closed in the 1980s, there was no land left for the unemployed to return to. The submission concluded by asserting:

From a time in the 1850s when Ahuriri hapu dominated all aspects of life in the fledgling province, Nga Hapu o Ahuriri were by the 1980s urbanised, landless, unemployed and unskilled labourers, whose primary contribution to political life in the province was to rail against the result of 140 years of the stripping of their assets and trampling on their mana.

These outcomes were not envisaged by the Treaty of Ahuriri.⁹²

88. Claim 1.23(d), p 13

89. Document X44, p 103

90. Ibid, p 113

91. Ibid, p 115

92. Ibid, pp 118–119

The Wai 299 statement of claim was mainly concerned with the confiscation of the Mohaka–Waikare district and its aftermath, and the subsequent purchasing of the remaining land by the Crown or private parties. It was also concerned with the social and economic effects of the confiscation and purchasing of land, which effects included the loss of wahi tapu, mahinga kai, and birding and fishing resources; the destruction of the traditional leadership; the dislocation of social relationships; and difficulties in utilising any remaining resources. As a result, ‘the health of the people deteriorated to such an extent that the rates of tuberculosis and typhoid, and chronically poor health far exceeded that of the balance of the population of the Hawkes Bay area’.⁹³

Wai 299 claimant counsel elaborated on these statements in final submissions, discussing a variety of social, cultural, political, and economic consequences resulting from the loss of land. He began by stressing the close physical and spiritual relationship that the claimants had had with the land and how their exercise of te tino rangatiratanga over it had given their hapu mana and self identity. The resources of the land and the sea had provided ‘the things necessary to sustain and enjoy life’.⁹⁴ The claimants’ customary use of the land had continued to the present but was severely restricted by the loss of land and by the limits that the Crown had placed on access to its land. Counsel described the loss of land and resources and the problems of an imposed tenurial system on remaining land as ‘the genesis of the loss of Mohaka Waikare Maori’s economic base, decay of social structures, damage to cultural and spiritual values, reduction in living standards and ill health’.⁹⁵ Counsel then referred to Boast’s research report and to a long line of scholars, starting with Sir Apirana Ngata, who had, counsel said, ‘demonstrated the clear connection between land alienation, poverty and consequently systemic weakness, poor housing, low nutritional levels, the prevalence of disease, ill health and mortality in Maori’.⁹⁶ Moreover, poor health and poverty were in turn a cause of further land alienation. He noted, in conclusion of this section, that the Crown did not challenge any of the evidence of the claimants on this issue.

The Wai 119 statement of claim on behalf of Ngati Pahauwera was mainly concerned with the Crown’s purchasing of some 90 per cent of Ngati Pahauwera’s land in the Mohaka district, which acquisitions began with the Mohaka and Waihua blocks in 1851 and 1865 respectively and continued well into the twentieth century, but also concerns other acts or omissions of the Crown in relation to their remaining land. Ngati Pahauwera’s third amended statement of claim stated that, as a consequence of their land loss, Ngati Pahauwera have been left with insufficient land for their present needs; have suffered ‘the destruction or erosion of their economic base, social patterns and traditional leadership structures’; have been prevented from developing, or hampered in the development of, their remaining land and resources; have

93. Claim 1.22(e), pp 6–7

94. Document x39, p 113

95. Ibid, pp 114–115

96. Ibid, p 118

suffered from unemployment and ‘other adverse consequences to their health, welfare and education’; and, finally, have suffered a loss of mana.⁹⁷

These points were elaborated on in Wai 119 claimant counsel’s final submissions. He said that by 1941 over 200,000 acres of Ngati Pahauwera’s original holdings had been alienated, leaving them with around only 6 per cent of their former estate. About three-quarters of this area was acquired by the Crown, the remainder by private purchasers with Crown approval. The remaining Maori land, all in scattered parcels under fragmented title, was ‘essentially economically valueless’.⁹⁸ Although Ngati Pahauwera had hoped to benefit from alienating some of their land for Pakeha settlement, the Crown continued to acquire more of their land, ‘until there was no possible way for Ngati Pahauwera to benefit from Pakeha settlement’.⁹⁹ The Crown failed to reserve an adequate endowment of land for Ngati Pahauwera’s future needs. Under the Native Land Court, the Crown:

facilitated not only the destruction of much of the remaining land base from 1868 but through its processes ensured that the traditional structure and fabric of Ngati Pahauwera society was all but destroyed with the consequent migration of people out of their traditional lands.¹⁰⁰

The Crown’s implementation of land consolidation and development schemes did little to ameliorate this situation, and in any case the Crown continued to buy land. Finally, we note that claimant counsel quoted several witnesses on the degree of unemployment, poverty, sub-standard housing, ill health, alcohol and drug abuse, low morale, and psychological inertia that Ngati Pahauwera suffer from today. Through the context of his submissions, he linked these problems today to the previous alienation of Ngati Pahauwera’s land, a link that had been made in the third amended statement of claim quoted above.

19.7.2 Crown submissions

Although the Crown responded to those claims of the three major claimant groups that related to the different forms of land alienation, it did not respond comprehensively to the various claims relating to the socioeconomic effects of those alienations. Crown counsel did not deal with the issue at all in relation to the Wai 400 claim regarding the Crown’s Ahuriri purchase. So far as the Mohaka–Waikare confiscation district is concerned, the Crown did respond to allegations concerning title revision and disruption in relation to the Tarawera and Tataraka blocks and to twentieth-century Crown purchases, as we have noted in the relevant chapters above. But the Crown made no response to the various claimant allegations

97. Claim 1.6(c), pp 4–5

98. Document x30, pp 14–19

99. Ibid, p 66

100. Ibid, p 73

on the socioeconomic flow-on effects of those matters, except in an oblique manner in relation to the Ngati Pahauwera claim. Here (and this should be read in conjunction with our summary of the Crown's submissions in chapter 13), the Crown essentially admitted that it failed to protect the land base of Ngati Pahauwera when counsel said that:

on the broader assessment it is hard not to conclude that there came a point in time where further land dealings in the claim area have resulted in enduring and pervasive consequences for the Ngati Pahauwera community . . . the goals of protecting a land base for the foreseeable needs of Ngati Pahauwera and actively protecting their interests as a tribal group have been lost sight of to some extent. The Crown accepts that it is appropriate that these issues should be reviewed and addressed by the Tribunal. They should also be addressed in direct negotiations between the Crown and Ngati Pahauwera.¹⁰¹

Crown counsel debated what was 'sufficient' land, cautioning against the 'danger of the values of today being unrealistically applied to events in the past'. On the contrary, he continued, 'the task requires a measured assessment of transactions in the context in which they arose'. Counsel quoted Normanby's instruction to Hobson that he was not to purchase land 'essential . . . to [the] comfort, safety or subsistence' of Maori, and he admitted that the Crown had a responsibility to retain sufficient land for Maori needs. But this did not mean, counsel continued, that Ngati Pahauwera should have been confined to 'a reservation status', since this would have infringed their freedom of action under articles 2 and 3 of the Treaty. Moreover, he added, before 1865 it was not possible to foresee how agriculture would develop and how much land would be required in the future. Therefore, any measurement of what was sufficient would depend on what was required by then-available techniques of land utilisation and expected trends of population growth.¹⁰² Crown counsel then made a brief comment on the claimants' point of view:

The long term outcomes put to the Tribunal by Ngati Pahauwera and a relatively disadvantaged social position may show broad inequality today. However, a causal link to landlessness is not easily attained. The Mohaka area and other areas near it labour under certain geographical disadvantages which are unrelated to any act of omission of the Crown. The economics of such regions are complex and the problem of under development has no simple answer. Prosperity will not necessarily follow the mere possession of large tracts of land.¹⁰³

Finally, in his conclusion, Crown counsel made another admission:

There comes a point between 1910 and 1930, following notification of the report of the Stout Ngata Commission where it would be reasonable for the Tribunal to find that, on the

101. Document x55, pp 45-46

102. Ibid, pp 48-49

103. Ibid, p 49

basis to preserve sufficient land (as set out above), the focus of the Crown on individual interests meant that the broader obligations on the Crown to Ngati Pahauwera were not met. Namely, to ensure that Ngati Pahauwera retained sufficient land for its present and reasonably foreseeable needs.¹⁰⁴

This admission (which we also touched on in chapter 13), is similar to the Crown's concession, noted in chapter 9, that its purchases of returned land in the seaward blocks of the confiscation district went on for too long. The Crown has not made a similar admission concerning its purchases in the area within the Wai 400 claim, beyond of course suggesting that at the time of the Ahuriri purchase in 1851 local hapu had sufficient land to the north and south of the block. We have related the fate (including the confiscation) of the lands to the north of Ahuriri in part III of this report. To the south, the Heretaunga Plains were the subject of numerous transactions which provoked so many Maori complaints that in 1873 the Government appointed the Hawke's Bay Native Land Alienation Commission to inquire into and report on them. But, as we noted in chapter 5, these lands lie outside our inquiry district and will have to be reported on by another Tribunal.

19.7.3 Claimant submissions in reply

In reply, claimant counsel made no further submissions concerning the socioeconomic effects of the Crown's acquisition of land and resources that have not already been outlined above.

19.8 TRIBUNAL COMMENT

We have been asked by the various claimants to find that, by one means or another, the Crown acquired or facilitated the acquisition by Europeans of an excessive area of Maori land in our inquiry district. As a result, the claimants argued that they and their forebears suffered poverty, social dislocation, and ill health. In acquiring or allowing the acquisition of so much land, the Crown is said to have breached its obligations to the claimants under the principles of the Treaty of Waitangi. As we noted above, the Crown admitted some liability for allowing the alienation of an excessive area of land, particularly in the twentieth century, though it denied any straightforward or simple connection between land loss, poverty, and ill health.

Before making findings on these issues, we need to specify the Crown's obligations under the Treaty in relation to the preservation of a sufficient area of land for Maori and more generally in relation to the safeguarding of Maori welfare. We refer back to our discussion of relevant Treaty principles in chapter 2. There, we referred to a duty of protection, or fiduciary

¹⁰⁴. Ibid, p52

responsibility, founded not merely on the Treaty but also on Normanby's previous instruction to Hobson that he was not to purchase from Maori land that was essential for 'their own comfort, safety and subsistence'. We quoted the president of the Court of Appeal in his judgment in the *Lands* case as saying that the duty to protect was 'not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent possible'. The obligation to protect has been interpreted as requiring the Crown to ensure that Maori retained a sufficient endowment of land for their present and future needs. As we noted above, that obligation was accepted by Crown counsel in his closing submissions, though he added that the question of what was sufficient needed to be answered in terms of the assumptions about land development that prevailed at the time. That may be so, but we are reminded of how the Ngai Tahu Tribunal addressed this question. That Tribunal went back to Normanby's justification for the Crown paying a low price for land, which was that Maori were to enjoy the 'added value accruing from British settlement'. To share that enjoyment, Ngai Tahu would need sufficient land to engage on an equal basis with Europeans in pastoral farming and other farming activities.¹⁰⁵ As we said in chapter 2, that finding applied equally to the pastoral and agricultural land of Hawke's Bay. It was not sufficient for the Crown simply to reserve enough land for Maori to use for subsistence cultivation while they earned additional income working as labourers. Finally, in our chapter 2 discussion of Treaty principles, we called on the principle of mutual benefit, whereby it was argued that the Crown was required not merely to protect Maori properties but to help to develop them.

In our chapters dealing with Crown purchases and confiscation and Crown support for private purchases under the Native Land Acts, we have repeatedly pointed out the Crown's failure to set aside and retain sufficient land as reserves, and its failure to assist Maori to develop those lands. The techniques of land utilisation then being applied to that part of New Zealand required the use of extensive areas for depasturing sheep and, to a lesser extent, cattle, but the Crown then (and now) does not appear to have considered that these standards should have applied equally to Maori and to Pakeha. The mindset was on Maori cultivating small patches of land for their subsistence. As we have noted, so little land was left in Maori ownership by 1930 that there was insufficient in most districts for Ngata's land development schemes to be implemented. The only exception was in the Mohaka district, where, although a land development scheme was started, it was only marginally successful, and then only for a brief period. There was also the later example of a land development scheme on the Tarawera block, although, as we have noted, that too was a costly exercise that left Maori with a long legacy of debt. These exceptions should not distract us from the main point: namely, that far too much land was alienated to allow Maori any worthwhile opportunities to develop, even with State assistance, that which remained.

We note that other Tribunals have also commented on the connection between land loss

¹⁰⁵ See Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 2, pp 239, 503

and migration away from rural areas. For example, in the *Ngati Awa Raupatu Report*, that Tribunal cautioned:

even where it is evident that large numbers of tribal members left their home area for opportunities elsewhere, it is not always certain that this was a consequence of raupatu or other losses of resources. Maori and Pakeha alike in the middle part of this century left rural areas of New Zealand for the better employment, education, and entertainment prospects that the towns and cities offered.¹⁰⁶

The Whanganui River Tribunal also referred to the ‘world-wide economic forces leading to urban migration globally that were beyond the power of a government to control’.¹⁰⁷

While it may be the case that some factors were beyond the control of the Government, it still had an obligation to act in the interests of Maori wherever it could. Therefore, we now consider what linkages, if any, there were between Maori land loss, poverty, social dislocation, and ill health. In doing so, we bear in mind that the right of protection granted Maori was spelled out in the preamble to, and article 3 of, the Treaty and that it was in turn based on Normanby’s instructions, particularly his admonition that protective measures be implemented. These would include ‘the necessary laws and institutions’ to ensure that Maori would avoid the catastrophes that had afflicted other native peoples subjected to uncontrolled colonisation. Under the Treaty, the Crown had an obligation to protect Maori people as well as their land, and that obligation included a responsibility to ameliorate ill health, as we have argued at some length in our *Napier Hospital and Health Services Report*.

As we have indicated above, on the evidence available to us, it is impossible fully to quantify the extent of Maori depopulation and ill health, let alone link them directly to land alienation. Simply put, there are immense difficulties in establishing a direct causal relationship between, on the one hand, land loss and, on the other, poverty, social dislocation, poor health, and low educational attainment. However, there is, *ipso facto*, a connection between land loss and poverty in cases where insufficient land has been retained for subsistence and insufficient income is available from intermittent part-time work to make up the deficit. We should also add that, even in an area where a lot of Maori land was retained – such as at Te Haroto – Maori still suffered poor health and poverty because they lacked the capital to develop that land. Thus, they were hardly in a better position than those who had lost it all. In sum, we conclude that most Maori in our inquiry district retained either very little land or very little productive land for most of the period under consideration, and also suffered a lack of capital for development, at least until the 1930s. This was amply demonstrated by the examples that we presented above. Their insufficient income doomed Maori to suffer not only substandard housing but also numerous other kinds of deprivation. Living in poverty, they were also doomed to the diseases that thrived in poverty, such as tuberculosis. In that

106. Waitangi Tribunal, *Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p 101

107. Waitangi Tribunal, *Whanganui River Report* (Wellington: GP Publications, 1999), p 83

respect, there was a link between land loss, poverty, and disease, a point that has been made repeatedly by academic authorities on Maori demography and health such as Professors Pool and Durie.

Whether there was a more specific link between Maori depopulation and the methods of land alienation, including the operations of the Native Land Court, is more problematic. On the face of it, it seems evident that requiring Maori to attend court hearings for weeks on end without proper accommodation (which often left them susceptible to drinking the proceeds of land sales) must have contributed to the spread of infectious diseases – and this was in fact frequently alleged in the newspapers of the time. Likewise, the peripatetic nature of Maori economic activities, such as bush felling and sheep shearing, where the workers and their families also lived in makeshift conditions, must surely have contributed to disease and depopulation. But we hardly need to pursue the matter here, since, in comparison with other districts, Maori within our inquiry district had less participation in Native Land Court proceedings because so much of their land had already been purchased or confiscated. It is safe to conclude, as Boast did in his careful consideration of this issue, that Maori depopulation was caused by a variety of socioeconomic factors that aggravated the effects of infectious diseases. Even after the Maori population began to recover, there remained a connection between land loss, poverty, and poor health, as argued by Hutton. We agree with that conclusion. Whatever the causes of Maori depopulation and ill health, the Crown had an obligation to ameliorate them as best it could and, when the population began to recover, it was obligated to bring the standard of Maori health to a level equal that of Pakeha. That obligation has not yet been achieved.

There were other ways in which the Crown's omissions contributed to Maori remaining in the poverty trap, including its failure to provide effective alternatives to land development. The Government failed to provide alternative employment, other than occasional employment on public works, or to train Maori for employment in the various aspects of the economy. Partly, this was a consequence of the limited provision of schooling, which included the late development of State primary schooling that we have noted. But here, as in land development, the omission was due to a limited vision: an assumption that Maori needed only part-time employment (to supplement their subsistence farming) and were good only for unskilled labour. The careers of Sir Apirana Ngata, Sir Maui Pomare, and Sir Peter Buck, all products of the Anglican Te Aute College and all of them university graduates, contradict that assumption. And the Crown's protective and mutual benefit obligations under the Treaty also contradict such a limited vision. Maori were entitled to full participation in the colonial economy and society, as the Tribunal said in its *Report on the Muriwhenua Fishing Claim*: 'The Treaty offered a better life for both parties. A rule that limits Maori to their old skills forecloses upon their future. That is inconsistent with the Treaty.'¹⁰⁸

¹⁰⁸ Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 234

The failure of the Crown to ensure that Hawke's Bay Maori were able to participate fully in the development of the society and economy of the region, supported by a sufficient base in land and resources, was inconsistent with its obligations to Maori under the Treaty of Waitangi.

19.9 FINDINGS

We find that the Crown, in its acquisition of excessive amounts of land from Hawke's Bay Maori, in its failure to assist Maori to develop their remaining lands at an early date, and in its limited vision of the role of Maori in the economy, breached the principles of the Treaty of Waitangi. We find that Hawke's Bay Maori were prejudiced thereby.

More specifically, we find that:

- (a) The Crown failed to reserve a sufficient endowment of land to allow Hawke's Bay Maori to share equally with Pakeha in the pastoral and agricultural development of the economy. The Crown thus acted in breach of its duty of active protection, the principle of mutual benefit, and the Maori right to development.
- (b) The Crown failed, for some considerable time, to provide Hawke's Bay Maori with the assistance to develop remaining land that was due to them under the aforementioned principles.
- (c) The Crown failed in its fiduciary obligation to make adequate efforts to arrest Maori depopulation, at least until the turn of the twentieth century, and then in its obligation to improve Maori health and living standards to equal that of Pakeha. This failure derived from (a) and (b) above, as well as from the entrenched official mindset that saw Maori as having the potential only to be subsistence farmers and wage labourers. The Crown thus acted in breach of the principle of equity.
- (d) There was and remains a link between landlessness and poverty, although, as we have seen, Maori in our inquiry district suffered similar social and economic marginalisation regardless of their land holdings. This was because, where land was retained, it was largely rugged and unproductive, and because all Maori land has suffered from a lack of development finance, a lack of access, fractionated ownership, or disputes over title. Maori were simply never given the opportunity to derive full benefit from the developing Hawke's Bay economy.

PART VII

CONCLUSION

This part of the report consists of our final chapter, which sets out our concluding comments and recommendations. We reiterate the salient grievances of the raupatu, Ngati Pahauwera, and Ahuriri sections of our inquiry district, and give careful consideration to the issue of claim negotiation and settlement.

CHAPTER 20

CONCLUDING COMMENTS AND RECOMMENDATIONS

20.1 INTRODUCTION

We now turn to our concluding comments and recommendations. In reaching this point, we have considered a large amount of evidence and submissions and made numerous findings as to breaches by the Crown of Treaty principles. Here, we attempt to pull this together into an overall picture that will be of use to the Crown and the claimants as they move into the next phase of the process – negotiations.

Our region is potentially typical of many Tribunal inquiry districts in the North Island. There were pre-1865 Crown purchases and alienations to both the Crown and private purchasers after the introduction of the Native Land Court. There was supposed rebellion followed by confiscation. Then, into the twentieth century, there were development schemes, a consolidation scheme, and still further land purchasing, particularly by the Crown. There were also major environmental and socioeconomic changes.

And, as with the majority of the other districts, most hapu finished the twentieth century with very little of their former landed estate. It also mattered little, in many ways, whether customary title was lost through sales to the Crown before 1865, through the passage of lands through the Native Land Court (and the ensuing individualisation of interests in land), or through the most grievous form of alienation, raupatu. The net result was, as elsewhere, the same. After 150 years of Crown–Maori relations in Mohaka ki Ahuriri – since the first transactions of 1851 – Maori were essentially left with the shadow of the land. Ironically, it was in the confiscated district that Maori were left with the largest holdings (although that reflected the rugged and isolated nature of that land).

So, what are the distinctive features of the Mohaka ki Ahuriri inquiry district? For a start, it is an untidy district, with one sizeable boundary that, like the purchase boundary line it follows, reflects little on the actual traditional areas of interest of the hapu of the region. Here, we are referring to the southern boundary of the Ahuriri block, which severs the takiwa of the Ahuriri–Heretaunga hapu. Within our boundary are the lands these hapu sold in their first major political engagement with the Crown in 1851; without it are the lands they retained at the time, the fate of which is crucial to any definitive assessment of their overall losses. We discussed some Hawke’s Bay-wide (including Heretaunga) issues for the sake of context in the previous chapter, but in chapter 5 our focus was restricted to the subject matter of the Wai 400

claim – the Ahuriri transaction. In other words, while the inquiry boundary was devised with sound and pragmatic administrative reasoning, it has made our job of coming to considered and definite conclusions on the overall prejudice suffered by the Ahuriri hapu difficult and hence incomplete.

In the central and northern parts of our inquiry district, the boundaries are much more sympathetic to our task of reporting fully. The central third of our region is the confiscation district, to which a distinct and separate narrative can be attached following the events of 1866. While claimant groups such as Ngati Tutemohuta have additional interests in Taupo, the confiscation district by and large encompasses the principal areas of interest of the key groups within this part of our inquiry, such as Ngati Hineuru and Ngati Tu.¹ We believe that our inquiry has shed much light on the ‘forgotten raupatu’, so-called because it was not investigated by the Sim commission and overshadowed by the confiscations elsewhere. That so much land was ‘returned’ makes the Mohaka–Waikare confiscation area different from other raupatu districts. As a result of the nature of those ‘returns’, the recipients of the returned confiscated land also suffered enormous disruption through crippling title disputes.

To the north-east, the blocks we have grouped together as the lands subject to claim by Ngati Pahauwera can also be addressed in a distinct narrative, although the story becomes more specific to Ngati Pahauwera from the late 1860s. Earlier events, such as the 1851 Mohaka transaction, could logically have been grouped with the other contemporaneous transactions such as Ahuriri, but we have included them with the later history of Ngati Pahauwera principally in order to report coherently on the claims before us. That history includes the operations of the Native Land Court, Crown and private purchasing, land consolidation, and development schemes. While some questions remain for us over the extent to which the interests of certain Wairoa hapu overlap with those of Ngati Pahauwera, in this part of our inquiry district we have the neatest intersection of the interests of a kin group with the history of a demarcated territory. Elsewhere, by contrast, the principal claims were by pan-hapu claimant groups and were focused on the history of specific areas of land defined by historical events rather than by tribal interests. The Ngati Pahauwera section of our report is therefore the most comprehensive coverage we can produce of one distinct group and its interactions with the Crown.

20.2 RAUPATU

It remains for us to restate the salient breaches of Treaty principles we have identified in the report. First and foremost amongst these is the raupatu. In saying this, we see no contradiction with our earlier statement that land was lost regardless of the manner in which

1. We should add that we understand Ngati Hineuru are also claimants in the Taupo, Kaingaroa, and Urewera inquiries. In any event, their turangawaewae is at Te Haroto in our inquiry district.

customary title ended. In short, the Crown's behaviour in respect of the confiscation was on many counts indefensible, as we have explained. A group of Maori we have found to be not in rebellion were abruptly ordered to lay down their arms and then attacked when they refused. The lands of the hapu with the most representation amongst that group were confiscated, as were the lands of various other hapu besides. The Crown kept several blocks without justification, and certainly not for the purpose of military settlements, as required under the New Zealand Settlements Act 1863. The Compensation Court, provided for in legislation, was not used to determine who had been amongst or who had supported the so-called rebels; instead, a deal was made between the Crown and its allies over the 'return' of the spoils. Then, the Crown proceeded to purchase half of what was given back, in large part by restricting the owners from dealing with anyone but the Crown. The other half was racked by decades of disputes over title. In a nutshell, that is the story of the Mohaka–Waikare confiscation. But it is worth pausing to stress certain matters above others.

The genesis of the raupatu is of course to be found well beyond its most immediate causes and lies in a national context of anti-land selling movements, warfare, the rise of Pai Marire, and the earlier confiscations. But that should not obscure the fact that the Mohaka–Waikare confiscation has a peculiarly Hawke's Bay flavour. To a large extent, it was born of the local circumstances that began in 1851, when, in purchasing Ahuriri, McLean left Ngati Hineuru overlooked and disaffected. In 1858, McLean moved to placate Te Rangihiroa with a belated payment. Te Rangihiroa refused the money, but it was later accepted on his behalf by three other chiefs (see sec 5.6). Further uneasy dealings occurred over the Kaweka block, which overlapped with the inland portion of the Ahuriri block, well into the 1860s. Here were the seeds of the confrontation to come.

The entire situation was both caused and compounded by McLean's preference to deal only with a coterie of coastal Ngati Kahungunu chiefs, such as Tareha, Te Waka Kawatini, Karaitiana Takamoana, and Paora Torototo. This alliance or – we do not think it too strong a term – collusion was apparent in the sale of Ahuriri, the fight at Omarunui, the 'return' of the confiscated land, and the passage of certain 'confiscated' blocks through the Native Land Court. Time and again, Ngati Hineuru were the main scapegoats or victims of this collaboration. As we have said, there were many alternatives available to McLean that would have avoided the bloodshed at Omarunui, but a peaceful solution was apparently not the object. The reason for this marked departure from the Crown's obligation to treat its Maori subjects impartially is to be found not just in the warfare and insecurity of the 1860s or in McLean's grand design to isolate the Kingitanga by securing the inland route to Taupo – it lies also in the vested self-interest of many of the main protagonists. On the part of the Ngati Kahungunu chiefs, this obviously related to a desire to control the sale of lands. For Crown officials, it was also largely bound up with their own glaring conflicts of interest over land. Indeed, almost without exception, the key Government agents in Hawke's Bay in the mid-nineteenth century gained personally from the Crown's land dealings. This was certainly true for

McLean, with his Maraekakaho Station to the south, but it was also the case for Whitmore, Rhodes, Ormond, and even Park, the surveyor, who took such a shine to a part of the Ahuriri block he surveyed.

In no one was this conflict more apparent than Whitmore. His sheep run extended over Ngati Hineuru's former territory in the inland Ahuriri block, and thus their opposition to the transaction was a thorn in his side. Whitmore was not averse to advocating military action to stamp out the Pai Marire 'menace' (as McLean had referred to them), using the loss of some of his sheep as a pretext (something even Locke scoffed at). When the opportunity finally arose to tackle Ngati Hineuru and Pai Marire followers (they were viewed rather indistinguishably), not only did Whitmore get to participate in the attack but he got to lead it, as well as the punitive expedition into the interior that followed. It seems remarkable that Ngati Hineuru should have had to contend with a Government officer who stood personally to benefit so clearly at their expense.

Of course, the local officials did not act in isolation. They required the sanction of their superiors in Wellington for their actions. In the atmosphere of the time, however, this was readily given, and included the wide powers conferred by Weld upon McLean in March 1865 to make 'such arrangements as you may think most advisable' with 'friendly' chiefs to preserve peace and Stafford's February 1866 authorisation of McLean's use of an armed force to deal with reports of sheep stealing. By contrast, *ex post facto* concern was expressed about the military action in December 1866 by Lord Henry Carnarvon, the British Colonial Secretary, who pointed out to Grey that he had been left to learn of the affair through the newspapers and had no idea whether those Maori killed had been 'unoffending persons' (see sec 8.8). Grey's response was to include in his dispatch to London Samuel Williams' exaggerated account of the plot to attack Napier.²

The collaboration that we have mentioned of course prevailed in the 1870 agreement between McLean and various (predominantly coastal) chiefs for the return of a number of blocks. It also certainly applied in the Government's allowance of the passage of the Petane block through the Native Land Court on the eve of the confiscation to stand, and its even less justifiable agreement to Pakaututu passing through the court in 1869. Nowhere, however, was the Crown's collusion more manifest than when it gave Tareha sole ownership of Kaiwaka (complete with a Crown grant). Despite the repeated and reasonable arguments before the courts of certain (undoubtedly loyal) Maori that a trust had been intended, the Crown would not intervene on the plaintiffs' behalf by passing clarifying legislation. It seems that the Crown felt that its alliance with Tareha – or its debt to him for his services in attacking the Pai Marire party at Omarunui and for chasing Te Kooti – carried on after his death to the next generation in his family. Indeed, it must be assumed that the Crown preferred the petitioners' case to fail. That is because, when it did fail, the Crown took the opportunity to buy nearly half the

2. See doc w1, p189

block off the Tareha brothers for the purpose of opening it for Pakeha settlement. In Treaty terms, the Crown should have bought it in order to compensate those with rightful customary claims – but it did no such thing. If the Crown today owns any land at Kaiwaka, it should now be used to settle with those descended from such claimants. If it does not, they should be offered compensation.

Kaiwaka aside, if the recipients of the seaward returned blocks were in theory the beneficiaries of an alliance with the Crown in 1870, the Crown certainly did not treat the owners as allies in due course. From about 1910 to 1930, the Crown embarked on a land-buying programme that all but obliterated Maori land-holdings in the nine blocks in question, in contravention of the prohibition on alienation in the Mohaka–Waikare Act of 1870. That purchasing was of course also facilitated by the return of the land to Maori in the form of individual undivided interests rather than in customary title. There are two matters to note about the Crown's conduct in this regard. First, absolutely no consideration was given to assisting Maori to develop and make a living from these lands; on the contrary, the object was clearly to divest them of the lands as expeditiously as possible and to make them available for Pakeha settlers, including returned soldiers. This was an example of, to coin a phrase, 'two standards of citizenship'. Secondly, we consider that the Crown's purchasing methods, which included actively purchasing individual interests over the clear objections of meetings of owners, were by and large unconscionable. But, in particular, the powers conveyed on the Crown by section 363 of the Native Land Act 1909 were draconian and completely unjustifiable in terms of the Treaty. The Crown could – and often did – place alienation restrictions on blocks of land that prevented the owners from selling to private purchasers or even letting the land (including to lessees chosen from amongst the owners themselves) for so long as the Crown chose to keep the restrictions in place. As the owners became starved of any income, sales to the Crown became inevitable. We might well ask whether this form of alienation was any better than confiscation. While we may not have been made aware in evidence of every instance in which section 363 was used, we can calculate from the examples we do know of that the amount of land lost by Maori in these circumstances in the seaward returned blocks was at least 16,000 acres.³

In the inland blocks, a superficial assessment shows that the majority of the land remains in Maori ownership (nearly 110,000 acres spread across the Te Haroto, Tarawera, Tatarakaikina, and Te Matai blocks). This, however, tells nothing of the story of the clear grievances of the traditional owners of these lands. We have already mentioned the Pakaututu block. With regard to its sister block, Te Matai, we believe that the Crown allowed the uncertainty over the title to go on for much too long. We also consider that the Crown has largely watched from the sidelines as the owners have struggled to gain practical access to their land. It seems that this is now provided for in a 2002 amendment to the Te Ture Whenua Maori Act 1993, but we

3. This includes 2711 acres of Pakuratahi, 3835 acres of Arapaoanui, 3990 acres of Te Heru a Tureia, and the full 5760 acres of Tatarakaikina o Te Rauhinu.

nevertheless believe that the Crown should have been vigilant to ensure that the owners had adequate access to their land much earlier, particularly in 1962, when the Crown acquired Pakaututu and onsold it for settlement purposes.

The worst grievances concern the Tarawera and Tataraka blocks, however. For a start, the Crown kept a 2000-acre enclave at Tarawera that included the sites of the principal Ngati Hineuru settlements and cultivations. Then, after allowing a disproportionate Ngati Kahutapere presence amongst the lists for the main Tarawera block and the Tataraka block in 1870, the Crown finally legislated for a reinvestigation of title in 1924. But by then it was far too late, for those who had been recipients of the theoretical security of a Crown-granted title had enjoyed over 50 years of occupation. To then allow them to be evicted was manifestly unjust, but this is indeed what happened, since the Crown refused to make its own land available to accommodate the formerly dispossessed Ngati Hineuru owners who were now put into the titles. Then, in making amends in 1951 with the appointment of a royal commission, the Crown oversaw the reinstatement of the pre-1924 titles, again without providing Crown land to compensate the new generation of owners thus dispossessed of their lands. All the while, the litigation costs and survey charges arising out of the new partitions were proving ruinously expensive to those Maori involved.

The retention of the majority of the land in Maori ownership was a saving grace. The Crown was generally not interested in purchasing the land, which it viewed as remote and unproductive. But this should not cloud the extent of the prejudice suffered by the customary right-holders as well as the descendants of those who wrongly made the ownership lists in 1870. So disruptive were the title disputes and revisions that it is a wonder that much use was made of the land at all. Development assistance arrived much later than elsewhere too, and for a long time the main income derived from the land came from the royalties paid for the milling of its native timber. The lack of consultation over, and compensation for, the placement of the 220-kilovolt transmission line over the two blocks only added insult to injury. In addition, the loss of economic opportunity caused by the protection strip beneath these lines is considerable.

Finally, we should note that the Mohaka–Waikare confiscation claimants have never been compensated. Compensation was paid in the 1940s in respect of the Waikato, Whakatohea, and Taranaki confiscations, and a small amount was paid in 1981 in respect of Tauranga. Those moneys have been put towards the general social and economic advancement of the tribes concerned. As the Ngati Awa Tribunal observed, missing out on such funds saw Ngati Awa lag behind in terms of tribal organisation, educational scholarships, and the like. The Tribunal felt that these matters should be taken into account in the Ngati Awa claim settlement, and we consider that the same must apply to the settlement of the Mohaka–Waikare confiscation claims.⁴

4. Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp 136–137

20.3 NGATI PAHAUWERA

It was argued that the 1851 Mohaka transaction was, like Ahuriri, akin to a treaty or an alliance. Certainly, we have found it to be a major political compact for Ngati Pahauwera and a yardstick by which to measure later Crown conduct towards them. At the very least, the Crown had an obligation to act thereafter in Ngati Pahauwera's interests. We have had the opportunity to assess whether the spirit of the original compact was upheld because we were able to trace the fate of all Ngati Pahauwera's lands right through to the present day. We have already said that insufficient land was reserved out of the Mohaka and Waihua purchases to meet the likely future needs of all the hapu. We have also said that the Crown was lax in its protection of Ngati Pahauwera from Te Kooti and that the failure to return the wrongly acquired 1152 acres of the Waihua block when the issue was first brought to light was singularly unacceptable. Furthermore, the native land legislation did not provide for the form of title favoured by Ngati Pahauwera in 1868, and the protracted disputes over title that followed in a number of the blocks can be attributed to this failing. But while all this is bad enough, we believe that the grievances were seriously compounded in the early twentieth century.

In 1910, Ngati Pahauwera retained more than a quarter of their former estate – some 60,000 acres. This might have just been enough to participate in the developing national economy if assistance had been provided to develop these lands. In 1907, Stout and Ngata investigated two of the remaining Ngati Pahauwera land blocks and recommended that not one acre of them be sold and that Government assistance for their development be provided. But that assistance for the development of Maori land in multiple ownership did not occur until 1930, over three decades after the same kind of assistance was made available to individual (inevitably Pakeha) landowners. Again, this was another example of two standards of citizenship and was not in accord with the spirit of the 1851 transaction. What was worse, however, was that from 1911 the Crown persisted over two decades in buying up individual interests in land, more than halving the amount of land left in Maori ownership at Mohaka in 1910. It adopted the usual tactics of employing alienation restrictions under section 363 of the Native Land Act 1909, as well as making payments on the basis of out-of-date valuations. This purchasing not only conflicted with the Stout–Ngata recommendations but seemed to serve no clear purpose. And, because the Crown had acquired so many partial interests, scattered throughout the various blocks, it decided upon a scheme to consolidate its interests. Even after this decision was made, however, purchasing continued unabated – in fact, the impetus for it increased, as the Crown tried to gain as much land as it could in the northern part of the Mohaka block, where the blackberry infestation was less, before the exchanges took place.

What the Crown deserves some credit for are the development schemes that it set up at Mohaka. Despite their various faults, they were genuine attempts both to help Maori to develop their holdings and to relieve unemployment, especially at first. In the long run, it is clear that the schemes failed, particularly because of the terrain, the small land units, and the choice of dairying as the farming practice. But they represented about the first proactive step

on the part of the Crown to foster Ngati Pahauwera's interests. There was precious little else to commend in the twentieth century. Ngati Pahauwera have suffered the effects of isolation, poverty, and rural decline, and most of their people have been forced to leave. For those who remained, or who have now come back, the area is racked with the problems of scattered holdings in fractionated title, a lack of amenities, poor health, and woeful housing. Overall, only some 15,000 acres of Maori land remain in Ngati Pahauwera ownership, which has been calculated at roughly 6 per cent of the former estate. Much of that land lies unproductive and neglected, but it is still subject to local authority rates. The Te Ture Whenua Maori Act 1993 has gone some way towards providing an avenue for the transformation of multiple titles into communal ones, but the only incentive for this to occur is the motivation of the people. As we have said, the Crown needs to continue to develop initiatives to ameliorate the situation. Finally, despite the Crown having ignored the Tribunal's recommendations in the *Mohaka River Report 1992*, we believe that it still needs to negotiate with Ngati Pahauwera over the management of the river.

20.4 AHURIRI

Concerning Ahuriri, we cannot say whether the expectations the Ahuriri hapu had of receiving collateral benefits from the sale of land in 1851 were fulfilled. This would require a close examination of the fate of the blocks to the south, which we of course have not been able to do. But, on this point, we can say three things. First, we can confirm that these expectations were legitimate and that promises of such collateral benefits were regularly made by Government purchase agents in other parts of the country. This does not make the Ahuriri transaction a treaty, but it was a major political compact between Ahuriri Maori and the Crown, particularly since it appears that none of the vendors had signed the Treaty of Waitangi. Secondly, on the basis of the fate of the lands to the north, in which the vendors held interests, the Ahuriri sellers clearly received none of the envisaged benefits. And, with regard to the blocks to the south, Crown counsel conceded that there were serious issues there for the Crown to answer. The claimants will have to decide, therefore, whether they wish to proceed to a further Tribunal inquiry or whether they wish instead to move directly to negotiations with the Crown on all their claims. We return to this below.

What we can say about Ahuriri is that, although there were some things to commend about the way in which McLean conducted the transaction – the openness of the large meetings, for example – there are a number of matters which do not bear much scrutiny. The vendors were pressured into selling important areas they did not want to lose, such as lands around the harbour and the majority of Puketitiri Bush. In securing these areas for the Crown, McLean took advantage of the strong desire of the sellers both to have Pakeha settle on their lands and to emulate Te Hapuku in his sale of the Waipukurau block. The meagre reserves that were

provided were soon being purchased, with the Crown relentlessly pursuing Puketitiri until it eventually secured the title. The price for the Ahuriri block was also low and less than a third of that paid for Waipukurau. Moreover, McLean's superiors had charged him with ascertaining, and paying no more than, the lowest price that Maori would accept for their land, which contradicted the supposedly protective function of the Crown's right of pre-emption. McLean was also in breach of Treaty principles by his treatment of Ngati Hineuru, essentially ignoring their objections to the inclusion of their lands in the transaction and compensating them after the event when the transaction was a *fait accompli*. Likewise, Ngati Tu were not properly consulted and were left disgruntled. Here, then, were a number of matters that make Ahuriri far from a model transaction, even if it compared more than favourably with the clandestine purchases that followed.

Amongst the Ahuriri claimants, Ngati Parau raised a series of specific claims concerning their lands. We identified grievances with respect to the loss of land from reserves at Waitanoa and Waiohiki. In particular, most of Ngati Parau's riparian land in the Waiohiki reserve was taken for flood control purposes in the 1930s. We found that this taking, which should have occurred only as a last resort and in the national interest, was not even necessary.

20.5 DISTRICT OVERVIEW

Our inquiry district covers roughly 800,000 acres. That is approximately a third of the 2.7 million acres that McLean estimated in 1859 were contained within Hawke's Bay province. Of that amount, McLean wrote that some 200,000 to 300,000 acres (or about 10 per cent) would be required for the present and future needs of Maori.⁵ Given the amount of land Maori retained in the inland confiscated blocks – and leaving aside the question of whether McLean's assessment was accurate – in our inquiry district Maori today retain more than 10 per cent of the land. But the figures are misleading. McLean also said that 500,000 acres of the province was 'waste and useless', and it seems likely that most of what Maori still have today fell under this category rather than under lands deemed necessary for their livelihood. For example, in January 1867 McLean described the confiscated district as 'the most hilly rugged and unproductive land within the Province'.⁶ The following year, he said it was 'really of very little value and might almost revert to the Natives without much detriment to the Public Interests'.⁷

Thus, the leading Crown official in Hawke's Bay suggested in 1859 that Maori would require 10 per cent of the province for their needs. Instead – in our inquiry district at any rate – they were essentially left with the mountainous and remote areas – areas that the Crown did not

5. McLean to TH Smith, Assistant Native Secretary, 29 June 1859, AJHR, 1862, C-1, p 345 (doc J10, p181)

6. McLean to Stafford, 8 January 1867, RDB, vol 131, p 50620

7. McLean to Colonial Secretary, 8 May 1868 (as quoted in doc J28, p 61)

want to purchase. Of the better land in our inquiry district, only a small amount of Maori land remains. In the Ahuriri block, there is a tiny amount left in the Wharerangi reserve. To the immediate south, a small area remains around Waiohiki Marae. To the north, an even smaller amount remains at Petane around the marae there. In the seaward confiscated blocks, only 4500 acres were still in Maori ownership in 1930 out of a total of 123,000 acres returned, and presumably fewer than that remain today. And at Mohaka, as we have said, Maori retain 15,000 acres scattered across four blocks out of a former estate of some 230,000 acres.

The Crown raised the issue at our hearings as to whether it is really necessary to retain a rural land base to succeed in contemporary New Zealand society. Crown counsel pointed to a general decline in the fortunes of rural New Zealand and to changes in farming practice, which, he claimed, meant that rural areas would never be able to support a burgeoning Maori population. The argument was made that many Maori made personal choices to sell their rural holdings and move to the better lifestyles and opportunities offered in the cities. Crown counsel also attempted to refute the direct link that the claimants were seeking to make between landlessness and poverty. But, despite this, Crown counsel also conceded that land purchasing went on too long and that insufficient thought was given by officials as to how to maintain viable Maori communities. In short, counsel conceded, groups such as Ngati Pahauwera did not retain sufficient land for their present and reasonably foreseeable needs.

These are important concessions. Crown counsel did not go as far as we do in finding that there was, and is, a link between landlessness and poverty, or that the Crown's mindset was fixated on Maori having potential for little more than subsistence farming and wage labouring. We also concluded that Maori needed to retain not just a small fraction of their land base, such as 10 per cent, but rather a sufficiently large area to participate in the growing pastoral economy of the day. We also found that the supposedly rational and free decisions that Maori made to sell were in reality no such thing, and we were very critical of the way in which the Native Land Court system undermined chiefly authority and destabilised Maori communities. But, despite all this, the concessions are encouraging, for they show that the Crown is willing to admit its mistakes and negotiate compensation accordingly.

In sum, therefore, the Crown in its dealings in Mohaka ki Ahuriri acted frequently in breach of the following Treaty principles:

- ▶ the duty of active protection of Maori, particularly with respect to ensuring the retention by Maori communities of sufficient land holdings;
- ▶ the duty to act towards Maori reasonably and in good faith, and in a spirit of partnership with full consultation;
- ▶ the principle of reciprocity, whereby the Crown's exercise of kawanatanga needed to be constrained by respect for rangatiratanga;
- ▶ the principle of options, which required the Crown to have due respect for Maori law and customs;

- ▶ the principle of equal treatment, which required the Crown not to favour one group of Maori over another;
- ▶ the principle of equity, whereby the Crown was to afford Maori the same rights and privileges as Pakeha New Zealanders;
- ▶ the principle of mutual benefit, whereby the Crown needed to balance the sale of land by Maori for Pakeha settlement with the provision of assistance to Maori to enable them to develop their remaining lands and to participate in the economy on an equal footing; and
- ▶ the principle of redress, which required the Crown to make amends for evident breaches of its foregoing obligations.

Now is the time for the Crown to exercise the principle of redress.

20.6 WITH WHOM TO SETTLE?

20.6.1 Claimant submissions

As regards the issue of settlement negotiations, we start by recording what the principal claimant groups and the Crown had to say on the topic. Counsel for Wai 299 said in closing that ‘The claimant[s] in Wai 299 are ready and able to proceed to negotiation and settlement of their claim.’ He sought a recommendation from the Tribunal that the Crown should not:

defer or refuse to enter into such discussions on the basis that it will only negotiate with an iwi, or a collection of hapu wider than the Mohaka–Waikare raupatu block, and thereby defer entering into any negotiations for settlement of these claims.⁸

Counsel had also previously made the following comment in a memorandum dated 26 February 1998 (in relation to the Tarawera–Tataraakina whanau claims):

The Wai 299 claimants are strongly of the view that the claims within the Mohaka–Waikare Confiscation area must be settled at a hapu level rather than a whanau or iwi level. This, however, is an issue that can be dealt with after the Tribunal has completed its inquiries and consideration is being given to the appropriate groups with whom the Crown is to negotiate for settlement of any claim held to be well founded within the Mohaka Confiscation area.⁹

Counsel for Wai 119 did not specifically seek a recommendation that the Crown enter into separate settlement negotiations with his clients. This was implicit, however, in his request that the Tribunal recommend that interim relief be awarded to his clients. In justifying this, he argued that it ‘must be borne in mind that alone of the claimants groups in this regional

8. Document x39, pp 140, 141

9. Paper 2.264, p 3

20.6.2

inquiry, Ngati Pahauwera, due to the appointment of a Section 30 committee, possesses a structure capable of accepting interim relief¹⁰. Counsel for Wai 400 did not make any comment on settlement negotiations in his closing submissions.

20.6.2 Crown submissions

For its part, the Crown was categorical on the subject of settlement negotiations in its closing submissions. Counsel said that the Crown wanted to negotiate ‘a comprehensive settlement’ with the hapu that had claims in the inquiry. In a note following this statement, counsel added that this was ‘on the basis of the Crown making an exception to its strongly preferred policy of negotiating settlements at an iwi level to negotiate with a collective of hapu who have claims in this regional inquiry’.¹¹

Crown counsel also made some specific comments in separate closing submissions on the main claims before us. Perhaps in contradiction of the general submission quoted above, counsel said with respect to the Wai 119 claim that the Crown preferred the Tribunal ‘to make findings of fact and Treaty consistency on these claims [Wai 119, Wai 436, and Wai 731] and recommend that, in the first instance, negotiations occur between the Crown and Ngati Pahauwera’.¹² With respect to the Wai 400 claim, counsel noted that perhaps the claimants’ ‘most important claims’ were in the area south of the Tutaekuri River. He suggested that they could be addressed either ‘by way of negotiation’ or in a future regional inquiry. The Crown’s preference, he explained, was ‘to settle claims comprehensively’.¹³ With respect to the confiscation area, counsel reiterated that the Crown sought to negotiate ‘a single settlement of the claims of the hapu involved in this regional inquiry’.¹⁴

20.6.3 Other Crown statements on negotiation and settlement

In keeping with the Crown’s concerns about the southern boundary of the Mohaka ki Ahuriri district, Crown counsel in the Wairarapa inquiry (the same counsel as in our inquiry) recently suggested that that inquiry could be extended as far as the southern boundary of the Ahuriri block to close a gap that would otherwise necessitate a further regional inquiry.¹⁵ When the district was in fact extended only as far as the Tararua district and not to the Tutaekuri River, Crown counsel accepted that this was the wiser course, given the extra research and claimant coordination that would otherwise have been required. Counsel noted, however, that the settlement of any Wairarapa ki Tararua claims which extended beyond this

10. Document x30, p75

11. Document x56, p20

12. Document x55, p55

13. Document x54, p14, app 1, p12

14. Document x51, p105

15. Wai 863 ROI, paper 2.72, pp1–5

boundary might necessitate further research being carried out during the negotiations process. He added that the Crown's ultimate decision 'not to advocate for an expansion of the current inquiry district boundary does not indicate that the geographical or iwi coverage of any Treaty settlement would exactly match the inquiry district boundary'.¹⁶

The Crown's official preference is to settle with 'large natural groups'. In its negotiations guide, *Ka Tika a Muri, Ka Tika a Mua: Healing the Past, Building a Future*, the Office of Treaty Settlements (OTS) states that:

The Crown strongly prefers to negotiate settlements with large natural groups of tribal interests, rather than with individual hapu or whanau within a tribe. This makes the process of settlement easier to manage and work through, and helps deal with overlapping interests. The costs of negotiations are also reduced for both the Crown and claimants.¹⁷

20.6.4 Tribunal comment

The Crown's policy, according to Crown counsel in our inquiry, is to settle with iwi. But the official OTS statement is open to a broader interpretation. This is backed up by the Crown's clear intention to have a series of sub-regional Ngati Kahungunu settlements – something we take from the explicit comments made in respect to the Mohaka ki Ahuriri inquiry and the corresponding implication of the comments made with regard to Wairarapa ki Tararua.

It is indeed difficult to imagine the success of one overarching tribal settlement with Ngati Kahungunu stretching from Wairoa to Wairarapa. This is the largest territorial spread of any one iwi in the North Island, and claimants at the opposite ends of it may legitimately feel that they are not part of the same claimant community as their distant relations. The Wai 201 claim was filed in May 1991 by several individuals on behalf of the 'people of Ngati Kahungunu' and covered the entire expanse of the tribal territory, but it has never been regarded as the vehicle for the tribe to pursue all its claims. Ngati Kahungunu are the third most populous tribe in the country and their constituent parts are relatively autonomous. Indeed, as can be seen from our discussion of the origins of Ngati Kahungunu in chapter 3, their existence as a political and corporate entity is a relatively recent phenomenon. Moreover, the Wairoa ki Wairarapa claims will now fall within four separate Tribunal inquiry districts, which are at differing stages of completion. The tribal district was also split into three Tribunal rangahaua whanui sub-districts (Wairarapa, Hawke's Bay, and Wairoa).

Before we go further, however, we should state that we support the Crown's general policy to settle with large natural groups of claimants, as indicated in chapter 17. This policy has

16. Wai 863 RO1, paper 2.112, pp 2–3

17. Office of Treaty Settlements, *Ka Tika a Muri, Ka Tika a Mua: He Tohutohu Whakamarama i nga Whakataunga Kereme e pa ana ki te Tiriti o Waitangi me nga Whakaritenga ki te Karauna – Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 2nd ed (Wellington: Office of Treaty Settlements, [2002]), p 44

found favour with other Tribunals. In its *Pakakohi and Tangahoe Settlement Claims Report* of 2000, the Tribunal commented that:

This is an approach with which we have considerable sympathy. There appear to us to be sound practical and policy reasons for settling at iwi or hapu aggregation level where that is at all possible. As the Whanganui River Tribunal put it, ‘While Maori custom generally favours autonomy, it also recognises that, on occasion, the hapu must operate collectively’.¹⁸

What we have to answer, therefore – and particularly in light of the comments of counsel for Wai 299 – is whether the Mohaka ki Ahuriri claimants as a whole are a ‘large natural group’. The ORS guide does not define ‘large natural groups’, but we understand that a variety of factors are used by ORS to determine whether a claimant community is a such a group or not. These factors include:

- ▶ whether there is descent from a common ancestor or ancestors;
- ▶ the number of functioning marae;
- ▶ the size of the territory;
- ▶ the population;
- ▶ whether the community is separately identified in the census; and
- ▶ whether the community is recognised by other groups.

In applying these criteria to Mohaka ki Ahuriri, we can see that the matter is by no means straightforward.

The claimants almost all share a Ngati Kahungunu identity and whakapapa, and origins on the Takitimu waka, although Ngati Hineuru, for example, also have strong Ngati Tuwharetoa as well as Tuhoë affiliations. The 1991 and 1996 censuses broke matters down a step further by identifying tribal members as either Ngati Kahungunu ki Wairoa (or, from 1996, Rongomai-wahine), Ngati Kahungunu ki Heretaunga, or Ngati Kahungunu ki Wairarapa. As we understand it, these three main divisions within the iwi are not historically authentic but rather constructs of administrative origin from within the Department of Maori Affairs.¹⁹ They were, however, expanded on in the 2001 census, which listed the six district organisations, or taiwhenua, of the corporate body that represents the tribe itself, Ngati Kahungunu Iwi Incorporated. These taiwhenua are Ngati Kahungunu ki Wairoa (based in Wairoa), ki Te Whanganui a Orotu (Napier), ki Heretaunga (Hastings), ki Tamatea (Waipukurau), ki Tamakinui a Rua (Dannevirke) and ki Wairarapa (Masterton). Again, however, these are clearly administrative divisions resulting from the sheer size of the Ngati Kahungunu takiwa rather than reflections on traditional spheres of established kin groups.

So, if the census categories and tribal taiwhenua provide no useful steer on the existence of ‘large natural groupings’ within Ngati Kahungunu, what of our own knowledge of the kin

18. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 13 (quoted in Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report* (Wellington: Legislation Direct, 2000), p 65)

19. Document T18(g), p 6

groups who appeared before us? The claimants with the strongest case for their own separate negotiations are Ngati Pahauwera. They presumably identify as either Ngati Kahungunu ki Wairoa or Ngati Kahungunu ki Te Whanganui a Orotu in the census (the Mohaka River forms a boundary between the Wairoa and Te Whanganui a Orotu taiwhenua districts²⁰), and their numbers are unknown. However, they have three functioning marae (Mohaka, Raupunga, and Kahungunu), distinct claims (the subject matter of our chapters 11, 12, and 13, as well as the *Mohaka River Report 1992*), and a large and relatively well-defined takiwa. If Ngati Pahauwera are not an iwi, they are certainly a hapu aggregation. Crown counsel referred to them in closing as a ‘tribal group’,²¹ and in his evidence for the Crown before the Mohaka River inquiry, Fergus Sinclair referred to them as a ‘tribe’.²² Angela Ballara and Gary Scott also described Ngati Pahauwera as the ‘major tribe’ of the Waihua to Tangoio region and noted that other historians have remarked upon their ‘major status’.²³ Furthermore, and the Ngai Tane claim aside, the Ngati Pahauwera Incorporated Society appears to have the support of the people, and there also already exists a section 30 committee appointed by the Maori Land Court to represent Ngati Pahauwera in claim negotiations. In all the circumstances, we consider Ngati Pahauwera to be a group of requisite standing and with sufficiently distinct claims to be deserving of separate treatment. We acknowledge that counsel for Wai 119 did not specifically seek such an observation from the Tribunal, but we are obligated to comment given the request of counsel for Wai 299 for a recommendation on the matter with respect to his own clients.

As far as the confiscation district is concerned, we note the presence of only three functioning marae within its borders. These are Te Haroto, Tangoio, and Petane, although we should bear in mind that Petane was not treated as confiscated land and that the hau kainga, Ngati Matepu, are not claimants in the confiscation district.²⁴ That leaves only two marae and their constituent hapu within the confiscation area. The relative absence of marae, however, undoubtedly reflects on the gravity of the prejudice suffered by the hapu of the district. We can well imagine, for instance, that, had the hapu retained sufficient land to nurture viable communities, marae would exist at Tarawera (where previously were located the main Ngati Hineuru settlements), Tutira, Arapaoanui, and other places. So, how should the grievances be settled? As noted, claimant counsel sought a recommendation that the Wai 299 claimants be accorded their own Treaty settlement. Indeed, a case could probably be made that a ‘large natural group’ is to be found in the very community of claimants with raupatu grievances. While the confiscation claim is pursued principally by affiliates of Te Haroto and Tangoio

20. See Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 29, map 2

21. Document x55, p 46

22. For example, see doc c5, pp 3, 9

23. Document 11(15), pp 3, 5

24. This is despite the fact that the Wai 299 claim encompasses Petane and the Wai 400 claim – in which Ngati Matepu are claimants – does not. See also section 3.5.

Marae, their claims are largely contained within the confiscation district, and such is the severity of the prejudice they have suffered that we believe they are also deserving of separate consideration. Thus, one option could be for the Crown to negotiate with a body that is representative of the descendants of both the original 1870 grantees and – in the case of Tarawera and Tatarakina – those with customary rights who were left out then but reinstated to title subsequently, if temporarily, between 1924 and 1951. Broadly speaking, such a body would be representative of Ngati Kahutapere and Ngati Hineuru and has been foreshadowed by the hapu claiming together under Wai 299 (although we note that Ngati Pahauwera should of course pursue their confiscation claims in their own negotiations).

That is only one option, however. In terms of the OTS criteria, there appear to be grounds for Ngati Hineuru to receive separate consideration. They have strong connections to coastal Ngati Kahungunu through whakapapa, but their links are also with other tribal groups, and they could as easily stand with Ngati Tuwharetoa. To some extent, they exist at the margins of several iwi and thus in a sphere of their own. As Ballara and Scott put it, Ngati Hineuru's territory was:

a buffer zone between geographical regions, and only a people who could claim relationships with all of those regions could survive there, given the tendency in Maori society to punish the whole of a descent group for the offence of a part, provided they were not kin. Ngati Hineuru was such a people.²⁵

While Ngati Tuwharetoa historian John Te H Grace had written that many members of Ngati Hineuru were 'so closely connected with Ngati Tuwharetoa that they come under the name of that tribe',²⁶ Ballara and Scott considered that Ngati Hineuru were in fact 'a separate people'.²⁷ Furthermore, Ngati Hineuru probably suffered worse than other groups in the confiscation, and to that extent their historical grievances are relatively distinct. Moreover, they have issues in three other inquiries, and these matters would need to be addressed in their Mohaka–Waikare negotiations in order that the Crown could achieve a comprehensive settlement. Already, therefore, the concept of a raupatu district settlement would be negated at an early stage by the need to introduce fresh issues. That said, however, the Wai 299 closing submissions were the last official word to us on this subject on behalf of Ngati Hineuru, so we cannot be too prescriptive.²⁸ We simply draw the Crown's attention to the need for discussion and agreement on these important decisions.

Before leaving the confiscation district, we need to remember that it is the subject of a proliferation of smaller whanau claims. As we have indicated in both our comment at the end of chapter 10 and our discussion of the Kupa whanau claim in chapter 13, we believe that

25. Document 11(15), p 8

26. John Te H Grace, *Tuwharetoa* (Wellington: AH and AW Reed, 1959), p 189 (doc 11(15), p 8)

27. Document 11(15), p 8

28. We are unofficially aware, however, that more recently Ngati Hineuru have also been considering negotiating alongside Ngati Tuwharetoa in the central North island inquiry or attempting to stand independently.

settlements should be made with representatives of the entire class of people who suffered losses instead of with every smaller group that has happened to file a claim. That is not to say that individual claimants and whanau do not have real grievances; rather, that it would be inappropriate to compensate only those who have filed a separate claim when others who could have done the same were content to put their weight behind the overarching claims such as Wai 119 or Wai 299. It is in this very context that the Crown's preference to settle with large natural groups is clearly sound policy. And, if there were concern about the representativity of those prosecuting the larger claims (which acted as the catalyst for the filing of the 'undergrowth' claims), then we would trust that such matters could be satisfactorily resolved in the ORS mandating process.

In saying this, we draw a distinction with the suggestion of the Ngati Awa Tribunal that historical claims subject to a global settlement should be distinguished from claims within living memory (which was said to be 75 years). That Tribunal said that it would be 'contrary to sound principle and patently unjust . . . if . . . individuals unjustly deprived of specific blocks through more recent Crown actions . . . were made as competitors with the tribe as a whole for a share of compensation proceeds'.²⁹ While we support this logic, we believe that it is unworkable in the context of the Tarawera and Tatarakina blocks, where every landowner has been affected by events within living memory. The global settlement we propose is intended to cover this general class of beneficiaries. Moreover, the grievances from within living memory have their roots in the confiscation itself, and any separation between 'historical' and 'living memory' claims would be artificial. That said, however, there remain certain matters which will require specific redress. One example is the power lines grievance, which is of relatively recent origin and directly affects only certain landowners.

We have thus recommended separate negotiations and a separate settlement for Ngati Pahauwera and we have suggested two options for settling with the confiscation claimants. If these groupings do not seem sufficiently large to the Crown, we might add that, similarly, the idea of settling with the Mohaka ki Ahuriri claimants as a whole does not seem intrinsically 'natural'.

This brings us to the Ahuriri claimants: Ngati Matepu, Ngai Te Ruruku, Ngati Parau, Ngati Hinepare, and Ngati Tu. The latter are, of course, also claimants in the confiscation. If the raupatu claimants are treated as a large natural group, then we consider that Ngati Tu's Ahuriri claims should also be settled as part of those negotiations. Ngati Tu's turangawaewae at Tangoio is, after all, in the confiscation district. If Ngati Hineuru are treated with separately, however, we believe that Ngati Tu, Ngai Tatara, and Ngati Kurumokihi should have their claims settled alongside their whanaunga in Ahuriri. We believe that they and the Ahuriri hapu could be said to constitute – along with Ngati Mahu, Ngai Tawhao, and other hapu of the Ahuriri–Heretaunga district – another 'large natural group'. However, we think that it is clear that any settlement of the claims of all these hapu will need to include their Heretaunga

29. *The Ngati Awa Raupatu Report*, p139

grievances. The Crown's preference for comprehensive settlements dictates this, but it is also a conclusion that makes sense for the claimants. Quite simply, the history and claims of Ahuriri are inextricably linked to the history and claims of Heretaunga. Furthermore, these groups have already demonstrated their readiness and ability to come together in dealings with the Crown over Treaty settlements in the Te Whanganui-a-Orotu claim.

We can see that, if there were to be just one Mohaka ki Ahuriri settlement, Ngati Pahauwera and either Ngati Hineuru or the confiscation claimants as a whole would be handicapped by the need to first carry out additional research into the claims of the Ahuriri–Heretaunga hapu. We note in this context that other Tribunals have reported on just part of the grievances affecting particular tribes but have none the less recommended the settlement of all those groups' claims on the basis of the contents of their partial reports. For example, the Muriwhenua Tribunal reported on claims up to 1865 only and, while it noted that the Tribunal would proceed with a post-1865 inquiry if that were the claimants' wish, it added that the impact of the pre-1865 policies and practices entitled the claimants to 'a very large compensation' and it did not consider that 'the proof of further wrongs after 1865 could add anything to the relief that might now be given'.³⁰ In 1999, the Ngati Awa Tribunal reported that it had been unable to investigate the Native Land Court's awarding of lands outside the confiscation boundary and the Crown's acquisition of some of those lands. It felt, however, that since 'an exact equivalence cannot be expected for historical losses beyond living memory . . . these matters should be included in a lump-sum settlement of the raupatu'.³¹ Similarly, the Taranaki Tribunal reported on historical Taranaki claims in advance of the completion of its full inquiry in the hope that this would 'hasten a settlement'. It said that a second report on each group's particular history and associated ancillary claims would be forthcoming, 'unless matters are resolved earlier'.³²

There is an essential difference between these examples and Ahuriri. In each of these cases, the Tribunal considered that the aspects of the claims not reported on were minor in importance compared with the matters covered in the report, which it believed were significant enough to merit substantial compensation in their own right. We are faced with the opposite situation in regard to the Ahuriri hapu. We have reported on only part of their claims, but we consider that their most significant grievances remain to be addressed by the Tribunal. We therefore cannot recommend a settlement of their claims on the basis of our findings on the Ahuriri transaction alone.

We also note that the Ngati Parau claim is quite specific in certain regards. We consider that, rather than be dealt with in a separately negotiated settlement, the Waiohiki grievances should be specifically addressed within a broader Ahuriri–Heretaunga settlement, since the Waiohiki claim so clearly belongs within this context.

30. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 407

31. *The Ngati Awa Raupatu Report*, p 1

32. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: GP Publications, 1996), pp xi, 311

20.7 HOW TO SETTLE

Our general recommendation is that the Crown and the claimants should negotiate for the settlement of the claims in the light of our findings as to breaches of the Treaty set out in the conclusions of chapters 5 to 19. We also believe that such negotiations should be arranged broadly on the basis that we have outlined above, although we accept that we did not call for submissions on the matter and that the claimants' current views must be taken into account. In addition to our general recommendation, we have a number of specific recommendations to make.

As we have said, if the Crown has reacquired any land in the Kaiwaka block since it purchased Kaiwaka 1 and 2A in 1911 and opened them for selection, it should be returned to the descendants of those with rightful customary claims. We put particular emphasis on Kaiwaka, but of course the Wai 299 claimants may consider that any Crown land in other blocks should also be returned to Maori as a matter of principle. That will be a matter for negotiation. As noted in chapter 10, however, various parts of the confiscated Waitara block remain in Crown ownership either as parts of the Esk Forest or as Landcorp farms or conservation areas managed by the Department of Conservation. It seems to us that some of this land could be used in part settlement of the Wai 299 claim. In recommending such a solution, particularly with respect to the Tarawera and Tatarakina blocks, we note that the Crown in its final submissions stated that, when the opportunity arose, Crown land should have been used to compensate those with legitimate rights who were earlier left out of the titles. From time to time, officials recommended the use of Crown land in the district for such ends. We endorse that recommendation.

We also recommend with respect to the confiscation district that the Crown:

- ▶ take steps to facilitate a settlement of the Te Matai access issue, either on the basis of mediating between the parties or by supporting an application through the Maori Land Court and paying the costs associated with such an application; and
- ▶ provide specific and additional redress to those landowners prejudiced by, and not previously compensated for, the power lines across the Tarawera and Tatarakina blocks. If it is convenient to do so, this compensation could also encompass the Pohokura block owners.

With respect to Ngati Pahauwera, we recommend that the Crown take steps to negotiate a settlement of the Mohaka River claim, which settlement should include an acceptance of the Mohaka River Tribunal's recommendation that it pay compensation to Ngati Pahauwera for the extraction of gravel from the riverbed. With regard to that part of the 1152 acres of land wrongly acquired as part of the Waihua transaction that the Crown owns today as part of the Mohaka Forest, we hope that direct negotiations will lead to a satisfactory resolution of the matter. If not, however, we will entertain a request for a binding recommendation for the land's return. Finally, we recommend that, in consultation with Ngati Pahauwera, the Crown continue to explore policy initiatives on how to turn the patchwork of small, multiply held

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fragments of land, such those comprising Ngati Pahauwera's remnant holdings, into a useable land base.

Lastly, we note the Crown's admissions in relation to various breaches of the principles of the Treaty. We express our hope that the Crown will be able to resolve any resulting prejudice to the claimants in the same spirit of reconciliation that has prompted its admissions.

Dated at Wellington this 11th day of May 2004



WW Isaac, presiding officer



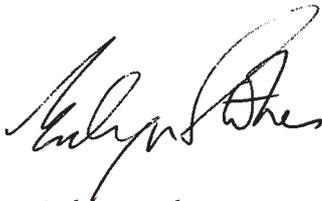
J Clarke, member



RCA Maaka, member



MPK Sorrenson, member



EM Stokes, member



APPENDIX

RECORD OF INQUIRY

RECORD OF HEARINGS

TRIBUNAL MEMBERS

The Tribunal constituted to hear the Mohaka ki Ahuriri claims comprised Deputy Chief Judge Wilson Isaac (presiding), John Clarke, Roger Maaka, Professor Keith Sorrenson, Professor (later Dame) Evelyn Stokes, and John (later Sir John) Turei. Sir John Turei passed away in January 2003, before the completion of the report.

COUNSEL

Counsel appearing were Maui Solomon, Deborah Edmunds, Quentin Duff, and Catherine Day for the Wai 299 claimants; Grant Powell, Kate Jackson, and Emma Pond for the Wai 119, Wai 400 and Wai 731 claimants; Joe Williams for the Wai 400 claimants; Charl Hirschfeld, Tavake Afeaki, Nick Taylor, and Darrell Naden for the Wai 168 claimants; Dave Porteous for the Wai 216, Wai 318, Wai 600, Wai 627, Wai 638 (encompassing Wai 598, Wai 601, Wai 602, and Wai 608), Wai 639, and Wai 732 claimants; Carrie Wainwright and Sophie Taylor for the Wai 436 claimants; John Smith for the Public Trustee; and Dr Fergus Sinclair and Craig Linkhorn for the Crown.

FIRST HEARING

The first hearing was held at Tangoio Marae, Tangoio, from 11 to 15 November 1996. It concerned the Wai 299 claim.

Submissions or evidence were received from Te Otene Anaru, Fred Reti, Maui Solomon, and Bevan Taylor (11 November); Kuia Gray, Te Hata Kani II, Rere Puna, Sabre Puna (on behalf of Wiari Anaru, deceased), Mere Kingi Ratima, Aperahama Sullivan, Rangitere Taurima (on behalf of Harata Taurima, deceased), and Bevan Taylor, (12 November); and Richard Boast, Heitia Hiha, Rangi Taurima, and Bevan Taylor (13 November); Richard Boast and Patrick Parsons (14 November); and Patrick Parsons and Bevan Taylor (15 November).

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SECOND HEARING

The second hearing was held at Te Haroto Marae from 27 to 30 January 1997. It concerned the Wai 299 claim.

Submissions or evidence were received from Edryd Breese, Maui Solomon, and Nick Wall (27 January); Hine Campbell, Bryan Gilling, Rangiaho Te Hata, Patrick Parsons, Te Omiraka Rahui, and Phillip Sullivan (both for himself and on behalf of Selina Sullivan, deceased) (28 January); Te Otene Anaru, Kahuiariki Bartholemew, Willie Bush, Tania Hopmans, David Kinita, Rere Puna, Hinei Reti, Phillip Sullivan, Waiata Sullivan, Henriatta Tipiwai, and Nick Wall (29 January); and Heitia Hiha and Fred Reti (30 January).

There was a site visit through the confiscation district on 30 January.

THIRD HEARING

The third hearing was held at Waiohiki Marae from 23 to 26 June 1997. It concerned the Wai 168 claim.

Submissions or evidence were received from Charl Hirshfeld, Pearl Kawhe, Hine Pene, Roy Pewhairangi, Tatu Pineaha, and Ben Whitiwhiti (23 June); Bryan Gilling (24 June); Pani Luke, David Pene, Taape Tareha O'Reilly, Alice Simmonds, Tipene Tareha, Tipu Tareha, and Gary Williams (25 June); and Dean Cowie, Albert Gray, Nigel Hadfield, Labour Hawaikirangi, Heitia Hiha, Roy Pewhairangi, Roy Stanford, and Jacqueline Wilson (26 June).

There was a site visit to Otatara Pa, Lake Rotokare, the Waiohiki block, and other places on 24 June.

FOURTH HEARING

The fourth hearing was held at Omahu Marae from 13 to 17 October 1997. It concerned the Wai 400 claim.

Submissions or evidence were received from Joe Williams (13 October); Heitia Hiha, Hoani Hohepa, Erua Kaukau, Joe Northover, Rameka Joe Pohatu, Piriniha Prentice, and Te Awhinga Whaitiri (14 October); Vincent O'Malley, Patrick Parsons, Georgina Roberts, and Hohepa Spooner (15 October); Angela Harmer, John Hutton, Wini Te Reo, and Tony Walzl (16 October); and Nigel Baker, Nigel Hadfield, Haami Harmer, and Ranui Toatoa (17 October).

FIFTH HEARING

The fifth hearing was held at Mohaka Marae from 3 to 6 November 1997. It concerned the Wai 119 claim.

Submissions or evidence were received from Joe Carroll, Akuhata Keefe, Charlie King, Grant Powell, Ruku Wainohu, and Paora Whaanga (3 November); Don Loveridge and Toro Waaka (4 November); David Alexander, Peter Hawkins, Erueti Te Kahika, Don Loveridge, Koea Pene, Tessa Tuhi, and Lou Wesley, (on behalf of Hemi Tuhi, deceased) (5 November); and Tureiti Moxon and Isobel Thompson (6 November).

There was a site visit by vehicle around the environs of Mohaka and Raupunga on 4 November and by helicopter around the entire takiwa of Ngati Pahauwera on 4 and 7 November.

SIXTH HEARING

The sixth hearing was held at the Great Wall Conference Centre, Napier, on 10 and 11 November 1997. It concerned the Wai 400 claim and was for the purpose of completing cross-examination of certain witnesses.

Evidence was received from Vincent O'Malley and Tony Walzl (10 November); and John Hutton and Tony Walzl (11 November).

SEVENTH HEARING

The seventh hearing was held at Te Haroto Marae from 14 to 17 April 1998. It concerned the Wai 599, Wai 600, Wai 627, Wai 638 (encompassing Wai 598, Wai 601, Wai 602 and Wai 608), and Wai 639 claims.

Submissions or evidence were received from Dave Porteous (14 April); Nigel Baker, Charles Utiera, Sidney Waiwiri, and Te Awhinga Whaitiri (15 April); Willie Bush, Tuhuihao Kahukiwa, David Kinita, Richard Moorsom, Henare Ratima, and John Wano (16 April); and Nigel Baker, Paul Crawford, Angela Harmer, Richard Moorsom, Dave Porteous, Piriniha Prentice, Te Rina Sullivan, and Ranui Toatoa (17 April).

There was a site visit by helicopter around the Tataraakina block on 15 April.

EIGHTH HEARING

The eighth hearing was held at Waipahihi Marae, Taupo, on 29 and 30 July 1998. It concerned the Wai 216 claim.

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Submissions or evidence were received from Whakapumautanga Downes, Haami Harmer, Harvey Karaitiana, Moari Karaitiana, Hui Moon, Dave Porteous, Ann Pupuirao-Clarke, Tana Tahau, Te Rina Sullivan, and Nick Wall (29 July); and Nigel Baker, Peter Clarke, Dean Cowie, Peter Eden, Angela Harmer, and A Seymour (30 July).

NINTH HEARING

The ninth hearing was held at the Great Wall Conference Centre, Napier, from 16 to 20 November 1998. It concerned the Wai 436, Wai 731, Wai 318, Wai 216, Wai 732, and Wai 168 claims.

Submissions or evidence were received from Richard Hill, Cordry Huata, and Carrie Wainwright (16 November); Maraea Aranui, George Hawkins, Te Hira Huata, Ranapia Huata, Wi Huata, Charlie King, Maria Mareroa, Grant Powell, and Paora Whaanga (17 November); Colin Amor, Nigel Baker, Gillie Cooper, Norman Cooper, Richard Cooper, Henry Kupa, Kevan Kupa, Robert McClean, Patrick Parsons, Dave Porteous, Guy Taylor, Toro Waaka, and Ruku Wainohu (18 November); Susan Baker, Richard Boast, Bristo Grey, Angela Harmer, Heitia Hiha, Dave Porteous, Richard Rewi, Stephen Robertson, Phillip Sullivan, and Barry Wilson (19 November); and Richard Moorsom and Darrell Naden (20 November).

TENTH HEARING

The tenth hearing was held at the Great Wall Conference Centre, Napier, on 24 May 1999. It concerned the Wai 168, Wai 299, and Wai 638 claims, as well as a mapping project for the entire inquiry.

Evidence was received from Richard Moorsom.

ELEVENTH HEARING

The eleventh hearing was held at the premises of Te Taiwhenua o Te Whanagnui a Orotu, from 8 to 10 June 1999. It concerned the Wai 692 (Napier Hospital and health services) claim only.

TWELFTH HEARING

The twelfth hearing was held at the War Memorial Centre, Napier, from 26 to 30 July and on 2 August 1999. It concerned the Crown's case.

Submissions or evidence were received from Dr John Battersby, Craig Linkhorn, and Dr Fergus Sinclair (26 July); Dr John Battersby, Lyndsay Head, and Mike Mohi (27 July), Bob Hayes, Lyndsay Head, and Elizabeth Pischief (28 July); and Brent Parker (29 July). The remainder of the hearing was given over to the Crown's submissions and evidence in the Wai 692 claim.

THIRTEENTH HEARING

The thirteenth hearing was held at the Great Wall Conference Centre, Napier from 22 to 25 and 29 and 30 November 1999. It concerned closing submissions for all claimants and the Crown.

Submissions were received from Quentin Duff and Charl Hirschfeld (22 November); Charl Hirschfeld and Grant Powell (23 November); Grant Powell and Dave Porteous (24 November); Fergus Sinclair (29 November); and Craig Linkhorn and Fergus Sinclair (30 November). Closing submissions in the Wai 692 claim were given on 25 and 30 November.

FOURTEENTH HEARING

The fourteenth hearing was held at the premises of Te Taiwhenua o Te Whanganui a Orotu, Napier, on 31 January and 1 February 2000. It concerned claimant submissions in reply.

Submissions were received from Quentin Duff, Charl Hirschfeld, and Grant Powell (31 January); and Dave Porteous (1 February). Submissions in reply in the Wai 692 claim were given on 1 February.

RECORD OF PROCEEDINGS

Note: The record of proceeding does not include all the material on the Wai 201 (Wairoa ki Wairarapa) record. It is confined to only those papers of direct relevance to the Mohaka ki Ahuriri inquiry (excluding those relating to the Napier Hospital and health services claim).

1. CLAIMS

1.6 Wai 119

A claim by Ariel Aranui and others concerning Ngati Pahauwera lands and the Mohaka River, 24 January 1990.

- (a) Amendment to claim 1.6, 6 April 1990
- (b) Amendment to claim 1.6, 25 November 1991
- (c) Amendment to claim 1.6, 9 April 1997

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1.9 Wai 168

A claim by Anikanara Te Haipo Hadfield and others concerning Waiohiki lands, 21 August 1990.

- (a) Amendment to claim 1.9, 5 June 1996
- (b) Amendment to claim 1.9, 30 April 1996
- (c) Amendment to claim 1.9, 1 December 1996
- (d) Amendment to claim 1.9, 11 June 1997
- (e) Amendment to claim 1.9, 10 July 1997
- (f) Amendment to claim 1.9, 27 June 1999

1.15 Wai 191

A claim by Tamihana Nuku and others concerning the Tarawera confiscation, 13 April 1991.

1.21 Wai 216

A claim by Moari Karaitiana and others concerning the Te Matai block, 22 January 1991.

- (a) Amendment to claim 1.21, 16 January 1996
- (b) Amendment to claim 1.21, 8 January 1997
- (c) Amendment to claim 1.21, 9 July 1998

1.22 Wai 299

A claim by Bevan Taylor and others concerning the Mohaka–Waikare confiscation, 24 July 1992.

- (a) Amendment to claim 1.22, 27 October 1992
- (b) Amendment to claim 1.22, 8 November 1996
- (c) Amendment to claim 1.22, 20 December 1996
- (d) Amendment to claim 1.22, 9 April 1997
- (e) Amendment to claim 1.22, 9 July 1999

1.23 Wai 400

A claim by Hoani Hohepa concerning the Ahuriri block, 2 November 1993.

- (a) Amendment to claim 1.23, 12 March 1996
- (b) Amendment to claim 1.23, 27 May 1996
- (c) Amendment to claim 1.23, 30 September 1996
- (d) Amendment to claim 1.23, 26 September 1997

1.31 Wai 436

A claim by Wi Te Tau Huata and others concerning Mohaka Forest, 16 June 1994

- (a) Amendment to claim 1.31, 22 October 1998

1.32 Wai 430

A claim by Charles Hirini and others concerning the Rawhiti block, 26 April 1994

1.34 Wai 488

A claim by Terry O'Sullivan concerning the Tatarakina c block, 9 November 1994. The claim was subsequently withdrawn on 12 December 1996.

(a) Amendment to claim 1.34, 1 June 1995

1.42 Wai 598

A claim by David Kinita and others concerning the Tatarakina 7 block, 16 May 1996

(a) Amendment to claim 1.42, 23 April 1998

1.43 Wai 599

A claim by Tuhiao Kahukiwa and another concerning the Tarawera 7 block, 16 May 1996

1.44 Wai 600

A claim by Te Rina Sullivan and another concerning the Tarawera 1F block, 16 May 1996

1.45 Wai 601

A claim by Winifred Kupa and others concerning the Tatarakina 2 and 5 blocks, 16 May 1996

1.46 Wai 602

A claim by Willie Bush concerning the Tatarakina 6 block, 15 June 1996

1.47 Wai 608

A claim by Lyndhurst O'Donnell concerning the Tatarakina 9 block, 5 June 1996

1.48 Wai 318

A claim by Mereana Maria Amor and another, concerning the Te Whaiti Kuranui 2D4 and other blocks, 26 September 1992

(a) Amendment to claim 1.48, 6 November 1998

(b) Amendment to claim 1.48, 13 November 1998

1.50 Wai 627

A claim by Albert Eden concerning the Tatarakina block, 27 September 1996

1.51 Wai 638

A claim by Nigel Baker and others concerning the Tatarakina c block, 18 October 1996

(a) Amendment to claim 1.51, 23 April 1998

1.52 Wai 639

A claim by Nigel Baker concerning the Tarawera township, 27 November 1996

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1.53 Wai 640

A claim by Nigel Baker concerning Stoney Creek Forest and the Tarawera 10B block, 6 November 1996. The claim was subsequently withdrawn on 12 May 1998.

1.55 Wai 731

A claim by Kevin Te Taka Kupa concerning land affected by the Mohaka consolidation scheme, 17 July 1998

(a) Amendment to claim 1.55, 9 November 1998

1.56 Wai 732

A claim by Albert Edward Eden concerning the Petane block, 23 July 1998

2. PAPERS IN PROCEEDINGS

2.9 Notices of Wai 199 claim, 18 May 1990

2.17 Direction to commission report by Huata and Thomson, 12 June 1990

2.26 Direction to register Wai 168 claim, 3 November 1990

(a) Notice of Wai 168 claim, 21 November 1990

2.30

(b) Memorandum releasing introductory report on Waiohiki by Joy Hippolite, 11 April 1991

2.31 Direction to distribute report by Huata and Thomson, 17 April 1991

2.38 Direction to register Wai 191 claim, 18 May 1991

2.43 Direction to register Wai 216 claim, 20 June 1991

(a) Notice of Wai 216 claim, 25 June 1991

2.77

(a) Direction to register Wai 299 claim, 29 July 1992

(b) Notice of Wai 299 claim, 12 August 1992

2.79

(a) Direction to register Wai 318 claim, 20 November 1992

(b) Notice of Wai 318 claim, 2 December 1992

- (c) Direction to register amendment to Wai 299 claim, 20 November 1992
- (d) Notice of amendment to Wai 299 claim, 2 December 1992

2.94 Direction to register Wai 400 claim, 26 November 1993

- (a) Notice of Wai 400 claim, 30 November 1993

2.113 Direction to register Wai 436 claim, 3 August 1994

- (a) Notice of Wai 436 claim, 12 August 1994

2.114 Direction to register Wai 430 claim, 25 November 1994

- (a) Notice of Wai 430 claim, 5 December 1994

2.117 Direction to register Wai 488 claim, 7 April 1995

2.119

- (a) Direction to register Wai 491 claim, 12 April 1995

- (b) Notice of Wai 491 claim, 20 April 1995

2.122 Direction to register further particulars of Wai 488 claim, 15 June 1995

2.123 Direction concerning claims in Mohaka to Napier locality, 20 July 1995

2.135 Joint memorandum from Crown and claimant counsel concerning settlement of Wai 147 claim and Waimakuku Trust's interests in Wai 491 claim, 7 February 1996

- (a) Deed of agreement for settlement of Wai 147 and Waimakuku Trust's interests in Wai 491 claim, 20 December 1995

2.138 Direction to register amendment to Wai 216 claim, 2 April 1996

2.139 Notice of amendment to Wai 216 claim, 16 April 1996

2.140 Direction to register amendment to Wai 400 claim, 4 April 1996

2.141 Notice of amendment to Wai 400 claim, 18 April 1996

2.143 Direction to register addition to Wai 400 claim, 5 July 1996

2.144 Notice of addition to Wai 400 claim, 15 July 1996

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- 2.148 Direction to register Wai 598 claim, 19 July 1996
- 2.149 Notice of Wai 598 claim, 23 July 1996
- 2.150 Direction to register Wai 599 claim, 19 July 1996
- 2.151 Notice of Wai 599 claim, 23 July 1996
- 2.152 Direction to register Wai 600 claim, 19 July 1996
- 2.153 Notice of Wai 600 claim, 23 July 1996
- 2.154 Direction to register Wai 601 claim, 19 July 1996
- 2.155 Notice of Wai 601 claim, 24 July 1996
- 2.156 Direction to register Wai 602 claim, 19 July 1996
- 2.157 Notice of Wai 602 claim, 25 July 1996
- 2.158 Direction constituting Tribunal to hear Mohaka ki Ahuriri claims, 23 July 1996
- 2.159 Direction to register Wai 608 claim, 2 August 1996
- 2.160 Notice of Wai 608 claim, 13 August 1996
- 2.161 Direction to register two additions to Wai 168 claim, 2 August 1996
- 2.162 Notice of two additions to Wai 168 claim, 15 August 1996
- 2.164 Direction naming claims to be heard in Mohaka ki Ahuriri inquiry, releasing first volumes of casebook, and aggregating relevant aspects of Wai 318 claim, 12 September 1996
- 2.168 Direction to release document J35, 25 September 1996
- 2.169 Minutes of 23 September 1996 pre-hearing conference
- 2.170 Direction following 23 September 1996 pre-hearing conference, 26 September 1996

- 2.171** Memorandum from Crown counsel concerning service of documents on Crown, 10 October 1996
- (a) Memorandum from Wai 400 claimant counsel in response to paper 2.171, 16 October 1996
 - (b) Memorandum from Crown counsel in response to paper 2.171(a), 23 October 1996
- 2.172** Letter from Wai 119 claimant counsel requesting extension of time for filing objections to Dr Fergus Sinclair acting as Crown counsel, 22 October 1996
- (a) Memorandum from Wai 119 claimant counsel objecting to Dr Fergus Sinclair acting as Crown counsel in Wai 119 claim, 1 November 1996
 - (b) Memorandum from Crown counsel concerning status of Dr Fergus Sinclair, 7 November 1996
 - (c) Memorandum from Wai 400 claimant counsel concerning status of Dr Fergus Sinclair and standard of proof required when binding recommendations sought, 8 November 1996
- 2.173** Direction to register Wai 627 claim, 21 October 1996
- 2.174** Notice of Wai 627 claim, 25 October 1996
- 2.175** Notice of first hearing, 24 October 1996
- 2.176** Memorandum from counsel for Wai 400 concerning Wai 400, Wai 598–602, and Wai 608 claims, 31 October 1996
- 2.177** Memorandum from Crown counsel requesting agenda for first week of hearing, 5 November 1996
- (a) Memorandum from Wai 299 claimant counsel in response to paper 2.177, 6 November 1996
- 2.179** Memorandum from Crown counsel objecting to Tania Hopmans as Wai 299 junior counsel, 6 November 1996
- (a) Memorandum from Wai 299 counsel in response to paper 2.179, 7 November 1996
 - (b) Direction concerning status of Tania Hopmans, 7 November 1996
- 2.180** Direction following first hearing, 27 November 1996
- 2.181** Direction following 2 December 1996 judicial conference, 4 December 1996
- 2.182** Direction to register amendment to Wai 299 claim, 27 November 1996
- 2.183** Notice of amendment to Wai 299 claim, 11 December 1996

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- 2.184** Direction to register amendment to Wai 400 claim, 27 November 1996
- 2.185** Notice of amendment to Wai 400 claim, 11 December 1996
- 2.186** Memorandum from Crown counsel concerning issues raised in Wai 598, Wai 601, Wai 602, and Wai 608 claims in relation to the Tataraaikina block and those settled in Wai 147 claim, 13 December 1996
- 2.187** Direction to register Wai 638 claim, 12 December 1996
- 2.188** Notice of Wai 638 claim, 20 December 1996
- 2.189** Direction to register Wai 639 claim, 12 December 1996
- 2.190** Notice of Wai 639 claim, 20 December 1996
- 2.191** Direction to register Wai 640 claim, 12 December 1996
- 2.192** Notice of Wai 640 claim, 20 December 1996
- 2.193** Letter from Terry O’Sullivan withdrawing Wai 488 claim and advising that interests to be pursued via Wai 598 claim, 22 December 1996
- 2.194** Direction to withdraw Wai 488 claim, 12 December 1996
- 2.195** Notice of withdraw of Wai 488 claim, 20 December 1996
- 2.196** Direction to release document M1, 9 December 1996
- 2.197** Direction to register amendment to Wai 168 claim, 20 December 1996
(a) Notice of amendment to Wai 168 claim, 8 January 1997
- 2.198** Direction to release document M2, 20 December 1996
- 2.199** Direction to register addition to Wai 216 claim, 10 January 1997
- 2.200** Notice of addition to Wai 216 claim, 14 January 1997

- 2.201** Memorandum from Wai 299 claimant counsel concerning amended claim, 20 December 1996
- 2.202** Direction to register amendment to Wai 299 claim, 10 January 1997
- 2.203** Notice of amendment to Wai 299 claim, 14 January 1997
- 2.204** Notice of second hearing, 9 January 1997
- 2.205** Direction to release document M8, 22 January 1997
- 2.206** Direction following judicial conference and second hearing, 7 February 1997
- 2.209** Notice of third hearing, 14 March 1997
- 2.210** Memorandum from Wai 400 claimant counsel objecting to Dr Fergus Sinclair acting as Crown counsel in Wai 400 claim, 3 April 1997
- 2.211** Memorandum from Crown counsel for judicial conference of 7 April 1997, 6 April 1997
- 2.212** Direction following 7 April 1997 judicial conference, 9 April 1997
- 2.213** Memorandum from Crown counsel requesting definition of Wai 119 claim area, 11 April 1997
- 2.214** Direction to register amendment to Wai 299 claim, 15 April 1997
- 2.215** Notice of amendment to Wai 299 claim, 18 April 1997
- 2.216** Direction to register amendment to Wai 119 claim, 15 April 1997
- 2.217** Notice of amendment to Wai 119 claim, 18 April 1997
- 2.218** Memorandum from Wai 119 claimant counsel requesting setting aside of third hearing, 16 April 1997
- 2.219** Memorandum from Crown counsel concerning request of Wai 119 claimant counsel to set aside third hearing, 16 April 1997

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- 2.220 Direction setting aside third hearing, 17 April 1997
- 2.221 Memorandum from Crown counsel in response to paper 2.210, 18 April 1997
- 2.222 Direction to continue hearings, 1 May 1997
- 2.223 Direction confirming third hearing and advising forthcoming conference of Mohaka ki Ahuriri claims, 6 May 1997
- 2.224 Memorandum from Wai 400 claimant counsel in response to paper 2.221, 7 May 1997
- 2.225 Direction to release document N9, 22 May 1997
- 2.226 Direction following 22 May 1997 judicial conference, 29 May 1997
- 2.227 Memorandum from Crown counsel concerning claims in Mohaka ki Ahuriri inquiry, 12 June 1997
- 2.228 Direction to register amendment to Wai 168 claim, 18 June 1997
- 2.229 Notice of amendment to Wai 168 claim, 18 June 1997
- 2.230 Notice of interest from the Public Trust in Wai 168 claim, 13 June 1997
- 2.231 Memorandum from Wai 400 claimant counsel concerning overlap with Wai 168 claim, 19 June 1997
- 2.232 Memorandum from Wai 168 claimant counsel concerning overlap with Wai 400 claim, 17 June 1997
- 2.233 Direction requesting that Wai 168 claimant counsel file amendment to claim concerning Waitanoa block, 4 July 1997
- 2.234 Direction responding to matters raised by paper 2.213, 14 July 1997
- 2.235 Direction advising of no further inquiry into Wai 201 claim in respect of matters concerning Mohaka ki Ahuriri inquiry, 14 July 1997
- 2.236 Direction to release document 01, 23 July 1997

- 2.237 Direction to register amendment to Wai 168 claim, 11 August 1997
- 2.238 Notice of amendment to Wai 168 claim, 21 August 1997
- 2.239 Letter from Wai 400 claimant counsel concerning filing of evidence, 27 August 1997
- 2.240 Direction concerning filing of evidence in Wai 400 claim, 11 September 1997
- 2.241 Memorandum from Crown counsel concerning filing of evidence in Wai 400 claim, 12 September 1997
- 2.242 Memorandum from Wai 299 claimant counsel requesting restricted access to Wai 299 claim evidence, 15 August 1997
- 2.243 Direction concerning filing of evidence in Wai 400 claim, 17 September 1997
- 2.244 Submissions of Crown counsel for judicial conference, 26 September 1997
- 2.245 Direction following 26 September 1997 judicial conference, 30 September 1997
- 2.246 Direction to register amendment to Wai 400 claim, 1 October 1997
- 2.247 Notice of amendment to Wai 400 claim, 1 October 1997
- 2.248 Notice of fourth hearing, 3 October 1997
- 2.249 Letter from Wai 400 claimant counsel concerning Wai 400 claim boundaries, 29 September 1997
- 2.250 Memorandum from Wai 299 claimant counsel concerning involvement of Ngati Pahauwera in Wai 299 claim, 14 October 1997
- 2.251 Direction following 14 October 1997 pre-hearing conference, 17 October 1997
- 2.252 Notice of fifth hearing, 17 October 1997
- 2.253 Direction vacating Wai 299 hearing and replacing it with Wai 400 hearing, 29 October 1997

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- 2.254 Notice of sixth hearing, 29 October 1997
- 2.255 Memorandum from Wai 119 claimant counsel concerning evidential matters, 4 November 1997
- 2.256 Direction responding to request from Wai 119 claimant counsel for an interim recommendation on surplus Crown land, 27 November 1997
- 2.257 Memorandum from Wai 400 claimant counsel concerning surplus Crown land and requesting that Tribunal make prima facie findings, 19 December 1997
- 2.258 Memorandum from Crown counsel in response to paper 2.257, 22 December 1997
- 2.259 Direction declining request for prima facie findings, 24 December 1997
- 2.260 Memorandum from Wai 119 claimant counsel further requesting Tribunal to issue recommendation that the Crown not sell land in Wai 119 claim region, 14 November 1997
- 2.261 Memorandum from Crown counsel opposing request of Wai 119 claimant counsel for Tribunal recommendation (paper 2.260), 14 November 1997
- 2.262 Direction to release document R3, 19 February 1998
- 2.263 Submissions of Crown counsel for judicial conference, 26 February 1998
- 2.264 Memorandum from Wai 299 claimant counsel on Tarawera, Tatarakaia, and Te Matai claims, 26 February 1998
- 2.265 Direction following 26 February 1998 judicial conference, 6 March 1998
- 2.266 Application from Wai 299 claimant counsel to bring further evidence concerning Tarawera and Tatarakaia, 16 March 1998
- 2.267 Memorandum from Crown counsel in response to paper 2.266, 18 March 1998
- 2.268 Memorandum from Wai 638 claimant counsel in response to paper 2.266, 18 March 1998
- 2.269 Direction concerning application of Wai 299 claimant counsel to bring further evidence concerning Tarawera and Tatarakaia, 20 March 1998

- 2.270 Direction to release document R9, 27 March 1998
- 2.272 Memorandum from Wai 318 claimant counsel seeking adjournment, 7 April 1998
- 2.273 Direction granting adjournment, 9 April 1998
- 2.274 Claimant notice of withdrawal of Wai 640 claim, 23 April 1998
- 2.275 Direction confirming withdrawal from inquiry of Wai 640 claim, 12 May 1998
- 2.276 Direction to release document s3, 19 June 1998
- 2.277 Memorandum from Wai 299 claimant counsel requesting restricted access to evidence, 25 June 1998
- 2.278 Direction to register amendment to Wai 598 and Wai 638 claims, 2 July 1998
- 2.279 Notice of amendment to Wai 598 and Wai 638 claims, 22 July 1998
- 2.280 Direction following 26 June 1998 judicial conference, 2 July 1998
- 2.281 Notice of eighth hearing, 16 July 1998
- 2.282 Memorandum from Crown counsel concerning Wai 216 claimant counsel's failure to file documents, 22 July 1998
- 2.283 Direction to register amendment to Wai 216 claim, 20 July 1998
- 2.284 Notice of amendment to Wai 216 claim, 23 July 1998
- 2.285 Memorandum from Wai 216 claimant counsel concerning failure to file documents, 24 July 1998
- 2.286 Direction concerning failure to file documents, 24 July 1998
- 2.287 Request from Pahikohuru Trust to make submissions at Wai 216 hearing, 20 July 1998
- 2.288 Direction concerning Pahikohuru Trust request to make submissions, 24 July 1998

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- 2.289 Memorandum from Wai 436 claimant counsel concerning status of claim, 19 August 1998

- 2.290 Direction to release document s10, 14 August 1998

- 2.291 Direction to register Wai 731 claim, 19 August 1998

- 2.292 Notice of Wai 731 claim, 24 August 1998

- 2.293 Direction to register Wai 732 claim, 19 August 1998

- 2.294 Notice of Wai 732 claim, 26 August 1998

- 2.295 Memorandum from Wai 119 claimant counsel concerning Wai 436 claim, 21 October 1998

- 2.296 Memorandum from Wai 436 claimant counsel concerning status of Ngai Tane, 22 October 1998

- 2.297 Joint memorandum from counsel and claimants in Wai 299 and Wai 119 claims, 6 November 1998

- 2.298 Direction following 22 October 1998 judicial conference, 23 October 1998

- 2.299 Direction to release document T17, 29 October 1998

- 2.300 Direction to release document T14, 29 October 1998

- 2.301 Direction to register amendment to Wai 436 claim, 5 November 1998
(a) Notice of amendment to Wai 436 claim, 25 November 1998

- 2.304 Memorandum from Wai 299 claimant counsel concerning overlapping issues with Wai 436 claim, 13 November 1998

- 2.305 Direction to register amendment to Wai 731 claim, 18 November 1998

- 2.306 Notice of amendment to Wai 731 claim, 10 December 1998

- 2.307 Direction to register two amendments to Wai 318 claim, 20 November 1998

- 2.308 Notice of two amendments to Wai 318 claim, 10 December 1998

- 2.309** Direction to release document T27, 9 November 1998
- 2.310** Direction following ninth hearing, 26 November 1998
- 2.311** Direction to release document T18, 30 November 1998
- 2.315** Direction granting extension for filing memoranda concerning discussions between claimants in Wai 119 and Wai 436 claims, 3 February 1999
- 2.316** Joint memorandum of Wai 119 and Wai 436 claimant counsel requesting extension for filing memoranda concerning discussions between claimants in Wai 119 and Wai 436 claims, 29 January 1999
- 2.318** Memorandum of Wai 436 claimant counsel concerning discussions between claimants in Wai 119 and Wai 436 claims, 16 February 1999
- 2.319** Memorandum of Wai 119 claimant counsel in response to paper 2.318, 17 February 1999
- 2.320** Memorandum from Wai 436 claimant counsel in response to paper 2.319, 19 February 1999
- 2.321** Memorandum from Wai 119 claimant counsel in response to paper 2.320, 22 February 1999
- 2.322** Direction to release document U11, 19 February 1999
- 2.324** Memorandum of Wai 119 claimant counsel responding further to paper 2.318, 23 March 1999
- 2.333** Direction to release document U14, 26 April 1999
- 2.334** Direction following 29 April 1999 conference, 3 May 1999
- 2.335** Memorandum from Crown counsel concerning Walzl report for Wai 168 claim, 4 May 1999
- 2.337** Direction following 10 May 1999 conference, 11 May 1999
- 2.338** Direction concerning Walzl report for Wai 168 claim, 13 May 1999

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- 2.343 Notice of tenth hearing, 17 May 1999
- 2.345 Direction on Wai 119 and Wai 436 claims, 27 May 1999
- 2.347 Direction following 18 June 1999 pre-hearing conference, 22 June 1999
- 2.348 Memorandum from Wai 119, Wai 400, Wai 430, and Wai 731 claimant counsel concerning closing submissions, 2 July 1999
- 2.349 Memorandum from Crown counsel concerning closing submissions, 5 July 1999
- 2.351 Memorandum from Wai 299 claimant counsel concerning closing submissions, 6 July 1999
- 2.352 Memorandum from Wai 216, Wai 318, Wai 598, Wai 599, Wai 601, Wai 602, Wai 638, Wai 639, and Wai 732 claimant counsel concerning closing submissions, 7 July 1999
- 2.353 Notice of twelfth hearing, 13 July 1999
- 2.354 Direction concerning closing submissions, 16 July 1999
- 2.358 Direction outlining procedure for closing submissions, 2 August 1999
- 2.359 Direction to register amendment to Wai 299 claim, 16 July 1999
- 2.360 Notice of amendment to Wai 299 claim, 18 August 1999
- 2.363 Memorandum from Wai 299 claimant counsel concerning closing submissions, 19 August 1999
- 2.364 Memorandum from Crown counsel concerning closing submissions, 23 August 1999
- 2.365 Direction concerning closing submissions, 23 August 1999
- 2.368 Notice of thirteenth hearing, 9 November 1999
- 2.369 Memorandum from Crown counsel concerning late filing of closing submissions, 1 November 1999

- 2.370** Memorandum from Wai 119, Wai 400, Wai 430, and Wai 731 claimant counsel concerning late filing of closing submissions of Crown counsel, 3 November 1999
- 2.371** Memorandum from Wai 299 claimant counsel concerning late filing of closing submissions of Crown counsel, 4 November 1999
- 2.372** Memorandum from Wai 216, Wai 318, Wai 638, and Wai 732 claimant counsel concerning late filing of closing submissions of Crown counsel, 2 November 1999
- 2.373** Memorandum from Wai 216, Wai 318, Wai 638, and Wai 732 claimant counsel concerning late filing of closing submissions of Crown counsel, 2 November 1999
- 2.374** Memorandum from Crown counsel concerning late filing of closing submissions, 12 November 1999
- 2.375** Letter from Wai 119, Wai 400, Wai 430, and Wai 731 claimant counsel to Crown counsel concerning late filing of closing submissions, 15 November 1999
- 2.376** Direction concerning late filing of closing submissions and rescheduling of reply submissions, 23 November 1999
- 2.378** Notice of fourteenth hearing, 23 December 1999
- 2.386** Direction to register amendment to Wai 168 claim, 19 April 2000
- 2.387** Notice of amendment to Wai 168 claim, 9 May 2000
- 2.412** Letter from Nigel Baker seeking urgent recommendation in respect of Wai 639 claim, 25 May 2001
- 2.419** Direction requesting that Crown counsel supply list of Crown and State-owned enterprise memorialised properties within inquiry district, 29 July 2003
- 2.420** Memorandum from Crown counsel in response to paper 2.419, 9 September 2003
- 2.421** Memorandum from Crown counsel attaching list of Crown and State-owned enterprise memorialised properties within inquiry district, 23 October 2003

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3. RESEARCH COMMISSIONS

- 3.2 Direction commissioning Cordry Huata and George Thomson, 12 June 1990
- 3.3 Direction commissioning Angela Ballara (amongst others), 21 June 1991
- 3.4 Direction commissioning Department of Survey and Land Information, 4 February 1992
- 3.11 Direction commissioning Gary Scott to assist Angela Ballara, 20 August 1993
- 3.17 Direction commissioning Roy Pewhairangi, 20 February 1996
 - (a) Direction authorising Nigel Baker to commission Buddy Mikaere, 8 March 1996
- 3.18 Direction authorising chairperson, Ngati Hinepare–Ngati Mahu Society, to commission research, 29 March 1996
- 3.19 Direction authorising Ranui Toatoa to commission Te Taite Cooper and Lee Smith, 30 May 1996
 - (a) Extension to commission 3.19, 12 July 1996
- 3.20 Direction authorising chairperson, Ngati Hinepare–Ngati Mahu Society, to commission Ranui Toatoa, 26 July 1996
 - (a) Extension to commission 3.20, 19 March 1997
- 3.21 Direction commissioning Georgina Roberts, 2 August 1996
- 3.22 Direction further extending commission 3.19, 20 November 1996
- 3.23 Direction commissioning Georgina Roberts, 9 December 1996
- 3.24 Direction commissioning Dean Cowie, 21 March 1997
- 3.25 Direction further extending commission 3.19, 5 May 1997
- 3.26 Direction commissioning Nigel Baker, 21 August 1997
- 3.27 Direction commissioning Dean Cowie, 21 August 1997
- 3.28 Direction commissioning Nigel Baker, 22 October 1997

- 3.29 Direction commissioning Richard Moorsom, 22 October 1997
- 3.30 Direction extending commission 3.27, 6 November 1997
- 3.31 Direction extending commission 3.26, 6 November 1997
- 3.32 Direction commissioning Richard Moorsom, 13 March 1998
- 3.34 Direction commissioning Richard Moorsom, 9 July 1998
- 3.36 Direction extending commission 3.34, 1 September 1998
- 3.37 Direction commissioning Richard Moorsom, 1 September 1998
- 3.38 Direction commissioning Richard Hill, 1 September 1998
- 3.39 Direction commissioning Robert McClean and Richard Moorsom, 1 September 1998
- 3.40 Direction commissioning Richard Moorsom, 1 September 1998
- 3.41 Direction extending commission 3.38, 17 September 1998
- 3.42 Direction commissioning Maria Mareroa, 17 September 1998
- 3.46 Direction extending commission 3.37, 30 November 1998

4. TRANSCRIPTS AND TRANSLATIONS

- 4.1 Transcript of evidence of Frederick Reti and Bevan Taylor at first hearing
- 4.2 Transcript of speech given in Maori by Hoani John Wall at second hearing
- 4.3 Translation of speech given in Maori by Hoani John Wall at second hearing
- 4.4 Transcript of questioning of witnesses at fourth hearing
- 4.5 Transcript of questioning of witnesses at sixth hearing

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- 4.6 Transcript of evidence in Maori by Bill Hakiwai at fourth hearing
- 4.7 Translation of evidence in Maori by Bill Hakiwai at fourth hearing
- 4.8 Transcript of evidence by Hoani John Hohepa at fourth hearing
- 4.9 Transcript of evidence by Rameka (Joe) Pohatu at fourth hearing
- 4.10 Transcript of evidence by Te Awhina Whaitiri at fourth hearing
- 4.11 Transcript of evidence in Maori by Joe Northover at fourth hearing
- 4.12 Transcript and translation of evidence by Whakapumautanga Downes at eighth hearing
- 4.13 Transcript and translation of evidence by Moari and Iramutu Karaitiana, Whakapumautanga Downes, and Poi Rangirangi at eighth hearing
- 4.14 Transcript and translation of evidence by Tama Moon at eighth hearing
- 4.15 Transcript of evidence by Hoani John Wall at eighth hearing
- 4.16 Transcript of further evidence by Hoani John Wall at eighth hearing
- 4.17 Transcript of evidence by Tana Tahau at eighth hearing
- 4.18 Transcript of evidence by Harvey Karaitiana at eighth hearing
- 4.19 Transcript of evidence by Te Rina Sullivan at eighth hearing
- 4.20 Transcript of evidence by Ann Clarke at eighth hearing
- 4.21 Transcript and translation of evidence of Ranapia Huata at ninth hearing
- 4.22 Transcript and translation of evidence by Paora Whaanga and Joe Carroll at fifth hearing
- 4.23 Transcript of evidence by David Alexander at fifth hearing
- 4.24 Transcript and translation of evidence by Whetu Tipiwai at second hearing

- 4.27 Transcript of proceedings from tenth hearing
- 4.28 Transcript of site visit of second hearing
- 4.29 Transcript and translation of speech by Charlie King given at powhiri for second hearing

RECORD OF DOCUMENTS

Note: The record of documents does not include all the material on the Wai 201 (Wairoa ki Wairarapa) record. It is confined to only those documents of direct relevance to the Mohaka ki Ahuriri inquiry (excluding those relating to the Napier Hospital and health services claim).

* Document confidential and unavailable to the public without a Tribunal order

A-1 DOCUMENTS RECEIVED PRIOR TO FIRST HEARING

- A16 Joy Hippolite, 'Waiohiki Lands: An Exploratory Report', research report, 28 March 1991
- A17 Supporting documents to document A16, various dates
- A18 Copies of titles for Waiohiki land blocks
- A19
- (a) Particulars of title for Waiohiki 1B4 and 1E5
 - (b) Particulars of title for Waiohiki 1C1D
 - (c) Particulars of title for Waiohiki 1D2B8, lots 4A, 4B, 7
 - (d) Particulars of title for Waiohiki 1E4C, 1E4D
 - (e) Particulars of title for Waiohiki 1D2B1, 1D2B6B2
- A20 Cadastral map of Waiohiki showing full ownership and title details of land
- A29 George Thomson, 'The Crown and Ngati Pahauwera from 1864', research report, January 1992
- A31 Tania Hopmans 'The Confiscation of the Mohaka and Waikare District', LLB (Hons) dissertation, Victoria University of Wellington, 1991
- A35 Supporting documents to document A29, various dates

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C2 Stephanie McHugh, 'The Issue of Hawke's Bay Purchase Instructions, June 1848–October 1850', research report, undated

C4 Stephanie McHugh, 'The Purchase of the Mohaka Block, December 1851', research report, undated

(a) Supporting documents to document c4, various dates

C5 Fergus Sinclair, 'Land Transactions on the North Bank of the Mohaka River, c1860–1903', research report, undated

(a) Supporting documents to document c5, various dates

C7 David Alexander, 'Land Dealings on the Mohaka River North Bank, 1903–1992', research report, undated

(a) Supporting documents to document c7, various dates

F9 Tony Walzl, 'The Ahuriri purchase', research report, undated

I1 Angela Ballara and Gary Scott, 'Claimants' Report to the Waitangi Tribunal on Crown Purchases of Maori Land in Early Provincial Hawke's Bay', research report, January 1994

(1)–(38) Block files

J DOCUMENTS RECEIVED TO END OF FIRST HEARING

J1 Richard Boast, 'Report on the Mohaka–Waikare Confiscation', 2 vols, research report, February 1994, vol 1

J2 Richard Boast, 'Report on the Mohaka–Waikare Confiscation', 2 vols, research report, September 1993, vol 2

J3 Richard Boast, 'Crown Purchasing of Mohaka–Waikare Blocks', research report, June 1994

J4 Richard Boast, 'The Mohaka–Waikare Confiscation and its Aftermath: Social and Economic Issues', research report, May 1995

J5 Bevan Taylor, 'Mohaka–Waikare Confiscated Lands: Customary Usage Report', research report, November 1993

- J6** Bevan Taylor, 'Mohaka–Waikare Confiscations: Kaumatua Interviews', research report, October 1994
- J7** Maungaharuru–Tangitu Society Incorporated, 'Mohaka–Waikare Confiscated Lands: Mapping', 1995
- J10** Vincent O'Malley, 'The Ahuriri Purchase', report commissioned by the Crown Forestry Rental Trust, April 1995
- J11** Treaty of Waitangi Policy Unit, 'Wai 147: Baker Whanau/Waimakuku Trust Inc: Report', research report, 7 March 1994
- J12** Dean Cowie, 'Hawke's Bay', Waitangi Tribunal Rangahaua Whanui working paper: first release, September 1996
- J13** Patrick Parsons, 'The Interests of Kahutapere II by the Agreement of 1870', research report, November 1994
- J14** Patrick Parsons, 'Ngati Hineuru Customary Usage Report', research report, March 1995
- J15** Patrick Parsons, 'Esk Forests in the Ahuriri Purchase: Maori Customary Rights in the Te Pohue District', research report, August 1994
- J16** Tureiti Moxon, 'The Impact of Post-Purchase Land Alienation on Ngati Pahauwera: Report 1', research report, July 1996
- J17** Tureiti Moxon, 'The Impact of Post-Purchase Land Alienation on Ngati Pahauwera: Report 2', research report, July 1996
- J18** Patrick Parsons, 'The Mohaka–Waikare Confiscated Lands: Ancestral Overview (Customary Tenure)', research report, November 1993
(a) Additional referencing to document J18
- J19** Patrick Parsons, 'The Mohaka–Waikare Confiscated Lands: the Hauhau Movement in Hawke's Bay', research report, February 1994

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J20 George Thomson, 'The Documentary Evidence of the Extent of Ngati Pahauwera Interests outside the Waihua and Lower Mohaka Valleys', research report, 10 July 1996

(a) Supporting documents to document J20, vol 1, secs 1 – 4

(b) Supporting documents to document J20, vol 2, secs 5 – 7

J21 Toro Waaka, 'Report No1 for the Mohaka Forest Claim: Traditional Resources of Ngati Pahauwera before 1851', research report, undated

J27 Bryan Gilling, 'The Policy and Practice of Raupatu in New Zealand: Part A', research report, undated

J28 Richard Boast, 'Mohaka–Waikare Confiscation Consolidated Report', research report, 1995, vol 1

(a) Petition by Toha Rahurahu and others, 1889

J29 Richard Boast, 'Mohaka–Waikare Confiscation Consolidated Report', research report, 1996, vol 2

J30 Donald Loveridge, "'When the Freshets Reach the Sea": Ngati Pahauwera and their Lands, 1851–1941', research report, August 1996

(a) Revisions and corrections to document J30, December 1996

J31 Edryd Breese, 'Mohaka–Waikare Confiscation Area Environmental Change: Stage 1 Report', report commissioned by the Maungaharuru–Tangitu Society Incorporated from Tonkin and Taylor, August 1995

J32 Edryd Breese and Chris Livesy, 'Mohaka–Waikare Confiscation Area Environmental Change: Stage 2 Report', report commissioned by the Maungaharuru–Tangitu Society Incorporated from Tonkin and Taylor, July 1996

J34 Letter to Tribunal from CG Amor concerning the Tarawera c and Tatarakaia j blocks and the Wai 318 claim, 24 February 1993

J35 Roy Pewhairangi, 'Waiohiki Land Claim: Wai 168', research report, May 1996

J36 Opening submissions by Wai 299 claimant counsel, 11 November 1996

J37 Statement of evidence of Frederick Reti, 11 November 1996

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J38* VHS videotape of Mohaka–Waikare confiscation district

(a)* Transcript of document J38

J39 Statement of evidence of Mere Kingi Ratima, 12 November 1996

J40 Statement of evidence of Te Hata Kani II, 12 November 1996

J41 Statement of evidence of Kuia Gray, 12 November 1996

J42 Statement of evidence of Rere Puna, 12 November 1996

J43 Statement of evidence of Aperahama Sullivan, undated

J44 Statement of evidence of Harata Taurima, undated

J45 Statement of evidence of Wiari Anaru, undated

J46 Statement of evidence of Rangi Taurima, 12 November 1996

J47 Statement of evidence of Ruruarau Heitia Hiha, 13 November 1996

(a) Maori Committee, Hawke's Bay Regional Council, paper on council responsibility for waterways, 22 October 1996

(b) Amendments to document J47, 13 November 1996

J48 Statement of evidence of Bevan Taylor, 13 November 1996

J49 Statement of evidence of Richard Boast, undated

J50 Statement of evidence of Patrick Parsons, undated

J51 Statement of evidence of Bevan Taylor, 15 November 1996

M DOCUMENTS RECEIVED TO END OF SECOND HEARING

M1 Georgina Roberts, 'A Land History of Wharerangi and Puketitiri Reserves, Hawke's Bay', research report, October 1996

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M2 Te Taite Cooper and Lee Smith, 'Ki a Te Makarini: Correspondence between Donald McLean and Maori Leaders prior to and following the Ahuriri Purchase, 1851', research report, November 1996

(a) Letter from Takirirangi Smith seeking amendment to document M2, 11 February 1997

M3 David Alexander, 'The Mohaka Block (1868–1941)', research report, October 1996

(a) Supporting documents to document M3, various dates, vol 1

(b) Supporting documents to document M3, various dates, vol 2

(c) Supporting documents to document M3, various dates, vol 3

(d) Supporting documents to document M3, various dates, vol 4

M4 David Alexander, 'The Mohaka Block (1903–1941): An Overview', research report, October 1996

M5 David Alexander, 'The Waihua Block', research report, October 1996

(a) Supporting documents to document M5, various dates, vol 1

(b) Supporting documents to document M5, various dates, vol 2

(c) Supporting documents to document M5, various dates, vol 3

M6 David Alexander, 'The Rotokakarangu and Whareraurakau Blocks', research report, October 1996

(a) Supporting documents to document M6, various dates

M7 David Alexander, 'The Putere, Pihanui, Owio and Maungataniwha Blocks', research report, October 1996

(a) Supporting documents to document M7, various dates, vol 1

(b) Supporting documents to document M7, various dates, vol 2

M8 Georgina Roberts, 'The Interests of Mereana Amor in the Tarawera and Tatarakina Blocks', research report, January 1997

M9 Bryan Gilling, 'The Policy and Practice of Raupatu in New Zealand: Part B – The Practice of Raupatu (The Five Confiscations)', research report, January 1997

M10 Evidence of Hoani John Wall, undated

M11 Outline of opening submissions on behalf of Wai 299 claimants, 27 January 1997

(a) References for document M11

M12 Statement of evidence of Edryd Breese, 27 January 1997

(a) References for document M12

M13 Herbert Guthrie-Smith, *Tutira: The Story of a New Zealand Sheep Station*, 4th ed (Wellington: AH and AW Reed, 1969)

M14 Statement of evidence of Bryan Gilling, 28 January 1997

M15 Statement of evidence of Patrick Parsons, undated

M16 Statement of evidence of Rangiaho Te Hata, 28 January 1997

M17 Statement of evidence of Te Omiraka Rahui (in English), 28 January 1997

(a) Statement of evidence of Te Omiraka Rahui (in Maori), 28 January 1997

M18 Statement of evidence of Selina Sullivan, 26 August 1994

M19 Statement of evidence of Philip Sullivan, 28 January 1997

M20 Statement of evidence of Hine Campbell, 28 January 1997

M21 Statement of evidence of Tania Hopmans, 29 January 1997

M22 Statement of evidence of Hinei Reti, 29 January 1997

M23 Statement of evidence of Hori David Kinita, 29 January 1997

(a) Supporting documents to document M23, various dates

M24 Statement of evidence of Heneriata Tipiwai, 29 January 1997

M27 Statement of evidence of Kahuiariki Bartholemew, 29 January 1997

M28 Statement of evidence of Nga Waiata Brown Sullivan, 29 January 1997

M29 Statement of evidence of Rere Puna, 29 January 1997

M30 Statement of evidence of Rangi Weeti Waamu, September 1994

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M31 Statement of evidence of Frederick Reti, 30 January 1997

- (a) Frederick Reti, 'Examination of the Crown Grant List in the 1870 Agreement', research report, undated
- (b) Frederick Reti, 'Examination of the Crown Grant List in the 1870 Agreement', research report (revised edition), January 1997

M32 Statement of evidence of Ruruarau Heita Hiha, 30 January 1997

- (a) Supporting documents to document M32, various dates

N DOCUMENTS RECEIVED TO END OF THIRD HEARING

N1 Letter from Whitmore to Colonial Secretary, 23 November 1863, MA-NA1/2, pp162-164 (National Archives)

N2 *Hawke's Bay Herald*, 26 August 1863, p3, col 1

N3 Excerpts from letter from Whitmore to Colonial Secretary, 13 April 1864, MA-NA1/2, pp192-195 (National Archives)

N4 *Hawke's Bay Herald*, 24 May 1864, p2, col 2

N5 *Hawke's Bay Herald*, 7 December 1869, p2

N6 Statement of evidence of Donald Loveridge, 14 April 1997

N7 Statement of evidence of David Alexander, 14 April 1997

N8 Statement of evidence of Tureiti Moxon, 15 April 1997

- (a) Appendices to document N8

N9 Dean Cowie, 'The River, the Reserve, the Trustee and the Taking: An Historical Report on Aspects of the Waiohiki (Wai 168) Claim', research report, May 1997

N10 Statement of evidence of Gary Williams, undated

- (a) Attachment 2 to document N10
- (b) Attachment 6 to document N10

- N11** Statement of evidence of Dean Cowie, 13 June 1997
(a) Map showing land taken in 1930s for river control purposes
- N12** Bryan Gilling, 'Waiohiki Lands, 1870–1937', research report, June 1997
- N13** Statement of evidence of Jacqueline Wilson, undated
- N14** Statement of evidence of Peneamine (Ben) Whitiwhiti, undated
(a) Whakapapa
(b) Letter from Angela Ballara of the *Dictionary of New Zealand Biography* enclosing essay on Tareha, 27 March 1997
(c) Photograph of Ben Whitiwhiti as New Zealand Maori golf champion
- N15** Statement of evidence of Pani Wairau Luke, undated
- N16** Statement of evidence of Ngareipa Hawaikirangi, undated
- N17** Statement of evidence of Roy Stanford, undated
- N18** Statement of evidence of Hineiaia Pene, undated
- N19** Statement of evidence of Alice Simmonds, undated
(a) Revised statement of evidence of Alice Simmonds, 21 June 1997
- N20** Statement of evidence of Tipene Tareha, undated
(a) Article on James (Jimmy) Waitaringa Mapu, undated
- N21** Statement of evidence of Tatu Pineaha, undated
(a) Additional notes to document N21, undated
- N22** Statement of evidence of Albert Gray, undated
(a) Revised statement of evidence of Albert Gray, undated
(b) Articles on Redcliffe Dump, undated
(c) *Saturday Telegraph*, extract, undated
- N23** Paula Berghan, 'Research Report on the Waiohiki Reserve', research report, January 1997
- N24** Opening submissions from Wai 168 claimant counsel, undated

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N25 Statement of evidence of Roy Pewhairangi, undated

- (a) Whakapapa from Te Ua Te Awha
- (b) Ancestral whakapapa of Waiohiki
- (c) Obituary for Tareha Te Moananui, *Daily Telegraph*, 30 December 1880
- (d) Map of Napier city showing Ngati Parau's boundary
- (e) Whakapapa from Pitaka Te Otupeka
- (f) Extract from document J35
- (g) Evidence of Kahu Reremoana Hungahunga concerning Te Whanganui-a-Orotu, undated
- (h) Kay Mooney, 'History of the County of Hawke's Bay: Part 1', research report, 1973

N26 Statement of evidence of Pearl Kawhe, undated

- (a) Charles Tareha, 'Serving a Worthy Cause', *The Watchtower*, 15 September 1979

N27 Statement of evidence of Bryan Gilling, undated

- (a) The Public Trust Office Act 1872

N28 Statement of evidence of David Pene, undated

- (a) Documents concerning return of Crown surplus land to Ngati Paarau, 27 July 1994
- (b) Statement of evidence of David Pene concerning Te Whanganui-a-Orotu, undated
- (c) Supporting illustrations to document D19(a)
- (d) Article from *The Illustrated London News*, 31 October 1863

N29 Statement of evidence of Taape Tareha, undated

N30 Statement of evidence of Tipu Tareha, undated

- (a) Additional statement of evidence of Tipu Tareha, undated
- (b) Elsdon Best, 'Notes on Customs, Ritual and Beliefs Pertaining to Sickness, Death, Burial and Exhumation among the Maori of New Zealand'
- (c) Newspaper articles on Tareha and Otatara Pa
- (d) Newspaper articles
- (e) Department of Lands and Survey, 'Otatara Pa Historic Reserve', report, 1983
- (f) Statement of evidence of Tipu Tareha concerning Te Whanganui-a-Orotu, undated
- (g) Photograph of L Frank Fryer and Kapi Tareha, 1927

N31 Statement of evidence of Ruruarau Heitia Hiha, 24 June 1997

N32 Statement of evidence of Nigel Hadfield, undated

- (a) Statement of evidence of Nigel Hadfield concerning Te Whanganui-a-Orotu, undated
- (b) Letter from New Zealand Historic Places Trust concerning Otatara Pa, 5 May 1992

- (c) Newspaper clippings concerning Waiohiki
- (d) Photograph of Pukemokimoki and newspaper clipping on Waiohiki substation
- (e) Aerial photographs of lands, 1936, 1949, 1975
- (f) Photographs of Otatara Pa historic reserve, Napier City Council soil taking, aerial views of Ngati Parau lands, and Napier City dump toxic waste, 1988–93
- (g) Elizabeth Pishief, 'Assessment of Significance of Otatara Pa Historic Reserve', draft report, undated
- (h) *Otatara Pa Historic Reserve Management Plan*, undated
- (i) Resource consent documents concerning Waiohiki lands
- (j) Map of Otatara Pa

N33* VHS videotape of Ngati Parau lands

0 DOCUMENTS RECEIVED TO END OF FOURTH HEARING

- 01** Buddy Mikaere, 'Wai 216: The Te Matai Block Claim', research report, 29 October 1996
 - (a) Supporting documents to document 01, various dates
 - (b) Transcripts of correspondence to Native Land Court concerning Pakaututu
 - (c) Napier minute book records concerning Pakaututu

- 02** Vincent O'Malley, "'The Treaty of Ahuriri': Supplementary Evidence of Vincent O'Malley in Relation to the Ahuriri Purchase of 1851', research report, September 1997

- 03** Statement of evidence of Vincent O'Malley, undated

- 04** John Hutton, 'Ahuriri: A Social Impact Study for the Twentieth Century', research report, 8 September 1997

- 05** Tony Walzl, 'Ahuriri Land Issues', research report, September 1997
 - (a) Supporting documents to document 05, various dates

- 06** Elizabeth Pishief, 'The Ahuriri Block Purchase: Summary of Crown Land and Archaeological information', research report, January 1997

- 07** Patrick Parsons, 'Maori Customary Rights in the Ahuriri Block', research report, undated
 - (a) Amendments to document 07

- 08** Statement of evidence of John Hutton, 3 October 1997

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09 Statement of evidence of Georgina Roberts, 3 October 1997

(a) Supporting maps to document 09

010 Statement of evidence of Tony Walzl, October 1997

011 Opening submissions from Wai 400 claimant counsel, 13 October 1997

012 Statement of evidence of Rameka (Joe) Pohatu, undated

013 Statement of evidence of Piriniha (Bill) Prentice, undated

(a) *Te Tangi a Rawiri Tareahi mo Ahuriri*, waiata

(b) Supporting photographs and maps to document 013

014 Statement of evidence of Ema Te Ruawhare Kurupo Kaukau, undated

015 Statement of evidence of Ruruarau Heitia Hiha, 14 October 1997

(a) Supporting whakapapa

016 Statement of evidence of Hohepa Spooner, undated

(a) vhs videotape of wahi tapu

017 Statement of evidence of Patrick Parsons, undated

018 Angela Harmer, 'Te Kore', research report, June 1997

019 Statement of evidence of Angela Harmer, undated

020 Statement of evidence of Wini Te Reo, undated

021 Statement of evidence of Nigel Hadfield, undated

(a) Supporting documents to document 021, various dates

022 Statement of evidence of Nigel Baker, undated

023 Statement of evidence of Edwin Charles Harmer, undated

(a) 'The Claims Process'

(b) 'He Patai mo nga Maori Members of Te Tribunal'

(c) 'Alienation'

- (d) 'Moemoea'
- (e) 'Principles of the Golden Rule'
- (f) 'The Clock is Ticking'

O24 Statement of evidence of Ranui Toatoa, undated

P DOCUMENTS RECEIVED TO END OF FIFTH HEARING

P1 Opening submissions of Wai 119 claimant counsel, 3 November 1997

P2 Booklet of maps for Wai 119 claim

P3 Statement of evidence of Wiki Hapeta Taiamai to the Planning Tribunal, undated

P4 Statement of evidence of Awhi Winiata to the Planning Tribunal, undated

P5 Statement of evidence of Charles Kohi King, undated

P6 Statement of evidence of Rukumoana Wainohu, undated

(a) Order appointing Ngati Pahauwera representatives under section 30 of the Te Ture Whenua Maori Act 1993

P7 Land Information New Zealand notice of surplus land at Raupunga school

P8 Statement of evidence of Erueti Te Kahika, undated

P9 Statement of evidence of Koea Te Uru Manao Pene, undated

P10 Statement of evidence of Peter Hawkins, undated

P11 Statement of evidence of Lou Wesley, undated

P12 Statement of evidence of Hemi Tuhi, undated

P13 Statement of evidence of Isobel Thompson, undated

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R DOCUMENTS RECEIVED TO END OF SEVENTH HEARING

- R1** Waitanoa block deed
- R2** Supporting documents to documents J16, J17, various dates
- R3** Richard Moorsom, 'Raupatu, Restoration and Ancestral Rights: The Title to Tarawera, Tataraaakina, and Te Haroto', research report, February 1998
- R4** Stephen Robertson, 'The Alienation of the Petane Block, 1866–1912', research report, February 1998
- (a) Supporting documents to document R4, various dates
- (b) Stephen Robertson, 'The Alienation of the Petane Block, 1866–1912', research report (revised edition), February 1998
- R5** Documents supplied by Crown following second hearing of Wai 400 claim, 20 February 1998
- R6** Statement of evidence of Marama Te Hata, undated
- R7** Photograph of Mangapukahu scenic reserve
- R8** Patrick Parsons, 'The Ahuriri Block: Maori Customary Interests', research report (revised edition), May 1997
- R9** Richard Moorsom, 'Raupatu, Restoration, and Ancestral Rights: The Title to Tarawera, Tataraaakina, and Te Haroto', supplementary research report, March 1998
- R10** Richard Moorsom, 'Raupatu and the Paper Township: Takings for the Tarawera Road Depot', research report, April 1998
- R12** Opening submissions of Wai 638 claimant counsel, undated
- R13** Statement of evidence of Sidney Brian Waiwiri, undated
- (a) Additional statement of evidence of Sidney Brian Waiwiri, undated
- (b) Royal commission report concerning Tarawera and Tataraaakina, 1951
- R14** Statement of evidence of Charles Utiera, March 1998
- R15** Statement of evidence of Te Awhinga Riki Whaitiri, undated

- R16** Statement of evidence of Nigel Baker, March 1998
- R17** Public advertisement of Tatarakina c block meeting of 6 October 1996, undated
- R18** Minutes of Tatarakina c block meeting, 6 October 1996
- R19** Statement of evidence of Richard Moorsom, April 1998
(a) Supporting maps to document R19
- R20** Statement of evidence of Henare Ratima, 25 February 1998
(a) Supporting photographs to document R20
- R21** Statement of evidence of Hori David Kinita, undated
(a) Supporting photographs to document R21
- R22** Statement of evidence of Hone Wano, April 1998
(a) Additional statement of evidence of Hone Wano, 17 March 1998
(b) Whakapapa of Wano Taungakore
(c) Bibliography
- R23** Statement of evidence of Willie Bush, March 1998
- R24** Statement of evidence of Tuhuiiao Kahukiwa, undated
- R25** Statement of evidence of Piriniha (Bill) Prentice, undated
(a) Supporting diagrams to document R25
(b) Proposed Tatarakina management structure
- R26** Statement of evidence of Ranui Toatoa, undated
- R27** Opening submissions of Wai 627 claimant counsel, undated
- R28** Statement of evidence of Angela Harmer, undated
(a) Supporting photographs to document R28
- R29** Opening submissions of Wai 600 claimant counsel, undated
(a) Statement of evidence of Te Rina Sullivan, undated
- R30** Opening submissions of Wai 639 claimant counsel, undated

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(b) Documents concerning Tataraakina c, various dates

S3 Dean Cowie, 'Te Matai and Pakaututu', research report, June 1998

(a) List of amendments to document s3

S4 AJHR, 1862, C-1, extracts

S5 AJHR, 1873, G-7, extracts

S6 Statement of evidence of Dean Cowie, 'Te Matai and Pakaututu', July 1998

S7 vhs videotape of Te Matai lands

S8 Opening submissions of Wai 216 claimant counsel, undated

S9 Native Land Court award of title to Te Matai block, 3 December 1880

S10 Angela Harmer, 'Te Wero: Pakaututu', research report, July 1998

S11 Whakapapa of Ann Clarke

S12 Statement of evidence of A Seymour, undated

S13 Statement of evidence of Peter Eden, undated

(a) vhs videotape concerning Te Matai Manatu Trust

S14 Statement of evidence of Nigel Baker, undated

(a) Nga Whenua Rahui Kawenata, 11 July 1997

(b) Draft heads of agreement between trustees of Te Matai Trust and Roston Nominees Ltd, 14 October 1996

(c) 'Te Matai 1 and 2 Blocks, Northern Hawke's Bay: A Quest for Access, 1895-1995? - An Historical Brief', research report, July 1995

(d) 'Submission as to Access'

S15 Statement of evidence of Peter Tukiterangi Clarke, undated

(a) Map of intended road through Te Matai and Pakaututu blocks

(b) Cadastral map of Te Matai, Tarawera, Runanga, and Wharetoto blocks

S16 Statement of evidence of Harvey Karaitiana, undated

S17 Statement of evidence of Angela Harmer, undated

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T1 Newsletter for Te Matai block owners concerning Nga Whenua Rahui Kawenata, December 1995

T2 Heads of agreement between trustees of Te Matai Trust and Roston Nominees Ltd (handwritten, signed), 14 October 1996

T3 Heads of agreement between trustees of Te Matai Trust and Roston Nominees Ltd (typed, unsigned), 14 October 1996

T4 Heads of agreement between trustees of Te Matai Trust and Roston Nominees Ltd (typed, signed), 11 November 1997

T5 Minutes of special meeting for Te Matai blocks 1 and 2, 11 July 1997

T6 Statement of defence of first defendant, *Te Matai Trustees v Roston Farm*, High Court, NP11/96

T7 Statement of defence by second defendant, *Te Matai Trustees v Roston Farm*, High Court, NP11/96

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- T8** Directions conference checklist, *Te Matai Trustees v Roston Farm*, High Court, NP11/96
- T9** Directions checklist on behalf of plaintiffs, *Te Matai Trustees v Roston Farm*, 16 July 1996, High Court, NP11/96
- T10** Memorandum of second defendant for directions conference on 18 July 1996, *Te Matai Trustees v Roston Farm*, 16 July 1996, High Court, NP11/96
- T11** Minute of Master Thomson, *Te Matai Trustees v Roston Farm*, 19 July 1996, High Court, NP11/96
- T12** Notice of appearance reserving rights, *Te Matai Trustees v Roston Farm*, 24 July 1996, High Court, NP11/96
- T13** Te Matai investigation decision, Napier minute book 89
- T14** Richard Hill, 'Ngai Tane, Ngati Pahauwera and the Crown', research report, 1998
- T15** Richard Boast, 'Petane and Te Pahou Blocks', research report, October 1998
- T16** Richard Boast, 'The Wairakei–Whirinaki Transmission Line and the Mohaka–Waikare Blocks', research report, October 1998
- T17** Robert McClean and Richard Moorsom, 'Fragmented Lands: Report on the Kupa Whanau's Interest in the Mohaka Area', research report, October 1998
- T18** Maria Mareroa, 'Ngai Tane Oral Research Report', research report, 1998
- (a) Statement of evidence of Paraire Huata, undated
 - (b) Statement of evidence of Tama Huata, undated
 - (c) Statement of evidence of Derek Huata, 23 September 1998
 - (d) Statement of evidence of Roger Aranui, undated
 - (e) Notes of interview between Neville Baker and Hinemoa Awatere, 18 October 1998
 - (f) Audiotape of interviews with Tama Huata, Paraire Huata, and Cordry Huata
 - (g) Maria Mareroa, 'Interview Transcript and Notes Forming the Basis of the Ngai Tane Oral History Report', December 1998
- T19** Submissions arising from Tataraka Corporation AGM concerning removal of transmission power lines, 26 November 1987

- T20** Statement of evidence of Richard Hill, undated
- T21** Statement of evidence of Stephen Robertson, undated
- T22** Statements of evidence of Robert McClean and Richard Moorsom, undated
- T23** Statement of evidence of Maraea Aranui, undated
- T24** Statement of evidence of Wi Huata, undated
- T25** Statement of evidence of Ranapia Huata, undated
- T26** Statement of evidence of Richard Boast, November 1998
- T27** Richard Moorsom, 'The Little Bush on the Plains: The Alienation of Waitanoa', research report, November 1998
- T28** Statement of evidence of Te Hira Huata, undated
- T29** Statement of evidence of Cordry Huata, undated
- T30** Statement of evidence of Richard Moorsom, undated
- T31** Statement of evidence of Richard Boast, November 1998
- T33** Opening submissions of Wai 436 claimant counsel, undated
- T34** Submissions of Wai 119 claimant counsel concerning Wai 436, 17 November 1998
- T35** Statement of evidence of George Hawkins, undated
- T36** Statement of evidence of Toro Waaka, undated
- T37** Statement of evidence of Rukumoana Wainohu, undated
- T38** Letter from Ngati Pahauwera to McLean (extract from 'Te Waka Maori o Ahuriri'), 2 December 1869

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- T39** Statement of evidence of Patrick Parsons, undated
(a) Extract from Te Kuta minutes concerning Tamihana Huata
- T40** Opening submissions of Wai 731 claimant counsel, 18 November 1998
- T41** Statement of evidence of Kevan Te Taka Kupa, undated
- T42** Statement of evidence of Norman Cooper, undated
- T43** Statement of evidence of Henry Kupa, undated
- T44** Statement of evidence of Gillie Cooper, undated
- T45** Opening submissions of Wai 318 claimant counsel, undated
- T46** Statement of evidence of Colin Amor, undated
- T47** Opening submissions of Wai 732 claimant counsel, undated
- T48** Statement of evidence of Angela Harmer, undated
- T49** Statement of evidence of Henrietta Baker, undated
- T50** Statement of evidence of Ruruarau Heitia Hiha, undated
- T51** Statement of evidence of Barry Wilson, 17 November 1998
- T52** Statement of evidence of Richard Rewi, undated
- T53** Statement of evidence of Ruruarau Heitia Hiha concerning Wairakei–Whirinaki transmission line, undated
(a) Supporting documents to document T53, various dates
- T54** Statement of evidence of Phillip Sullivan, undated
- T55** Submissions of Wai 168 claimant counsel, undated

T56 Statement of evidence of Cordry Huata to Planning Tribunal, undated

T57 Statement of evidence of Canon Wiremu Te Tau Huata to Planning Tribunal, undated

T58 Extracts from various histories concerning Ngati Pahauwera

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U5 Closing submissions of Wai 436 claimant counsel concerning Wai 119, 11 December 1998

U6 Closing submissions of Wai 119 claimant counsel concerning Wai 436, 11 December 1998

U9 Statement of claim by trustees of Te Matai Trust against Roston Nominees Ltd concerning access, 24 May 1996, High Court, CP11/96

U10 Statement of evidence of Marama Te Hata, 28 January 1999

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(a) Supporting documents to document w2, various dates, vol 1

(b) Supporting documents to document w2, various dates, vol 2

(c) Supporting documents to document w2, various dates, vol 3

w3 Brent Parker, 'Evidence of Brent Parker for the Crown Concerning the Mangapukahu Scenic Reserve and the Puketitiri Reserve', research report, June 1999

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(d) Supporting documents to document w5 concerning the Waipapa block, various dates, vol 2

(e) Supporting documents to document w5 concerning the Waihua block, various dates

(f) Supporting documents to document w5 concerning the Putere block, various dates

w6 Statement of evidence of Elizabeth Pishief, June 1999

(a) Supporting documents to document w6, various dates

w7 Statement of evidence of Mike Mohi, June 1999

w9 Supporting documents to documents w3, w4, various dates

w10 Supporting documents of Crown, various dates

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(a) Amendments to document w11

(b) Amendment to document w11

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w21 Statement of evidence of John Battersby, July 1999

w22 Statement of evidence of Bob Hayes, undated

w23 Colour print of sketch plan of Mohaka–Waikare confiscation district

w29 Opening submissions of Crown counsel, 26 July 99

w30 Opening submissions of Crown counsel in Wai 119, Wai 436, and Wai 731, 25 July 99

w31 John Battersby, 'The Treaty Process – We Need to Get It Right', *Sunday Star-Times*, 18 October 1998

w32 Statement of evidence of Lyndsay Head, undated

w33 Explanation of significance of document w34

w34 Extract from report by Tony Walzl

w35 Letter from Te Matai Trustees to Mike Mohi concerning Kawenata finalisation, 14 February 1997

w38 HH Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand* (1883), pp 53–54

w39 *Great Britain Parliamentary Papers*, 1860, vol 10, pp 228–229

w40 Governor to Legislative Assembly, message 28, LE1/1856/65 (National Archives)

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w41 HH Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand* (1883), pp77–78

w42 *Great Britain Parliamentary Papers*, 1860, vol 11, pp33–34

w43 The Hawke's Bay Crown Lands Sale Act 1870

x DOCUMENTS RECEIVED TO END OF THIRTEENTH HEARING

x2 Supporting documents to document w1, various dates

x3 Supporting documents to document w1, various dates

x6 Colour map of Ahuriri block and land blocks to the south between Tutaekuri and Ngaruroro Rivers

x7 Map showing Maori land holdings in Ahuriri and neighbouring blocks

x8 Photographs of traditional sites in environs of Te Whanganui-a-Orotu

x9 Photographs of Tauria Mateawha and Heipipi Pa

x10 Photographs of traditional sites in inland Mohaka–Waikare district

x11 Map and photographs showing wahi tapu in Ahuriri block and environs

x12 Colour print of map showing Crown purchase blocks in Hawke's Bay from Porangahau to Mohaka

x13 Map showing exotic forests in Ahuriri and neighbouring blocks

x14 Map showing Department of Conservation areas in Ahuriri and neighbouring blocks

x15 Bousefield, colour sketch plan of Hawke's Bay land blocks in 1852

x16 Photographs of the Kaweka Ranges, Kaweka Forest, and upper reaches of Ngaruroro River

- x17** Photographs of Lakes Rotoroa and Rototuna and inland areas of Tutaekuri and Waiohinga Rivers
- x18** Photographs of inland portions of Ahuriri block
- x19** Photographs of traditional sites in inland portions of Mohaka–Waikare district
- x20** Photographs of inland areas of Ahuriri block
- x21** ‘Sketch Map of the Ahuriri District’
- x22** Sketch map showing Moeangiangi and Mohaka Crown purchase blocks
- x23** Cadastral map (NZMS261, sheet w20) showing Mohaka–Waikare blocks
- x24** Cadastral map (NZMS261, sheet w19) showing Ngati Pahauwera blocks
- x25** Cadastral map (NZMS261, sheet w19) showing Mohaka block
- x26** Cadastral map (NZMS261, sheet w19) showing Maori land holdings in Ngati Pahauwera blocks
- x27** Letter from McLean to Fox, 26 May 1864
- x28** Mohaka Crown purchase deed plan
- x30** Closing submissions from Wai 119, Wai 430, and Wai 731 claimant counsel, 1 October 1999
- x34** Closing submissions from Wai 318 claimant counsel, undated
- x35** Closing submissions from Wai 216 claimant counsel, undated
- x36** Closing submissions from Wai 598, Wai 601, Wai 602, Wai 608, Wai 627, and Wai 638 claimant counsel, undated
- x37** Closing submissions from Wai 639 claimant counsel, undated
- x38** Closing submissions from Wai 732 claimant counsel, undated

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- x39 Closing submissions from Wai 299 claimant counsel, undated
- x40 Appendix to document x39
- x44 Closing submissions from Wai 400 claimant counsel, 14 October 1999
- x45 Closing submissions from Wai 168 claimant counsel, undated
- x51 Closing submissions of Crown counsel, November 1999, vol c
- x52 Closing submissions of Crown counsel, November 1999, vol E
- x53 Photographs of traditional sites in environs of Napier
- x54 Closing submissions of Crown counsel, November 1999, vol B
- x55 Closing submissions of Crown counsel, November 1999, vol D
- x56 Closing submissions of Crown counsel, November 1999, vol A
- x57 Supporting documents of Crown, various dates
- x58 Closing submissions of Crown counsel, November 1999, vol A(i)
- x59 Statement of evidence of Brent Parker, November 1999
- x60 Supporting documents to document x59, various dates

Y DOCUMENTS RECEIVED TO END OF FOURTEENTH HEARING

- Y1 Covering letter of Crown documents inadvertently omitted from earlier documents filed by the Crown, 6 December 1999
 - (a) Notes of comments made during Crown closing submissions concerning implications of earlier Tribunal reports, undated
 - (b) Taupo minute book 1, pp 239–241
 - (c) Documents concerning purchase of land in Mohaka–Waikare confiscation area, MS papers 0032–7 (Alexander Turnbull Library)
 - (d) Extracts from Colenso’s correspondence with McLean (MS papers 0032–221)

- Y2 Closing submissions in reply of Wai 299 claimant counsel, 31 January 2000
- Y3 Closing submissions in reply of Wai 168 claimant counsel, January 2000
- Y4 Closing submissions in reply of Wai 400 claimant counsel, 31 January 2000
- Y5 Documents supplied by Wai 400 claimants, 31 January 2000
(a) Memorandum from Wai 400 claimant counsel enclosing transcript of illegible document filed as appendix to document Y5, 18 February 2000
- Y6 Closing submissions in reply of Wai 119, Wai 430, Wai 731 claimant counsel, 31 January 2000
- Y7 Closing submissions in reply of Wai 216, Wai 318, Wai 598, Wai 601, Wai 602, Wai 608, Wai 627, Wai 638, Wai 639, and Wai 732 claimant counsel, undated

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