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THE WAIRARAPA KI TARARUA REPORT

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THE WAIRARAPA KI TARARUA REPORT

Volume I: The People and the Land

WAI 863

WAITANGI TRIBUNAL REPORT 2010

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The cover incorporates details from a design by Cliff Whiting invoking the signing of the Treaty of Waitangi and the consequent interwoven development of Māori and Pākehā history in New Zealand as it continuously unfolds in a pattern not yet completely known

The cover illustration is an artist's reconstruction of a sixteenth-century Maori hamlet in the interior of the Makotukutuku River valley based upon archaeological research. The larger structure on the ridge is a house that was specially rebuilt by Ngāti Hinewaka using stone tools, and is exhibited in the Museum of New Zealand Te Papa Tongarewa. The small structure further up the ridge from the house is a kumara storage pit. The flat area below the ridge was a kumara garden. Source: B Foss Leach and Helen May Leach, 'Prehistoric Man in Palliser Bay', in *Prehistoric Man in Palliser Bay: National Museum of New Zealand Bulletin 21*, Edited by B Foss Leach and Helen May Leach (Wellington: National Museum of New Zealand, 1979), pp 251–272.

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Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Dr Pita Sharples
Minister of Māori Affairs
Parliament Buildings
WELLINGTON

26 June/Pipiri 2010

E te Minita o ngā Take Māori

Tēnei te mihi atu ki te hunga i whakatere, i whakangaro, i whakaoti atu ai ki te pōuriuri, ki te pō tangotango o tūpaengarau ki Hawaiki wairua. Rātau o te rohe i kiia ai ko Wairarapa ki Tararua i wawata ai i tētahi ao whai hua mō ā rātau tamariki mokopuna ake ki te ōnāianei.

Ka takapautia tenei te pūrongo a Te Rōpū Whakamana i te Tiriti o Waitangi, ki mua i tōu aroaro hei mātai mā te Karauna.

E te Minita, he tāpaetanga tēnei nā mātau o te Taraipiunara i te wāhanga whānui o ngā whakakitenga mai ki a mātau o ngā kōrero ā nga uri o ngā pō kua whakahuatia atu nei. Ko te tūmanako e ai ki ngā kupu, '*I te pōuri kua mārama, i te ngaro kua kitea, i te mate kua ora*' ki a Wairarapa ki Tararua.

Kia tau ki runga i ngā iwi nō rātau nei ēnei auhī ēnei wawata, tūmanako, ki runga ano hoki ki a koe me te Kāwanatanga ngā whakamānawa rangiwhāwhā ā te Wāhi Ngaro.

Here is the Tribunal's report on its inquiry into the district we have called Wairarapa ki Tararua, which extends from the southern coast of the eastern side of the North Island up to southern Hawke's Bay.

We are glad to say that in the course of the inquiry it was our strong impression that the historically difficult relationship between the two tribes of this region, Ngāti

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Kahungunu and Rangitāne, improved. We hope that this will set the scene for a successful negotiation about the Treaty breaches we found here.

We are not surprised that the Kahungunu–Rangitāne relationship has been a difficult one, because stress often leads to conflict, and Māori of this region have been sorely tested over a long period. Their small population, and early colonisation (especially in the south of the district), left them struggling to assert their mana and identity in the face of a Pākehā majority that soon owned most of the land, made all of the decisions, and did not value Māori culture or language. We trust that the Government and the tangata whenua will use the negotiation of a settlement, and the settlement itself, as an opportunity to address these problems – which, sadly, continue today. Te reo Māori needs special support here, because it has reached a very low ebb. Although there are signs of recovery, much more needs to be done to make the language once again a medium of communication in everyday life. Māori language tuition is not easily accessible to most. It is not even available to all Māori children, especially after early childhood. Improved access and more resources are necessary if the Crown is to make amends for the wrongs of the past.

We ask that you and the Government act on our concerns that:

- *The many important Māori heritage sites in the region are vulnerable.* Some of the archaeological sites, especially in the south, are internationally significant, and the current regime for their recognition and protection is inadequate.
- *Māori rights in and around Wairarapa Moana need to be recognised and given effect.* The important and little-known history of Wairarapa Moana and Pouākani is a story in which all the credit for honour, reasonableness, and restraint goes to the Māori actors, and sadly little to either the representatives of the settler government of that time or indeed to the Wairarapa farmers who so resented Māori controlling the opening of the wetland to the sea.
- *The Crown purchased too much Māori land too quickly and without regard to the inevitable plight of a Māori population left virtually landless in a part of the country where agricultural enterprise was the principal route to a good livelihood.* This is all the more galling because, until the Crown interfered, Wairarapa Māori looked set to profit from colonisation through an apparently stable situation in which Pākehā sheep farmers were leasing Māori land on a mutually profitable basis.
- *The Māori population of this area find it incredibly difficult to exercise any meaningful influence on what goes on in their own locality.* There is not enough muscle in the legislation governing the relationship between the tangata whenua and local authorities, the Department of Conservation, agencies involved in Māori heritage management, and the Ministry of Fisheries to enable Māori here to make their views count to an extent that is at all appropriate in Treaty terms.

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You will recall that we released our chapter on public works last year. There, we urged on you the necessity to put an end to the legislative power to acquire Māori land compulsorily for public works. We have not observed any Government response to our recommended changes to the public works regime since we released them, but we remain hopeful that this area of policy will soon get the attention it has been for so long denied.

Nāku iti nei, nā

Judge C M Wainwright
Presiding Officer

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ABBREVIATIONS

a	acre
AJHR	*Appendix to the Journals of the House of Representatives*
AJLC	*Appendix to the Journals of the Legislative Council*
aka	also known as
APL	Auckland Public Library
app	appendix
art	article
ATL	Alexander Turnbull Library
blk	block
BPP	*British Parliamentary Papers: Colonies New Zealand*, 17 vols (Shannon: Irish University Press, 1968–69)
c	circa
CA	Court of Appeal
CDC	Carterton District Council
cf	compare
ch	chapter
cmd	command
CMS	Church Missionary Society
CO	Colonial Office file
col	column
comp	compiler
CT	certificate of title
DNZB	*The Dictionary of New Zealand Biography*, 5 vols (Wellington: Department of Internal Affairs, 1990–2000)
doc	document
DOC	Department of Conservation
DOSLI	Department of Survey and Land Information
DR	Turton's deed receipt
ed	edition, editor
encl	enclosure
fol	folio
GIS	geographical information system
GBPP	*Great Britain Parliamentary Papers*
GWRC	Greater Wellington Regional Council
ha	hectare
HWB	Turton's deed reference for province of Hawke's Bay
ITQ	individual transferable quota
km	kilometre
ltd	limited
MA	Department of Maori Affairs file
MA MLP	Māori Affairs Māori land purchase files
MDC	Masterton District Council
MOU	memorandum of understanding
MS, MSS	manuscript, manuscripts
n	note
n/a	not applicable
NIWA	National Institute of Water and Atmospheric Research
no	number
NZC	New Zealand Company files
NLC	Native Land Court
NZPCC	*New Zealand Privy Council Cases*
NZPD	*New Zealand Parliamentary Debates*
NZLR	*New Zealand Law Reports*
NZRMA	*New Zealand Resource Management Appeals*
p	page, perch
para	paragraph
PC	Privy Council
pl	plate
pp	pages
pt	part
r	rood
RDB	*Raupatu Document Bank*, 139 vols (Wellington: Waitangi Tribunal, 1990)
reg	regulation
RMA	Resource Management Act 1991
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
sch	schedule
SD	survey district
sec	section (of this report, a book, land, etc)
sess	session
SOC	statement of claim
SOI	Statement of Issues
SOR	statement of response
SWDC	South Wairarapa District Council
tbl	table
TD	Turton's deed reference for province of Wellington
TDC	Tararua District Council
trans	translator
v	and
vol	volume

'Wai' is a prefix used with Waitangi Tribunal claim numbers.
Unless otherwise stated, endnote references to claims, documents, papers, transcripts, and statements are to the Wai 863 record of inquiry, an extract of which is reproduced in appendix IV and a full copy of which is available on request from the Waitangi Tribunal.

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GLOSSARY

This glossary covers Māori words used in the English text. There are many passages of Māori text, for which translations are usually given. We do not attempt here a definition of all the Māori words used in the passages of Māori text. For that you will need a dictionary!

Many of the Māori words in the glossary are open-textured words capable of bearing many meanings, depending on context. The definitions we give here relate to the way they are used in this report.

We give an English definition in brackets after a Māori word in the English text, but usually only the first time the word is used in each chapter. If a word is used in a chapter in different contexts, it may be defined more than once.

There are some Māori words that we consider are sufficiently well known to New Zealanders that they do not need to be explained. For example, we do not define iwi and hapū. However, for non-New Zealanders, we provide definitions in the glossary.

Māori words used in English language quotations are defined in the glossary but not in the text.

ahi kā/ahi kā roa burning fire; continuous occupation; rights to land by occupation
aho rua two lines of descent
aho rua hapū hapū (sub-tribe) where the people have two principal lines of descent
ariki leader of the people, chief
aruhe fern root
atua god, deity, spirit, supernatural being
awa river or stream
e hoa salutation to a friend
hao type of eel
hapū tribe, descent group, kin group wider than whānau
hāpuku groper
hau a type of eel traditionally fished in the Wairarapa Moana wetland
heke migration, descent
heko a type of eel traditionally fished in the Wairarapa Moana wetland
hīkoi step, walk
hīnaki eel trap
hīnau native tree
hoa friend
hoko exchange, barter, buy, sell
hui meeting, gathering, assembly
huia native bird, probably extinct
īnanga whitebait
iwi tribe, people

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kahawai fish
kahikatea native tree known in English as white pine
kai food, to eat
kai whakarite a man to make peace and resolve disputes
kaimoana Seafood
kāinga home, village, settlement
kāinga taniwha the lair of a mythical creature or spiritual familiar
kaitiaki guardian, trustee, protector, steward, controller; spirit guardians
kaitiakitanga ethic of guardianship, protection
kaiwhakaako teacher
kākā large green parrot
kākahi freshwater mussel
kākāpō large, flightless, nocturnal parrot
kākāriki green parrot
kanohi ki te kanohi face to face, person to person
kapa haka traditional song and dance
kapakopako/ kopakopako native freshwater fish
karaka native tree bearing orange berries prized for food
karakia incantation, chant, prayer, ritual
karengo/kerengo edible seaweed
kaumātua male or female family elder
kaupapa subject, topic, agenda
kawa protocol
kawana transliteration of 'governor'
kawanatanga government
kawenata transliteration of 'covenant'
kererū native bush pigeon
kiekie epiphytic plant
kina sea urchin
Kīngitanga Māori king movement founded in the1850s
kiore Polynesian rat
kiwi iconic flightless bird
koha present, gift
kōhanga reo Māori language pre-school
kōhatu rock, stone
kohekohe native tree
kōiwi human remains, corpse
kōkako New Zealand crow
kōkopu native freshwater fish
kōkoputuna type of very large eel
komiti transliteration of 'committee', Māori council
komiti nui name given to a large hui in Wairarapa called by Governor Grey in 1853
kōrau turnip leaves and beet

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koreke New Zealand quail
kōrero story, discussion, speech, to speak
kotahitanga oneness, unity
Kotahitanga Māori political development of the late nineteenth century
koukou morepork
kōura crayfish
kuia old lady
kuia koroua old people
kuku a kind of mussel
kūmara sweet potato
kura 'kura' is a transliteration of 'school'
kura kaupapa primary school where education is delivered in te reo Māori
kurī dog
kūtai mussel
mahi work, activity
mahinga kai place for gathering food; the activity of food gathering
mahinga mātaitai place for gathering seafood
maire native tree
mākutu spell, incantation
mamae pain
mamaku large native fern
mana authority, control, influence, prestige, power, reputation
mana whenua / manawhenua customary rights and authority over land and taonga
manaaki hospitality, generosity, compassion, respect, kindness
manaakitanga ethic of hospitality, generosity, care-giving
manuhiri guests, visitors
mānuka tea tree
māra cultivation, garden
marae enclosed space in front of house, courtyard, community meeting place
mataī native tree
mātaitai fish or other foodstuff obtained from the sea
mātauranga knowledge
mate atua sickness beyond human control
matua father, senior relative
mauri life force, life principle
miro native tree
moa extinct, large flightless bird
moana large body of water; lake, sea
mōki/ mōkihi raft made of reeds
mokopuna grandchild
muru retributive act of plunder
ngā manu the birds
ngaio native tree

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nīkau native palm
noa ordinary, free from tapu or restrictions, safe, touchable
nohoanga traditional camping area
ōhākī dying speech
pā fortified village, or more recently, any village
pā tuna weir for catching eels
Pākehā white New Zealander
pakeke adult person
papa kōhatu broad flat rock
papakāinga original home, home base
paranui a type of eel fished in the Wairarapa Moana wetland
pātaka food store
pāua univalve shellfish
pepeha tribal saying
pingao now rare grassy coastal plant (*Desmoschoenus*) traditionally used for weaving and rope making
poi light ball with a string attached to it, swung rhythmically in dance
poroporoākī farewell, especially to deceased person
pou upright post, support, pole, sustenance
pou tokomanawa main support post in a meeting house
pūpū shellfish, often called cat's eyes
pure ceremony to lift tapu
rāhui temporary restriction on access or prohibition on use of land or resources; reserve, preserve
rākau whenua tree under which placenta are buried
rangatahi young people
rangatira chief
rangatiratanga chieftainship, leadership, self-determination
raupō a kind of bullrush
rauriki herbaceous plant otherwise known as puha or sow thistle
riko a type of eel fished in the Wairarapa Moana wetland
rimu native tree, red pine
rohe boundary, territory, district, area, region
rohe moana tribal territory at sea
rongoā medicine, remedy, solution to problem, take care of
rūnanga assembly
tahakupu o te whenua high water mark
taiāpure a word created for a particular type of tribal fishery protected under statute
taiwhenua land, district
Taiwhenua political organisation within Ngāti Kahungunu
takahē large, rare flightless bird
take issue, grievance, cause, reason
takiwā territory

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tamariki children
tangata heke migration
tangata kaitiaki persons in caretaking role (a term used in the customary fisheries regime)
tangata whenua people of the land, people of a given place
tangi cry, weep, grieve
tangi funeral ritual (abbreviation of tangihanga)
taonga treasured possession, property
taonga raranga materials for weaving
tapu religious or spiritual restriction, sacred, consecrated, prohibited
tatau pounamu enduring peace, sometimes sealed by visible symbol of a green door
te taua whenua yours (singular) and my land
tauiwi foreigner, alien, outsider
taura here/taurahere link
tauranga ika traditional fishing ground
tauranga waka traditional waka landing site
tawa fruit-bearing tree
te ao Māori the Māori world
te reo/te reo Māori the Māori language
te tino rangatiratanga full (chiefly) authority
tekoteko carved figure on a house
tī cabbage tree
tītī/ tiitii muttonbird
tika correct, proper, fair, just, according to traditional ways
tikanga traditional rules for conducting life, custom, habit, rule, plan, method, rights, law
tipuna ancestor, forebear
tīpuna ancestors, forebears
tītoki native tree
tītonga native tree (dialect word for tītoki)
tohi ritual for purification
tohu sign, portent
tohunga specialist, expert, wizard, priest
tomo marriage negotiation
tororaro *Muehlenbeckia astonii*, a divaricated shrub native to the Cook Strait area
tōtara native tree
tūāhu altar
tuatara large native lizard
tūī native bird, parson bird
tuku let go, give up
tuku whenua yielding up or gifting land, permission to settle or occupy
tuna eel
tuna heke twice yearly eel migration
tūrangawaewae home turf, core habitation, ancestral home
tūturu real, genuine

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upokokororo grayling, a freshwater fish
urupā burial site, cemetery, tomb
utu reciprocity, retribution, recompense, revenge, response, price
wāhi tapu sacred place, repository of sacred objects
wāhi taonga treasured places
wahine woman
waiata song
waka canoe
wānanga school of higher learning
weka flightless bird about the same size as a chicken
whaikōrero traditional oratory on the marae
whakapapa ancestry, lineage, family connections, genealogy; to layer
whakataukī proverb, saying
whakawā judge or native assessor in the Native Land Court era
whakawātea ritual for cleansing or clearing spirits
whānau family, extended family
whanaunga relative, kin, blood relationship
whanaungatanga ethic of connectedness by blood; relationships, kinship
whāngai adopted child
whare house, building
whare kura secondary school
whare wananga tertiary institution
wharenui meeting house
wharepaku toilet
whāriki woven flat floor mat
whenua land, ground, placenta, afterbirth

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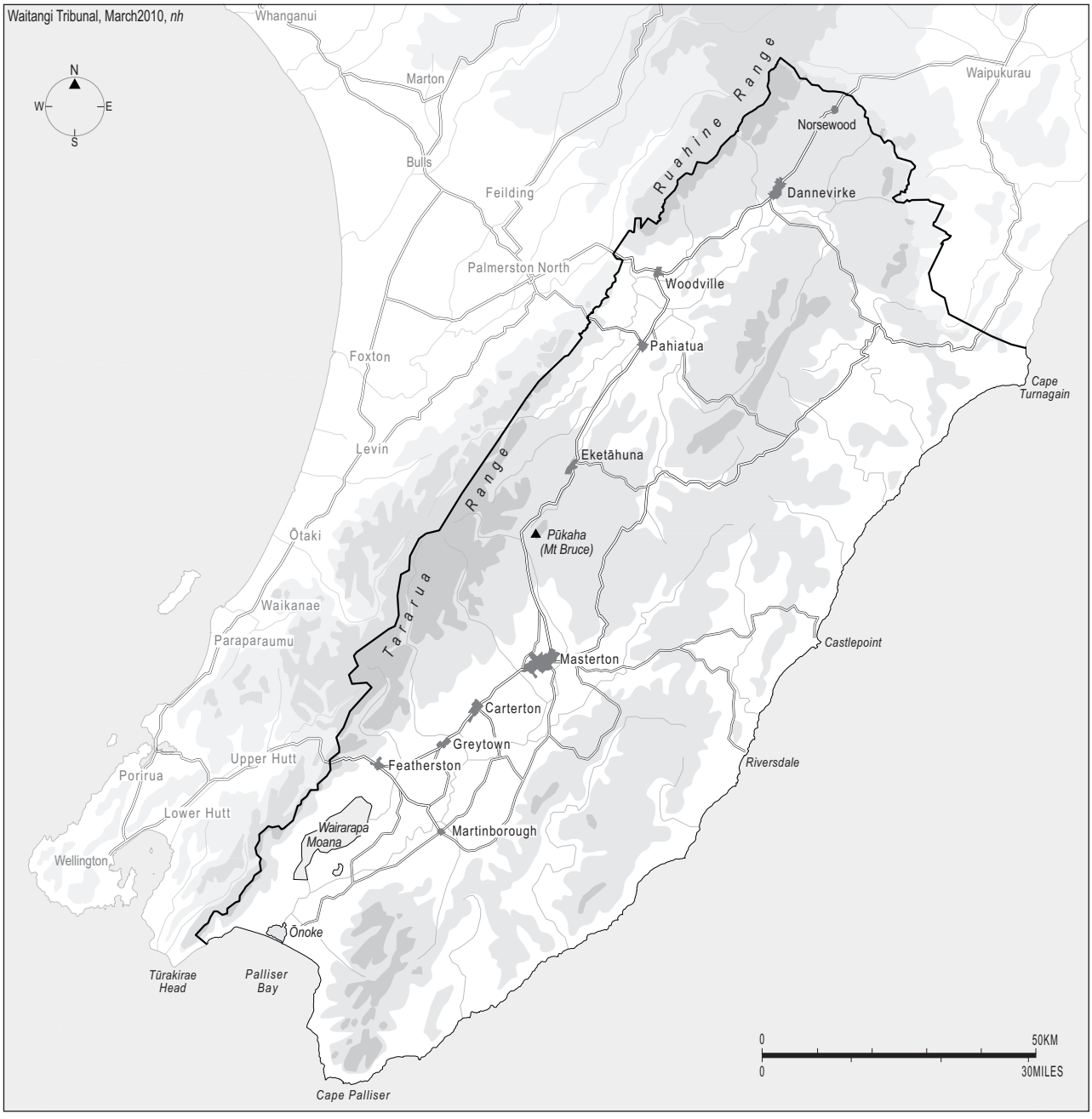

The Wairarapa ki Tararua inquiry district

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What this Introduction Does

This introduction does three things in three sections:

1. Housekeeping – explains and describes important things about people, places, and words;
2. Outlines briefly how the report is organised; and
3. Captures this Tribunal's most pressing thoughts about its inquiry into this district. It crystallises our lasting impressions of what is special and distinctive about the history here of Māori and the Crown over the past (approximately) seven generations since Pākehā settlers arrived.

Although the task described in 3 is by far the most important, we perversely begin with 1 and 2. That is because these, though more workaday, nevertheless convey information about this report that the reader cannot easily do without. Also, we are yielding to a strong impulse to clear out of the way the necessary and the routine so that we may focus upon what Māori call the 'ngako' – a word that literally means the grease or the fat, but metaphorically means the vital kernel of the matter.

Housekeeping

This inquiry district is a large, mainly rural region that runs from the southern and eastern coasts of the North Island, inland to the central mountain ranges of Tararua and Ruahine, and north into southern Hawke's Bay. We attempt no comprehensive description of the region here; we want simply to clarify how we refer to its different parts. This is necessary because, unfortunately, place names were historically inconsistent and ambiguous, especially in the northern part of our inquiry district.

Before European settlement, a feature of the district was the vast area of lowland forest that stretched from Maramauku Stream – a small waterway well to the north and west of Waipukurau – south to Kopuāranga, which is located about halfway between modern-day Masterton and Pūkaha Mount Bruce. This forest was often called Seventy Mile Bush, and sometimes also Ninety Mile Bush. Its extent was probably closer to 90 than 70 miles. Confusingly, though, the name Forty Mile Bush was used to refer to *both* the portion north of the Manawatū River and the portion south of it. When the Crown purchased large blocks in 1871, it labelled as 'Tāmaki' the northern portions that were in Hawke's Bay Province, and as 'Seventy Mile Bush' the portions in the Wellington Province. The names Tāmaki-nui-ā-Rua and Te Tapere-nui-ā-Whātonga applied to the denser lowland forests in the inland area, but sometimes embraced a more extensive area of forest that included

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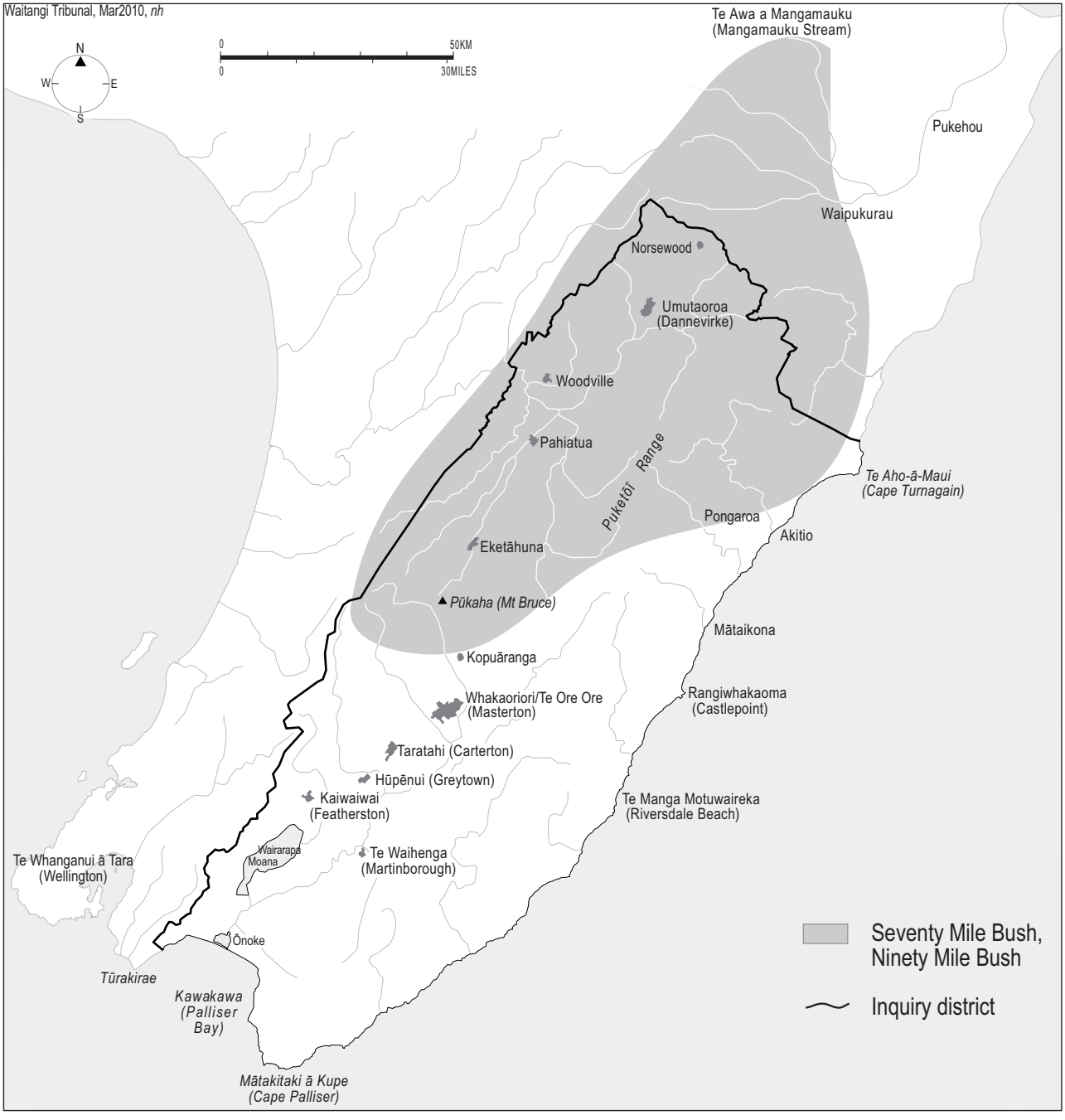

The area referred to in the nineteenth century as 'Seventy Mile Bush' and 'Ninety Mile Bush'

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The area comprised by the term 'Tāmaki-nui-ā-Rua', as used by tangata whenua today

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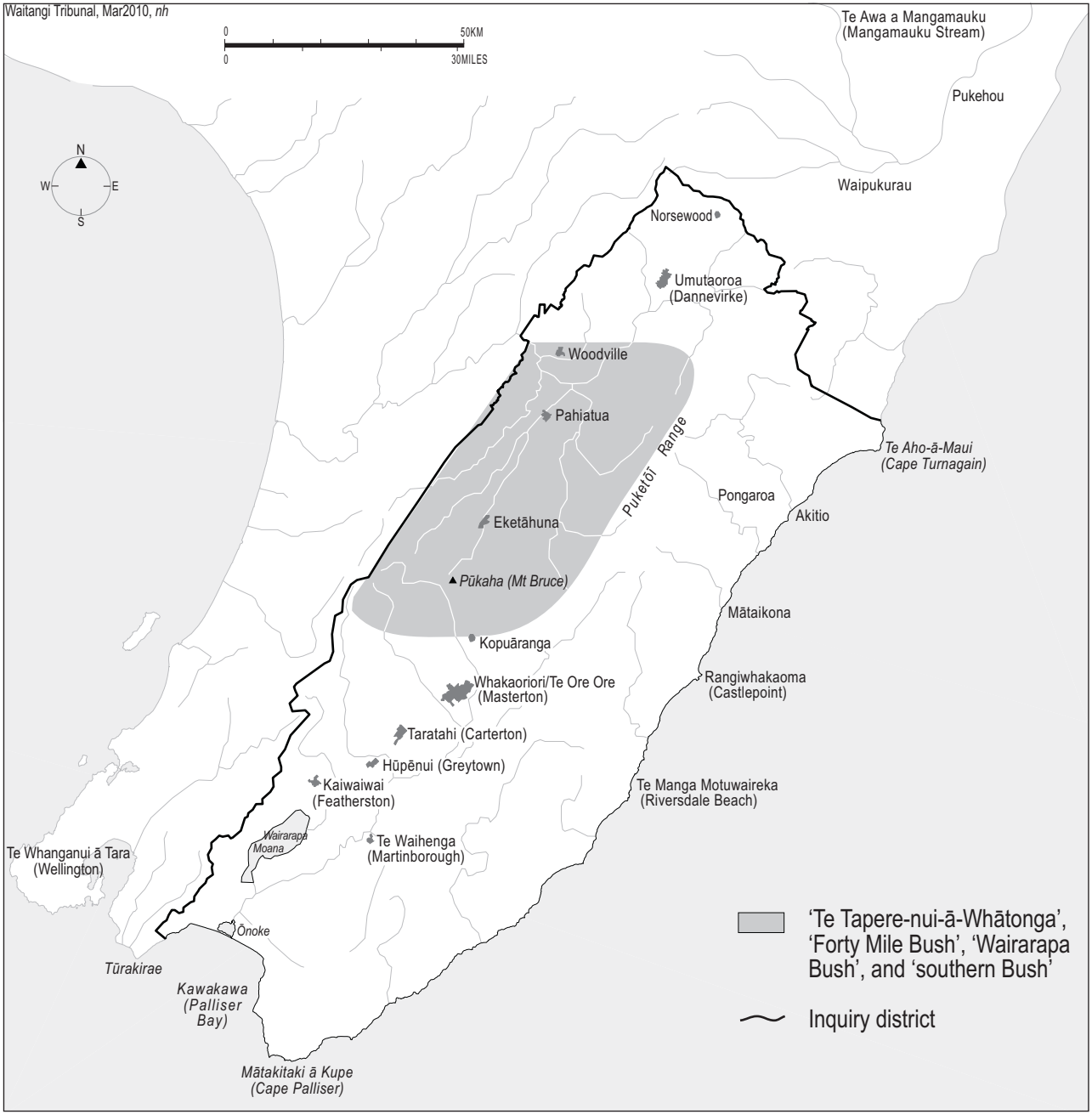

The area variously referred to in the nineteenth century as 'Te Tapere-nui-ā-Whātonga', 'Forty Mile Bush', 'Wairarapa Bush' and 'southern Bush'. In this report, we refer to this area as the southern Bush.

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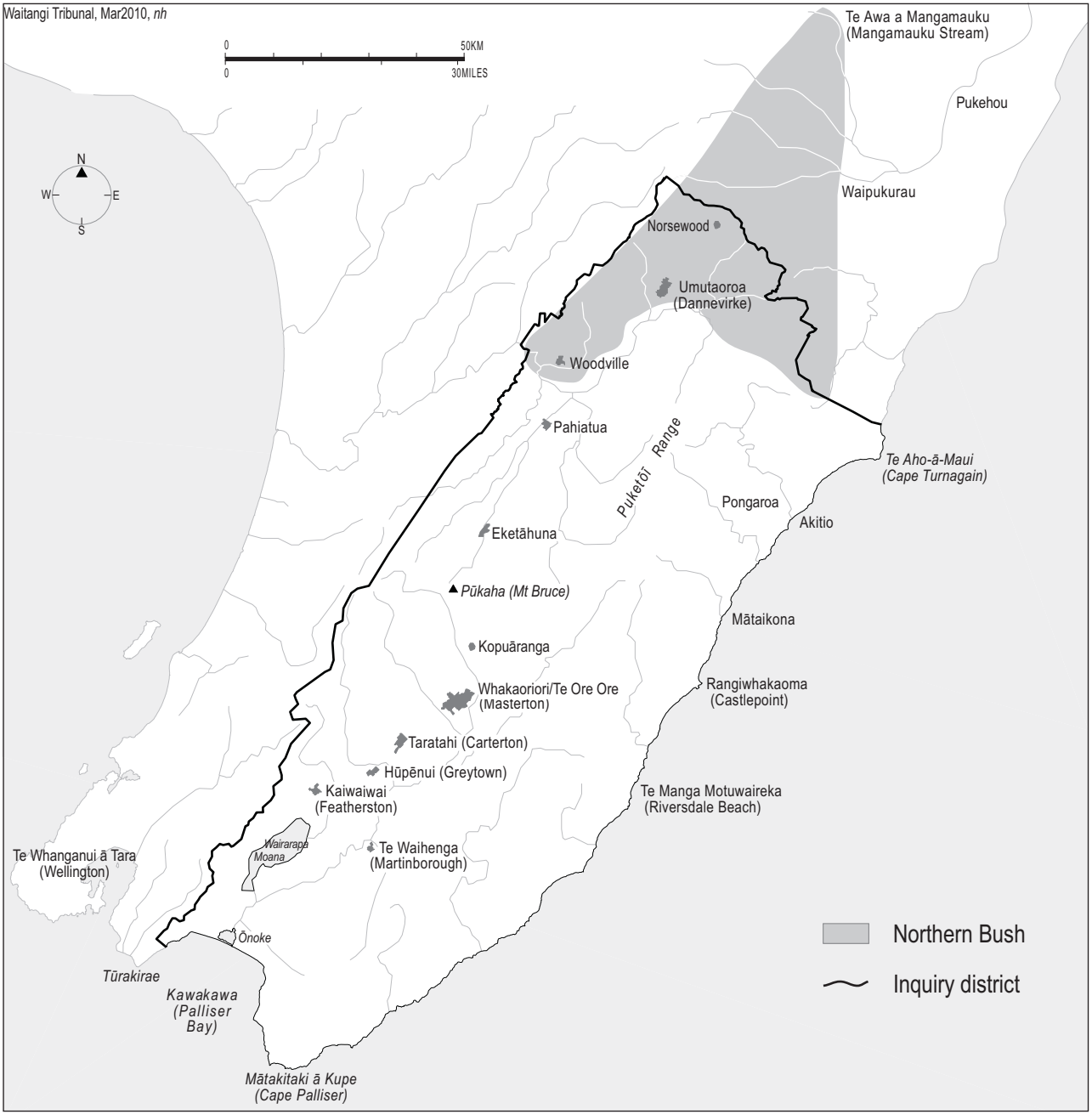

The area variously referred to in the nineteenth century as 'Forty Mile Bush', 'the Tāmaki', 'Tāmaki-nui-ā-Rua', and 'the northern Bush'. In this report, we call it the northern Bush, but for practical purposes this means that part of the northern Bush that lies within this inquiry district.

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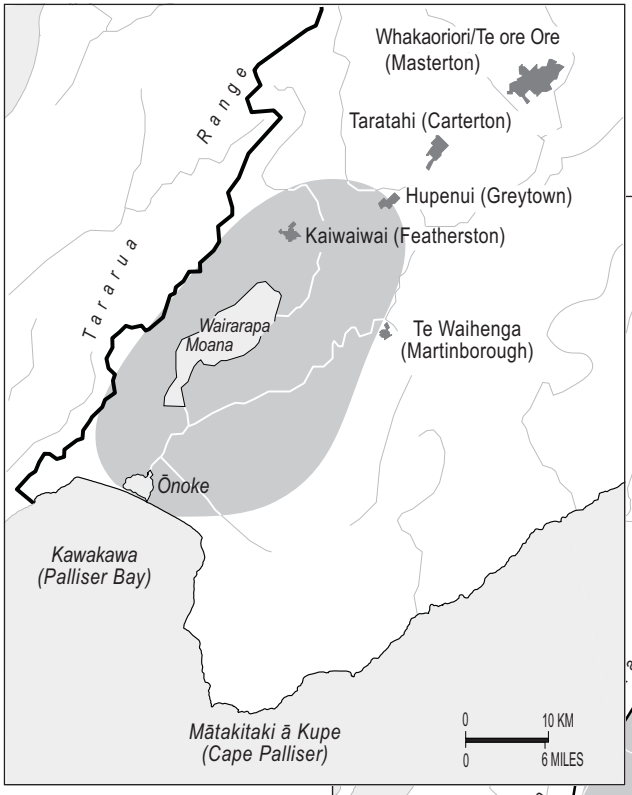
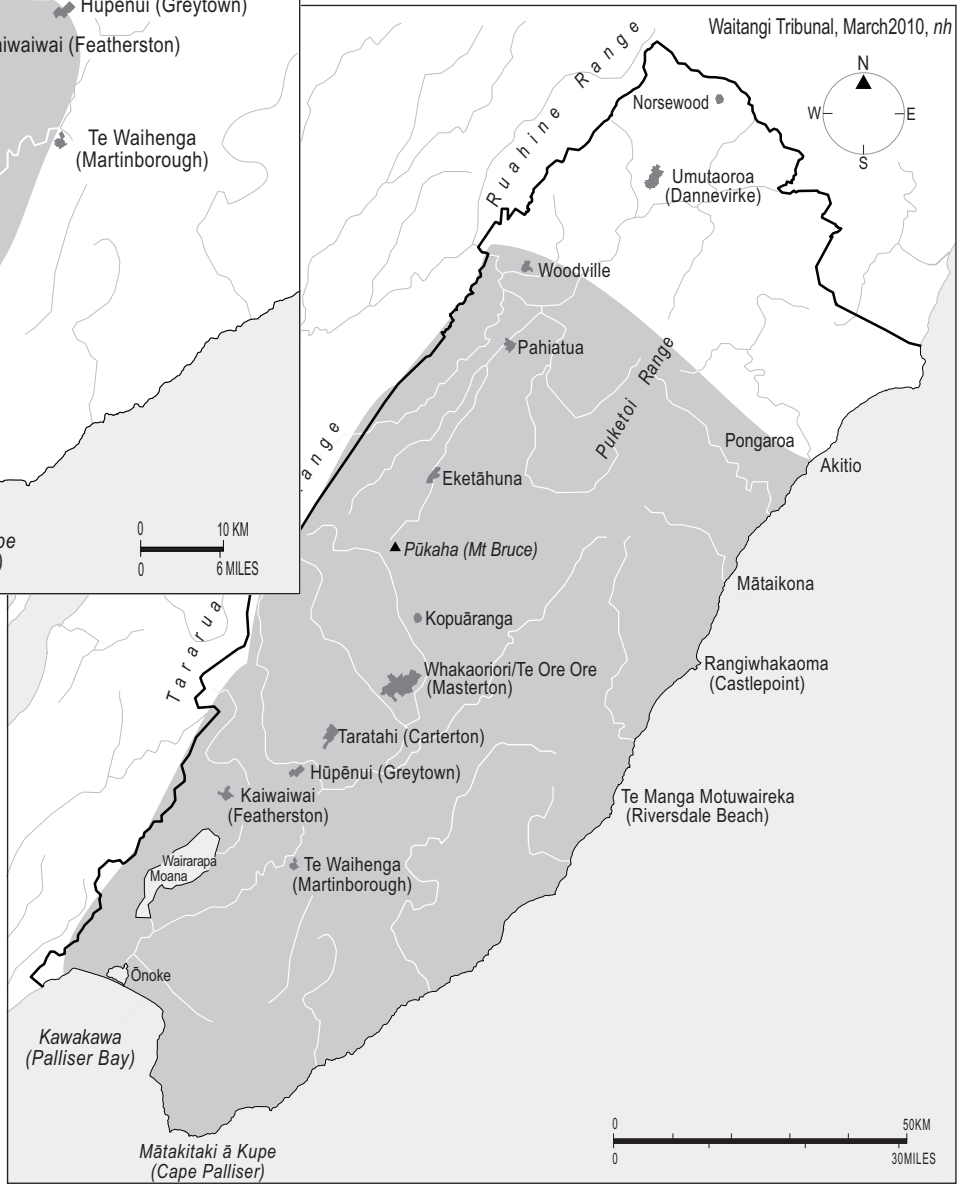


▲ **The area comprised by the term 'Wairarapa' in the pre-contact era**



▶ **The area comprised by the term 'Wairarapa' in popular usage today**

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the slopes of the Puketōī Ranges and the environs towards the coast – including, for example, the Tautāne Bush.

As a written description like this is hard to follow, the best way to show it is in maps. The maps between pages xlii and xlvi reflect our understandings of the various names for the different parts of the inquiry district historically and today.

Important particularly in chapter 4, on the Native Land Court, is our decision to go for simplicity by referring to the northernmost part of the inquiry district as the northern Bush, and the area roughly between Woodville and Kopuāranga as the southern Bush. We think the maps make this plainer than any amount of description.

The claimants and their claims

The claimants before us were groups comprising hapū and iwi of Rangitāne and Ngāti Kahungunu, some of whom claimed descent from both iwi, and some from only one. Some did not want to emphasise their connection with either group, saying they were a hapū in their own right. Some claimants were essentially whānau whose focus was a particular take (issue) affecting them.

The claimants in this inquiry are part of a Māori population that was, and remains, relatively small. There were fewer than 1000 Māori in Wairarapa ki Tararua at the time when the Treaty was signed. The small population was not an issue when only Māori lived there, but once Pākehā settlers began to arrive, Māori were soon outnumbered. Now, Māori account for less than 16 percent of the population here.[1] This affects their ability to maintain a significant presence and influence in their own rohe (tribal territory).

Nevertheless, the Tribunal's experience during our hearings and site visits was of people who remain strong in the traditions of manaakitanga (ethic of hospitality). They worked together tirelessly to prepare for our hearings and were wonderful hosts. We had an enduring impression of people who retain a sense of themselves as Māori, despite many decades of efforts in countless subtle and not-so-subtle ways to get them to forgo their distinctiveness and merge seamlessly into the wider, Pākehā population. Happily, recent years have seen the emergence of a real determination among the younger generations to reclaim their Māoritanga (Māori culture), and become strong once more in te reo Māori (Māori language) and tikanga Māori (the traditional rules and practices of Māori society).

We say no more here about the claimants and their claims, but appendix I is a treasure-trove of information. It lists who brought what claim, when and where the Tribunal heard the claims, who gave evidence on whose behalf, and when and where they gave the evidence.

Terminology

Tohu tō or macrons

Throughout this report – and for the first time in a Tribunal district inquiry report – we have tried to use Māori correctly by deploying tohu tō or macrons. A tohu tō or macron is a long line over a vowel to indicate its extended length, and we use them on all Māori words that have long vowels. Applying macrons (as used in the word 'Māori'), or doubling the vowel (as in 'Maaori'), is necessary for correct pronunciation, and also for meaning. For example, the word 'kaka' is really four completely different words in Māori, depending on vowel length:

kaka – clothing, fibre, line, tattoo, ancestry
kakā – red hot, inflammation
kāka – cork
kākā – native parrot

Their use is therefore not pedantry or affectation; it is intrinsic to meaning and sound, together the essence of language.

Our use of macrons extends to personal names and place names. While the position of macrons in ordinary Māori words is fairly well settled in dictionaries, names are another matter entirely. Historically, vowel length was not usually indicated in written Māori; sometimes the derivation of names is unclear, or has changed with use. They were not generally deployed in the written text of evidence

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Present-day marae of the tangata whenua of Wairarapa ki Tāmaki-nui-ā-Rua

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or submissions in our inquiry. This makes our use of macrons in names a slightly perilous business, but we have attempted it because we think it necessary for proper rendition of te reo Māori. We have been as consistent and accurate as we can. There will be cases, though, where our understanding is wrong, or differs from local usage, and for any such aberrations we apologise.

Names are potent

We spell two names in this report differently from usual.

The claimants explained to us why the name 'Rimutaka' for the range of hills between the Hutt Valley and Wairarapa is wrong: it should be 'Remutaka' (see ch 14).[2] We use Remutaka, and recommend this change to the New Zealand Geographic Board.

Similarly, there is a mountain range wrongly called 'Haurangi', and we give it as 'Aorangi', which tangata whenua tell us is the correct name. We understand that this change is in the process of being effected officially, and in anticipating it, we add our support.[3]

Names are very potent, as the recent controversy about whether to use Whanganui or Wanganui made apparent.

When settlers came to this country, they soon began renaming the landscape. It was an aspect of the assumption of power inherent in colonisation. Everywhere, English – and sometimes in this district Scandinavian – names were substituted for Māori names. Overriding of earlier names happened nowhere more than in Wairarapa, where settlers moved in early, and tangata whenua were not so numerous. Somehow, settlers felt able to approach the places they were newly occupying as though nothing and no one had gone before: they were the people who counted, and their language and their names were more important. Misspelling and mispronouncing Māori names is simply another manifestation of this attitude. Remutaka/Rimutaka and Aorangi/Haurangi are only two of numerous examples of incorrect spelling. Equally disrespectful is mispronunciation of Māori – sometimes to the extent where the Māori word and its Māori origin is indiscernible. For instance, the river and sheep station near Kawakawa (Palliser Bay) are called Te Awaiti, but locally, Te Awaiti is often pronounced 'Tar White'. This is tantamount to denying that the name is a Māori one at all.

Proper pronunciation and accurate spelling of Māori place names is arguably all the more important where – as is usually the case in Wairarapa ki Tararua — tangata whenua no longer own the land. The names, and the tīpuna (ancestors) and stories associated with them, are often their only abiding connection with places their forebears occupied and traversed mai rāno (from time immemorial).

The glossary

The first time in each chapter that we use a Māori word in the text, we give an English definition immediately afterwards in brackets. There are a few Māori words that we don't define in the text. These are words like iwi, hapū, and mana, which we think New Zealanders know.

However, for readers not familiar at all with Māori, or who forget a definition as soon as they read it, the glossary set out immediately before this introduction defines all the Māori words used in the English text. Māori words are often open-textured as to meaning, and can be used in many different senses. We do not attempt a comprehensive definition of the words used but give their meaning in the context in which we used them in the text.

How the Report is Organised

This report is in three volumes. Each volume has a theme, and the chapters in each volume explore the theme in various ways. The themes reflect our response to the evidence and arguments in the inquiry.

In the Wairarapa ki Tararua inquiry district, there was a transition over a remarkably short period from Māori being the people with authority over their whole physical environment (volume I: *The People and the Land*), to a situation in the present where they own very little land and exercise virtually no authority over the circumstances that define their lives and environment (volume III:

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There they were gone . . . Artist's reconstruction (based on archaeological research) of a kāinga (settlement) at the mouth of the Makōtukutuku River, also known as the Washpool. The Washpool was an important area of Māori occupation for more than 400 years, beginning in the twelfth century AD. Kūmara gardens were neatly laid out with stone walls along their boundaries. This village was ideally placed to take advantage of rich marine resources nearby and bird life in the forested interior.

Powerlessness and Displacement). In between were several decades that we chronicle in volume II: *The Struggle for Control*.

Volume I

Thus, volume I, *The People and the Land*, goes from describing the lie of the land in the pre-contact era (ch 1), to the era in the 1840s and early 1850s when Māori leased an extensive area of the Wairarapa valley to Pākehā sheep farmers (ch 2). Chapters 3A to 3D cover an enormous amount of material on the topic of Crown purchasing.

Volume II

Volume II, *The Struggle for Control*, describes the phenomena that saw control over Māori land and resources moving out of their hands. Chapter 4 looks into the land court era in Wairarapa and Tararua between 1865 and 1900, and chapter 6 takes that inquiry into the modern era. Chapter 5 looks at the dwindling of Māori landholdings and asks, 'sufficiency: how much was enough?' Chapters 7 and 8 inquire into particular factual and legal situations: Wairarapa Moana and Pouākani and public works takings respectively.

Volume III

Volume III, *Powerlessness and Displacement*, deals with the present, addressing the many environmental, local government, heritage, and fishing issues of concern to Māori today. Chapter 9 gives the structure of the various chapters, and chapter 10 explains their thematic connection. Chapters 12A to 12D cover the contemporary management

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The mouth of the Makōtukutuku River, now with a settler's dwelling and other buildings on the land where the kāinga was. This is the same view as depicted opposite.

of the landward terrains, and chapters 13A to 13C cover the contemporary management of the seaward terrains. The final chapter, chapter 14, explores claims about Rangitāne identity.

Use of images

The Tribunal has long deployed maps to depict places discussed in reports. This is the first Tribunal report, though, where there are images of all the major historical actors whose photographed portraits, or photographs of painted portraits, survive. Unfortunately, no likenesses exist of some of the key Māori figures. In the current generation, many claimant witnesses gave us permission to use their photographs, and these appear in the text where we refer to the witness's evidence.

We also searched out images of the events and places discussed in the text. Again, suitable images are often few, and we have used what we could find.

Illustrating reports is more costly and time-consuming, but pictures provide another dimension. We think they record the people and places that feature in the text more fully, and of course they add visual interest.

What Struck Us Most

Everywhere you go in New Zealand, the stories of the colonial encounter have much in common. Does that make Waitangi Tribunal reports all essentially the same? Thankfully, no. Every district has its very own stories to tell, shaped by particular people, events, places, coincidences, and accidents. What was it about this district inquiry that was most striking?

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The leasing experiment

We were intrigued by the unique interaction in the 1840s and the early 1850s of squatters who came over from Wellington to lease land and run sheep in Wairarapa, with hapū Māori as their landlords. The farmers and the Māori lessors rubbed along pretty well for about 12 years, learning from each other, and accommodating differences in mainly amicable ways. The sheep thrived and flocks grew, Māori received a healthy rental income, and the squatters earned more than adequate returns on relatively modest investments of capital.

Was this a pilot for a different kind of colonial arrangement that did not involve wholesale transfer of Māori land to Pākehā, but nevertheless provided a means of fulfilling the agricultural aspirations of settlers? Unfortunately, the Crown's intervention meant that the experiment was shortlived. We can only speculate on how, if given the chance, the leasehold economy might have developed.

Paora Ammunson at Pāpāwai Marae on 28 May 2004. Paora's accomplished whaikōrero evoked the glory days of the Kotahitanga movement.

The komiti nui and what came after

A pivotal hui (gathering) took place in southern Wairarapa in 1853 that was called the komiti nui. The word 'komiti' means to mingle, as waters do at the confluence of rivers. It was thus a big coming together – not of waters but of people. That hui turned the tide of Māori opinion in the Wairarapa.

Governor George Grey was the celebrity attraction, and many turned out to hear him talk about why they should let the Crown in to purchase land for settlers. Grey and Crown purchase agent Donald McLean were steeped in Māori language and culture and knew how to deploy metaphor – which Māori love – to explain the Crown's purchase of Māori land in terms that tangata whenua would like and understand. They would use images such as a marriage between two peoples, painting a future together in which many good things would flow to Māori completely over and above the purchase price. From what we know of what was said, and of how Māori received what was said, Māori had every reason to believe they would be very much involved in the lives and activities of the settlers, and would learn and profit from sharing a common destiny.

The upshot was, of course, that Wairarapa Māori said yes, and McLean came in and purchased for the Crown just about every acre he could get his hands on.

From our knowledge of what followed, we were driven to speculate on how cynical McLean and Grey were at the komiti nui. Did they really think that the new dispensation could deliver to Māori as they indicated? Or were they simply saying what they thought they had to say to get Māori to agree to sell, not caring whether the fledgling colony could really follow through on the promises?

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Wairarapa Moana

Then there was the story of Wairarapa Moana. We noted how little known it is, although it seems to us in many ways a perfect allegory of the colonial experience. Capable and determined rangatira (chiefs) – especially Piripi Te Maari – devoted their lives to solving an enormous problem for Wairarapa Māori: how to get the settler administration to honour the purchase deeds giving them control over Lakes Wairarapa and Ōnoke extending to the high-tide mark, and including the opening to the sea at Ōnoke. Māori desire to retain intact a legendary tuna (eel) fishery and wetland ran smack into the settlers' resolve to maximise their pastoral acres by draining the land. The owners of Wairarapa Moana left absolutely no stone unturned – except violent confrontation – to get the system to work in their favour. In the end, it did not. Pākehā farmers came to control the opening of Ōnoke to the sea; Māori did not get the promised reserves near Wairarapa Moana; they lost control of their tuna fishery; and the land the Crown gave them instead was 30,000 pumiceous acres at Pouākani, hundreds of miles from home in another iwi's rohe.

The Kotahitanga movement

Those of us less steeped in Māori history were stunned to find that, in the late nineteenth century, a whole Māori complex grew up at Pāpāwai Marae on the outskirts of Hupenui (Greytown). It was the flowering really of the Kotahitanga movement, in which Wairarapa chiefs educated in both the Māori and Pākehā worlds played an influential part. One of the Kotahitanga's achievements was to develop reasonable and attractive ideas about how Māori policy – and especially Māori land – might be better managed. We learned how in the 1890s the Kotahitanga very nearly lured Premier Richard Seddon and Māori member of Parliament James Carroll down a path to what looked like a kind of partnership with their Liberal Government. Again, events in this district gave us a tantalising glimpse – as did the leasehold situation 40 years earlier – of how another kind of New Zealand might have unfolded.

When we were at the pōwhiri held for us at Pāpāwai in 2004, we listened appreciatively to Paora Ammunson's whaikōrero (ceremonial oratory). Later, we mused that the rangatira of the Kotahitanga were probably there too somewhere, listening to Paora, and hoping that the glory days would come again. In mid-2004, our hearings took us to the north of the inquiry district, where Rangitāne o Tāmaki-nui-ā-Rua, based in Dannevirke, have worked against the odds to bring themselves into an era of cultural resurgence that the Tribunal found truly inspiring.

The buildings that once comprised that impressive complex at Pāpāwai may be no more, but the spirit of the Kotahitanga lives on.

Te Tapere-nui-ā-Whātonga

The transformation of the mighty Tapere-nui-ā-Whātonga (Seventy Mile Bush) was another headline story of this inquiry. Perhaps the densest in New Zealand, this lowland forest succumbed to the axe in a remarkably short passage of time. It was of course home to the marvellous huia, whose resonant cries are now, it seems, forever silenced. The lives of the tangata whenua were profoundly changed by the loss of the bush, and not long after by the demise of their iconic bird.

The speed of change

The speed of the changes that happened in this district in colonial times is one of the things this Tribunal marvelled at. The amazing felling of Te Tapere-nui-ā-Whātonga is one example; another is the Crown's whirlwind buy-up of 1.5 million acres in the Wairarapa in 1853 and 1854. As a result, in the space of no more than a decade, from the 1850s to 1860s, tangata whenua there went from being landlords who roamed at will through an expansive territory comprising coastal and inland domain to pleading with the Government to fulfil promises of small reserves as settlers flooded in to take up all the land the Crown had just bought.

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Imagining the past

All these stories enrich our knowledge and understanding of our history, and of how we became who and what we are today as citizens of the nation we have constructed and called New Zealand. The stories take us down paths of endless imagining – because of course we cannot revisit the past. We can only imagine it.

We imagine the experience of those nineteenth-century Māori engaging first with Donald McLean, who purchased their land so rapidly, and then with the settlers, who followed hard on his heels to establish themselves as farmers. What on earth did they make of it all? What did they think they were giving up? What did they think they would gain? Afterwards, as events unfolded surely quite differently from how they expected, did they wish they could go back to how things were before? Did they yearn for the certainty of their previous lives, when everything was cast in terms of tapu (sacred, restricted) and noa (free from tapu), and nothing really changed? And what of the settlers? What made them so certain that their ways were better? When they looked at the communal lives Māori led, how did they know that their own atomistic lives were more fulfilling, more godly? Did they think about what it would be like to live as a member of a hapū – always one amongst many, the individual always less important than the collective (except perhaps sometimes in the case of rangatira)? Why were settler governments so determined that Māori should give up 'tribalism'? Did they grasp what a profound shift this was for people? Did they care?

This Tribunal's task in 2010

Fascinating though these questions are – and necessary as it is to ask them (and many others) in order to make sense of all we hear in the course of a Tribunal inquiry – our role as Tribunal members is not simply to marvel at the happenings of the past. It is our job to see it all through the lens of the Treaty and its principles, and to ask whether what the Crown did and did not do should be found wanting in those terms.

The Treaty set out understandings about the relationship between the main players in a colonial experiment that was about to ensue. Critically, it recognised the role of chiefs and tribes, and their property rights. They would not have the things they owned taken from them. They could sell land to the Crown, but only if they wanted to.

As we know, things worked out quite differently. Over the next century, te iwi Māori (the Māori people) lost most of what they had when the Treaty was signed. Substantially, their land was the subject of purchase by the Crown and others – but in circumstances where, in very many cases, it could not be seen as a willing buyer/willing seller situation of the kind prefigured in the Treaty. We saw much of that in this inquiry, not only in McLean's early hectic dash through the territory signing one deed after another, but also later in the Native Land Court era, especially in the north of the district.

What, then, of rangatiratanga? The Treaty guaranteed te tino rangatiratanga: the full authority of chiefs. But what does that guarantee amount to when the lands over which chiefs held sway are gone, and the people who occupied them are dispersed to live lives unimaginable in 1840? Has the elapse of time and the turning of the world relegated chiefs and their rangatiratanga to the mists of the past?

Quite simply, no. Possibly the answer would be 'yes' if the promises of the Treaty had been fulfilled, and Māori were truly partners in the 2010 enterprise we call New Zealand. But they are not.

And yet, iwi survive. In some areas, Māori people are at the forefront. They remain distinctively themselves: Māori identity is in many ways a stronger 'brand' than ever.

So what does the guarantee of te tino rangatiratanga mean in the here and now? It means an ongoing promise that the principles essential to Māori identity will be given due recognition in our nation state. These include a proper role for Māori tribes in decisions affecting them; full status for te reo Māori and wholehearted support for its restoration as a language of communication and not only of ceremony; and a commitment to finding ways within the existing polity for Māori to make their own choices and

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determine their own destiny in areas like health and education. Quite simply, Māori communities need to be empowered to rebuild so that they can exercise authority over their affairs in place of that of the State. They must once again be in a position to exercise their own social control, so that they can look after their own, and save them from becoming criminals and drop-outs in an uncaring world.

What does te tino rangatiratanga mean in the environmental context? A vital strand of Māori identity concerns a physical, emotional, and spiritual connection with the natural world. In the times when tribes occupied and owned their tribal territory, they knew it intimately, and named all its features. Occupation and ownership of tribal lands by its ancestral owners is largely historical. But the connections with mountains, rivers, habitats, creatures, and plants survive. As the waiata (songs) say: Ka mōwai tonu te whenua e tokoto e; Toitū te whenua. (The people live and die, but the land goes on.) The ancestral connections continue, generation after generation.

This is the environmental residue of te tino rangatiratanga. Respect for Māori cultural imperatives means recognising and providing for their particular connections with, and insights into, the physical landscape. Such recognition is practically achievable, and does not too much infringe the power now exercised by the majority culture.

People generally do not relinquish power easily. It is more realistic, we think, to focus on what can practically be done than to talk in pie-in-the-sky terms about te tino rangatiratanga as something that can be fully realised in the twenty-first century in any sense comparable with te tino rangatiratanga of the past. In the short term, at least, it seems unlikely that so many things will suddenly change that we will see the dawning of a new age of total Māori empowerment. But some change is possible, and this is where efforts should now focus. Our findings and recommendations in this report indicate where, in our opinion, changes can and should be made.

It is not too late. The time to start is now, and if we do, our uri (descendants) will thank us for it, for New Zealand will be a better nation.

Notes

1. The percentage of Māori in the total population in this inquiry district derives from the totals for the main district councils – Masterton, Tararua, Carterton, and South Wairarapa – and from the 2006 census (see ch 12B). Our estimation is also informed by the Māori population totals provided in document A28 (Sceats, Kukatai, Pool, Portal Consulting), pp 28, 40.

2. Document F1 (Rimene), p 23; doc I18 (Rangitāne closing submissions) p 200

3. Document I17(b) (Crown closing submissions) p 62; doc G2 (Flavell), pp 19–20, attachment p 95

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CHAPTER 1

TRADITIONAL OCCUPATION OF THE INQUIRY DISTRICT, 1800–40s

1.1 The Geographical Setting

The traditional settlement patterns and systems of resource use in Wairarapa were products of the tangata whenua's interaction with the environment. The Wairarapa landscape and seascape determined the seasonal availability of resources and living space. In order to understand where and how people lived, and the unfolding of events in the early nineteenth century, it is important to have an understanding of the geographical setting.

Wairarapa is located in the south-eastern corner of New Zealand's North Island. The Remutaka, Tararua, and Ruahine Ranges form its western boundary, with the Manawatū Gorge forming the only substantial break in this mountain wall.[1] The Wairarapa does not have a clear physical northern boundary, so the northern boundary of the Tribunal's Wairarapa ki Tararua inquiry district stretches from a point in the Ruahine Ranges north-west of Norsewood, proceeding in a generally south-easterly direction to the coast at Poroporo above Cape Turnagain (Te-Aho-ā-Māui). The border generally follows the north-eastern boundary of the Manawatū 5 (Ngā Moko), Manawatū 6 (Tuatua), Wharawhara (Manawatū 8), Ngāpaeruru, and Tautāne blocks (see map over).

The mountains at the western edge of Wairarapa generally consist of high ridges, rugged peaks, and steep-sided valleys. In the early 1800s, these ranges were covered in mountain beech forest, with tussock and alpine herb fields above the treeline. To the east of the Remutaka Range is the Wairarapa flood plain, extending from rolling hills in the north to the sea at Palliser Bay in the south. In the early 1800s, the foothills of the Wairarapa Valley supported mixed lowland forests dominated by podocarps such as matāī, tōtara, and kahikatea.

The flood plain itself had a system of rivers and wetlands, the land being a mix of grass, fernlands, and patches of forest; the vegetation was a product of natural events and the impact of human activities. The Ruamāhanga River is the major watercourse of the valley, flowing from the Tararua Ranges down to Lake Ōnoke, with many smaller rivers running into it.

Lake Ōnoke and Wairarapa Moana (Lake Wairarapa) are located on the south Wairarapa coast, and together comprised a large wetland. They were lagoon-like, because Lake Ōnoke was separated from Palliser Bay by a sand bar that opened at various times of the

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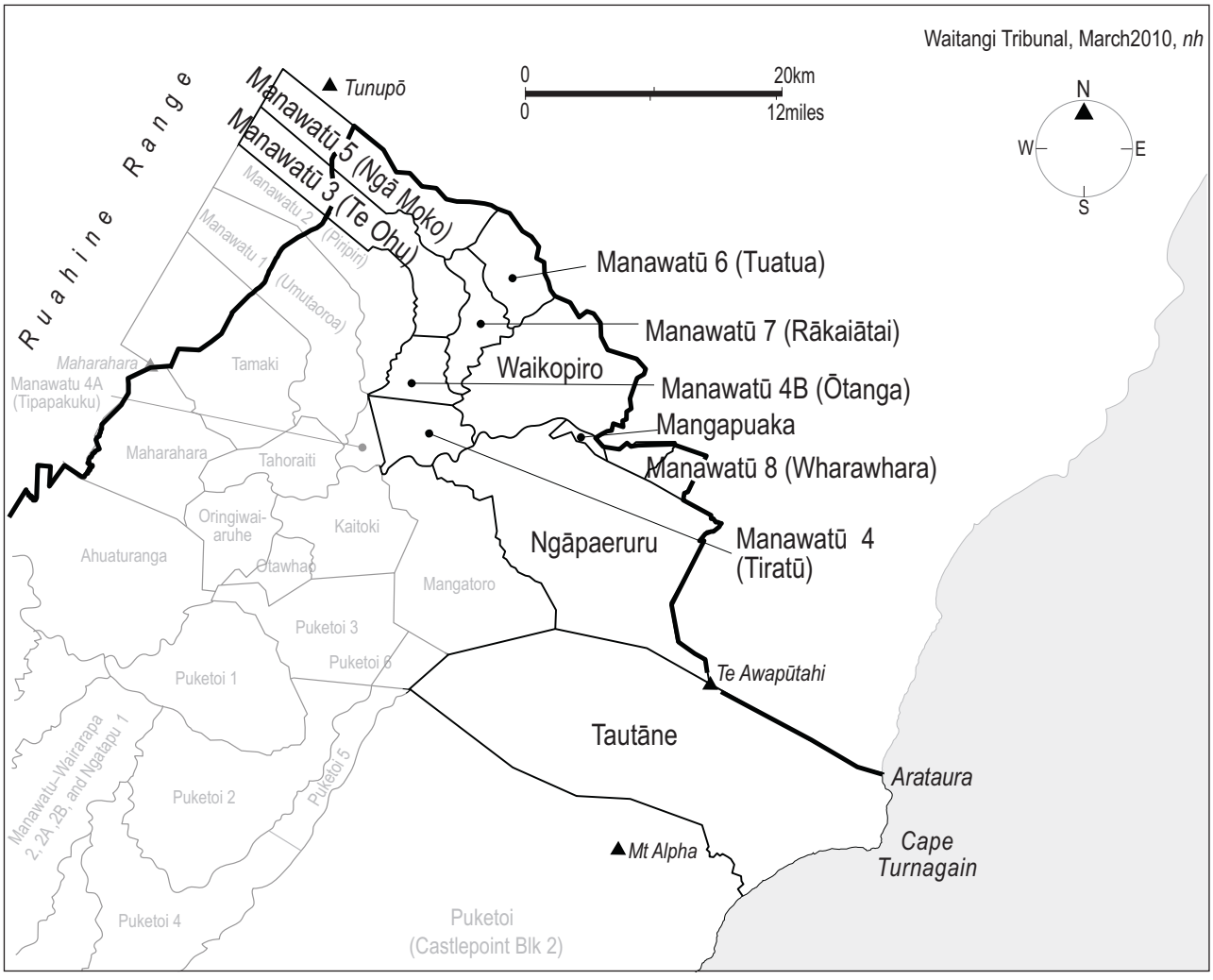

Māori land blocks on the north-eastern boundary of the Wairarapa ki Tararua inquiry district

year to form a channel out to sea. Wairarapa Moana was large at any time of the year, but when annual floods inundated the flat land surrounding the lakes, the area covered by water – including Wairarapa Moana, Lake Ōnoke, and large areas in between and around them – was about 52,500 acres. Unsurprisingly, then, Wairarapa Moana was and is the largest body of fresh water in the district.

To the east of the Wairarapa flood plain lies a range of low but rugged hills. In the early 1800s, these hills were mostly covered in mixed podocarp and broadleaf forests, but many of the lower hills were covered in scrub, fern, or grass. Ranges of low, rugged hills extend up the east coast as far as southern Hawke's Bay. Numerous rivers flow through this hill country to the south and east, and kāinga

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were often based near river mouths. Most of the Wairarapa coastline is rugged and exposed. About two-thirds of it consists of cliffs and rocky beaches, and the remainder is mostly shingle beaches, with some dune areas, such as at Riversdale and Ocean Beach. The areas of coastal flats between the coast margin and the eastern hills are usually narrow. Coastal escarpments were clad in kohekohe, ngaio, and tītoki forest or, in areas with more severe conditions, scrub or tussock. The coast has no large sheltered harbours and only a few inlets and bays that are naturally sheltered from the prevailing north-westerly winds and southerly storms to which the coast is often subjected. The rocky shorelines and frequent rough seas tested the skills of waka crew and were clearly a factor in limiting early Pākehā seaborne contact with Wairarapa.

The north-western part of the Wairarapa inquiry district, to the east of the Tararua and Ruahine Ranges and the Manawatū Gorge, was known as Tāmaki-nui-a-rua. Most of this area was covered in lowland mixed podocarp and broadleaf forest. This forest was referred to by the tangata whenua as Te-Tāpere-nui-a-Whātonga; to Pākehā settlers, it was Forty Mile Bush and Seventy Mile Bush. It stretched south from the Mangamauku River (an upper tributary of the Tukituki) to Kopuāranga, just north of Masterton, and east to the Puketōī Range. In some parts of the forest there were natural or man-made clearings, including large open areas at the Manawatū Gorge, Tahoraiti, and Te Whiti. These stretches were covered in either grasslands or fernlands. The Seventy Mile Bush area acts as a catchment for the Manawatū River, with numerous tributaries flowing into the larger river.[2]

1.2 The Hapū of this Rohe and their Interests in Land and Resources

1.2.1 Introduction

Most of the many hapū resident in Wairarapa and Tāmaki-nui-ā-Rua traced their descent to the ancestor Rangitāne or Kahungunu, or to both tūpuna. Despite a great deal of intermarriage, Ngāti Kahungunu and Rangitāne retained separate identities. In general, people identified with and organised themselves into particular hapū, but they traced back the origins of their land and resource rights to older tūpuna – in particular, Rangitāne and Kahungunu. Aho rua hapū (hapū with two main lines of descent) could trace back to either ancestor and identified with one or both iwi according to circumstance.

1.2.2 Ngā aho rua

Narratives vary as to detail, but they agree that Rangitāne's ancestors migrated from Hawke's Bay within two generations of the arrival of the Kurahaupō waka, probably around the early fourteenth century.[3] According to these narratives, they did not encounter iwi already in Wairarapa, so they assumed mana whenua (customary rights and authority over land and taonga) through settlement. In later generations, kin groups from Ngāti Ira, Ngāi Tahu, Ngāti Kahungunu, and Muaūpoko migrated to Wairarapa. Most of the new arrivals shared some connection with Ngāti Kahungunu, who traced their descent to the migrants of the Tākitimu waka. A brief sample of some of the many stories of the principal leaders of these migrations illustrates the importance in these events not only of conflict but also of intermarriage and kin relationships with the tangata whenua. Te Whākumu of Ngāti Ira brought his people to Wairarapa because they had relatives there. After conflict with Rangitāne hapū in the Whareama area, Te Whākumu negotiated peace with the Rangitāne leaders Te Whakamana and Te Rerewa, and he married Te Whakamana's daughter, Hineipūterangi. Te Rangitāwhanga, who led one of the most important Ngāti Kahungunu heke to the southern Wairarapa, went because he had relatives there. Although again there was conflict between the newcomers and Rangitāne, intermarriage and gift exchange were important factors in establishing Ngāti Kahungunu's rights around Wairarapa Moana. In a similar manner, the ancestor Tūmapuhia, whose people settled around Te Unuunu and inland to Maungaraki, established

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rights in that area through descent from the Rangitāne ancestor Hinematua.

Thus, by the beginning of the nineteenth century, complex intermarriages and conflict over, and tuku (gifting) of, land and resources had resulted in a situation where interconnected iwi and hapū lived near to each other throughout Wairarapa and Tāmaki-nui-ā-Rua. Hapū generally co-existed peacefully, but there were occasional inter-hapū disputes and clashes.[4]

1.2.3 Descent and occupation

Although much disruption resulted from the conflict and migrations of the 1820s and 1830s, Native Land Court records give a reasonable indication of where different hapū were located and where they exercised rights in the early part of the nineteenth century. Individuals or whānau may, of course, have had rights in a variety of different places through their different descent lines. The description below is only a skeletal outline of the larger hapū groupings, with their stated areas of interests, and is by no means comprehensive.

For Rangitāne hapū, Te Rangi-whaka-ewa, from Ngāti Hāmua, was recognised as the principal tipuna in the Tāmaki-nui-ā-Rua area, especially for hapū from the Manawatū Gorge up the eastern side of the Ruahine Range to the area around Takapau. Te Rangi-whakaewa descended from Hāmua, Rangitāne, and Whātonga through a number of ancestral lines and also traced descent to Tara and to Kupe. Ngāti Rangi-whakaewa hapū in Tāmaki-nui-ā-Rua were all descended from Te Rangi-whakaewa's son Parikōau. Hapū of Ngāti Rangi-whakaewa lived or had resource rights in the Seventy Mile Bush area. The area in question included the Manawatū Gorge, extending north from the gorge to the area around Takapau and west into the Tautāne block. While Ngāti Rangi-whakaewa hapū could often also trace descent to Ngāti Kahungunu ancestors, rights to most of the land in the Tāmaki-nui-a-rua area north of the Manawatū Gorge and west of the Tautāne block were claimed through Rangitāne. The Rangitāne hapū Te Kapuārangi also lived and had resource rights in the Tāmaki-nui-a-rua area between Te Hāwera (Hāmua township) and Paneatua.[5]

Te Rangi-whakaewa's son Tamahau was the ancestor of the Ngāti Hāmua people of Wairarapa, specifically those in central and southern Wairarapa. Ngāti Hāmua had its strongest presence south of the Manawatū Gorge from Te Hāwera south to the Te Oreore area near present-day Masterton.[6]

The migration of Ngāti Kahungunu hapū to southern Wairarapa was followed by intermarriage, tuku (gifting) of land, and fighting. Although these processes resulted in Ngāti Kahungunu acquiring rights to some areas, Rangitāne hapū remained in southern Wairarapa with some of their land and resource use rights intact. Ngāti Whakamana, of Rangitāne and Ngāi Tara descent, had land and resource rights in the vicinity of Pōtakakuratāwhiti and Pukengaki (near Gladstone) and mahinga kai (food gathering sites) at Wairarapa Moana. Ngāi Tūkoko, an aho rua hapū that traced descent to both Rangitāne and Ngāti Kahungunu, had rights to lands to the west of Wairarapa Moana and around the Tūranganui River. Ngāti Hinetauira, another aho rua Rangitāne and Kahungunu hapū, had rights to the east side of Wairarapa Moana, and Ngāti Tauiao had rights to the Pāpāwai area. Ngāti Merōiti claimed land and resource rights at Pāhaoa and Waikēkeno on the south-eastern coast through their descent from Rangitāne, while Ngāti Ruatēika and Ngāti Rongomaipare claimed rights to land around Gladstone based on their Rangitāne ancestry.[7]

Ngāi Tūmapuhia-ā-Rangi are a hapū of Ngāti Kahungunu, who also trace descent to Rangitāne through Tukoroua and Hinematua. Their traditional rohe (tribal territory) is on the eastern coast of southern Wairarapa, stretching from Whareama in the north to Āwhea in the south and inland to the Maungaraki Range. Among the hapū descended from Tūmapuhia-ā-Rangi were Ngāti Rongomāiaia, who lived at Pāhaoa, and Ngāti Hikawera, whose descendants occupied the Ngā Waka ā Kupe area: Pāhaoa, Waikēkeno, and Motuwairaka.[8]

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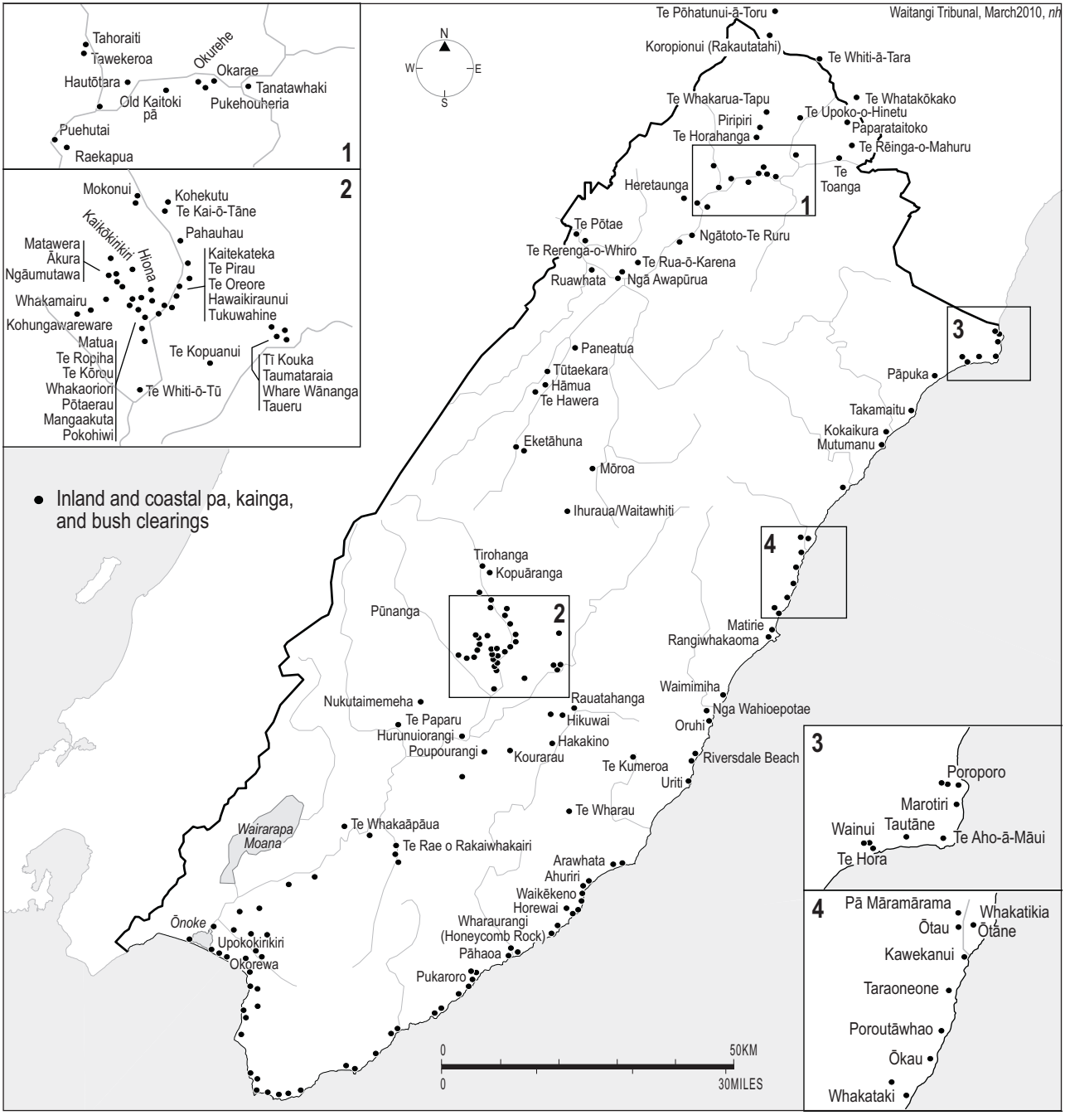

Traditional occupation sites given in evidence. These include coastal pā and kāinga, inland pā and kāinga, and bush clearings.

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Ngāti Hinewaka identify principally with their Ngāti Kahungunu ancestry, but they also share ancestry with Ngāi Tara, Ngāti Ira, and Rangitāne. Ngāti Hinewaka had land and resource rights in areas along the south-eastern coast of Wairarapa from Te Unuunu (Flat Point) to the mouth of the Ruamāhanga River, with major interests in the land from Te Ōroi on the Wairarapa coast to Te Kōpi in Palliser Bay. The Tūhoungia and Ngāti Rua hapū also had rights to the Te Kōpi area.[9]

Ngāti Moe were one of the larger hapū of Ngāti Kahungunu descent living in Wairarapa. Among the smaller hapū associated with Ngāti Moe were Ngāti Muretū and Ngāti Heretaunga. Ngāti Moe were based at Pāpāwai (near Greytown) and Pukengaki (near Gladstone). They and their related hapū had rights to land and resources in the central and southern Wairarapa from the Hūpēnui (Greytown) area south to the Maramamau area on the north-eastern side of Wairarapa Moana.[10]

Ngāti Kahukuraāwhitia (or Kahukuraāpitia) were not descendants of Kahungunu but were associated with Ngāti Kahungunu through the female ancestors Hineraumoa and Rakaimōari. Ngāti Kahukuraāwhitia occupied land to the east of Wairarapa Moana and in the Kawaewae (Featherston) to Hūpēnui (Greytown) area. Most of these blocks were shared by minor hapū of Ngāti Moe.[11]

Ngāti Rākaiwhakairi (or Rākaiwakairi) were descended on their male line from Tahu and Ira and on the female line from Ruapani and Kahungunu. Their main interests lay to the east of Wairarapa Moana and in Palliser Bay, and overlapped with those of Ngāi Tara, Rangitāne, Ngāti Moe, and Ngāti Kahukuraāwhitia. Ngāti Rākaiwhakairi married into all these hapū. Prior to the 1820s, Ngāti Rākaiwhakairi also had land in the Whanganui-ā-Tara (Wellington) area at Paekākāriki, Te Awa Kairangi (the Hutt Valley), and the Ōrongorongo Valley, but Te Rauparaha and his allies drove them out of there in the early 1820s.[12]

The hapū Te-Hika-ō-Pāpāuma descended from Tangaroa and Kupe through their ancestor Pāpāuma, who was linked by marriage to Ngāti Kahungunu. Te-Hika-ō-Pāpāuma held the principal rights over the coastal area of northern Wairarapa from Akitio to Rangiwhakaoma (Castlepoint). There was much intermarriage between Te-Hika-ō-Pāpāuma and Ngāti Hāmua, and the hapū often shared lands and resources, particularly in the Puketōī area.[13]

It should be noted that, while hapū of Rangitāne descent in Wairarapa ki Tararua maintained their links with Rangitāne living to the west of the Manawatū Gorge, the hapū on each side of the gorge operated autonomously, and continued to do so throughout the nineteenth century. Rangitāne leaders from Tāmaki-nui-a-rua were later to oppose attempts by western Rangitāne leaders to claim rights in Tāmaki land blocks through the Native Land Court. Before the 1820s, the Ngāti Kahungunu hapū of Wairarapa were also largely independent of their whanaunga (kin) in Heretaunga and Wairoa. But the warfare and migrations of the 1820s and 1830s ushered in an era of greater organisation of, and cooperation between, Kahungunu hapu.[14]

1.3 Growing, Gathering, and Hunting Food up to the Early 1800s

1.3.1 The seasonal round in Wairarapa

In the early 1800s, the settlement patterns of the tangata whenua of Wairarapa ki Tararua were based on the seasonal patterns of the traditional economy.

In southern Wairarapa, permanent settlement was mainly coastal. Archaeologist Foss Leach argued that, in this period, long-term occupation of the interior was impossible. The evidence of witness Takirirangi Smith painted a broadly consistent picture of people concentrated on the coast but moving between there and the interior at different times of the year in response to seasonal changes and the availability of resources.

During the summer months, men carried out deep-sea fishing, while women, children, and the elderly prepared the catch, fished in inshore areas, and gathered shellfish. Among the kai (food) collected was hāpuku, kahawai,

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pāua, kūkū (pigeon), kūtai (mussels), and kōura (crayfish), as well as edible seaweed. These activities were carried out from September to February, although until the middle of November unsettled weather could severely restrict the fishing. November through to February was also the period when most of the work was carried out in the kūmara gardens, which were located primarily in frost-free coastal areas. In February, karaka berries were gathered and cooked, raupō cut, and pollen heads gathered. Nectar-eating birds were hunted during spring, when they were in peak condition and suitable for eating or preserving for the winter months.[15]

The period of fishing at sea was followed by eeling over the time of the tuna heke (eel migrations) from February through to April, although it could be carried out at any time of year. Maintenance was carried out on pā tuna (eel weirs) before the migrations began. Freshwater fisheries, such as Wairarapa Moana and the many streams and rivers of the area, were of great importance to the tangata whenua. Wetlands, which Pākehā saw as a problem waiting to be solved by drainage, were to Māori a valuable source of waterfowl and products such as flax and raupō, and were of course also essential as a habitat for tuna (eels). Kanae raukura (freshwater mullet), upokokororo (grayling), īnanga (whitebait), kōura, and freshwater shellfish were among the food sources available from inland waterways. The Wairarapa flood plains and surrounding hills were valuable sources of timber for waka building, with large waka being built inland and floated to the coast during the flood season.[16]

In southern Wairarapa, with the onset of autumn and the end of the major fishing and eeling seasons, hapū migrated inland to the forests and wetlands to hunt and forage. As autumn was also the time for harvesting and storing kūmara and gourds, some of the population must have remained in the coastal areas to carry this out. Birds hunted included kiwi, weka, koreke (quails), tūī, kererū, koukou (morepork), kākāpō, kākāriki, and kākā (bush parrots). In the wetlands, kākā (bitterns) and waterfowl were hunted, while tītī (muttonbirds) were obtained from a variety of nesting sites. Kiore (Polynesian rats) were also an important food source. They were trapped or snared in designated trails, such as on the ridges of hills where they were known to travel.

1.3.2 Use of plants

A wide variety of plants and plant matter were collected for food and other uses. Among them were the hearts of nīkau (palm trees) and tī (cabbage trees), pollen from raupō (bullrushes), and kōrau, a term variously described as referring to edible fern shoots and to the 'sago like pith' of the mamaku (black fern). Flax was used for fibre, and berries were picked from trees including mataī, tawa, tītonga, hīnau, and karaka for use as food or oils.[17] To encourage the growth of particular species, Māori changed the environment. Karaka were deliberately planted in areas where they had not previously grown, such as at the coast. Areas of forest were burned off for gardens or to promote the growth of ferns so that their aruhe (roots) could be harvested. Aruhe was the principal source of starchy food, particularly in areas where kūmara could not be grown. Kūmara and gourds are frost tender, so their cultivation was mostly confined to coastal areas, although evidence of kūmara and gourd gardens has also been found along the Ruamāhanga River.[18]

1.3.3 Tāmaki-nui-ā-Rua

In Tāmaki-nui-ā-Rua, the forest, inland lakes, waterways, and wetlands were the main sources of food. Kākā, ducks, weka, tūī, kererū, and huia were among the birds hunted for meat and feathers. Kiore were trapped and snared. Eels, freshwater crayfish, and whitebait were caught. The forest was a source of berries and medicinal plants, and wetland areas yielded flax. Some sites, notably in the eastern Puketōī Ranges, were burnt off to encourage the growth of aruhe. People living in Tāmaki-nui-ā-Rua would also journey to the coast at particular times to obtain food, following the cues of the season. For example, when the

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Manawatū River turned yellow owing to flooding – a time known as Te Awa Kōwhai (the yellow river) – people would travel to the coast to collect kina (sea urchins).

1.3.4 Occupation sites

In all situations, whether living inland or by the coast, the people favoured occupation sites near freshwater sources and cultivatable land and with easy access to good defensive positions.[19] We were told that the whakataukī (proverb) 'He whare tū ki te pae, he kai nā te ahi' meant that a house on the plain was food for fire. The second part of the proverb, 'Mehemea he pā tūwatawata, ko te tohu nō te rangatira' (a well-defended pā is the sign of a chief), indicates the value and status of strategic sites for forts.[20] Large expanses of open grassland were not favoured for habitation.

1.3.5 Managing the impact of human occupation

Human occupation had a considerable impact on the Wairarapa environment. Tuatara, moa (which appear to have been present only in small numbers even before human settlement), some larger bird species, and seals disappeared from the area in the early period of Māori settlement. There was also significant forest clearance in the Wairarapa flood plain area, probably due to fires, whether accidental or lit deliberately to establish settlements, gardens, and fern cultivation sites. The introduced kiore and kurī (dog) may have had some impact on native fauna.[21] Despite such alterations to the environment, all resource use came to be managed by whakapapa relationships and tikanga (rules for conducting life properly). The concepts of tapu (religious or spiritual restriction) and rāhui (a mark to warn people against trespassing when temporary protection was required) controlled access to resources and preserved them for future use. Karakia (prayers or incantations) were used in all food-gathering activities to maintain the correct relationships with the atua (gods, supernatural forces) and spiritual kaitiaki (protective guardians) of the places and resources in question. Particular hapū and whānau had rights to specific birding trees, eel weirs, and rat runs. Trespassing on other people's mahinga kai often resulted in conflict between groups.[22]

1.4 Transport and Communication

Before 1840, all travel and transportation of goods was by foot or water. Horses were introduced to Wairarapa in the early 1830s but were still rare in the mid-1840s. A network of tracks and waterways linked the various districts of Wairarapa ki Tararua to each other and to areas beyond. Through these communication systems, the Wairarapa people were part of trade links between the people of the New Zealand archipelago.

People travelled in mōki or mōkihi (rafts made of reeds) on rivers or lakes and in waka and, later, whale boats or larger vessels on the sea, with waka also being used on the larger rivers. Waka could also be dragged across the sand bar to Lake Ōnoke, then paddled up the lower Ruamāhanga River to Wairarapa Moana: the upper Ruamāhanga and Tauherenīkau Rivers were navigable in the years before the 1855 earthquake. Even routine fishing and trading trips in good weather could be dangerous, because neither waka nor the ocean were entirely predictable. The risks involved meant that major journeys were usually conducted inland or, in the case of maritime journeys, in short stages in fine weather.[23]

Waterways and settlements were connected by a system of tracks, and coastland also provided walking routes. Until the 1855 earthquake, the coastal route from Palliser Bay to Whanganui-ā-Tara and Te Awa Kairangi was an easy trip for foot travellers as long as they took careful note of the tides. Well-used routes ran from inland Kaikōkirikiri to Whareama on the east coast, and from the east coast at Ngāpapata, 10 miles north of Rangiwhakaoma, through to the Manawatū Gorge. These tracks became overgrown once the area was partially abandoned in the violent times of the 1820s and 1830s.

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The difficulties that Pākehā experienced on their early ventures into Wairarapa may well have been because their Te Āti Awa guides lacked local knowledge.[24]

1.5 Pākehā Arrival Causes Changes in the Māori Economy and Environment

During the early nineteenth century, the introduction of new plants, animals, and technology and changes in land use in Wairarapa led to dramatic changes in the local economy and environment.

1.5.1 The introduction of pest species

The arrival of European rats, mice, cats, and pigs had a destructive impact on the native fauna and reduced the availability of some traditional food sources. Feral dogs may also have had an impact, although whether the European dog had any worse effect on wildlife than the kurī is unclear. In the 1850s, Hine-i-paketia, of Ngāti Whatuīāpiti and Ngāti Kahungunu, complained that the bush in the Waipukurau area was now useless because the birds were gone. While travelling in the Wairarapa end of Seventy Mile Bush in 1846, Anglican missionary William Colenso (of the Church Missionary Society) wrote of the forest as silent. However, Historian Bryan Gilling questions whether introduced predators had in fact had much of an impact on the interior of the Seventy Mile Bush by the 1850s, noting that settler Frederick Weld (who would later become Premier) had written in the late 1840s that 'the woods are alive with kakas and pigeons'. It is difficult now to be sure, but a decline in the native wildlife may have made Māori more willing to sell forested areas that had once been major sources of food. Native forests did, however, become a home for feral pigs, thereby maintaining considerable value as hunting grounds.[25]

Foss Leach, long-time archaeological researcher for Ngāti Hinewaka, on a Tribunal site visit to Kawakawa (Palliser Bay)

1.5.2 The pig and the potato

Leach writes of the introduction of pigs and potatoes to New Zealand that 'It is impossible to over-emphasise the impact that the introduction of these two new items of food had on Māori'.[26] The potato was easy to grow, being both more productive and more climatically tolerant than the crops that Polynesians had brought from the tropical Pacific. Its cultivation allowed a carbohydrate-rich food source to be grown away from the coast, thus allowing the permanent settlement of larger groups of people in the interior. It is not certain when potatoes were first grown in Wairarapa, but it is likely they were well established by 1820, and by 1830 they were the basic food crop. The increase in the production and storage of food that resulted also allowed for the organisation and movement of larger taua (war parties) in times of conflict, as food supplies were now more secure.

Pigs were a good source of protein and fat. They were

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easy to hunt, provided more food per animal than any of the bush birds, and were easily domesticated. By the late 1830s, they were well established in Wairarapa, and by the 1840s they were joined by wheat, barley, and a range of fruit and vegetables. Notwithstanding these resources, there were still seasonal food shortages.[27]

1.5.3 Population decline

Historian Angela Ballara estimates tentatively that the combined Māori population of Wairarapa and Hawke's Bay was around 5700 in the early 1850s. She believes that this was about half the population of the same area in 1769 and dates the impact of introduced diseases and animal pests from the late eighteenth century.

Leach points out that the introduction of potatoes and pigs should have promoted population growth in the Cook Strait area. But, against that, there were some strongly countervailing factors, such as the new epidemics and the effects of dispossession and war through the 1820s and 1830s. The worst casualties from the wars probably resulted not from the battles themselves but from the redistribution and concentration of the population as people fled the fighting and became refugees. This brought in its train economic disruption, the loss of crops and access to food sites, starvation, and disease as a result of overcrowding and unsanitary conditions.[28]

As the nineteenth century unfolded, other factors like general infant mortality and infertility from sexually transmitted diseases accelerated the decline.

1.6 The Musket Wars of the 1820s and 1830s

The 'musket wars', fought in Wairarapa and Heretaunga during the 1820s and 1830s, were in fact the culmination of a cycle of conflict that began in the late eighteenth century, before the introduction of muskets.

To the north of Tāmaki-nui-ā-Rua, fighting escalated at the turn of the century as Ngāi Te Upokoiri and related hapū from Pātea fought Ngāti Kahungunu and Te Whatuīāpiti from Heretaunga. Both sides brought in non-kin allies from outside the area: Ngāi Te Upokoiri invited taua from Whanganui, Taupō, Taumaranui, Maungatautari, and the Hauraki Gulf, while Ngāti Whatuīāpiti and Ngāti Kahungunu recruited allies from Ngāti Raukawa, Arawa, and Ngāti Awa. However, these 'allies' often proved to be as dangerous as enemies; some attacked their hosts, while others decided to stay in Heretaunga whether invited or not.

In the 1810s and 1820s, violence increased throughout the North Island in the wake of the Ngāpuhi raids. The circumstances of war had vitally changed. Tribes armed themselves with muskets, and the cultivation of potatoes meant that there was more food to sustain larger taua. As warfare and migration became commonplace, the disturbed state of Heretaunga and Pātea attracted the attention of tribes from outside the area that saw the potential for either raiding or establishing permanent settlements. The resulting violence inevitably spilled over into neighbouring Tāmaki-nui-ā-Rua and Wairarapa.[29]

1.6.1 Effects on Rangitāne

The Manawatū Gorge and Tāmaki-nui-ā-Rua were the pathways between Manawatū, Wairarapa, and Heretaunga, making the Rangitāne people of Tāmaki vulnerable to attacks from passing taua – both those of their neighbours and relatives and those of outside invaders. What happened at the Ngāti Parakiore pā at Te Rēinga a Mahuru is a good example of this. The pā was sequentially attacked by a Ngāti Tūwharetoa taua, by another from Ngāti Raukawa, and by a Ngāti Whatuīāpiti (Heretaunga Ngāti Kahungunu) force under the war leader Pareihe.

Rangitāne were also sometimes aggressors, as, for example, when a number of hapū allied with Ngāti Raukawa and joined in attacks on Heretaunga Ngāti Kahungunu.[30]

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1.6.2 Attacks on southern Wairarapa from the south

While the districts to the north were becoming increasingly unstable, southern Wairarapa was under attack from another direction.

In 1819 and 1820, the hapū of Whanganui-ā-Tara were attacked by the combined forces of Tūwhare of Te Rōroa from northern Kaipara, Patuone and Nene of Ngāti Hāo from Hokianga, and Te Rauparaha of Ngāti Toa from Kāwhia. The northern taua then attacked the Wairarapa Moana and Ruamāhanga River areas. Despite their lack of muskets, Wairarapa tangata whenua put up a strong defence. The leader of this struggle was the fighting chief Nukupewapewa of Ngāti Kahukuraāwhitia, a leader of mixed Ngāti Kahungunu and Rangitāne descent. The northern invaders eventually withdrew without attempting to occupy any of the territory they had raided.[31]

1.6.3 Attacks on the rohe from the north

Within a year, further attacks on Wairarapa and Tāmaki-nui-ā-Rua came, this time from the north. The Amiowhenua taua was a combined force of warriors from Ngāti Whatua, Waikato, Ngāti Maru, and Ngāti Maniapoto. It may also have included a contingent from Ngāti Tūwharetoa. This taua fought its way through Heretaunga, attacked Tāmaki-nui-ā-Rua, and then passed on to Wairarapa and Whanganui-ā-Tara. Next came an invasion of northern Wairarapa by a force known as the Tangi te Ruru taua. The war party attacked the coastal region around Akitio but abandoned its progress south when confronted by huge fires in the area.[32]

1.6.4 Preparations to take refuge at Nukutaurua

In the early 1820s, the people of Heretaunga and Wairoa began to prepare for the exodus to Nukutaurua, since the continuing warfare showed no sign of abating.

The Ngā Puhi chief Te Wera Hauraki had established himself with a small force of hardened warriors at Te Māhia. Te Whareumu of Rākaipaaka made a tuku of land to Te Wera in the hope that he and his warriors would lead the local people against the invaders. After some initial suspicion and dispute, Te Wera formed an alliance with the Ngāti Whatuīāpiti chief Pareihe, who had become one of the most important toa (war leaders) in Heretaunga. Pareihe was the main instigator of the plan to move the population to Nukutaurua on the Māhia Peninsula, having been warned by his tohunga, Ngoi, that powerful enemies were once more threatening to attack. At Nukutaurua, the massed tribes could defend themselves more easily. As an area frequented by Pākehā whalers, Te Māhia was also an ideal spot to trade for more muskets.

Initially, the Wairarapa tribes were not part of the alliance making preparations for the move to Nukutaurua. In late 1823 or early 1824, Pareihe's ally Tiakitai, chief of the Ngāti Kuukuru of Waimarama, led an attack on Te-Hika-ō-Pāpāuma on the northern Wairarapa coast. According to at least one version of events, after this attack Tiakitai had a change of heart and invited the Wairarapa people to take refuge with him. This may have been a significant factor in the Wairarapa tribes' decision to move to Nukutaurua.[33]

In the early 1820s, Ngāti Toa from Kāwhia, Ngāti Raukawa from Maungatautari, and Te Āti Awa, Ngāti Tama, Ngāti Mutunga, and other hapū from Taranaki were migrating south and forcibly taking over land in Horowhenua, the Kāpiti coast, and Whanganui-ā-Tara. As the invaders moved through these territories, the tangata whenua, including hapū of Muaūpoko and Ngāti Ira, sought refuge in the Tararuas and among their relatives in Wairarapa. By that time, some Wairarapa hapū were already moving to Nukutaurua. A party of Ngāti Tama, Ngāti Mutunga, and Te Āti Awa made their way to the vicinity of Lake Ōnoke and initially settled there peacefully. Then, when the Wairarapa people learned that the Taranaki iwi planned to attack them and take over their land, a combined force of Ngāti Hāmua and Ngāti Kahungunu hapū from Ruamāhanga and Rangiwhakaoma assembled in response. They approached the Ngāti Tama pā at Te Tarata under the guise of a peaceful meeting, then attacked and defeated the Taranaki iwi. Reacting to this

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defeat, the Ngāti Tama rangatira Taringakurī Te Kāeaea led a taua of Ngāti Tama, Ngāti Mutunga, and Ngāti Toa over the mountains into Wairarapa. The taua attacked Wairarapa people at Pēhikatea, near Greytown, where Tūtepākihirangi and a group of chiefs were rebuilding the old pā. The Wairarapa people were heavily defeated both there and at Paengahuru. These events appear to have been the catalyst for the final migration of southern hapū to Nukutaurua in the early 1830s.[34]

1.6.5 Rangitāne's response to the incursions

The Tāmaki-nui-a-rua district was also subject to a succession of invading taua. A large section of Te-Hika-ō-Pāpāuma and other coastal hapū went to Nukutaurua. They were joined there by some of the Rangitāne people of Te-Tapere-nui-ā-Whātonga (Seventy Mile Bush), including a section of Ngāti Parakiore. Some members of Ngāti Tū, Ngāti Hauiti, and Ngāti Hāmua who had been living in the Akitio area moved inland to the fortified pā of Te Awakari at Pōrangahau for mutual protection.[35] Some Rangitāne hapū went to the Mangatainoka area, while others from Tāmaki-nui-ā-Rua, Pōrangahau, Takapau, and northern Wairarapa sought refuge with their Rangitāne relatives to the west of the mountains in Manawatū. Ngāti Hāmua living east of the Manawatū Gorge were among those who took shelter in the gorge itself and in the lands to the west of the gorge.[36]

According to the evidence of claimant Manahi Paewai, a large number of Rangitāne descendants remained in Tāmaki-nui-ā-Rua and set up a defensive network. Paewai describes this formation as 'Ringakaha' or 'the eastern Rangitāne alliance'. The alliance was set up by the Ngāti Rangi-whaka-ewa leader Tūrake, who organised his niece Matetapu and his nephews Rangitotohu, Te Koro ō Ngā Whenua, Whakawehi, and Parakiore to set up a system of defensive pā in northern Tāmaki-nui-ā-Rua. Pā were located at the Manawatū Gorge and along the north and north-eastern approaches to Te-Tapere-nui-ā-Whātonga. This system acted as a buffer zone to enable the tangata whenua to maintain ahi kā over the Tāmaki area (ahi kā is to keep the fires burning, thereby maintaining continuous occupation). When Ngāti Kahungunu living north of Tāmaki-nui-ā-Rua withdrew to Nukutaurua under threat of attack from outside tribal groups, Tūrake and his people remained neutral, arguing that this was not their fight. Paewai states that the eastern Rangitāne alliance remained in effect until the 1850s.[37]

1.7 Nukutaurua: The Exodus and the Return

1.7.1 Migration in waves

The Wairarapa people who did move to Nukutaurua did so in a series of migrations. According to ethnographer Elsdon Best, there were two waves. The first involved the coastal hapū from Ōroi to Whareama; the second, the hapū that were left.[38] Heretaunga sources record the first wave of refugees from the Wairarapa coast arriving at Waimārama on a flotilla of waka at the very time that the Heretaunga and Wairoa people were preparing for their own move to Nukutaurua. The new arrivals were supported by the Heretaunga leaders Tiakitai and Tūahu, but Te Moananui and Te Hāpuku argued that they should be attacked. A long debate ensued, and they finally agreed to help the refugees.[39]

The majority of the southern Wairarapa people remained on their lands until the defeats at Pēhikatea and Paengahuru. Then they, too, migrated to Nukutaurua, but overland rather than by sea.

1.7.2 Those who stayed behind

Not all the Wairarapa people left the south; some stayed on to maintain ahi kā. A group stayed on in the Te Oreore area, while Ngāti Hāmua and Ngāi Te Aomataura kept a presence on their lands. Members of Ngāi Te Aomataura and Ngāti Moe lived on the land that was to become the Tipua Maputanea block. Ngāti Rākaiwakairi and Ngāti Kahukuraāwhitia kept up an intermittent occupation of

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their respective rohe. Some Ngāti Rua remained in the Te Kōpi area in south-eastern Wairarapa. The exact numbers of tangata whenua remaining are not known, but it is likely that their populations were concentrated in the upper Wairarapa Valley, away from the invaders' base at Whanganui-ā-Tara.[40]

1.7.3 Life at Nukutaurua

While the primary reason for leaving Wairarapa was to escape attack from invaders, a secondary reason was that Nukutaurua was close to Pākehā whaling stations, allowing trade for muskets and other European goods.[41] The majority of the Wairarapa refugees were at Nukutaurua from the early 1830s until 1840 or 1841. Nukupewapewa, who had been an important toa (warrior) in Wairarapa, became the leader of this Wairarapa community, while Pareihe and Te Wera Hauraki appear to have held mana over the combined Nukutaurua refugee communities while they lived on the peninsula. Nukupewapewa and other Wairarapa warriors joined in the defence of Māhia and accompanied Pareihe and Te Wera on fighting expeditions to the East Coast and Taupō. The Nukutaurua refugees were organised to grow potatoes, maize, and flax for trading with the whalers. Initially, the different refugee communities lived in their own separate pā on Māhia, but once the danger of invasion diminished, a shortage of land for crops led various hapū to begin moving off the peninsula. Some groups of local inhabitants permitted the refugees to grow food on their land. A noted feature of this period is that the major leaders, including Pareihe, Te Wera, and Nukupewapewa, all achieved their positions through their ability as war leaders, rather than through their status based on whakapapa.[42]

1.7.4 Other groups move into Wairarapa

With the tangata whenua population of Wairarapa much reduced, hapū of Ngāti Tama, Ngāti Mutunga, Ngāti Toa, Te Āti Awa, and Ngāti Raukawa moved into parts of the district for a brief period. Ngāti Tama, Ngāti Rāhiri, and Ngāti Tawhirikura settled around Wairarapa Moana and the Ruamāhanga area; Ngāti Toa occupied the region near Carterton; Te Āti Awa settled near Kawaewae (Featherston); and Ngāti Raukawa were in the vicinity of Masterton.[43]

1.7.5 Wairarapa hapū take action

In the meantime, the Wairarapa hapū in Nukutaurua built up a formidable armoury of muskets through their trade with the whalers at Māhia. In the mid-1830s, fearing that the Taranaki tribes and their allies were settling permanently in Wairarapa, Nukupewapewa and his comrades planned an attack to force them out. The Wairarapa taua made a surprise assault on Tauwharerata, the settlement of Te Wharepouri, a Te Āti Awa chief. Te Wharepouri escaped, returning to his pā at Pito-one, but the Wairarapa forces captured his wife, Te Ūamairangi, and a young woman called Wharawhara-i-te-rangi (later known as Rīpeka Te Kakapi). Wharawhara-i-te-rangi is described in some accounts as Te Wharepouri's niece and in others as his daughter.[44]

Nukupewapewa had come to the conclusion that there should be a peaceful resolution to the years of conflict. Te Ūamairangi agreed to go to Pito-one to propose a negotiated peace, while Wharawhara-i-te-rangi remained at Nukutaurua as a hostage. Te Wharepouri agreed to the proposal but delayed for a number of years while building up his resources. Eventually, he travelled to Māhia for further negotiations. On his arrival at Nukutaurua, Te Wharepouri learned that Nukupewapewa had drowned and that Tūtepākihirangi had taken over his leadership role. Tūtepākihirangi held out for the peaceful restoration of Wairarapa itself as the price for the return of Wharawhara-i-te-rangi to Te Wharepouri. After protracted negotiations, this was agreed. The Remutaka and Tararua Ranges were accepted as the boundaries between the Taranaki and Wairarapa peoples. Tūtepākihirangi undertook that the Wairarapa people he spoke for would

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abandon any claims they had west of the mountains and would no longer support any similar claims made by their relatives. The boundaries and the relationships between the negotiation partners were sealed through marriage alliances.[45] Missionaries were involved in this process, but were not the driving force; Maori were searching for their own ways of re-establishing the peace.[46]

In fact, Wairarapa people had started returning to their homelands before these negotiations began, and many hapū would have been back at home by the time Tūtepākihirangi and Te Wharepouri concluded their agreement. For their part, the Taranaki people were moving out of their Wairarapa settlements in the early 1840s.

1.7.6 Te hokinga mai (the return home)

The Wairarapa refugees moved home in stages. Some of the heke that left Māhia around 1838 first settled in Ahuriri and Waimārama, remaining there for several years before making the final stage of their trip home. Ngāti Hinewaka, Ngā Pīkahu, Ngāti Mahu, and Ngāti Rongomāiaia made the heke together, with Ngāti Hinewaka and Ngāti Rongomāiaia travelling on to Te Kōpi, while Ngāti Mahu settled temporarily at Te Unuunu before moving on to Whāraurangi. People from Ākura stopped for a period of time at nearby Kaikōkirikiri, while a large group from Kaikōkirikiri stayed for a long time at Te Kōpi before returning to their original homes and habitations. Takirirangi Smith described a group that, while returning by canoe from Nukutaurua, was scattered by a storm and deposited at various points along the coast from Waipupū to Whatarangi.[47]

1.7.7 Uncertain times in the rohe

Fear of attack by Te Āti Awa and the other Taranaki iwi dictated caution and the joining of forces in the heke. This apprehension about the safety of Wairarapa was shared by their former enemies at Whanganui-ā-Tara, who expressed reluctance to venture beyond the Remutaka Ranges in the early years of Pākehā settlement. But the threat was not only from the south. As late as 1845, William Colenso reported that the people at Akitio and Mātaikona feared raids from Waikato and the Hauraki Gulf.[48] (Ballara also points out that some of the hapū may not have been party to Tūtepākihirangi's agreement and therefore still felt vulnerable.) The travellers felt safety in numbers and congregated at specific sites before undertaking the last stage of their heke (migration) to settle in more dispersed kāinga (villages). Te Kōpi was a favoured spot, with many hapū residing there, most of them without having any traditional rights in the area. Hamahona of Ngāti Rua, one of the tangata whenua hapū of Te Kōpi, allotted land for the manuhiri hapū (visiting groups) to occupy and cultivate while they remained in the area.[49] Other places where the returnees gathered in large groups included the Tapuaeharuru pā north of Te Oreore and an area near Kaikōkirikiri.[50]

1.7.8 Pākehā bring change

The coming of the Pākehā, with their new resources and ideas, was another element in the process of reoccupation.

The refugees' long absence from the rohe, and the deaths of elders in the intervening years, inevitably meant that knowledge of some traditional resources was forgotten or lost. But the arrival of Christianity – and the new foods and techniques of production that the missionaries brought with them – probably had more influence on traditional patterns of resource use. Together, these factors resulted in an economy much altered from the pre-exodus days.[51] Occupation patterns shifted as Māori adapted to their new circumstances, taking advantage where they could of introduced crops and food sources, trading opportunities, and the chance to acquire both the settlers' knowledge and material benefits through trade.

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1.7.9 The challenge of the new

Clearly, some important traditional beliefs and practices were being challenged. But how profound was the challenge? How quickly did it crystallise? And what were the effects in those early years of the colony? These are important and difficult questions to grapple with. Evidence commissioned by the Crown suggests that the willingness of Māori to sell their land as a commodity indicates that the old ways had by then been shucked off in favour of the many enticements of the new.[52] Was this really how it was? And what changes can be discerned in how Māori communities organised themselves, how they reached decisions about land and resources, and how they enforced them?

There is a suggestion, based on the comments of some Crown officials and on reports of early missionaries, that the authority of rangatira was seriously compromised from early on by the challenges to Māori belief systems.[53] Could this have contributed to the willingness of Māori in Tāmaki-nui-ā-Rua to engage with the Western economy and to 'sell' land? Had Māori given up the seasonal round to grow crops to supply the local settlers? Did this place a new and different emphasis on the land that was cultivated, and did it render the rest (the bulk) less important? Did leaders feel able, therefore, to make deals involving hapū lands without the sanction of their respective communities? These are all pressing questions to which we will return in the following chapters.

1.8 A Changing World: Missionaries, Squatters, and Settlement Patterns

Apart from their contact with whalers at Nukutaurua, most Māori from Tāmaki-nui-ā-Rua had minimal interaction with Pākehā before the 1840s. No leaders from the area signed the 1835 Declaration of Independence or the Treaty of Waitangi, though Ngāi Te Whatuīāpiti chief Te Hāpuku did sign, and he was to be influential in Wairarapa land dealings.[54]

Back in their Wairarapa homelands, the tangata whenua had many more opportunities to engage with Pākehā. Christianity was spreading through the district, brought largely by native teachers. In 1843 and 1844, the first settlers undertook expeditions into Wairarapa to investigate the possibility of acquiring land for grazing. Ultimately, the tangata whenua granted such people use rights and offered them hospitality, trade, shelter, and protection. The impact of new technology and a new economy, along with a new spiritual belief system and new responses to sickness, would change not only where Ngāti Kahungunu and Rangitāne chose to live but also the key concepts that underpinned their daily lives.

1.8.1 Native teachers

Wairarapa Māori probably first encountered Christianity at Māhia, where there were Māori teachers. In the early 1840s, teachers began to preach in Wairarapa, and before the arrival of any Pākehā missionary, Māori began setting up Christian villages with their own houses of worship.

When he toured the district for the first time in 1843, Colenso remarked on a village of 80 people at Mātaikona with a partly completed chapel building. Residing in the village was a Māori teacher, Paraone, sent by Archdeacon William Williams.[55] Likewise, when he first visited Te Kōpi, Colenso noted that the native teacher, Richard Taki, had already established a native school, that many of the Māori residents had been baptised, and that almost 200 people had attended a Good Friday service. Native teachers were present at Kaikōkirikiri and Pāhaoa, and chapels were soon erected at Rangiwhakaoma, Waipupū, Tūranganui, and Mātaikona. Colenso also noted, with less approval, that the Catholics of Ōmoekau had their own native teacher also.[56]

Although traditional leaders sometimes opposed the influence of native teachers, there was no general rule. A number of influential Rangitāne and Ngāti Kahungunu chiefs acted as native teachers themselves.[57] For example, Hoani Meihana Te Rangiotu (John Mason), an important

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William Colenso in 1868. He toured the Wairarapa district for the first time in 1843, and undertook missionary work there until the 1850s.

Rangitāne leader who converted in 1840, was appointed a lay reader and teacher.[58] Renata Kawepō, a senior leader of Ngāti Te Upokoiri and Heretaunga Ngāti Kahungunu, accompanied Colenso in 1844 to 'preach at . . . the scattered villages of Wairarapa'.[59] Later in the decade, Colenso noted that native teacher Nicodemus was 'one of the Principal Chiefs of the place', though he also recorded an incident that shows that his authority was under challenge. Ultimately, power and influence turned on community approval. Nicodemus informed Colenso that 'some Heathen folks of no note living at Te Awaiti . . . had threatened to cut off his nose, for daring to speak in defence of his own right to a piece of land, which they were about to transfer clandestinely to some whites'. Colenso attributes the heathen folks' daring in disregarding Nicodemus's rights to their knowing that 'his hands were now tied by his Faith'.[60] However, it is difficult to know how far to rely on Colenso's interpretation, because we know nothing more about Nicodemus himself, nor his relationship with the people at Te Awaiti.

1.8.2 Missionaries

A number of different missionaries visited Wairarapa in the 1840s and early 1850s; the Reverend Robert Cole of the Church Missionary Society and the Wesleyan missionary Samuel Ironside were both active at different times. Colenso was the most frequent visitor, making nine tours of the district in the eight years that he was posted at Ahuriri and holding services at 'Christian villages' on important dates in the Christian calendar.

Colenso was a difficult and acerbic character. His denunciations, deliberate violations of tapu, and criticism of many aspects of Māori culture (especially sexual mores) offended a number of rangatira. But his journals and correspondence do give an invaluable glimpse into what was happening to traditional beliefs and the social structure in Wairarapa during this period.

1.8.3 Challenging traditional practices

Colenso targeted tapu for criticism and ridicule – which he later regretted, because in hindsight he realised that its sudden absence shook Māori society to the core and made it more vulnerable to the impact of colonisation.[61] Colenso used Christianity as a vehicle for humbling tohunga, proud chiefs, and 'stout warriors', whom he made 'tremble' under his hands.[62] On the other hand, Colenso's journals and

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correspondence reveal that his influence – and his success in changing Māori beliefs and behaviour – was less extensive than he may have wished.

1.8.4 Christianity and settlement patterns

Certainly, Christianity had a discernible impact on the settlement pattern and economics of the district. We have noted the trend for Wairarapa Māori to focus their habitation on particular well-populated sites for greater security. This was accelerated by the attraction of Christianity and the associated opportunities to gain experience in the production of introduced crops such as maize, pumpkins, and potatoes.

Christian Māori gathered in communities where they could join in worship, build chapels and schools, and encourage the settlement of, or visits by, native teachers and Pākehā missionaries. In Christian villages, the production of flax, pork, and potatoes, which had formerly been aimed at acquiring muskets and other goods, was now directed at paying Pākehā contractors to build chapels. As already noted, Te Kōpi and Kaikōkirikiri became favoured sites, and the dispersal of hapū throughout the whole of their territory was delayed by interest in these new opportunities.

Yet there was still considerable seasonal movement, largely based around the continued use of traditional resources. Colenso noted both the harvesting of fernroot, karaka and mataī berries, kōura, and tuna and the fact that certain villages were occupied at particular times of the year and abandoned at others. In the 1840s and early 1850s, Wairarapa ki Tāmaki-nui-ā-Rua Māori were still living off a mix of traditional and recently introduced food sources. The population at this time was more concentrated and less mobile than in the 1800s, but the customary use of resources meant that at least a portion of the population still moved according to the seasons.[63] Where people lived had changed in response to tribal disruption, new food sources, and opportunities for trade, but they had not yet become fixed in their habitation.

1.8.5 Other influences effecting change

During the 1840s, Colenso, a strong opponent of land sales, believed that competition over leasing and land transacting was adversely affecting the traditional economy and the settlement patterns of the district. He made a number of observations about how junior chiefs were asserting claims to lands in which they had no rights and how would-be sellers of land threatened the authority of older leaders. Journeying to Waipupū in 1852, he came across two elderly women who resided about three miles apart and remarked that:

> In this scattered manner do many of the Natives now dwell, and I believe the number every year to be on the increase. Some of them do so in order to spend their remaining days on the lands of their ancestors; others to prevent their lands from being alienated through the fraudulent dealings of many of the Chiefs and of the stronger party – their own young and near relations.[64]

Land – and who had authority to make decisions about rights – seems to have been at issue in the Nicodemus incident too.

In late 1848, Colenso informed Government officials that their confidence that they had acquired the Wairarapa valley was misplaced: the group of vendors with whom they had been dealing were 'junior chiefs' who had not consulted others among the hapu of Wairarapa.[65] He also thought, however, that the other leaders would be 'ultimately obliged to give way to the few', who comprised 'two or three wild young fellows who wish to sell their land'.[66]

We return to the issue of chiefly authority, and whether it was being undermined by Western contact, new power bases, and new ideas regarding land use and 'ownership', in the following chapters. Here, we focus more on the impact of Christianity on the key concept of tapu, as well as other customs, and we assess its effect on traditional bases of authority and leadership. Were these breaking down?

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1.8.6 The appeal of Christianity

What Māori made of Christianity and its various denominations at this time is open to question. Large numbers of Wairarapa Māori 'converted' to Christianity in the 1830s and 1840s; some nominally, others for spiritual reasons. Anglicanism appears to have claimed the largest number of followers in the district, although there was also a Roman Catholic village at Ōmoekau and Wesleyan communities at Whangaīwhakarere, Otāraia, and Te Ūpokokirikiri.[67]

A range of factors encouraged the spread of the new religion. By the late 1830s, war weariness had set in across the country and peacemaking initiatives were on the increase. Although traditional means of resolving conflict continued to be practised, the prevailing mood enhanced respect for Christianity, which was identified with peace and reconciliation.

New diseases, technology, and economics led many to believe that Christianity might be a better way to deal with the new world emerging. Colenso regularly treated Māori patients with Western remedies, providing a context in which he might impress upon them the power of God.[68] Christianity also came with a strong connection to Pākehā trade and technology, and also to Pākehā education, with its emphasis on literacy: Colenso recorded numerous applications for books.[69] For many converts, Christianity meant access to all these perceived benefits. Moreover, the traditional Māori belief system accommodated the new: the Christian god could be conceived as a new atua rather than as the 'one god' preached by Colenso and his kind.

At first, Colenso recorded high attendance at services, although many villages remained 'heathen', holding to traditional beliefs and observing tapu. Some such villages were hospitable and others were actively hostile to Christianity.[70] 'Heathen' leaders also included some of the most senior men of the district – Ngātuere of Otāraia, Te Weretā Te Kawekairangi of Whāraurangi, and Te Korou of Kaikōkirikiri (at least until 1845, when he converted upon being cured of an illness attributed to 'tohunga makutu', or bewitching by a traditional priest or wizard).[71]

1.8.7 Negative responses to Christianity

Colenso's journals suggest considerable Māori engagement with new ideas and aspects of the Christian message, and debate about what their response to it should be.

Perhaps the most extreme rejection of the Christian message and those who brought it was that of Te Weretā Te Kawekairangi. We tell the whole story – the Barton incident – in the next chapter. Suffice to note here that Te Weretā's muru (retributive plunder) against a settler was in part a reaction to the activities of the Christian community at Te Kōpi and the influence of the native teacher there. Te Wereta, a recent convert, denounced Christianity when the Crown punished him for the muru. By Colenso's account, Te Wereta 'blasphemed God, for whom he cared not', married his discarded wives, and refused to become a Christian: 'no, not for the eternal fire – as it was all a lie that a spirit could suffer in flame, and if it could, what would that despicable bit of suffering be?'[72] Colenso felt the need to stay longer at Mātaikona to write 'sundry instructions' for the native teachers based at Pāhaoa, Whāraurangi, and Huariki, to 'strengthen them' against the chief's 'sad and powerful example'.[73] In the year that followed, Colenso lamented Te Weretā's influence and, on a number of occasions, blamed him for various commissions of sin.

Te Weretā was not the only rangatira who felt the need to challenge the Christians. One means of expressing opposition was through whaikōrero (traditional oratory). Colenso recorded one such occasion:

> Ngātuere came to tell me how greatly he was vexed with Mark and his party . . . and to ask my consent to talk to them Native fashion, assuring me, he would only talk; so, having assented, he sprang upon a housetop and commenced his oratory, which he kept up . . . even until towards morning!

Though he condemned Ngātuere's language as 'often bad', Colenso thought that the chief had 'evidently the best of the argument'. The subject, he noted, was '[that] fruitful source of mischief in this country – Land'.[74] Colenso,

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and also settlers such as Weld, (as we discuss in our next chapter), recorded other instances where whaikōrero was deployed to deal with the issues of the day, including disputes between Christian and 'heathen' leaders and between rangatira and their followers.

1.8.8 Were conversions authentic?

Colenso himself doubted the authenticity of many of the supposed conversions in the district. It is clear that joining the church did not mean the complete abandonment of traditional beliefs as argued by the Crown. Colenso reported the continuing practice of 'adultery', polygamy, and tomo (marriage negotiation, probably inciting Colenso's condemnation because the arrangements involved young children). These practices continued amongst Christian as well as 'heathen' communities. At Warerangi, for example, the kaiwhakaako, Paul Kaiwata, told the missionary that his beliefs would not prevent him from 'taking two wives, or absconding with Charlotte to the woods'. According to Colenso, such incidents were weekly events.[75]

1.8.9 How persuasive were the missionaries?

Colenso recorded how he deliberately challenged notions of tapu and, in the course of doing so, also the capacity of rangatira to enforce their will by that means. Sometimes, he may have misjudged the delivery of his message. For example, he questioned the capacity of rangatira to tapu pathways as a means of preventing people from going somewhere.

He recounted how Te Kawatini, in a dispute over the costs of establishing the mission station at Ahuriri, attempted to tapu the road 'so that no one should walk upon it'. Colenso went out and 'placing a common kitchen boiler on the road (used by us in boiling of pork, etc) made the road "*noa*" again'.[76]

Colenso also sought to engage Māori minds in beliefs about causality and, in particular, what destroyed life, health, fertility, and strength. This was tempting ground in a society where sickness was a prevailing issue. For example, in 1848 Ngāti Kahungunu chief Tiakitai died. This rangatira had been one of Colenso's major opponents; the two had battled over morality, and Colenso had condemned Tiakitai's conduct as licentious. After the chief's dramatic death, Colenso triumphantly reported the conversion to Christianity of a number of tohunga. Among them was a famous Mātaikona tohunga called Te Awake. This man, once the 'terror of the whole line of Coast, the Natives believing that he had the power of life and death in his own hands through his potent incantations' now sat in the 'lowest class in the School to be taught catechisms', Colenso smugly recorded. Wango, a celebrated tohunga living at Warerangi, converted at the same time.[77]

But conversion could rapidly be followed by reversion. Historian Paul Goldsmith pointed out that Colenso faced a fundamental problem in using sickness as a lesson about godliness, for 'death cared not whether its victims were "mihinare" (missionaries), "pikopo" (bishops), or "heathen"'. Colenso must have been aware himself that death was no respecter of religious preference. He recorded that, of the 56 people who died in Wairarapa in 1849 and 1850, 31 were of the church, while another 11 had attended services.[78] More and more, he had to resort to arguing, to an increasingly doubtful Māori audience, that a death that one could not avoid had its own purpose.[79]

During this time of extreme morbidity, an unquestioning adoption of the Christian message was likely to be short-lived, and local healers soon emerged – Colenso noted Te Hura at Petanetangoio and Te Horo at Mātaikona – who challenged its authority. Te Hura claimed that she had been visited by Moses and the spirit of one of her dead children. Moses had told her how to cure the sicknesses that had come with 'white-man's medicine and the Faith'. She commanded local kaiwhakaako Paul Toki to 'wai weratia a au!' (purge me with hot water!) and proceeded to treat her patients with steam-baths and a prayer to

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the Lord. Colenso banned her from the practice, but she seems to have recommenced soon afterwards. Te Hura combined Christian ideas with Māori; Te Horo (like Te Weretā) rejected them entirely. Originally a parishioner at Mātaikona, Te Horo claimed that ancestral voices told him that the sicknesses that had struck the village during the years 1850 and 1851 were due to neglect of traditional rites. His followers were to stay away from services and 'embrace heathen practices', Colenso recorded.[80]

By 1850, the popularity of Christianity was in decline, with chapels falling into disrepair. Sickness continued, the expected benefits had not materialised, and personal conflicts between strong-willed Māori leaders and the equally stubborn Colenso contributed to growing Māori disenchantment.[81] Ngāti Kahungunu rangatira, annoyed by the missionary's overbearing manner and denigration of so many of their practices, challenged his ministry at Ahuriri. According to Goldsmith, Wiremu Te Pōtangaroa and his community at Mātaikona had also 'entered into a period of deep spiritual questioning'.[82] Even Te Kaikōkirikiri was 'going cold', Colenso believed. The missionary's influence finally ended in November 1852 when he was exposed as an adulterer, dismissed from the Church Missionary Society, and, in the following year, convicted of assault by a panel that included Donald McLean.[83] McLean was soon to play a major role in purchasing land in the district for the Crown.

As Christianity waned, some of the larger communities once more became dispersed across the district – though this also may have been an attempt to assert rights to particular sites as disputes arose over leasing and sale arrangements. At that time, people tended to move into the open country, or land suitable for horticulture, rather than into the forests and mountains.[84]

1.9 Conclusion

Takirirangi Smith, who drew on Colenso's journals as well as his own background in mātauranga Māori (traditional Māori knowledge), concluded that:

> It was apparent that the missionaries could provide benefits such as learning to read and write, and that rangatira were quick to exploit this and other material advantages for the benefit of whānau and hapū. It is also clear that indigenous values of rangatiratanga had not been significantly marginalised by Christianity at this point, however economic change was clearly evident.[85]

On the evidence before us, we are inclined to agree with this assessment, and we return to it in the following chapters.

The period from 1800 to 1840 was one of considerable change for the people of Wairarapa ki Tararua. Within a relatively short span of years, introduced plants, animals, and technology altered the nature of the ecology and economy of Wairarapa and Tāmaki-nui-ā-Rua. Some traditional resources were destroyed by the introduced species, while the new crops and animals became major food sources. New diseases increased death rates among the local people, and muskets transformed the nature of warfare throughout New Zealand, with enormous impact on Wairarapa. In response to the escalating warfare, a large proportion of the tangata whenua population left their homelands for Nukutaurua and Manawatū. They returned in the late 1830s and 1840s, but changes in the economy and the adoption of Christianity modified their earlier settlement patterns.

As Pākehā pastoralists moved into Wairarapa, they encountered a society in the process of change, both in terms of the food they ate and how they acquired it and, more importantly, in terms of their rates of sickness and death. Also, as a direct result of missionaries' challenges to long-held beliefs, the spiritual power of tapu and related concepts was questioned for the first time.

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Probably, though, how Māori viewed the spiritual and physical world changed only incrementally. The new god, rather than replacing the old beliefs, was accommodated by them. Chiefs retained authority, although new forms of leadership emerged (along with new bases of power), and the potency of tohunga was undermined. But, as we explore further in the following chapter, we think that in these years Māori social organisation was largely unaltered and rangatira continued to exercise authority in relation to land and resources as they always had – that is, with the sanction of their community.

Notes

1. Mike Kawana of Rangitāne o Wairarapa describes the naming of the Remutaka Range in document F3(a), pp 2, 6:

> The famous Maori ancestor who named the Wairarapa was Haunuiananaia . . . On his journey home [from Wellington], Haunuiananaia first had to climb over a big hill or mountain. When he finally made it to the top of the mountain he sat down for a much needed rest. It is this act of sitting down that gave the mountain its name, Remutaka. The correct name. Remu means to gaze about and taka means to sit down hence 'Remutaka' or the misspelt 'Rimutaka' with an 'i' as we now call the mountain.

2. Document A25 (Marr), pp 1–7; doc A83 (Ballara), pp 33–34; doc A118 (Gilling), pp 28–32; doc A54 (Smith), pp 8–9

3. Recent archaeological work appears to support the idea of the late thirteenth century as the time of human arrival in New Zealand: Janet M Wilmshurst, Atholl J Anderson, Thomas F G Higham, Trevor H Worthy, 'Dating the Late Prehistoric Dispersal of Polynesians to New Zealand Using the Commensal Pacific Rat', *Proceedings of the National Academy of Sciences of the United States of America*, vol 105, no 22 (3 June 2008), pp 7676–7680

4. Document A60 (Chrisp), pp 7, 12–24; doc A45 (Smith), pp 11–12; doc A83 (Ballara), pp 86–87

5. Document A36 (Kawharu and Poledniok), pp 50–52; doc E3 (Paewai), pp 16–18, 25; doc I8, pp 14–15; doc A83 (Ballara), pp 157–159, 219–221; doc A68 (Parsons and Ropiha), pp 40, 57–62, 65–69

6. Document A60 (Chrisp), pp 29–30; doc A83 (Ballara), pp 221–222; doc A36 (Kawharu and Poledniok), pp 50, 52–55

7. Document A60 (Chrisp), pp 32–34, 40–42; doc A60(a) (Chrisp), pp 9–10

8. Document A98 (Hill), pp 5–6; doc D22 (Te Whaiti), p 9

9. Document D22 (Te Whaiti), pp 11–12; doc A36 (Kawharu and Poledniok), pp 113–116

10. Document A36 (Kawharu and Poledniok), pp 68–69; doc A83 (Ballara), pp 223–224

11. Document A36 (Kawharu and Poledniok), pp 69–70; doc A83 (Ballara), pp 226–228

12. Document A36 (Kawharu and Poledniok), p 72; doc A83 (Ballara), pp 228–232, 447n

13. Document A60 (Chrisp), pp 46–47; doc E3 (Paewai), pp 26–27; doc I8, p 25

14. Document A60 (Chrisp), p 3 n 1; doc A83 (Ballara), pp 415–416, 447–448, 479; doc A35 (Oliver), pp 8–9

15. Document A71 (Leach), p 6; doc A54 (Smith), pp 31–32; B Foss Leach and Helen M Leach, 'Prehistoric Communities in Eastern Palliser Bay', in *Prehistoric Man in Palliser Bay: National Museum of New Zealand Bulletin 21*, edited by B Foss Leach and Helen M Leach (Wellington: National Museum of New Zealand, 1979), pp 257–258, 261

16. Document A54 (Smith), pp 31–32; Tame V Saunders, 'The Eels of Lake Wairarapa', *Te Ao Hou: The Maori Magazine*, no 51 (June 1965), pp 36–38

17. Document A83 (Ballara), pp 48–49

18. Document A83 (Ballara), pp 48–49; doc A54 (Smith), p 8; doc A71 (Leach), p 6; doc A36 (Kawharu and Poledniok), p 26

19. Document A35 (Oliver), pp 7, 14, 15, 18–19, 21; doc E7 (Karaitiana), pp 2–4; doc E5 (Nicholson), p 6; doc A118 (Gilling), pp 32–33

20. Document A45 (Smith), p 19

21. Document A25 (Marr), pp 9–11; doc A71 (Leach), p 6; Bruce G McFadgen, *Archaeology of the Wellington Conservancy: Wairarapa – A Study in Tectonic Archaeology* (Wellington: Department of Conservation, 2003), pp 17–20

22. Document A25 (Marr), pp 9–10; doc A54 (Smith), pp 37–38, 46, 47, 59–60

23. Document A83 (Ballara), p 37

24. Ibid, pp 37–46

25. Document A118 (Gilling), p 31; doc A83 (Ballara), pp 52–54

26. Document A71 (Leach), p 6

27. Ibid, pp 6–11; doc A25 (Marr), p 14; doc A83 (Ballara), pp 52–54; James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Allen Lane, 1996), p 159

28. Document A71 (Leach), p 8; doc A83 (Ballara), pp 56–59

29. Document A83 (Ballara), pp 420–423, 427–433

30. Document A68 (Parsons and Ropiha), pp 47–48; doc A36 (Kawharu and Poledniok), pp 46–47, 146

31. Document A83 (Ballara), pp 448–449; doc A36 (Kawharu and Poledniok), pp 134–135; doc A45 (Smith), p 42

32. Document E3 (Paewai), pp 27–28; doc A45 (Smith), pp 42–3; doc A83 (Ballara), p 449

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33. Document A83 (Ballara), pp 441–449
34. Document A45 (Smith), p 43; doc A83 (Ballara), pp 457–459, 461; doc A60 (Chrisp), p 25; doc A36 (Kawharu and Poledniok), pp 136–137
35. Document A83 (Ballara), p 447; doc A68 (Parsons and Ropiha), p 50
36. Document A83 (Ballara), pp 217–218, 462; doc A36 (Kawharu and Poledniok), p 139
37. Document E3 (Paewai), pp 27–31
38. Elsdon Best, notebook 6, QMS-0181, ATL (as quoted in doc A36 (Kawharu and Poledniok), pp 137–138)
39. Mohi Te Ātahikoia, MS 1354, p 33, 42–43, and Takaanui Tarakawa, 'Ngā Mahi a Te Wera', pt 4, p 76 (as quoted in doc A83 (Ballara), pp 407, 447–450)
40. Document A36 (Kawharu and Poledniok), pp 116, 142
41. Thomas W Downes, 'Life of the Ngati Kahungunu Chief Nukupewapewa', *Transactions and Proceedings of the New Zealand Institute 45* (Wellington: Government Printing Office, 1913), pp 364–475, esp p 368 (as quoted in doc A36 (Kawharu and Poledniok), p 137); doc A45 (Smith), p 45
42. Document A83 (Ballara), pp 450, 453–455, 459,463–464
43. Best, notebook 6 QMS-0181, ATL; Downes, 'Life of the Ngati Kahungunu Chief Nukupewapewa', p 368 (as quoted in doc A36 (Kawharu and Poledniok), pp 139–140)
44. Document A60 (Chrisp), p 26; doc A36 (Kawharu and Poledniok), pp 140–141; doc A83 (Ballara), pp 459–460
45. Document A83 (Ballara), pp 460–461, 475–476; doc A36 (Kawharu and Poledniok), pp 142–144
46. Angela Ballara, 'Te Whanganui-ā-Tara: Phases of Māori Occupation of Wellington Harbour c1800–1840', in *The Making of Wellington, 1800–1914*, edited by David Hamer and Roberta Nicholls (Wellington: Victoria University Press, 1990), pp 9–34, 31–33
47. Document A83 (Ballara), p 473; doc A36 (Kawharu and Poledniok), pp 144–147
48. William Colenso, papers, vol 1, journal 11–12, March 1845 (as cited in doc A83 (Ballara), p 476)
49. Document A36 (Kawharu), p 116
50. Document A83 (Ballara), p 476
51. Document A36 (Kawharu and Poledniok), pp 145–146; doc A83 (Ballara), pp 478–479
52. Document A111 (Head), pp 85, 100, 138
53. Hazel Petrie, *Chiefs of Industry: Maori Tribal Enterprise in Early Colonial New Zealand* (Auckland: Auckland University Press, 2006), pp 81, 163, 182–185, 216–217
54. Document A45 (Smith), p 47
55. Document A45 (Smith), pp 49–50; doc A83 (Ballara), pp 469–470
56. Document A45 (Smith), pp 51, 54–56, 58, 62, 68; doc A83 (Ballara), pp 340, 478; doc A36 (Kawharu and Poledniok), p 153
57. Document A36 (Kawharu and Poledniok), p 153
58. Ibid; Jock M McEwen, *Rangitāne: A Tribal History* (Auckland: Reed Books, 1986), pp 140–141
59. Document A54 (Smith), pp 63, 71
60. Colenso, journals, 1841–54, QMS-0487, vol 1, 1841–48, p 107
61. Paul Goldsmith, 'Medicine, Death and the Gospel in Wairarapa and Hawke's Bay, 1845–1852', *New Zealand Journal of History*, vol 30, no 2 (1996), pp 163–181
62. Ibid, p 166
63. Document A45 (Smith), pp 49–56, 58, 62; doc A71 (Leach), p 14
64. Document A45 (Smith), pp 73–74
65. Document A48 (Stirling), p 66. Stirling uses the expression 'junior chiefs' based on Colenso to Eyre, 23 December 1848, in Colenso, letters, vol 1, QMS-0491, ATL (Wai 201 R01, doc A21(e), pp 1181–1185). Colenso uses the phrases 'junior ones' and 'junior party'.
66. Document A44 (Walzl), p 75
67. Document A36 (Kawharu and Poledniok), p 153; doc A45 (Smith), pp 55–56
68. Goldsmith, 'Medicine, Death and the Gospel', pp 163–181
69. Colenso, journals, 5 May 1847 (doc A45 (Smith), pp 57)
70. Document A45 (Smith), pp 49–56, 60; doc A71 (Leach), pp 13–15
71. Goldsmith, 'Medicine, Death and the Gospel', p 172; Colenso, journals, 20 March 1846, journeys, QMS-0490, ATL. Takirirangi Smith records Te Korou being baptised by Colenso on 14 April 1848: doc A45, p 59.
72. Colenso, journeys, 18 March 1845 (doc A45 (Smith), p 51)
73. Colenso, journeys, 19 April 1845 (doc A45 (Smith), p 53)
74. Colenso, journals, 12 April 1847 (doc A45 (Smith), p 56)
75. Goldsmith, 'Medicine, Death and the Gospel', p 166; Colenso, journals, 12 April 1847 (doc A45 (Smith), p 58)
76. Colenso, journals, 28 February 1845 (Goldsmith, 'Medicine, Death and the Gospel', p 165)
77. Colenso, journals, 1 November 1848 (Goldsmith, 'Medicine, Death and the Gospel', pp 176–177)
78. Goldsmith, 'Medicine, Death and the Gospel', p 174
79. Ibid
80. Ibid, pp 179–180
81. Document A36 (Kawharu and Poledniok), pp 149–152; doc A45 (Smith), pp 50–51, 58–59
82. Paul Goldsmith, *Wairarapa*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), p 33
83. Ibid
84. Document A45 (Smith), pp 58–59, 68; doc A83 (Ballara), p 479
85. Document A45 (Smith), p 61

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CHAPTER 2

THE RISE AND FALL OF THE WAIRARAPA LEASEHOLD ECONOMY

2.1 The Issues around Leasing in Wairarapa

2.1.1 Introduction

From late 1843 onwards, Pākehā settlers began to move from Wellington to the Wairarapa to establish homesteads and sheep runs. Local rangatira welcomed these new arrivals and, in some instances, went to Port Nicholson to invite them. Over the next decade, an informal leasehold, or squatting, economy developed as an increasing number of settlers entered individually into arrangements with their Māori hosts. By the early 1850s, there were nearly 200 Europeans living in the area, and an estimated 300,000 to 400,000 acres under grass lease. Māori were receiving rents of some £1200, plus enjoying attendant opportunities for economic and cultural exchange, access to new goods, and new knowledge. The squatters, for their part, were probably making annual returns of up to 19 to 20 percent on their capital investment. Ventures like these were the life-blood of the new colony.

Then, in the early 1850s, this economy was brought to an end for reasons, and with results, that are disputed between claimants and the Crown.

Although this sort of informal land arrangement was seen as essential to the economic viability of the colony in its early years, the Crown also saw it as infringing on its pre-emptive right in article 2 of the Treaty. Officials argued that it was the Crown's exclusive right to negotiate with Māori all transactions in customary land, and not just purchase. The 1841 Land Claims Ordinance confirmed this understanding by expressly stating: no alienations of Māori land directly to settlers – whether by gift, lease, or sale – were to have any legal standing. Penalties for infringement were introduced later, in the Native Land Purchase Ordinance of 1846.

Some thought was given to the idea of regulating – rather than banning – direct purchase and leasing from Māori to settlers. There was even consideration of putting aside the Crown's pre-emptive right altogether – but this did not happen until 1862, when land was opened to the direct market under the Native Land Court system. Until then, the Crown remained steadfast, insisting on a uniform system of purchase of Māori land through the agency of its own officials. This approach was driven in large part by the need to finance government, infrastructure, immigration and the 'civilising' of Māori. The 'land

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fund' – the profit made from the Crown's sale to settlers of land purchased cheaply from Māori – was the mechanism adopted. This was given higher priority than developing a leasing system in partnership with the government, which would arguably have been a preferable mode of settlement for Māori.

Intolerance for direct leasing between Māori and settlers grew. Māori in the Wairarapa were told in the late 1840s and early 1850s that their established lease arrangements with settlers could not continue. They were given two starkly opposed options. Option 1: They could keep their lands under their own laws, but they would lose Crown favour and the prospect of settlers and the benefits they brought – and they would also lose their lessees, as the leases were now illegal. Option 2: In return for peace, prosperity, and partnership in developing the colony, they could accept the permanent alienation of their lands and the Crown's authority over both peoples.

2.1.2 The claimants' argument

The Native Land Purchase Ordinance of 1846 made direct leasing from Māori illegal, and the Crown swiftly moved in to buy large tracts in the Wairarapa. Extensive permanent alienations ensued in 1853 to 1854.

The claimants contended that the Crown forced Māori into outright sale. They had been happy with the lease arrangements, which were 'very much controlled by the Maori grantors'.[1] When the Crown moved to curtail these arrangements, they lost the opportunity to maximise their chances of engaging productively with the new economy by retaining their major asset (land) while acquiring the knowledge they needed to farm in the European way. Keeping the bulk of their land would have allowed them to continue customary resource use, and also to raise capital for development on the security of the land. The colony could have proceeded as a partnership.[2] The passage of the Native Land Purchase Ordinance, and the pressure it put on Māori, was an unwarranted interference in their rangatiratanga (full chiefly authority), and undermined their capacity to engage with settlement on equal terms and on a self-sustaining basis.

Counsel for Ngāti Hinewaka said the leasehold system was 'an arrangement that was not only Treaty compliant, but met the hopes of both Treaty partners: for Māori, tino rangatiratanga was tangibly maintained; for the Crown, settlement was able to flourish, though at a pace controlled by Māori'.[3] Wairarapa Māori had welcomed the squatters and entered into these arrangements for the 'rental' moneys and the opportunity to trade – and, above all, in order to retain their lands and to participate in substantial new economic opportunities. For instance, joint business ventures might have been possible, where Māori cared for Pākehā-owned stock grazed on Māori-owned land, in exchange for a share of the profits.[4] It was this mix – the ability to pursue new economic opportunities while retaining ownership and authority over their lands – that was a 'true expression of tino rangatiratanga'.[5]

The Crown deliberately undermined leasehold arrangements, not only by making them illegal but also by pursuing purchases in the Hawke's Bay to ensure that settlement of the region advanced on a purchase (and not leasehold) basis. Actions to curtail leasing were taken not to ensure the peace and progress of the colony, but because the Crown feared that their commitment to leasing would fuel Māori reluctance to sell outright. If the Crown's only real objective had been to preserve the peace of the colony and protect Māori, it would surely have been open to developing a system to regulate leasing, which Māori clearly preferred to sale.

The claimants rejected the argument that leasing would have stultified settlement. Rather, a mix of leasing and sale might have ensured that Pākehā settlement proceeded at a pace Māori could control.[6] The Crown's insistence on purchase was at least in part an expression of prejudice against Māori as landlords.[7] If leasing was in itself an insurmountable obstacle to settlement, the Crown would not have continued with leasehold arrangements with Wairarapa settlers after 1853.[8]

Even the more legitimate motivations for curtailing

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leasing – that it was anathema to the philosophy of the land fund system, as historian Dr Donald Loveridge's evidence showed – did not, in the claimants' view, 'justify the actions of the Crown in terms of its Treaty obligations'. Nor, they pointed out, had Loveridge (as the Crown's witness) made the claim that it did justify the Crown's actions.[9]

As to whether the Crown's pre-emptive right in article 2 extended to leasing, counsel for Ngāti Hinewaka argued that the use of 'hoko' (exchange, barter) in the Māori text suggested a more limited power than that claimed by the Crown. This was particularly because 'hoko' was used in conjunction with promises of undisturbed possession of their lands for so long as they wished.

> The Treaty should be interpreted *contra proferentum* to the effect that the Treaty only contemplated pre-emption in relation to the outright alienation of land and not leasing.[10]

But the major issue was not whether the Crown had a legal, or even a Treaty, right to extend its pre-emptive power to leasing; it was whether the Crown had acted 'in good faith and with the interests of Maori in mind'. Here again, the claimants contended that the Crown's motivation was to 'force Maori to a position of inevitable sale of land'.[11] Really, the Crown's focus was 'at all times' on eventual purchase of the Wairarapa.[12] As counsel for Rangitāne argued, leasing was 'antithetical to colonisation as envisaged by the Crown'.[13]

2.1.3 The Crown's argument

Crown counsel submitted that when the Crown acted to prevent direct leasing from Māori to European, it was a legitimate and unremarkable exercise of sovereignty in the interests of the peaceful development of the colony. The steps taken were performed reasonably, in good faith, and were consistent with the Treaty of Waitangi.[14] The Crown had consistently taken the position, since 1840, that the right of pre-emption included all alienations of land, and not just sales. Furthermore, the 1846 ordinance inflicted no penalties on Māori, so could not be regarded as a direct impediment to rangatiratanga; nor was it directly applied to settlers, except in a handful of instances, and so really had little effect on the Wairarapa situation. Counsel contended that 'government opposition to leasing is likely to have caused little direct prejudice to Maori'.[15]

Anyway, counsel said, if the Crown had not sought to prohibit leasing, Māori would probably have abandoned the practice in any event, and turned to selling land. The Wairarapa leasehold model would have imposed a 'low ceiling on the development of the colony' and was already 'nearing its capacity' by the time of the first Crown purchases.[16] Thus, a leasehold system – even a state-sanctioned version of it – was not the course most likely to have allowed Māori to engage successfully with the new economy. It would not have satisfied 'the hunger for modernity, which was increasingly evident among Maori of the Hawke's Bay and Wairarapa regions'. Māori aspirations could be adequately met only by sale and Crown-sponsored settlement under the land fund model.[17]

The Crown's starting point was its 'authority over the conduct of British-born subjects'. This included the right to insist that it had the exclusive right to deal with Māori concerning their lands. That authority was described in, but did not derive from, the Treaty. Even so, the Crown's prohibition of direct leasing was consistent with its responsibilities to control the growth of European settlement and protect Māori. 'As a general principle', Crown counsel argued, 'actions to suppress unauthorised leasing were in accordance with the Crown's right of pre-emption and therefore consistent with the Treaty of Waitangi'.[18] This was contemplated by Treaty promises of 'peace and good order', and was one of the major motivations for Māori to sign it. In the view of counsel, 'Crown control over the interface between colonists and Maori was at the heart of the Treaty compact'.

There were two aspects to this promise of good order to be considered: the risk of disputes in areas where the government had no real presence, and the land fund as the intended engine of systematic settlement. The Crown

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conceded that there was no serious disharmony in the district that required its active intervention and thus it was the Crown's wider colonisation policy that was crucial. 'Purchasing under the right of pre-emption afforded the best opportunity for settlement to proceed in an orderly manner.'[19]

The Native Land Purchase Ordinance was not aimed at undermining the rangatiratanga of Wairarapa Māori, and nor was it inconsistent with the Treaty. Since 1840, the Crown had argued that the 'right of pre-emption extended to all forms of alienation'. The ordinance merely introduced penalties for an act that had always been considered illegal. It was, moreover, 'directed at European transgressors and not the Maori party to illegal transactions' since the latter were not liable to prosecution. There was justification for the measure in the 'concepts of civil order and orderly settlement'.[20] And, as for the land fund, alternatives had been considered but were ultimately rejected in favour of purchase under Governor Grey's 'new' uniform system. It was appropriate for the Governor to 'close the lid on direct leasing' given the possible expenses involved in setting up a licensing system, the financial constraints under which the Colony was operating, and his hopes for the success of his own scheme of large-scale Crown purchase.[21]

There were sound economic reasons, as well as policy reasons, for the demise of leasing. Crown counsel argued that, whatever the impact of Governor Grey on the land policy and the place of direct leasing in the land economy:

> What does seem clear . . . is that squatting on the Wairarapa model would have imposed a low ceiling on the development of the colony . . . The economics of squatting were based on simple principles. Squatters aimed to maximise short-term profit by minimising outlay.[22]

Insecurity of tenure discouraged both investment and capital accumulation, while the squatters would have provided 'nothing in the way of infrastructural development'. The result was a 'robber pastoralism' exploiting the natural grasslands rather than investing in creating good pasture for the long term.[23] The Crown also argued that, in the Wairarapa, 'Both in terms of income and the area occupied, the high point of leasing . . . may well have been reached by the time of the first sales'.[24]

The Crown questioned whether its actions could be held responsible for the change in Māori opinion in favour of sale, or for bringing the leasehold economy to an end. There had been no intention to prosecute or expel the squatters from the district, and very little was done to stop its expansion until Crown purchase agent Donald McLean became involved. Even then, the Government's actions were in accord with its duties under the Treaty. The ordinance had not been used coercively and had little apparent impact on the expansion of squatting in the years that immediately followed. The Crown was also entitled to pursue purchases in Hawke's Bay, even if this had the consequence of undermining lease arrangements in the Wairarapa.

The Crown concluded that it was likely that government opposition to leasing 'caused little direct prejudice to Maori' – although conceding that 'the minor exception may be those Maori seeking to admit squatters to the Castlepoint area'. Even so, any assessment of possible prejudice would have to consider whether the block would have been sold soon in any case and the ability of Māori to lease the reserves which they had retained.[25]

2.1.4 Our inquiry in this chapter

The key question for our consideration is whether the Crown breached its Treaty obligations by acting to curtail informal leasing arrangements so that settlement could proceed by means of Government purchase alone. In answering this, we explore the following issues:

- Was the leasehold economy a successful one, representing the fullest exercise of Māori rangatiratanga in the 1840s and with potential for development? Should officials have encouraged that system to grow?
- What were the factors that influenced Crown policy? Did those factors mitigate any breach of the Treaty

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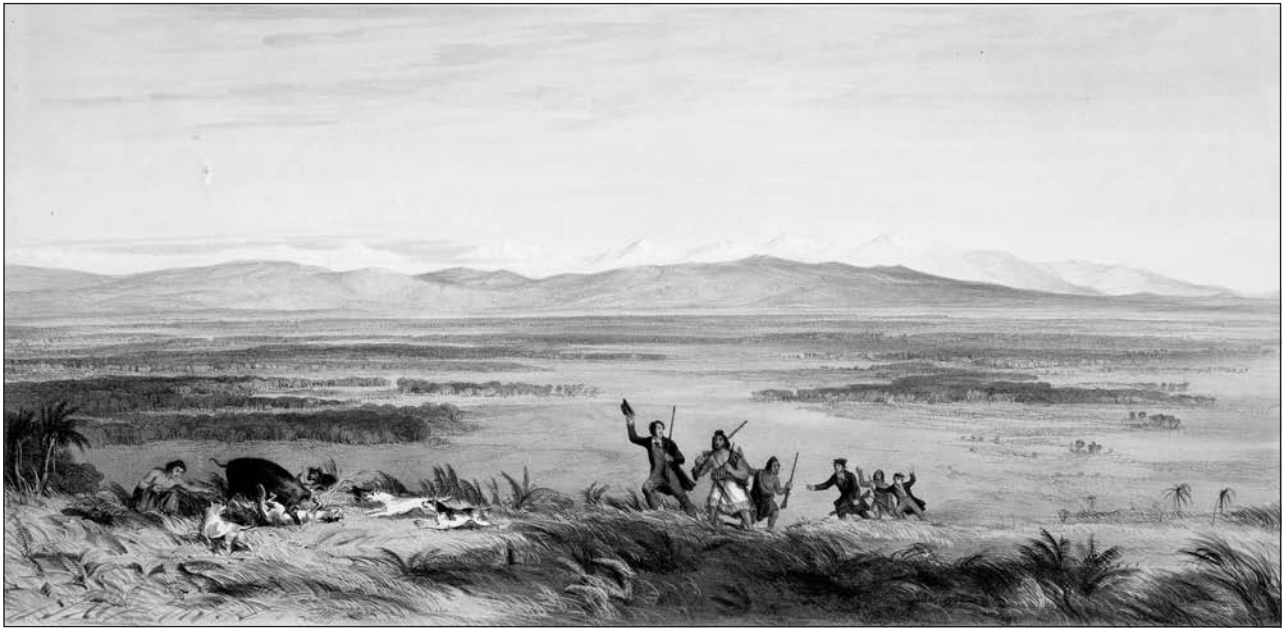
that the Crown committed in relation to direct leases between Māori and Pākehā?

- How effective were Crown policies and actions in bringing the leasehold economy to an end?

We turn, first, to what actually happened in the Wairarapa. Why was the region of such interest to Europeans, and how did Ngāti Kahungunu and Rangitāne react to the opportunities and challenges generated by that interest? We begin (in section 2) with a description of the arrival of the first settlers, the positive Māori response, and the impact of grazing arrangements on the traditional Māori economy in the 10 years preceding Crown purchasing.

We turn next to a discussion of the major ideas that were current amongst policy makers and officials in these years, and how they affected Government policy on leasing. In general, the Crown's thinking was characterised by a mix of principle and pragmatism. These included recognition of Māori ownership, customs and usage; ensuring that settlement proceeded in an orderly way; and the need to finance Government and the development of the colony (seen as largely dependent on the purchase of cheap Māori land). Alternatives that were under serious consideration at the same time could have dictated quite a different path. They included assumption by the Crown of ownership of all lands that were not actually cultivated or built upon by Māori ('wastelands' policy) and direct land transaction between settler and Māori ('free trade' in land). Also under consideration – although to a lesser extent – was the possibility of the Crown supervising leasing by settlers of some customary lands while the government negotiated the purchase of other areas for on-sale and white settlement.



Plain of the Ruamahanga, Opening into Palliser Bay near Wellington **by Samuel Charles Brees, 1843. This picture depicts an extensive view of the Wairarapa plain, with the Remutaka and Tararua Ranges behind. In the foreground is a wild boar hunt, with four Māori, three Pākehā, and a pack of dogs worrying a boar. The Māori wear traditional clothing and all carry firearms. There are tree ferns and bracken in the foreground and clumps of bush on the plain.**

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The interplay of official instructions, local pressures, and the opinions of officers on the spot are key to answering the central question of whether the Crown breached its Treaty obligations by insisting that informal leasing arrangements end in favour of government purchase alone.

Of particular note in this context is an incident that occurred at Maungaroa, Barton's Run, in 1845, when a muru (retributive act of plunder) was punished by the 'confiscation' of land. The incident, and official reaction to it, raised specific issues regarding the legitimacy of the punishment inflicted and its effect on Māori authority, and also the Crown's responsibility for maintaining the peace of the colony. The underlying issue to be considered is whether the incidence of such disputes was sufficient cause for the Crown's insistence on a monopoly over all land transactions including leases.

The role of Governor Grey is of particular importance to our assessment of the Crown's actions. It was Grey who introduced penalties for the direct private lease of land under the Native Land Purchase Ordinance, and it was Grey, too, who was to succeed in overcoming apparent Māori resistance to sale seven years later. In addition to working under the changing instructions of his colonial masters, Grey had his own ideas about how to deal with Māori and squatters. We leave to chapter 3 our inquiry into the different attitudes to 'waste' and 'unused' lands, as reflected in the instructions Grey received, and how this affected the conduct of Crown purchase. But here we look into how Grey influenced the government's approach to direct leasing – that is, whether it should be tolerated or actively discouraged.

We then turn to questions about how Grey's policy was applied in the context of negotiation for purchase in the Wairarapa, first on behalf of the New Zealand Company, and subsequently, under its own auspices, for resale to settlers.

Finally, we look at the economic arguments: the opposed views of claimants and Crown about the success of the early leasehold economy and what long-term opportunities would have resulted if it had been left alone. Was it an avenue for providing Māori with a means of engaging with colonisation successfully over the long term? Or was it, as the Crown submits, a dead-end for the colony and for Māori alike?

2.2 The Wairarapa Leasehold Economy

2.2.1 The arrival of the squatters

As we saw in the preceding chapter, when Europeans first arrived in the district, to their eyes it appeared largely unoccupied and unused. Permanent Māori settlements had always been restricted to the coastal areas and the lands around Ōnoke and Wairarapa Moana. This extended to the river valleys after the arrival of potatoes and pigs. Ngāti Kahungunu and Rangitāne were only just returning to these areas when settlers at Port Nicholson began to turn their interest to the Wairarapa. Also, Māori population in this region may have halved over the 70 years since initial European contact as a result of the spread of infectious diseases, general infant mortality, and declining fertility rates.

Still, any idea that the land was unowned as well as unoccupied was shortlived. At first, settlers hoped that these lands were within the disposal of the people based at Whanganui-ā-Tara – Te Āti Awa and their allies – as they had been told. It was soon clear that this was not the case – that Te Āti Awa feared attack if they travelled into the Wairarapa valleys, and that other iwi asserted rights there. Also, while tangata whenua of the Wairarapa did not dwell on the grasslands, they were in the process of re-occupying their kāinga (home, village, settlement) and pā located at their favoured (mainly coastal) sites, and their permission was certainly required for any occupation of the valley. Frustrated by the slow progress of the New Zealand Company and the Crown in opening up land in the vicinity of Port Nicholson, a number of settlers sought out and entered into grazing arrangements with the inhabitants of Wairarapa whom they had soon identified as Ngāti Kahungunu.

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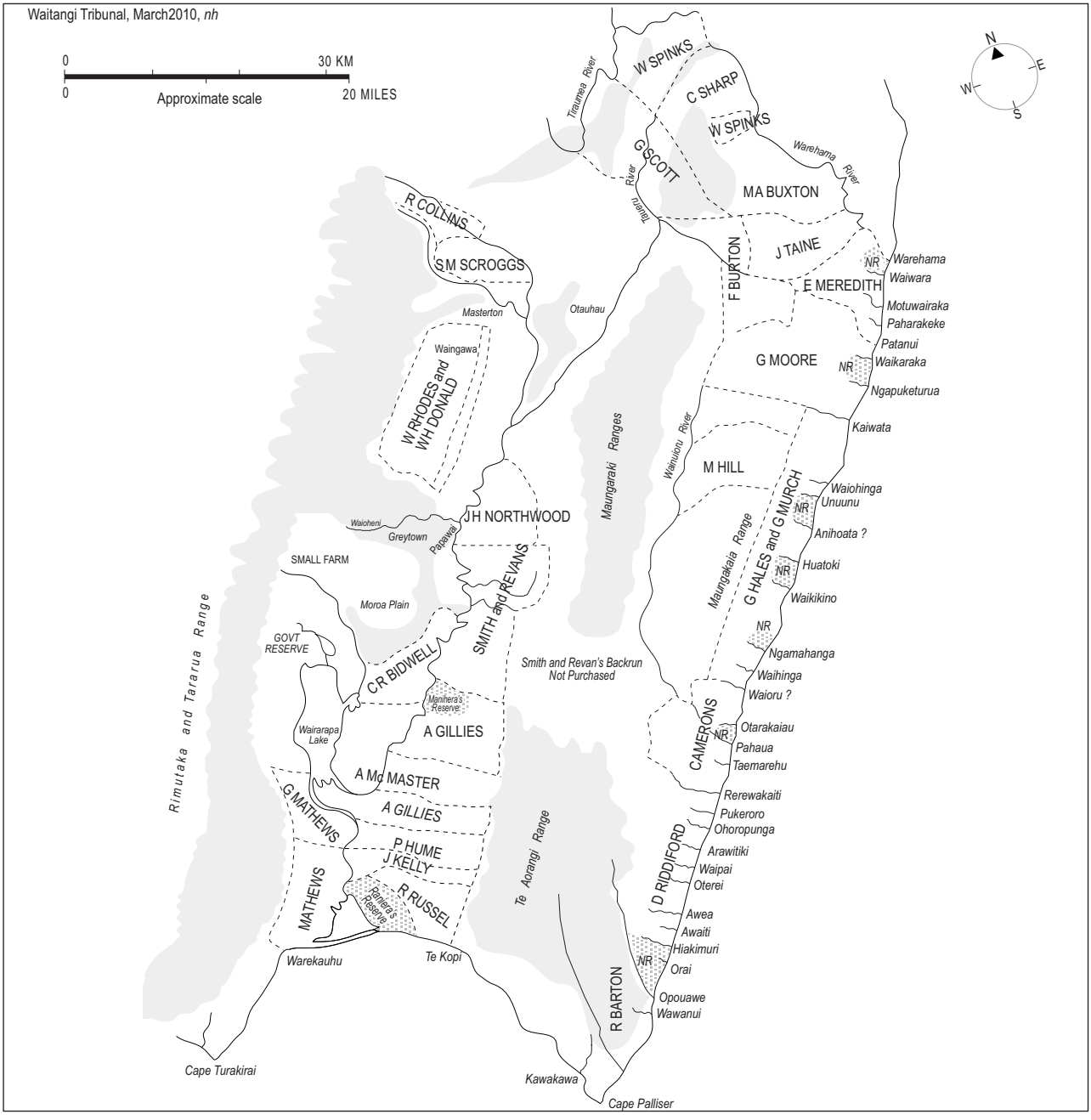

Rendering of 'Sketch Map in the Wairarapa and East Coast District' signed by F D Bell, commissioner of Crown lands, July 1855. Question marks indicate where the word on the original is not entirely legible.

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The area was immediately attractive to prospective graziers – close to Wellington, sparsely populated by a people who welcomed them, and comprising an extensive area of natural grassland.

Raising sheep required a certain amount of start-up capital, but was profitable only when inputs were low, especially in the early stages of developing a pastoral economy. A ready-made landscape was essential and this was an important part of what made the Wairarapa particularly valuable. Much of the North Island – including the northern part of this inquiry district – was bush country. Converting this kind of land to pasture was slow, requiring intensive labour and entailing relatively high costs. By contrast, in the Wairarapa, pastoralists only needed to burn off the coarser vegetation to turn the natural grasslands into grazing suitable for sheep.[26] In addition, the country was well watered, and there was an excellent supply of timber for domestic purposes and for building and fencing.[27] The Wairarapa environment also suited merino, which could be imported from the Australian colonies at less expense and with fewer losses than breeds that had to be sourced from Britain.[28] This gave the Wairarapa an advantage over areas such as New Plymouth and Auckland, where merino struggled in the wet, humid conditions.

The enterprise of the early squatters was rewarded by immediate results: most of them wanted to stay; they began to introduce new grasses, build houses and fences, and they were keen to invest further. Grazing became established, wool weights were high, and the wool quality of some flocks was very good.[29] The lambing percentage was evidently also more than satisfactory.[30] Later in this chapter, we look at whether these favourable conditions were likely to persist, had leasehold tenure been allowed to continue as a long-term proposition.

2.2.2 Wairarapa Māori pursue the new

By the early 1840s, Wairarapa Māori were aware of the material advantages that Pākehā settlers had brought to Port Nicholson, and were keen to share in them. The tatau pounamu (an image connoting enduring peace, sometimes sealed by a visible symbol) had sealed peace with Te Āti Awa. This was followed by Ngāti Kahungunu-Rangitāne visits to the New Zealand Company settlement at Port Nicholson, and to the Hutt Valley where they assisted Barton (who was soon to venture into the Wairarapa region) to establish a farm. The historical record describes a lively interest in goods and cash to be gained from early Pākehā visitors to the Wairarapa, in return for providing shelter and services like ferrying their pigs and produce.[31] These intriguing encounters added to the sum of local knowledge, and soon Māori were seeking out settlers to come and live amongst them.

In 1844, H S Tiffen reported on a visit he had recently made to the Wairarapa:

> The Native chiefs Te Raro, Te Teira and Maniera are very anxious to have white people among them that they and their people may obtain such comforts and luxuries as they see the Ngatiawas possessed of.[32]

Later that year, Mānihera guided Clifford, Petre and Bidwill up the Ruamāhanga River to show them the valley country. Here Clifford and Petre selected the site for their Wharekākā Run, while Bidwill was taken to Kopungārara. The prospective pastoralists negotiated the boundaries of their runs and the terms of the leases directly with Mānihera and Haimona Pita (Simeon Peter). In December 1844, Clifford and his partner Weld agreed to pay £12 per annum for a run 'on both sides of the brook that runs across the valley [the Dry River?] and the like sum for the Warrikaka Station' on the plain.[33]

From these beginnings, pastoralism in the Wairarapa soon expanded as others negotiated leases with Māori chiefs in different parts of the district. By April 1845, the *Wellington Independent* could list 12 stations in the Wairarapa, and between 40 and 50 Europeans living there.[34] Two years later, the number of stations had grown to 15, and the European population to 92.[35] The return from 1848 recorded 127 males and 55 females in the district, including children.[36] This compares to some 800 Māori.[37]

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2.2.3 How did Māori conceive of the leases?

The leasing arrangements resembled traditional tuku whenua in some respects. Tuku whenua was 'the granting of rights to occupy land . . . [or] permission to settle or occupy'.[38] This was about relationships based on the giving of rights in land – intended to be enduring – but always with the proviso that the recipient stayed to contribute to the welfare of the community. If the gift was abandoned by the recipient's people, it reverted to the giver.[39] Tuku could occur in many circumstances, and cement a variety of different relationships, especially in times of change. This could be between victors and the defeated, between allies as they settled new territories, and also between tangata whenua and early settlers. Traditionally, the recipients were expected to make timely gifts of the produce of the land to the givers whose mana protected their occupation, and to support the givers politically and socially. We shall see that this happened in the case of leases also – Māori insisted on it, and took matters into their own hands if need be. They expected goods and favours in addition to rents and other cash payments. The squatters had no choice but to accept this situation, but they all condemned the demands for extra payments as native 'cupidity', and the taking of items of property as theft.

As we shall see, it was conceptual differences like these, rather than disputed rights under leasing arrangements, that brought local Māori occasionally into conflict with settlers and the Crown. Although tensions developed over rents, stock, and trespass, and understandings were modified accordingly, there was one constant: these arrangements were made under the authority of local rangatira supported by their community.

There is strong evidence that things continued to be dealt with using customary practices and understandings, although inevitably with changes over time. But when Weld and his partners sought to expand their enterprise, '[a] grand council was held . . . in wh [*sic*] Manihera gave a long account of our first settling here and the Maories expressed their determination not to extend the run unless we increased the rent'.[40] Also, Māori were predisposed to regard the relationship as ongoing, extending to descendants of both sides. According to Tamahau, at Ngā Waka ā Kupe, for example, Captain Smith had brought up his children on the Huangārua land, and after:

> the old men who were parties to the original arrangement died leaving behind them their wishes that Captain Smith and his family should be cherished and well treated – not to be turned off or interfered with in any way.[41]

Te Mānihera in the 1850s or 1860s. Te Mānihera was a leading Wairarapa rangatira of the time.

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Wairarapa Leasehold Tenure 'Precarious'?

Frederick Weld was one of the first squatters in the Wairarapa, setting up a sheep station in partnership with Clifford and Vavasour. Weld was critical of the Crown's 'soft' handling of Māori – the 'FitzRoy-cum-missionary influence' – and what he saw as a failure to punish the perpetrators of an attack on New Zealand Company settlers at the Wairau. He was later a leading proponent of self-reliant government and of ending pre-emption in favour of the Native Land Court regime.

When Weld tried to bargain for an extension of grazing rights from Whareama into Wharekākā in 1844 and 1845, he found that the chiefs with whom he had struck a deal might not have the principal say. Weld's journal describes the turbulence of the frontier, the rubbing together of different customs, understandings, and attitudes. Weld himself adapted well to the physical environment and utilised Māori custom to his own purpose. Though he often recorded his refusal of Māori requests, demands, and even threats, his journal also shows efforts by Māori to accommodate his wishes and speaks of a developing commercial relationship with local rangatira:

> December 11 1844: Sheep shearing began. Donald & Shepherd with John Foss & Joe to assist whilst Jim followed Vavasour & I with the chiefs to mark out the land. We agreed to pay 12 per annum for a run on both sides of the brook that runs across the valley & like sum for the Warrikaka station on the plains between (belonging in part to E Meri etc who refuses to lease to us) must necessarily be in our hands

Frederick Aloysius Weld in 1860. Weld was one of the first to take up leasehold tenure in the Wairarapa. Later (in November 1864), he was to become Premier for 11 months.

Some of the earliest disputes were caused when Europeans treated their leases as purely commercial arrangements and attempted to transfer them to others without reference to Māori right holders in the lands concerned.

2.2.4 The leasing system brought mutual benefit

The claimants stress that the pastoral leasing economy that existed in the Wairarapa between 1844 and 1853 was a mutually beneficial arrangement for both local Māori and for the pastoralists, with give and take on both sides.[42]

From the outset, Māori encouraged and supported the pastoralists in establishing their stations, but they were able to control the expansion of the industry and, as their knowledge increased, negotiate better terms for themselves. Throughout the 10 years that the grass-leasing economy functioned, in addition to earning rents from the leases,

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also as they have no place for a house. So far all went well . . . returning home in high glee when on being asked to mark the Warrikaka boundaries the Maories quietly pointed to a wood behind the house thus cutting off much of the best part of our present run and giving a building place to E Meri's plain. Of course this was unbearable . . .

Weld threatened to leave the valley, but:

Simeon Peter replied coolly that go we might but the land in question belonged to E Meri as well as the other Maories & that Manihera . . . had had no right to give it to us. On reaching the house a hot debate ensued the Maories with the exception of Manihera & one or two others declaring that we should not have the land & we threatening to burn our house, destroy and carry away everything & leave. At last Simeon Peter agreed to give us his share in the land and of course all the others came in to his opinion – and the assembly broke up it being agreed that we should write out the leases & send them round for signature. Manihera & Tautere remained with us all night helping us to make out the lease and evidently much afraid of our threatened departure – the more so as we stopped our sawing & sent the man to Bidwells as soon as we found our position was precarious.

The following morning, Te Mānihera and a party of his people accompanied one of Weld's men, Jim, down the valley with the lease to be signed. On 27 December, Jim returned with the un-welcome news that the disputed land indeed 'belonged' to E Meri and another woman, both of whom refused to sign despite the strong persuasions of Simeon Peter.

There were to be times of alarm over the next several years of Weld's residence in the district, but his apprehension that his tenure, and that of the other leaseholders, would prove to be precarious was unfounded. Unwelcome visits by Māori wanting this or that (tobacco, ammunition – which Weld never gave – tea, clothes, and other 'treats') continued, as did minor arguments over land, straying dogs and, more particularly, demands for more moneys. There were also disagreements about principles of utu (reciprocity, retribution) as opposed to principles of 'justice'. Yet disputes were settled peacefully, and Weld himself commented favourably on the growing prosperity and stability of the region – and 'how much the native mind is turned to peaceful ideas of late'. Overall, our assessment is that Māori were hospitable, curious, often helpful, and protective in their dealings with Weld.

Māori were closely engaged with the settlers, trading with them, working for them, and protecting them.

The leasing system provided Māori with a number of avenues for accessing western goods and skills. First was income from rents. The leases that were negotiated with Clifford and Bidwill were for an annual rental of £12 for terms of 21 years, and this became the standard for subsequent agreements.[43] Māori landowners soon realised that the rents had been set too low, and increased them. By late 1847, rents had nearly trebled and, in 1848, a prospective pastoralist negotiated a lease for a new run at £50 per annum.[44] As rentals increased and new leases were negotiated, cash income for Wairarapa Māori grew rapidly. In 1847, Māori received an estimated £300 a year from rents; by the end of 1848 this doubled to more than £600. By 1852, it had risen to £1,200.[45]

The increases in rentals demonstrate the authority and control that Māori had over the leasing arrangements at this stage. When they saw what could be gained in the way of goods and payments from Pākehā, they insisted on more (although settlers were attempting to band together to resist their rising demands). Māori also sought conditions in the leases as they gained experience – especially to limit the timber that the leaseholders could use. Initially they allowed the pastoralists to take timber for their building and household needs, but later leases were more restrictive. Settlers were denied the right to cut timber for any purpose, and had to pay for what they used.[46] Bruce

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Stirling, in his extensive research report, argues that agreements were adapted to reflect the Māori point of view, and cites a lease drawn up by Ngātuere that stated the main conditions were an annual payment of £50 per annum and 'not to cut a stick'.[47]

It is an essential plank of claimant argument that there was more at stake here than the collection of rents for grazing stock or agreements about cutting timber. Equally, if not more important, were the opportunities for trade and acquisition of skills, of which Māori soon took advantage. They readily engaged with both settlers and missionaries, and did so from a position of strength. In the early years, the pastoralists relied on Māori for their basic supplies, such as wheat, potatoes, onions, and pork, and in return, Māori received tobacco, cloth, blankets, and clothing. As we have noted earlier with reference to the arrival of the missionaries, some groups shifted their kāinga to be closer to stations in order to facilitate this trade. For example, soon after Wharekākā was established, Mānihera moved his people to a kāinga nearby and planted a potato crop. Te Hiko also moved to be nearer the squatter Angus McMaster at Tuhitarata. (Local Māori knew McMaster as 'Hiko's Pākehā'.)[48] A J Allom, an early squatter in the Wairarapa, commented on the nature of this relationship:

> It was here, as elsewhere, a great point with each tribe or *hapu* that it should possess its own *Pakehas* (white men) so that the numerous and increasing wants of the tribe might be more readily supplied.[49]

Along with the benefits that accrued from having their own Pākehā, Māori recognised their own responsibilities, offering customary hospitality (which they expected in return), and an obligation to protect their Pākehā from the depredations of others. This was clearly demonstrated, in 1846, during an outbreak of fighting between Māori and Pākehā elsewhere in the Wellington region. When a group of 'hostile Māori' was reported in the northern Wairarapa, local Māori made sure that the settlers and their stock were protected. When Captain Smith heard a shot one night, the local chief Ngāiro rushed to the defence of 'his' Pākehā.[50] Weld also recorded that Ngāiro was 'a great friend':

> He calls *himself* sometimes Wetterike (Frederick) and *me* Narro (his name). He sells me potatoes and pigs for tobacco, and threatens to break any man's head who steals from me, so I sometimes give him a cup of tea as a great luxury, and a bit of hearth-cake or dough-nut. [Emphasis in original.][51]

In addition to cups of tea and other 'treats', the leasehold economy provided Māori with a cash income in the form of wages and payments for services. When flocks were small, in the early years, there was little regular labour required beyond that supplied by the pastoralists themselves, plus one or two permanent staff. However, building, fencing, gardening jobs, and seasonal work were available, especially when the sheep were washed before shearing. And as the economy expanded so did the opportunities for Māori, at least at first. Shearing was a valuable skill and, as shearers were in short supply, the job was highly paid: the going rate was £1 for every 100 sheep, and meals supplied.[52] Good men could shear around 70 or 80 sheep a day, so there was good money to be made, though the work was physically demanding. Other labouring work included construction of the road over the Remutaka Range, connecting Wellington and the Wairarapa, which began in 1847 and was completed in 1853. Most of the work was carried out by Māori labour, although in the early years, the Wairarapa people were less involved than iwi from the Hutt Valley. In December 1850, Māori labourers earned 2s 6d a day compared with 3s 6d for Europeans, but in October 1851 the rate for 'first-class' Māori labourers went up to three shillings.[53]

It is important to note that Māori showed more enterprise than providing labour at the behest of their Pākehā tenants, and from the beginning of the leasing economy, some set themselves up in business. They operated ferries at the mouth of Wairarapa Moana and the Whareama

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River, as well as transporting canoe loads of supplies up the Ruamāhanga River for pastoralists. Apparently, they knew how to drive a hard bargain, for Weld complained that 'the fee they had to settle on was double what they would have had to pay any English ferryman'.[54]

The new settlers also provided a market for the surplus of the new crops Māori had begun cultivating, and soon they were growing produce on a commercial scale. Again, Weld noted the readiness with which Māori – in this instance, Pirika based at Wharekākā – had seen the possibilities for a mutually beneficial relationship: if Weld would provide the seed potatoes, Pirika and his people would supply the land and the labour. Weld, whose crop had failed, was pleased to accept. 'I mention this as being a very remarkable offer for a Maori to make,' he recorded, 'as in fact it constitutes me his partner.'[55] Pirika was followed by Ngāiro and Te Weretā, both of whom made similar proposals. In 1850, Kemp noted that Māori in the valley owned horses, five head of cattle, sheep (the number unrecorded), and 349 tame pigs, and were growing 15 acres of wheat, 32 acres of maize, and 102 acres of potatoes.[56] By 1852, vegetables, grain crops, pork and live pigs produced by Māori were being shipped to Wellington. It is likely, however, that pastoralists acted as middlemen, trading with the Māori growers and on-selling to Wellington commercial interests.[57]

2.2.5 Summary

The picture of the Wairarapa economy at this stage was one of enthusiastic Māori engagement with the newcomers and a strong interest in what they had to offer. The assessment of Dr Bryan Gilling, commissioned by the Waitangi Tribunal to write a report on aspects of the economic history of Māori in the inquiry district, was that:

> The sources indicate that they [Māori] took to the new economy well, apparently seeing that this was the way the new world was going and doing their best to adapt. They were sharp in their business dealings and almost instantly developed ways of deriving income for themselves from the opportunities being presented. They participated in trade, providing goods, especially types of food, as local Pakeha needed them and as a market opened up over the hills in Port Nicholson. They provided services such as guiding and ferrying and labour for the road-making that would open up their lands to further Pakeha economic development. The rental income they demanded from earliest days was significant and rapidly increasing through the 1840s and early 1850s – they were gaining income but not losing control of their irreplaceable asset. At this time, it appears that that the Maori of Wairarapa ki Tararua were adapting quickly and fluently to the novel economic challenges and opportunities with which they were being presented.[58]

We largely concur with this assessment. To this point, Māori had been able to participate in the burgeoning economy at different levels, in a range of activities, and on equal terms. These elements are crucial to our view of how the leasehold economy was operating and whether it was likely to offer long-term success to Māori as they engaged with colonisation and settlement. We agree that the initial indications were good: Māori were proving to be innovative and adept managers of economic, technological, and cultural change. The question is whether this lasted, and whether Māori commercial endeavour would continue to expand. Were Māori able to continue in their land ownership while acquiring the further skills and capital to fully participate in the colonial economy at their own pace? In particular, would Māori be able to take the next step and move from what was in essence a trading relationship to one based on production as landowners? In the Wairarapa, this meant being large-scale pastoralists, as well as being landlords and supplying the local market with labour as gardeners, shearers, and manual workers.

Considerable capital was required to establish a successful station. In our view, Māori were unlikely to be

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able to accumulate sufficient funds while they continued to lease their land to enable them to develop their own large sheep runs – unless, ultimately, they were able to sell some land at an adequate price. Alternatively, or as well, the Crown needed to help Māori to a position where they could raise capital and develop the land they retained. We shall see below that this requirement sat uneasily with the Crown's desire to acquire land cheaply to fund colonial development.

2.3 Leasing and Crown Policy, 1840–53

2.3.1 Introduction

Why did the Crown act to bring the leaseholds in the Wairarapa to an end, and were its actions compatible with promises made to Māori? In the following section we examine the various statements made, and the influences at work to produce Crown policy.

We rely largely on the report of Crown historian, Loveridge, 'An Object of the First Importance – Land Rights, Land Claims and Colonization in New Zealand, 1839–1852'. Loveridge shows that a Crown monopoly over purchase of land from Māori was seen as essential to systematic and peaceful colonisation.

2.3.2 The land fund

In particular, the maintenance of the pre-emption right was integral to the operation of the land fund, which was the mechanism by which orderly settlement would be effected. The basic idea of the land fund was that the Crown would be able to buy Māori land cheaply and resell it to settlers at a higher price, with the surplus financing colonisation and government. Māori would benefit both from European settlement and the increased value of the land they retained as reserves. Secretary of State for the Colonies Lord Normanby's instructions of 1839 were the first expression of this policy in New Zealand and, although both FitzRoy and Grey were to consider alternative means of promoting settlement, the Crown ultimately settled on this mechanism as the best (and only) means of proceeding. Loveridge argues that the land fund required both the Crown's exclusive right of purchase and the capacity to control all forms of land dealings between Māori and Pākehā, because:

> If settlers could acquire and make use of Maori lands with the same security of title and tenure as Crown-granted lands, they were unlikely to be willing to pay the Crown an artificially high price for the acquisition or use of the latter. But it was this elevated price which was the engine of the Land Fund system, providing the surplus between costs and revenue which generated the wherewithal to subsidize British immigration and pay for local improvements – and, in New Zealand, to pay for the purchase of additional Maori lands, to renew the cycle.[59]

It was primarily the pragmatic imperatives of the land fund – the need to finance systematic settlement, immigration, infrastructure, social purposes, and administration – that drove Crown policy in these years. The perception of the leaders of the time was that this was a legitimate and reasonable exercise of sovereignty, required for the colony to progress.

The claimants do not deny that this was the Crown's view, but say that the outcome was unacceptably unfair to Māori. As counsel for Ngā Hapū Karanga said in closing submissions:

> The irony is that despite the efforts of Grey, the resurrection of the land fund was largely temporary, with both private purchasing and leasing being legalised following the establishment of the Native Land Court in 1862. By that time however the vast bulk of the Wairarapa lands had already been permanently alienated and the prospect of a Maori controlled leasing economy effectively lost forever . . . There was no

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justification in Treaty terms for attacking the Wairarapa leasing regime in order to uphold what was essentially a philosophical position with regard to the importance of the land fund.[60]

2.3.3 Normanby's instructions: 'an object of the first importance'

We start, like other Tribunals before us, with the instructions from Lord Normanby to Governor Hobson in 1839. They have been considered many times, particularly in the Orākei and Ngāi Tahu reports,[61] and we note only the salient features. It is important to revisit these because of the instructions' importance generally, and because they set out for the first time the anticipated operation of the land fund, which the Crown emphasises in its analysis of its actions in this inquiry district.

Normanby's instructions were the key statement of Crown intentions in a period crucial to the Wairarapa people. They stress the importance of Crown pre-emption, and set out the land fund model of colonisation. They also established the standard for conduct by Crown officers, both in terms of the general treatment of Māori, and specifically in terms of carrying out land purchase. These ideas persisted, although subsequent secretaries of state issued their own instructions.[62]

Hobson was ordered to negotiate with the tribes of New Zealand; first, for the cession of sovereignty. Next, he was to induce them to agree that, henceforward, no lands were to be ceded, either by sale or by gift, to any other person than the Crown. This was a priority because, Normanby stated:

> it is an object of the first importance that the alienation of the unsettled Lands . . . be conducted from its commencement upon that system of Sale of which experience has proved the wisdom, and the disregard of which has been so fatal to the prosperity of other British Settlements.

Hobson was to issue a proclamation immediately upon his arrival, stating that Her Majesty would not recognise any title to land except one derived from Crown grant. He was to 'obtain by fair and equal contracts with the Natives the cession to the Crown of such wastelands as may be progressively required for the occupation of Settlers'. All such contracts were to be made through a protector, and were to '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'.[63] This meant that, in purchasing land, Hobson had to obtain 'the free intelligent consent of the Natives, expressed according to their established usages'.[64] Further:

> they must not be permitted to enter into any contracts in which they might be 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.[65]

Normanby then sketched out the anticipated working of the land fund system. He theorised that 'waste' lands had minimal 'exchangeable value' to Māori and would remain 'useless' for many years, even in the hands of the Crown. It should be possible, therefore, to purchase these lands for a 'comparatively small sum of money' and resell them at a profit. This would generate the funds necessary for further purchases, and for financing colonisation, without causing any 'real injustice' to Māori: they too would benefit from settlement, and their retained lands would become a source of wealth for them.[66] This would be what Grey would later refer to as the 'real payment' for giving up the rest.[67]

A commissioner was also to be appointed to 'investigate and ascertain what are the lands held by British subjects

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under grants from the natives; how far such grants were lawfully acquired and ought to be respected'.[68] The workings of that Commission do not concern us here, since there were no old land claims (that is, land dealings made between Māori and European prior to the declaration of British sovereignty over New Zealand) in the Wairarapa. How to deal with these was one of the Crown's most challenging issues, and fuelled a strong desire to avoid further complications arising from private land transaction in the future.

2.3.4 Article 2 of the Treaty of Waitangi and pre-emption

The Crown considered itself to have a pre-emptive right irrespective of Māori agreement or otherwise. Nevertheless, Hobson's instructions charged him with seeking an express right of pre-emption. He succeeded. Article 2 stated that:

> 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 in that behalf.

In the Māori text, this statement was written as:

> 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.

'Hokonga' in this context has usually been translated as 'purchase' or 'sale and purchase'.[69]

Hokonga was a controversial word to have used. In the view of some language experts, hokonga was appropriate to sale but not to other forms of transaction that were more customary in nature. We discuss matters of interpretation more fully later. Suffice to note here that not all claimants agree that a distinction was made between sale, lease, or gift, while Crown witness Lyndsay Head argues that the term hoko was used interchangeably with others (tuku) and cannot be read as having a distinct meaning of permanent alienation. Our own view is that the wording 'te hokonga o era wahi wenua' – and the explanations of various officials and missionaries in the negotiations before signing – left considerable room for misunderstanding about the rights being given to the Crown. For instance, did the language preclude Māori entering into lease arrangements with settlers? Was it clear to Māori that all European uses of their lands would require an intervening Crown grant (doubtful)? Did they agree that the Crown should control the interface between Pākehā and themselves (possible)? Certainly, reports of the time indicate that the idea of pre-emption was advocated as one meant for their protection.[70]

2.3.5 Ensuring compliance with policy

In fact, Māori continued to 'lease' lands, as they had in the past, and Hobson immediately began considering the necessity of explicitly bringing these arrangements into the Crown's pre-emption.

In October 1840, Hobson sought the advice of Governor Gipps on the matter. Gipps advised that Hobson should:

> avail [himself] of every opportunity to declare that Her Majesty's Government will not suffer so manifest an invasion of the Act of Council . . . as the practice of taking leases from the natives would, if recognised, establish.[71]

Gipps's view that Māori leasing was illegal relied not on the Crown's right under the Treaty, but on the character of native title. He argued that the:

> uncivilised tribes, not having an individual right of property in the soil . . . cannot, either by a sale or lease, impart to others an individual interest in it, or, in any words, that they cannot give to others that which they do not themselves possess.[72]

This principle applied equally to sale and lease, and Gipps advised Hobson to introduce an appropriate

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measure once the home Government had approved the original legislation (the Land Claims Ordinance 1840). Lord Russell (Normanby's successor) eventually gave his official approval, but so urgent did Hobson consider the matter that he had already moved to introduce his 1841 Land Claims Ordinance.

As a result, the law now stated that:

> all unappropriated lands within the said Colony of New Zealand, subject however to the rightful and necessary occupation and use thereof by the aboriginal inhabitants of the said Colony, are and remain Crown or Domain Lands of Her Majesty, her heirs and successors, and that the sole and absolute right of pre-emption from the said aboriginal inhabitants vests in and can only be exercised by Her said Majesty, her heirs and successors, and that all titles to land in the said Colony of New Zealand which are held or claimed by virtue of purchases or pretended purchases gifts or pretended gifts conveyances or pretended conveyances leases or pretended leases agreements or other titles, either mediately or immediately from the chiefs or other individuals or individual of the aboriginal tribes inhabiting the said Colony, and which are not or may not hereafter be allowed by Her Majesty, her heirs and successors, are and the same shall be absolutely null and void.[73]

Arguably, this is the point at which the first serious infringement of Māori rangatiratanga guaranteed by the Treaty occurred, because, on its face, the ordinance significantly restricted Māori capacity to exercise authority over their lands and resources. However, the measure went largely unremarked at the time, because no penalties were introduced, and the Crown had no way to enforce the right it had assumed. Moreover, the ordinance seems not to have been translated, and historian Rose Daamen in her study on pre-emption, states that it is doubtful it was ever read publicly or proclaimed.[74]

Thus the infringement on rangatiratanga was perhaps more apparent than real, because at a practical level, little changed. Māori carried on entering into arrangements for the use of their lands as they had before, because they did not accept the restriction even if they knew of it. Although arrangements about land made directly with Māori stood outside the law and were unenforceable, Pākehā were not deterred: they continued to make deals to use Māori land to graze stock, mill timber, prospect for minerals, and so forth.

2.3.6 Crown pre-emption under challenge

Most settlers and investors in New Zealand bitterly resented the Crown's monopoly of the land market, which they held to blame for holding up progress in settlement. Loveridge shows how a strong 'free trade' party developed in Auckland (the focus of Crown purchase activity in the first two years of the colony), advocating abandonment of Normanby's land fund model and Māori-protective approach in favour of 'free colonisation'. This would entail direct settler purchase of land, free trade in goods, direct taxation, and 'equal treatment' for Māori and settlers.[75] This group lobbied against the first New Zealand Land Claims Ordinance, and sought to rouse Māori support by telling them that they were being denied their rights as British subjects to sell land as they saw fit.[76] Not that Māori could help but notice the huge mark-up in the resale price of land they had sold to the Crown just a few months earlier. Purchasing ground to a halt under the Crown's monopoly because of growing Māori dislike of the way it was using the pre-emptive right to keep prices low. This contributed to the financial difficulties of the Colonial Government, because the Imperial Government expected funds to flow from land sales, and provided no alternative funding. At the same time, ordinary settlers in Auckland could not afford the prices paid at auction by speculators, or even, so it was argued, the government's minimum upset price.

There was growing sympathy in official circles for the plight of the genuine colonist. The 'free trade' position, and the idea of opening up Māori land to direct settler

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purchase, gained ground – although it was still recognised that some form of supervision would be required to protect Māori.

There was also a shift in official attitude about the nature of native title and the Crown's obligation when extinguishing it. From 1839 to 1840, it was assumed that there was much unused, unowned land that the Crown could grant or sell to new settlers, and earn revenue for the general needs of the Government. This did not prove to be the case – at least, not at the low prices that the Crown was willing to pay Māori. The commitment to paying low prices was both philosophical and pragmatic. The philosophy arose from the idea that the land was not valuable in and of itself, but required the expenditure of labour and a secure, or Crown-derived, title in order to acquire any exchangeable value. Pragmatically, there needed to be a significant margin between purchase and resale prices in order to fund government, emigration and development.[77] There was growing opinion that the Treaty had been a mistake. This view found its clearest voice in the 1844 Select Committee, and was echoed in Earl Grey's subsequent 'wastelands instructions'.[78]

2.3.7 Waiver of the Crown's pre-emption right

Hobson's successor, Governor FitzRoy, recognised the guarantees of the Treaty, which were under increasing challenge, but relaxed the Crown's purchase monopoly in order to satisfy the pressure for land. First, he attempted to settle the New Zealand Company claims and the difficulties arising from the Wairau incident. With more company settlers preparing to embark for New Zealand and the Government without the funds to purchase the land that would be required for them, FitzRoy opted for the only solution he thought 'practicable': waiver of the Crown's pre-emption right.

He began by waiving pre-emption over 150,000 acres for the proposed settlement of New Munster (the South Island and the southern part of the North Island). The New Zealand Company agent was to select and purchase the land under the superintendence, and with the assistance of, a government officer. (This was to result in the Otākou purchase.)

Then FitzRoy authorised a pre-emption waiver for 150,000 acres in Wairarapa, where again a government officer was to assist in the negotiation. Next came a waiver over another 250,000 acres at places within the limits claimed by the company under its November 1840 agreement with the Crown (by which it could select four acres for every pound spent on colonisation).

On his return to Auckland, the Governor introduced a more general waiver system for New Ulster (the northern district), seeking to introduce supervised direct purchase while still providing for the costs of emigration and government. This system was introduced in March 1844 by the '10-shillings-an-acre proclamation'. Settlers were permitted to purchase a limited acreage directly from Māori on payment of a fee of £4 per acre to secure the waiver permit, and £6 into the land fund for general government purposes. (In November 1844, the fee for the waiver permit was reduced to 1d per acre.[79])

2.3.8 The situation in Wairarapa

In fact, the general waiver system never extended to Wairarapa, because the right of purchase was confined to the New Zealand Company. FitzRoy apparently indicated in a speech to the Wellington settlers that a more general waiver was intended, prompting movement into the valley. At least, people at the time claimed that's what he said. Squatters continued to go on to land illegally well after the Crown's position had been clarified, though. When Wakefield informed Richmond (Superintendent of the Southern Division and former Land Claims Commissioner) that several settlers had told him of their intention to begin bargaining with Wairarapa Māori for grazing rights, Richmond published notice that only the New Zealand Company had the right to purchase land in

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the district. Private arrangements, whether by 'purchase, lease or otherwise' would not be sanctioned.[80]

Nonetheless, several settlers took up the invitation of Wairarapa rangatira to reside with them. As we have seen, they were allowed to set up their homes and graze their flocks on the natural grasslands of the district in exchange for annual payments and the knowledge, skills, and goods they would bring.

2.4 Peace of the Colony?

2.4.1 Disputes few and minor

Once settlers began to move into the Wairarapa and to enter into arrangements with various rangatira, there were inevitably some misunderstandings and differences. Officials made much of the dangers of disputes arising between competing Māori, and between Māori and settlers, if the Crown did not control the terms of engagement and ensure that the correct parties were dealt with. We turn to this issue next.

Both Crown and claimants agree that the relationship between Māori and settlers was characterised by goodwill, despite some misunderstandings and complaint on both sides. Both Colenso and Weld give accounts to this effect.[81] Squatters' accounts do too. With one exception, disputes were settled without Crown intervention, deploying small gifts and payments to redress offence to Māori.

When Te Mānihera permitted Clifford and Weld to take up a new site, this was disputed by the principal right holders and their hapū. Bidwill's lease at Kopungārara, Joseph Kelly's at Tūranganui and Barton's at Maungaroa were also contested, but in no case was armed fighting reported. Although the need to maintain peace between tribes was a consistent theme of colonial policy makers, there was no violent outbreak over rights and rents in the Wairarapa.

Some squatters resented what they saw as 'pilfering' by Māori, although it is likely that these Pākehā were the kind who were unfamiliar with Māori belief systems, and unwittingly gave offence themselves. Others simply lived on good terms with their 'friends', whose customs they tried to respect.[82] On a day-to-day basis there must have been give and take on both sides. Māori insisted on payments for timber and sometimes on more moneys for grazing. On occasion, they seized goods (as we discuss below). But they accepted the Crown's judgement when matters were in dispute between them and Pākehā. They had no interest in turning Europeans off the land, provided that their own rights were acknowledged. In 1850, a local run holder, W Donald, commented that both sides kept to the terms of the grass leases, even though the arrangements were not legally binding, and Māori could have ejected the graziers if they had wished:

> these agreements have been held to in most instances by both parties and have been observed as faithfully as if . . . sanctioned by laws, the Natives knowing us as their servants, bound to them, if not legally, at least in integrity and good faith, and themselves ascending the same obligation to recognise our rights to the privileges guaranteed to us by their several agreements, in all cases I believe they have been effected without any attempt at evasion or duplicity.[83]

Nonetheless, settlers looked to the Crown for 'protection'. Donald, for example, was seeking greater security of property and person through acquisition of the freehold. The arrival of more settlers, diminishing available land, and increasing complexity of tenure as established run holders sought to transfer their rights to newcomers lacking personal connections with the Māori owners – all these would erode the goodwill he extolled in the passage quoted above.[84]

It does seem likely that some kind of Crown intervention would have been required in the near future to ensure that rights of all parties were protected. But nothing we have seen really suggests that the Crown had to bring the leasing arrangements to an end to maintain the peace of the colony.

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Maintaining the Peace of the Colony – Did English Law Apply to Māori?

Even after the signing of the Treaty of Waitangi, it was not clear where 'substantive sovereignty' rested. Many rangatira and their hapū – including the people of Wairarapa ki Tararua – did not sign the Treaty. Also, the British Government lacked troops to back its authority, and could not respond with force when fighting between tribes broke out at Tauranga (1840) and Maketū (1842).

The question of whose laws should apply was still debated in principle. Normanby, Russell and Stanley all recognised that Maori custom should continue – although not cannibalism or other 'practices especially barbarous' and contrary to 'universal laws of morality'. Lord Russell, for example, suggested that some adjustment of British law might be required, that missionary work in 'civilising' Māori should be supported, and that force should be used only to suppress unacceptable custom. Lord Stanley also saw no real problem in making allowances for Māori usages, for this had been done elsewhere in the Empire. He instructed New Zealand officials accordingly.

Officials generally assumed that British laws and customs would ultimately prevail, as would the actual authority of the Crown, although for now caution was called for. Chief Protector Clarke argued for example that it was 'an act of humanity' to treat all Māori as British subjects – though they might not have signed the Treaty ceding sovereignty – but he thought the use of military force to stop tribal conflict and ensure Pax Britannica would be 'totally subversive of the good understanding hitherto preserved between Her Majesty's Government and the native tribes'.

Governor FitzRoy shared the view that Māori should be treated as British subjects, and under British law. But he saw the advantages of adjusting those laws to accommodate Māori custom, which could not be 'at once laid aside and discarded'.

In 1844, FitzRoy made a number of concessions to Māori rights and usages, including their sitting on juries in cases where one or other party was Māori.

But it was the Native Exemption Ordinance 1844 that stated explicitly that 'immediate and indiscriminate enforcement' of English law was not the best way forward. First, 'the force of ancient usages' would need to weaken, and Māori would need to understand 'the nature and administration of our laws'. In the meantime, there would be a period of transition in which English law would be brought to bear only gradually on Māori 'relations and dealings amongst themselves'. This ordinance set out how it was to happen.

Some features are worth noting. First, the rule of thumb was that non-Māori would not get involved in crimes between Māori. 'Two principal chiefs' could invoke an English law response, but it was at their discretion. Where the offender was Māori and the victim was not, the law was to be 'enforced against any such offender with the least possible risk of interrupting the peace of the community', and rangatira could be employed (and paid) to execute warrants 'beyond the limits' of towns. Elements of tikanga (traditional rules and practices) were incorporated, such as allowing crimes of theft to be punished by a kind of muru, and providing for compensation as a surrogate for utu (retribution). Clause 12, headed 'People of Native race not to be liable to imprisonment for debt, &c' responded to the known dislike of Māori for incarceration.

At the same time, FitzRoy also requested Chief Justice Martin to draw up for publication a lesson book – *Ko Nga Tikanga a te Pakeha* – containing instructions on British laws and customs.

2.4.2 The cession of Maungaroa (Barton's Run): an unreasonable exercise of Crown sovereignty?

The single apparent exception to the generally harmonious state of relations took place at Maungaroa (Barton's Run). The incident arose from a muru of goods that happened because some of those who had interests in the leased land had been left out of the leasing arrangement and rental.

The incident is remarkable now for the inappropriate handling of the matter by Sub-Protector Forsaith. His inquiry into the matter was cast in terms of British justice and protection of the peace of the district rather than the

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Te Weretā's Muru

On the morning of 18 February 1845, a quarrel broke out at Richard Barton's newly established sheep run at Whāwhānui in south-east Wairarapa. A station hand, Charles Jones, and local rangatira Te Weretā Kawekairangi were squabbling over a pair of trousers.

Jones had demanded their return, and it had seemed Te Weretā might oblige – once he had breakfasted. But Jones grew insistent: 'I endeavoured to explain to him how wrong his conduct was,' he said.

This was too much for Te Weretā. His mana was insulted, and he became physical, thrusting Jones from the house, and ordering the upstart to cook for him.

Minor though it was, this altercation was a flashpoint in an escalating dispute over land. In just over a month, the Crown would demand that Māori hand over thousands of acres in the vicinity of Barton's Run.

Barton and Wairarapa Māori already had a relationship prior to the establishment of the Whāwhānui station. The Englishman had used labour from the region to clear land in the Hutt Valley. He had been invited to resettle in Wairarapa, and he agreed to this in late 1844. There were perceived benefits for both parties. While Barton would have grazing rights, local Māori could learn sought-after farming skills from a European with whom they already had an association.

Difficulties over land rights soon emerged. The invitation accepted by Barton had come from southern Wairarapa Māori, who had earmarked a run for him. He instead proposed the Whāwhānui block, much to the east, which he staffed with three station hands in January 1845, preferring not to relocate immediately himself.

Though Barton believed 'every native near' had signed his lease document, it was witnessed principally by Māori from Te Kōpi and Whatarangi to the west of Cape Palliser. Others with rights had not been party to the deal.

So it was that Te Weretā, an important local rangatira, came to Barton's farm to address the matter, arriving with a party of about 12 Māori the day prior to the trousers confrontation. A second contingent, this one from Te Kōpi, appeared soon after. That night a hui was held, and Te Weretā disputed the right of the Te Kōpi people to lease the land without his consent.

Come morning, Te Weretā sought gifts of clothing from James Bell, Barton's station manager. Before leaving for his day's work, Bell freely complied, supplying a pair of his own trousers and a shirt of Barton's.

Later, Jones discovered that his trousers, too, had been taken by Te Weretā, and so ensued the spat between them.

The day deteriorated rapidly. Te Weretā lashed out again, this time at a Te Kōpi onlooker who had taken Jones's part, saying it was 'wrong to take the white man's property'. The slights to Te Weretā's mana were mounting. Ignored in the land deal, he had now been insulted by a farm hand and an underling from the opposing group. On top of that, food was not forthcoming, as custom required.

Bell returned from his work to find Te Weretā impassioned. Payment was demanded for the affronts – or Jones would lose his head. Clothing, food, and tools were selected in muru by Te Weretā for distribution among his party, and a handshake with Bell sealed the deal. Te Weretā left the station with Bell's double barrel shotgun, a final assertion of mana.

But what about the Te Kōpi people? Although critical of Te Weretā's demands, they too made their own friendly requests for goods, and again Bell complied.

But events had left their mark. That night, drunk and belligerent, Bell seized a hammer and struck violently at the 10 Māori gathered in his hut. The affronted Māori took utu (retribution) for Bell's behaviour and muru'd him, although the bulk of property taken was returned in the days that followed. Requests continued for gifts, however, and fearful for his life, Bell parted with his possessions until he had little left.

When told of the incident, Barton laid a complaint with Major Richmond, Superintendent of the Southern Division. Thomas Forsaith, a Sub-Protector of Aborigines, at whose sole discretion offenders would be punished, was promptly dispatched.

It appears that Forsaith quickly decided on what should follow. He had previously experienced muru himself, for

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which the Government had compensated him amply in land. Although the Colonial Office had made clear its disapproval of the arrangement, his own experience doubtless informed his opinion.

Pointers to Forsaith's attitude were revealed on his journey to Barton's Run, the setting for his inquiry. Passing through Te Kōpi, he addressed congregated Māori as to 'the enormity of the offence they had committed'. On the next day's travel, he encountered a missionary (Colenso) who had recently seen Te Weretā, and believed 'a payment in pigs' could sort the matter; Forsaith, however, informed him that 'a section of land for the government' was his objective.

On 22 March 1845, with all parties assembled at the station, Forsaith began his investigation, which was to be 'as serious and formal' as possible. Both sides were heard, the Pākehā viewpoint given in statements by Jones and Bell.

Te Weretā acknowledged their version before speaking himself. He had come to the farm specifically to see Barton. 'I was not willing [that he] should remain on my land with his sheep without paying me for it,' Te Weretā explained. In Barton's absence he had dealt with Bell and Jones. Though he had intended neither to quarrel nor muru property, provoked by the effrontery of the Te Kōpi subordinate, he had become enraged, and then 'determined to have payment'. He added that, at his bidding, Jones had made a list of the items taken, distinguishing them from gifts.

Thomas Forsaith

Forsaith, addressing the assembly, then upbraided Te Weretā for the 'great error' he had committed: 'when you found Mr Barton absent you had no right to pay yourself.'

rights or otherwise of those entering into arrangements with Barton. The most notorious aspect of the affair was the penalty inflicted for a relatively low-level disturbance of the peace. Supposedly acting under the Native Exemption Ordinance, Forsaith demanded that Te Weretā of Ngāti Hinewaka sign a deed ceding a large block of land as penance for the muru.

The deed that Te Weretā and his community were obliged to sign was in fact the first complete transfer of land rights in the Wairarapa. Counsel for the Ngāti Hinewaka claimants contended that 'The forced cession of between 40,000 and 80,000 acres in 1845 amounted to a Crown confiscation' for which there could be no justification under the Treaty.[85] The Crown subsequently purchased the area, which Ngāti Hinewaka conceded 'may have mitigated to some degree the earlier Crown breach'. Nevertheless, Ngāti Hinewaka say that the cession resulted in a loss of authority for them, and reduced their capacity both to hold on to and to negotiate for those lands on equitable terms.[86] The Crown does not accept this conclusion (see sec 2.4.2(6)).

(1) *The dispute*

The incident began when Te Weretā and his party objected to Barton's lease, which was granted by Te Kōpi Māori without Te Weretā's consent. There were questions of spiritual authority too. The Te Kōpi people were Christians; Te Weretā's conversion was in doubt, and Colenso's journal suggests that this – in particular, the influence of native teachers on the local community – was as much at issue as

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As for Te Weretā expecting compensation from Bell for the fury induced by the hapless Te Kōpi man: 'I never before heard of a native . . . demanding payment from the European who has nothing to do with the quarrel.' Te Weretā laughed, agreeing – a moment's levity in the proceedings.

Rather than take goods, Forsaith continued, Te Weretā should have asked the Government to arrange matters with Barton. As it was, he had 'outraged the laws of the Queen', and so must make reparation 'or abide by the consequences of a refusal'.

Te Kōpi Māori also spoke, defending their actions. They had become involved as a result only of Bell's drunken attack and had returned most of the property taken in utu, they said.

The particulars heard, Forsaith pronounced judgment. The existing lease to Barton would be cancelled and a new deed signed, 'conveying the same tract of country to the Crown for ever'.

Still unacquainted with the boundaries of the land, Te Weretā asked for the original agreement to be read. On learning the extent to be seized for 'the few paltry articles' of Barton's, he flew into a fury, and 'declared he would turn all the Europeans out of Wairarapa'.

The terms were 'just' and 'final', declared Forsaith; it was 'a great offence and demanded great payment'. The territory, though large, 'was not of a character to justify his taking less'. Wairarapa Māori had a choice: either sign the new deed and benefit from 'the permanent advantages of European intercourse', or risk losing that contact. It was clear that if Māori resisted, force could result. Incensed though Te Weretā was – at one point he dramatically brandished a tomahawk – he ratified the deed, as did all gathered at the station, and also other Te Kōpi Māori at a later date.

Thus, Barton's Run was ceded to the Crown – yet little changed on the ground. In lieu of goods still owed, Forsaith recommended that Barton continue to have the right to graze the land for a nominal rent. Wairarapa Māori nonetheless exacted rental payments from Barton in the years that followed. The zealous conduct of Forsaith met with a series of less than enthusiastic responses from the Government, which sought to distance itself from the incident – but without overturning the deed.

As for Te Weretā, on his return to his village he renounced Christianity. He made a point of resuming traditional practices. He thumbed his nose at the proponents of Christianity by discarding his baptismal name and calling himself 'The Devil'.

the question of who had the right to control arrangements with outsiders.

In response to the Barton lease, Te Weretā demanded his own payment from the lease arrangements, and the station manager (Bell) agreed to hand over some articles of clothing belonging to Barton and himself in satisfaction. Matters escalated. Alcohol was involved, and in some way offence given to the chief. Accordingly, Te Weretā took away an assortment of goods, as did the Te Kōpi people. These were later returned in recognition of the 'wrong' action.[87]

(2) *Response to the muru*

This sort of occurrence – a demand for goods as redress for a perceived insult or some offence given to a chief – was common in the early years of the colony. However, the Crown and settlers mostly saw the practice as theft and were anxious to bring it to an end.[88] Barton was in occupation of the land outside the law, but he still looked to the authorities to protect his property. Both Barton and Bell laid depositions with Wakefield, and Barton appealed directly to Matthew Richmond, Superintendent of the Southern Division. Richmond sent Sub-Protector Forsaith to investigate 'the outrage and robbery' that had purportedly occurred.[89]

On 22 March 1845, Forsaith conducted an onsite investigation and the deed bore the same date.[90] Both sides were heard, although it is doubtful that Forsaith really had an open mind.

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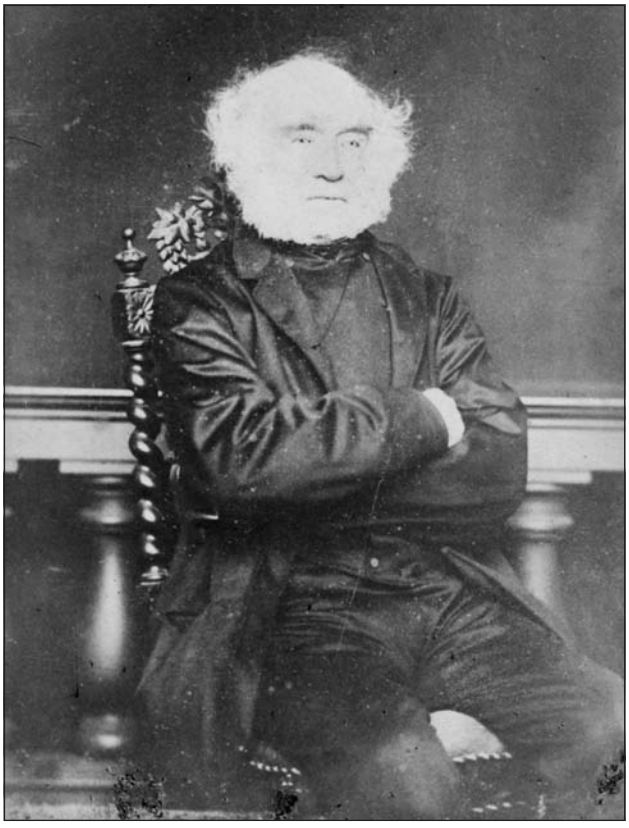

Richard Barton in the 1860s

(3) *The punishment*

Giving judgment, Forsaith rebuked Te Weretā for the 'outrage' he had committed against the 'laws of the Queen', and demanded that he make reparation by giving up the area that was formerly leased to Barton. The lease would be cancelled and, instead, all that land was to be conveyed by deed to the Crown 'forever'. Or, threatened Forsaith, Te Weretā could 'abide by the consequences'.[91]

Despite Māori objections, Forsaith insisted that his decision was 'just':

> the offence they had committed was a great offence and required a great payment, that it now remained for them to make their choice, whether they would continue the friends of the Governor, and secure to themselves the permanent advantages of European intercourse, or whether they would send him away as the messenger of their obduracy, and force him to warn all the Europeans that they could no longer remain with safety in Wairarapa.[92]

The deed effecting the transfer to the Crown was signed reluctantly. An estimated £60 of Barton's goods had not been returned, and Forsaith proposed to Richmond that compensation should comprise the lease of the ceded land at a peppercorn rental.[93] This proposal was never formalised but Barton remained on the land, apparently under the Crown's grant of five years of free use, before the Government reconsidered its position and brought the arrangement to an end by a series of purchase deeds. In the interim, Māori expressed their dissatisfaction and Pākehā their unease about the justice of the penalty.[94]

(4) *Fall-out?*

It is not clear exactly what was happening on the ground and the impact it had, if any, on Te Weretā's prestige and authority. Certainly, any chance of Colenso's being able to win Te Weretā over and open the district completely to Christianity was lost for the immediate future. Te Weretā, who had flown into a rage, had nonetheless 'complied with Forsaith's demand, ceding a large tract of land', which, in Colenso's opinion, 'by the bye, did not belong to him'. Returning to his kāinga, the chief had assembled his people, and renounced Christianity, and turning the tables on Colenso's teachings on tapu, threatened to turn the chapel into a cooking shed for his food and burn all his books. Then, gathering together his cast-off wives, he remarried them, and uttered 'bitter native (cannibal) curses' against Colenso and the native teachers. He rejected his Christian name, insisting that the people in his settlement call him only 'The Devil'.[95]

Colenso's journal of his visits over the following six years noted the temperature of Te Weretā's opinions (as well as

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the patchy penetration of the Christian message into the district). At first Colenso lamented the 'sad and powerful example' of Te Weretā, whom he referred to by his Pākehā name, Arthur Wellington.[96]

According to Colenso, Te Weretā's kāinga (village) was at Whāraurangi; although a chapel had been built there, it was overgrown with weeds. The inhabitants of Pāhaoa had been 'very shy' of visiting Te Weretā's kāinga, due to the chief's 'desperate character'. But, in 1849, Te Weretā attended a prayer reading held on Colenso's verandah.[97] Gradually, Te Weretā seems to have repaired his relationship with the missionary, but without giving up what Colenso thought of as his heathen and adulterous ways. In 1852, the chief met with Colenso on the occasion of Easter services at Te Awaiti, querying why his third wife had not been admitted into the church.[98] Colenso recorded that the chief had debated in the wharenui (meeting house) with one of the Christian Māori and, after three hours, 'came to an amicable arrangement'. He had then accompanied Colenso to Waipupū and probably on to Mātaikona, where Te Hāpuku and a number of Heretaunga-based Ngāti Kahungunu chiefs had gathered to 'transfer another large portion of their land to the Government'. The missionary noted in passing that 'many of the Chiefs' and 'their own young and near relations' deliberately scattered their places of habitation through the district.[99]

On the one hand, the cession seems to have changed little in practical terms. Te Weretā continued to exercise local authority, and to command the respect of his people. Barton and other Europeans continued to pay rent, or promised to do so. Partly, this was to satisfy Māori who had rights in the ceded land but who had not been involved in the muru. But Te Weretā himself also demanded payments for some portions of the lands covered by the deed he had been forced to sign.[100] The western part was leased to Thomas Purvis Russell and another portion to Charles Pharazyn.[101]

On the other hand, it would seem that Barton did continue to occupy lands at Maungaroa without making annual payments to any Māori, though it is impossible to say exactly what area was involved because there was no survey at the time.[102] It is also clear that the incident, and the approach taken by the Crown, effected a basic shift in the power balance. In 1851 Māori from Peretanginoa near Tūranganui wrote to Grey expressing fear of further penalty – Forsaith had threatened to back his authority with force – and their sense of grievance.[103]

Superintendent Richmond seems to have been well pleased with Forsaith's measures, forwarding his report, with a covering letter to the Colonial Secretary, seeking the Governor's approval. He maintained that Forsaith had won a 'moral victory over a violent and excitable chief', inducing Te Weretā and his followers to 'confess their crime and seek [Forsaith's] pardon'. They also gave back property that had not already been consumed, and ceded a large tract of territory in 'expiation of their offence'.[104] He then wrote to Te Weretā, pardoning him, and telling him that his offence would be 'buried'. But in future Te Weretā should 'take care of the natives lest they offend against the Europeans', just as Richmond would 'take care of the Europeans lest they offend against you'.[105]

(5) *Criticism of Forsaith's approach*

Other Crown officers questioned the appropriateness of Forsaith's penalty on a number of grounds, although they were reluctant to disavow it publicly.[106] Forsaith's penalty followed a precedent set by Protector Clarke four years earlier, at Kaipara, when his (Forsaith's) own goods had been taken in a muru.[107] On that occasion, the Colonial Office had subsequently condemned the measure. In 1842, Lord Stanley (Secretary of State) said that requiring Māori to cede land in such circumstances was a 'penal infliction' of 'too questionable propriety to be often repeated'. To punish such acts by the confiscation of large tracts of land was likely to result in 'dangerous consequences' for Māori and the peace of the colony.[108]

It is unclear whether Forsaith knew of the criticism, but it is likely that Protector Clarke did.[109] When Clarke himself visited the Wairarapa in 1846 to negotiate its purchase on behalf of the New Zealand Company, he had little to say

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in favour of Forsaith's approach. The penalty was 'perhaps . . . the best arrangement that could have been made' in the circumstances, but Clarke now repeated Stanley's view that he 'could not approve of the principle as a general rule of action'. He did not question that a penalty was called for, but thought that the amount taken seemed excessive. His concern focused on the impossibility of measuring a penalty in terms of acreage of land of indeterminate quality and unknowable value to its owners. We note his conclusion, however, that the real solution was to provide some form of Crown supervision of transactions between Māori and Pākehā so as to ensure that both sides understood them:

> It is . . . very certain that the safest and most effectual mode of remedying this evil will be to subject the agreements for grazing stations made by the settlers with the natives of this district to the supervision of an officer acquainted with the native language and usages, in order that both parties may clearly understand the arrangements they are making.[110]

At the end of the decade, complaints from Barton that Māori were threatening to remove him from his run led to inquiry by the Colonial Secretary. Barton was informed that the period for his occupation of the land had expired; it was Crown demesne and required for other purposes (to fulfil Crown arrangements with the New Zealand Company). Māori, for their part, were told that the deed 'must be regarded as sacred', that acts of violence would be punished, but that the case would be referred to the Governor-in-chief.[111] Nothing more was done, however, until McLean turned his attention to the Wairarapa in pursuit of a district-wide purchase programme the following year. His observation, then, was that Forsaith's threats were 'equivalent to a declaration of war,' inducing the cession out of fear.[112] McLean described himself as:

> quite ashamed that the Government was ever in any way party to Barton's imposition and occupation of land acquired under such a ridiculous tenure.[113]

But his solution was to adjust rents in arrears and to purchase rather than publicly disavow the cession. By this stage the idea of Crown supervision of private de-pasturing arrangements between Māori and Pākehā – along the lines suggested by Clarke – had been dropped completely.

(6) *The negative effects of Forsaith's conduct*

The Crown has made a number of factual admissions relating to Forsaith's actions, and accepts that the cession of such a large area was a 'punishment disproportionate to the gravity of the incident'. McLean acknowledged as much in 1853.[114]

The Crown does not concede, however, that Māori were significantly prejudiced. In part, this was because:

> Barton was obliged to pay, or promise to pay, various sums to Maori for his continued occupation of parts of the ceded land.

Another settler, J P Russell also paid rent of £30 per annum for use of the area supposedly ceded.[115] In essence, therefore, Māori rangatiranga remained unimpaired; also, some form of punishment for Te Weretā's 'theft' was justified.[116] Moreover, the Crown argued, the cession had no effect. McLean later compensated Māori for their loss of income; arranged for Barton to pay arrears in rent; and, in his subsequent purchase 'attached no practical significance to the cession'.[117] These circumstances meant that the Crown was not prepared in this case to concede (as it did in the Kaipara case, where 'repurchase' also took place) that its actions may have contributed to the alienation of lands that Māori wished to retain.[118]

We look later at whether McLean's 1854 negotiations for 'Mataōperu' (Barton's Run) and overlapping blocks wiped the slate clean and removed the possible prejudice to Ngāti Hinewaka from the Barton's Run incident. As for the appropriateness and validity of what Forsaith did, the Crown admits that his actions were 'regrettable and over zealous', and they would have been 'disproportionate' if the penalty had come into real effect. The Crown declined to go as far as saying that Forsaith's high-handed

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investigation, judgment, and penalty were not warranted at all.

Forsaith was supposedly acting under the Native Exemption Ordinance 1844. This allowed a protector to issue a warrant through the two principal chiefs of a district in cases where a Māori living outside the limits of a town had offended against a European. In cases of theft, a Māori offender who was found guilty could avoid sentence on paying four times the value of the goods stolen. Forsaith demanded 'reparation' in land, and in doing so misused a law designed to amalgamate law and custom to adjudicate disputes between Māori and settlers.[119]

We accept Bruce Stirling's assessment that Forsaith prejudged the case and pre-determined the punishment.[120] His primary concern was putting down the practice of muru. He did not inquire properly into who held customary rights in the lands to be ceded. Moreover, Māori who had returned what had been taken or had not been involved in the incident at all were still required to cede land.

Even if muru was a customary practice that the authorities needed to try and control – in the interests of the peace of the colony, and to protect person and property – Forsaith's approach lacked the impartiality and discretion that must attend the just imposition of penalties under law. His actions bear the hallmarks more of an attempted land grab than fair arbitration under the Native Exemption Ordinance.

The fact that rents were collected, and that McLean subsequently made sure that everybody was paid, does not mean there was no prejudice.

These years were critical in establishing how Māori in the Wairarapa would engage with settlement. That Forsaith was allowed to do what he did, and that his actions were not immediately undone once wiser heads recognised their unfairness, must have sent an alarming signal to Māori about the potential for power to be arbitrarily wielded against them. It would have been impossible for the affected Māori to discern justice in what Forsaith did, and yet they were expected to comply. They did so, as McLean commented later, because they 'feared the consequences of a rupture with the Government' if they ejected Barton. A critical consequence – perhaps the one most feared – was that the Government would withdraw its protection. Then, existing settlers would leave, and no new settlers would come.

The lesson was clear: in order to retain the favour of the Crown, Māori must be prepared to comply with what officials wanted, however unreasonable.

2.4.3 Treaty breach

This was not the dispensation that the Treaty promised. Under that dispensation, arrangements between Māori and Pākehā would be properly understood, all right holders identified, and terms fairly negotiated. Instead, again in the words of McLean, the Crown was guilty of 'assisting . . . a private adventurer, for his personal aggrandisement, in his illegal and . . . unjust occupation of native lands.'[121] Even though Wairarapa Māori at that time retained their numerical strength, they must have been disillusioned.

McLean's subsequent adjustment of rents and purchase might have mitigated this disillusionment. But in the next chapter we discuss how McLean did not consider allowing the land to revert back to Māori ownership. Rather, Māori were obliged to sign further deeds of sale with the Crown to avoid losing out on both future rents and possibly, they thought, any future payment at all. This had the effect of advancing the Crown's wider purchase objectives, and maintaining an appearance of legality and impartiality.

We consider, therefore, that there was a breach of the Treaty principles here. The Crown failed:

- to act in good faith (particularly in not undoing Forsaith's deeds once the extent of their unfairness was appreciated);
- to actively protect Māori interests; and
- to accord Te Weretā and affected others equality before the law (the process Forsaith engaged in with Wairarapa Māori would never have been imposed on Pākehā), thereby denying those Māori the rights of British citizens under article 3.

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2.5 The Demise of the Wairarapa Leasehold Economy: Crown Policy under Sir George Grey

2.5.1 Grey restores Crown pre-emption

The arrival of Governor Grey in 1845 brought an end to FitzRoy's experiment in waiving pre-emption – and ultimately also to the informal leasing arrangements in the Wairarapa.

In his instructions of 1844, Lord Stanley told Grey to ascertain Māori land titles according to their customs and usages, and also to re-establish the land fund – 'the system of providing the means of defraying the expense of . . . [e]migration from the proceeds of the sale of Land'.[122] Grey duly stopped the issue of waivers, reporting that it would be a mistake for the Crown to give up its pre-emptive right. This was not just a matter of funding government. Grey saw pre-emption as a means of ensuring good behaviour on the part of Māori, for:

> no more certain means of controlling the natives could be found than refusing to purchase any lands from those who conducted themselves improperly, and in whose intentions of surrendering their lands, no confidence could be placed.[123]

Grey argued, too, that disputes had arisen under the waiver system because titles had not been properly investigated, and boundaries were undefined, adding to the sum of land issues already faced by the Government.[124] This is worth noting because it indicates what Grey expected of others: that titles should be correctly established so that it could be shown land was acquired fairly, with the informed consent of the proper owners, and with boundaries properly surveyed. Of course, these kinds of standards could also have been applied to good, regulated leases.

2.5.2 Grey opposed to informal leasing

Grey fought the war in the north, abolished the protectorate, and then, assisted by the promise of more generous imperial funding, considered whether local alternatives to the land fund could be found. Grey was firmly opposed to a free and unsupervised market in land. At this stage he seems to have favoured a mixture of direct purchase, regulated lease under Crown supervision, and indirect taxation as the best means of promoting 'peaceable and prosperous colonisation'.[125] These were the intentions he outlined to the Secretary of State for the Colonies, W E Gladstone, in June 1846 and to Gladstone's successor Earl Grey, in October 1846.[126] A licence regime was briefly introduced in New Ulster, but then Grey abandoned this idea in 1847 to 1848, in favour of his 'nearly allied principle' of opening up 'wastelands' for settlement. This would involve large-scale Crown purchasing at nominal prices, with Māori rights protected in the core sites they inhabited.[127]

But whatever system was to be put in place, it was necessary first to gain control of the land market. Although the focus of the public debate was on the question of direct purchase, it was as necessary, in Grey's view, to prevent the further expansion of the informal leasehold economy as it was to stop unauthorised purchases of customary land.

Although the 1841 ordinance had included leases, along with other land transactions, as needing a Crown grant to be legal, no penalties were introduced for ignoring that requirement. Squatters were prepared to take the risk. They grumbled about what Wakefield called the 'capricious demands of the natives' – which the squatters usually had to satisfy, since they were acting extra-legally – and they reckoned (correctly) that neither Government nor Māori had any interest in turning them off their runs.[128]

2.5.3 The Native Land Purchase Ordinance 1846

In 1846, Governor Grey took further steps to stop informal direct leasing. The Native Land Purchase Ordinance was to 'provide for the prevention by Summary Proceeding of unauthorised Purchases and Leases of Land'. Its preamble stressed that Government control of the disposal of land was essential to the peace and prosperity of the colony: 'to that end, the Right of pre-emption in and over all lands within the Colony [had] been obtained by Treaty'. The

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ordinance stated that unsanctioned arrangements for sale, use, or occupation of land had often been made without 'due regard to the validity of title', or were 'defective by reason of a want of a clear understanding' between the parties involved.

Clause 1 now provided that a summary prosecution could be undertaken:

> If any person shall after the passing of the Ordinance, purchase . . . any estate or interest in land from any person of the Native race, or shall . . . agree with any such person for the purchase of the right of cutting timber . . . or of the right of Mining or of the right of Pasturage, or for the use or occupation of land.
>
> And also if any person who shall not hold a license from the Government for that purpose shall be found using or occupying any land not comprised within a Grant from the Crown, either by depasturing any sheep or cattle thereon, or by residing thereon, or by erecting any house or building thereon, or by clearing, enclosing or cultivating any part thereof, or who shall be found without such license aforesaid to have cut timber . . . or to have gotten any mineral therefrom.[129]

Breaches would attract a fine, later set at between £5 and £10.[130] Only Pākehā were liable to prosecution. Although the land involved in the prohibited transactions could be deemed Crown demesne, the terms of the ordinance made it clear that the measure was intended as a 'speedy and effectual remedy' to punish European offenders rather than confiscate Māori land.[131]

(1) *Grey justifies the ordinance*

Grey argued that the ordinance would benefit both settlers and Māori. He told the Legislative Council that it was 'in reality a charter to those who wished to invest capital', guaranteeing 'to the squatter the necessary security to take out a licence for sheep and cattle runs'. He intended to provide 'something like a right of pre-emption' for the settlers, 'whereby an individual who had leased land and cut roads . . . or perhaps erected a mill, should not be turned off at the caprice of a parcel of savages . . . '.[132] He also saw Māori long-term interests as being benefited by regulation of the land market. Not only would investment be encouraged, but the alternative – unsupervised dealing in land still under native title – would result in the degradation of Māori, and conflict. Introducing the measure, Grey predicted that allowing Māori to sell 'to whom they please' would:

> lead to the most disastrous results . . . it would most assuredly tend to the extermination of the native race . . . the system was calculated to induce habits of indolence in the natives, which, above all things, should be vigilantly guarded against. So long as they could thus dispose of lands, to which many of them no doubt had no just claim, they would lounge about the towns and live in idleness, instead of deriving a subsistence from their industry and the sale of their surplus produce, which would tend to their own prosperity and that of every settler in the Colony.[133]

Ultimately, Grey argued, Māori who had divested themselves of all their lands would attempt to seize those of weaker tribes. Fighting would result, both among the tribes and with Pākehā.

(2) *Penalties for infringement*

Grey considered that the introduction of penalties for infringement of the Crown's pre-emptive right was well within the legitimate exercise of sovereignty. Loveridge points out that the Crown's right of pre-emption was a 'fixed component' of the British colonisation system at 1840 and, he argues, 'would undoubtedly have been imposed upon New Zealand even if the Chiefs had not explicitly accepted it'.[134] It was a matter between the Crown and its British subjects before the Treaty was signed, not between Crown and Māori. Before the signing at Waitangi, the Crown had proclaimed, in Sydney on 14 January 1840, that land titles not derived from, and confirmed by, a Crown grant would not be recognised as valid. If the Crown could not prevent Māori from directly dealing with settlers in their customary lands, it could discourage the practice

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by denying such dealings legal recognition. Chief Justice Martin would later comment in the famous case *Queen v Symonds*, that:

> this [the pre-emptive] right of the Crown, as between the Crown and its British subjects, is not derived from the Treaty of Waitangi; nor could that Treaty alter it . . . [T]he principle itself was already established and in force between the Queen and Her British subjects.[135]

There was therefore nothing remarkable about introducing penalties for British subjects who ignored the pre-emptive right. Loveridge suggests that the proposed new law came as a surprise to the Legislative Council, but was accepted on Grey's assurances that the interests of existing squatters would be supported, and that a new and more effective way of opening up land would soon follow. It was a first step, preventing further irregular settlement and 'paving the way for Grey's new system for the regulation of direct sales and leases'.[136]

(3) *Opposition to the ordinance*

Nevertheless, direct purchase advocates were alarmed, and immediately petitioned for the ordinance's repeal, arguing that it was an 'unjust and arbitrary measure'. They accepted that it was proper for the government to apply penalties to extra-legal sales, but not leases. It was noted that if the ordinance were implemented, it would mean the end of whaling, timber, cattle, and trading stations, all of which relied on informal leasing and occupation.[137]

The petitioners also said that the ordinance was 'calculated to excite the suspicions, and rouse the jealous apprehensions of the entire Native population, inasmuch as it is a virtual abrogation of the Treaty of Waitangi'.[138] The editor of *The New Zealander* agreed. As far as the Treaty was concerned, the ordinance amounted to 'an occult breach' of that agreement. He claimed it was 'obvious' from speeches made during the signing that the chiefs involved:

> had not slightest intention of surrendering any portion of the right they possessed of exercising an unlimited, discretionary control over the disposal of their own lands.

Defence of the Native Land Purchase Ordinance

In defence of his Native Land Purchase Ordinance, Grey told Earl Grey that unregulated direct purchase and leasing would encourage tribes to take land from their weaker neighbours, and rapacious European speculators would be able to acquire large areas at nominal prices. He claimed that such individuals 'have already been attempting to grasp at large tracts of country, with a view of sub-letting, or to take leases on such terms, as virtually amounted to a purchase of the land, &c'.

The Chiefs needed to be consulted, and their consent obtained to allow such a departure from the original contract. The editorial derided Grey's efforts 'to make it appear that a consultation of the kind had taken place'.[139]

(4) *Grey takes on his opponents*

Grey was not the man to crumble in the face of opposition. He set about defending his policy choices.

It certainly was not his intention to dispossess anybody already in an established sheep run or timber station (although gold mining was another matter). Rather, as he explained in his dispatch to Earl Grey of November 1846, he wanted to 'secure to them all such advantages as it may be found expedient from the circumstances of this country and attach to a right arising from pre-occupancy' while at the same time, preventing any further 'irregular squatting'.[140] The Governor informed Earl Grey that he intended to introduce a licensing system, by which the Crown would acquire 'great influence over the Native population from the fact of its regulating the mode under which the waste-lands are to be leased'. Controlling Pākehā access to use and occupation of customary lands would also enable the government to insist that questions of ownership were first

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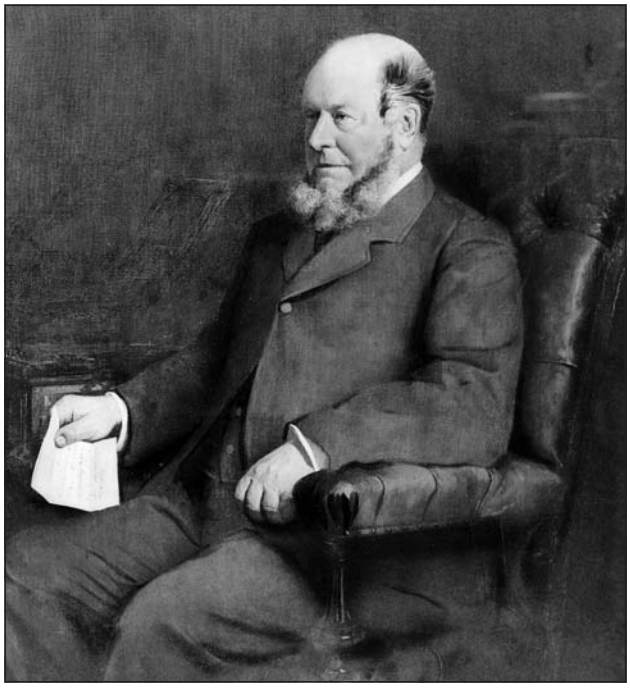
The Principles on which the Colony was Founded: Normanby's Colonisation Model

In 1839, Lord Normanby, Secretary of State for the Colonies, sent Captain Hobson to treat with Māori for the sovereignty of part or all of New Zealand based on key instructions on how the Government should conduct itself towards Māori:

- Māori 'title to the soil . . . is indisputable'.
- The Governor to 'obtain by fair and equal contracts with the natives the cession to the Crown of such wastelands as may be progressively required for the occupation of settlers'.
- Protectors to be appointed and negotiate in all matters with 'sincerity, justice and good faith.
- The Governor to persuade the chiefs 'if possible' that 'no lands shall be ceded, either gratuitously or otherwise, except to the Crown'.
- Systematic colonisation to be conducted under a land fund model: wastelands in Māori hands could be purchased cheaply and resold to fund colonisation; 'the price to be paid to the natives by the local Government will bear an exceedingly small proportion to the price for which the same lands will be re-sold by the Government to the settlers, nor is there any real injustice in this inequality'.
- 'To the natives and their chiefs much of the land in the country is of no actual use, and in their hands it possesses scarcely an exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange shall be first created, and then progressively increased by the introduction of capital and of settlers from this country. In the benefits arising from that increase the natives themselves will gradually participate'.
- 'You will not . . . purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety, or subsistence.'



Photograph of a portrait of George Augustus Normanby, painted in about 1875. Normanby was very influential in the establishment of the colony of New Zealand.

'amicably arranged amongst the Natives' first, with claims to such lands 'duly ascertained and registered'.[141]

He mentioned that 'The memorialists also object to this enactment because they regard it as an infringement on the rights [of Māori]'. He commented:

> I think that I shall be able to show in my separate Despatch [*sic*] on this subject, that this enactment will protect the rights of the native race.[142]

The promised dispatch refuted opponents' allegations, emphasising advancement of 'the rights and ultimate welfare of the native population, and the safety of the large European population now in the Country'. His principal themes were the familiar ones: unregulated direct purchase and leasing would encourage tribes to take land

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The Principles under which Wairarapa was Purchased: Governor Grey's Colonisation Model

In 1846, Governor Grey firmed up the Crown's position on pre-emption, which had been waived in some instances and ignored in others. He passed the Native Land Purchase Ordinance, which introduced penalties for settlers who entered into leasing and other sorts of occupancy arrangements with Māori.

Grey argued that the measure was required because:

> various persons continued to make pretended purchases and to take pretended leases from Native Chiefs, whose title to such land was often fictitious.

The result was that the colony was 'threatened with . . . evils' – disputes, encouragement for the more powerful tribes to take lands from their weaker neighbours, and interference with the progress of settlement. Grey thought it was necessary to include leasing in the pre-emptive regime because 'If leases of lands are permitted to be taken from the natives, without proper regulations on the subject being established and enforced by the Government nearly similar results will follow'.

In 1846, Earl Grey became Secretary of State for the Colonies. He instructed Governor Grey to register all Māori land. Where the Crown had not already recognised Māori title to specific 'wastelands', the Governor was to conduct purchases according to the principles of British 'wastelands' theory. This assumed that indigenous people owned land they occupied only by building on it or cultivating it. His instructions ignored Māori concepts of ownership under their own customary law.

Governor George Grey in the 1850s or 1860s

from their weaker neighbours, and rapacious European speculators would be able to acquire large areas at nominal prices. He claimed that such individuals:

> have already been attempting to grasp at large tracts of country, with a view of sub-letting or to take leases on such terms as virtually amounted to a purchase of the land etc.[143]

He did not broach the question of the chiefs' consent. Perhaps for Grey it was, as *The New Zealander* phrased it, a case of 'the end justifies the means'.[144] He acknowledged that the Crown's pre-emptive power was an impediment on Māori rights, but defended its exercise as necessary and protective.

When Grey met with Weld in early 1847 he was still contemplating a system whereby Māori would be protected in

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Neither intangible associations with a place, nor hunting, fishing and other resource use, nor ahi kā roa (continuous occupation connoted by keeping fires burning), were considered to confer any title on Māori.

Governor Grey received Earl Grey's instructions in mid-1847. In 1848, the Governor informed Earl Grey they could not be carried out – except with bloodshed. He argued that they could, however, be given effect through a scheme based on a 'nearly allied principle'. It went like this:

- 'The native population would, to the best of their ability, resist' any idea that they had no rights to unused lands but would 'cheerfully recognize the Crown's right of pre-emption'.
- '[T]hey will in nearly all – if not in all – instances dispose, for a merely nominal consideration, of those lands which they do not actually require for their own subsistence.'
- The Crown would purchase 'very large tracts of land' ahead of settlement – 'extinguish[ing] absolutely the native title'.
- 'Reserves' would be set aside and registered as the 'only admitted claims of the natives in that district'. The reserves would be 'an adequate portion for the future wants of the natives', and would afford 'small portions of land, for the purposes of cultivation . . . reserved for each tribe'. They would also 'accustom them to hold land under the Crown'.

Grey told Earl Grey that the only difference between what he had instructed and Grey's own proposal was that Earl Grey's would not work. Grey's approach would have 'the appearance of a boon conferred by the Government, instead of clothing it with a compulsory character' and was 'well suited . . . to the probable future wants of an agricultural population, such as the Maories are'.

Earl Grey approved this compromise and confirmed that, under the Treaty, Māori owned whatever land they were entitled to, under their own law.

their rents (for the meantime), and squatters in their tenancy. Weld reported that the Governor's intentions were 'most favourable towards us the squatters':

> We are to hold runs by paying a fair annual rent for grazing 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 his run at £1 per acre when such part is to be put up to auction . . . A commissioner is to be appointed to decide on the Native owners of each run to whom the rent is to be paid after which of course the Government will protect us in case of any disturbance on the part of the Natives.[145]

But a few months later, in July 1847, the Governor received Earl Grey's 1846 'wastelands' instructions that cut right across his own proposals. No system of securing leases to both parties was ever introduced. Instead, Grey opted for a uniform system of large-scale Crown purchase as the best – indeed, the only – means of promoting settlement.

2.5.4 Earl Grey's 'wastelands' instructions, and the leasing proposals that came to nothing

(1) *Before Earl Grey*

Earl Grey's predecessor, Lord Stanley, had given Grey instructions that were broad in scope, and not readily capable of implementation. Grey was to re-introduce pre-emption, carry out Normanby's and Russell's earlier instructions, identify the correct owners before buying land for the New Zealand Company, and assist the company in putting settlers in possession of promised land.[146] Today, rugby commentators would describe this as 'a big ask'.

Stanley also assumed that there were unused lands in New Zealand that did not properly belong to anyone.

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Henry George Grey, third Earl Grey, an English statesman who became Colonial Secretary in 1846

Unclaimed wastelands would belong to the Crown, so Grey was told to register within three years Māori claims to the land that was theirs so that the property of Māori and Crown (the unused or 'wasteland') could be clearly demarcated.

Māori claims to land were to be respected, though: Stanley was clear that the Treaty was to be scrupulously upheld.[147] Māori laws were also to apply. Registration of Māori claims would follow a proper inquiry as to titles, based on Māori custom rather than British precepts. Loveridge told us how Stanley expressly said this in a speech to the British Parliament in 1845: the 'limits and rights of tribes are known and decided upon by native laws'. The question as to whether there were unowned lands in New Zealand was one 'on which native law and custom [had] to be consulted'. These laws were well understood among Māori, and Stanley affirmed 'By them we have agreed to be bound, and by them we must abide'.[148]

(2) *Earl Grey's approach*

When Earl Grey took over the reins from Stanley, the tenor of the instructions concerning wastelands changed. Earl Grey's approach involved a less generous interpretation of wastelands, stripped of the protections assumed by Stanley. Also far less clear was whether Māori rights to land would be determined in accordance with Māori concepts of land ownership or Earl Grey's interpretation of those concepts.[149]

Earl Grey's previous experience predisposed him to a niggardly approach to Māori land ownership. In 1844, he was the chair of a House of Commons committee that condemned the Treaty, and, in particular, the British Government's view that article 2 meant Māori owned all the lands comprising New Zealand. Now, Governor Grey was told to modify the position on the ground in New Zealand. He was to honour any prior Crown recognition of Māori title in particular places, but where there had been no such recognition, he was to follow the principles set out in that committee's 1844 report. These were based not on Māori customary law, about which the committee had received evidence, but on the views of the Swiss jurist, de Vattel. The principles had been popularised in Britain by Dr Arnold, the headmaster of Rugby School, who theorised that aboriginal peoples had no laws of their own and had title only to lands on which they had built residences or expended labour. Thus, Governor Grey was to register Māori titles to land 'in use', as narrowly defined by Arnold, and assert Crown title to the rest.[150]

In the event, Earl Grey resiled from the position on wastelands set out in his instructions, daunted by strong

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protest from the missionary societies, and from prominent New Zealanders, such as Chief Justice Martin. Māori objected, too.[151] In 1848, Earl Grey reaffirmed the Treaty in a letter to the Wesleyan Missionary Society, which he then forwarded to Governor Grey as an explanation of his views. In it, he stated that the Government recognised the Treaty and title 'to those lands which they possessed according to native usage (whether cultivated or not) at the time of the treaty', while 'the exclusive right of extinguishing such title by purchase' was similarly secured to the Crown.[152] He endorsed the standards developed by Normanby, in the Treaty, and the Colonial Office, and by statements of Hobson, FitzRoy (and Grey).

(3) *Governor Grey's 'nearly allied principle'*

In the meantime, Governor Grey did nothing to implement Earl Grey's instructions. Finally, in May 1848, he wrote to persuade him of the merits of his 'nearly allied principle', a much safer way of achieving the same ends. (See box 'The Principles under which Wairarapa was Purchased: Governor Grey's Colonisation Model', previous page.)

The Governor insisted that the Crown's pre-emption right could and should be reasserted. Māori would 'submit', even though FitzRoy's waiver had engendered 'a reckless spirit of bargaining for lands between the natives and European speculators'. Crown pre-emption was the 'best guarantee for the future welfare of the natives' and, he argued, 'recognised as such by [Māori] themselves'.[153]

Governor Grey knew that article 2 guarantees of ownership would have to apply to all lands, not just lands considered to be in use. But, assured of far better funding than his predecessors had been, he now advocated making big purchases ahead of settler demand. He argued that Māori would 'cheerfully recognise the Crown's right of pre-emption', whereas they 'would, to the best of their ability, resist' any idea that they did not own their uncultivated lands. Grey's own belief was that Maori rights to wastelands were not 'strictly valid'.[154] In Grey's view, such lands must have little real value for Māori, and issues of overlapping boundaries could be disposed of by a sequence of purchase payments at nominal prices.[155] An 'adequate portion for the future wants of the natives' would be reserved and 'registered as the only admitted claims of the natives in that district'.[156] He anticipated that Māori would join with the colonial community in benefiting from settlement and development of the colony. He also thought his proposal differed little from what Earl Grey had wanted, except that his scheme would work while Earl Grey's wastelands instructions would be rejected outright.[157]

The Governor was right when he assured Earl Grey that his suggested approach was 'nearly allied' to Earl Grey's wastelands policy. In fact, it was nearly the same thing, but in a different guise.

(4) *Governor Grey's approach crystallises*

We shall return, in the next chapter, to the question of how ideas about 'unused' lands affected questions of price and the requirements for reserves. For the moment, we note that the era when the Governor was open to Māori leasing their customary lands (as opposed to only lands held as reserves under Crown grant) had ended. The proposal sketched out to Weld did not go ahead – except for the part about squatters being able to buy land they held under lease – and the fledgling licensing system that had been introduced in New Ulster was abandoned. By the end of the decade, Grey had completely discarded any notion of Crown-supervised leases for the colony, along with the idea of direct settler purchase through a Crown intermediary.

Instead, the Crown would identify the correct right holders, purchase from them large tracts of unwanted lands at cheap prices, and register Māori ownership of what was left. Their rights to those 'reserve' lands would be formally recognised by the Crown, with the plans and documents 'much esteemed by the natives'.[158] In this way unrest would be avoided and, with the profit made from resale, the Crown could finance infrastructure, emigration, and Māori 'civilisation'.

In 1849, frustrated by Grey's failure to follow through on his promises, the New Ulster Legislative Council attempted

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to persuade him to introduce an ordinance allowing Māori to lease their 'wastelands' under such 'rules and regulations' as he thought fit. The proposal was rebuffed in no uncertain terms:

> I have the honour [responded Grey] to state that it has always been my own opinion that the permanent interests of both races and the prosperity of the country, would be most effectually promoted by the Government purchasing large tracts of land from the Natives, (on the plan which has, by my directions, been pursued in the South of New Zealand) – spreading the payment for these lands over a period of several years, and making ample reserves for the Natives, which they would be at liberty to lease to Europeans, and by then throwing open these districts to the European stockholder in the ordinary manner. . . .
>
> Such a plan would, I think, present much greater advantages for both races than any plan that could be devised for rendering the Native lands available for depasturing purposes, under regulations framed by the Government; and I think that here, as in the South of New Zealand, the settlers would find it infinitely more advantageous to themselves to hold their runs under a secure tenure from the Crown, than to be subjected to the caprice of the Natives.[159]

Regulated leasing was no longer even a remote possibility.

2.5.5 Our assessment

Counsel for the Crown told us that orderly settlement was both an obligation on the Crown, and a central object of Māori in the understanding reached at Waitangi. In closing submissions, the Crown argued that this obligation extended not just to preventing disputes, but to the whole conduct of settlement. The land fund was the engine for achieving that object. It would provide the necessary infrastructure, encourage the right sort of settler, and facilitate improvement through schools and hospitals. Continuing to allow 'direct leasing on a large scale would restrict the land fund',[160] and was thus inimical to the goals of orderly settlement.[161] The claimants say that this did not justify the Crown's actions.

We agree with both parties. The idea of a land fund certainly did influence Crown policy on leasing customary land, but it was not the only influence, and did not in itself justify the Native Land Purchase Ordinance. Although punishing Pākehā was its ostensible focus, in reality it was an indirect restraint on rangatiratanga because it sought to stop informal dealings in land. The Crown should have explored means of simultaneously upholding te tino rangatiratanga (the full chiefly authority guaranteed by article 2 of the Treaty) and protecting the land fund. Controlled leasing could have achieved this, with the Crown charging for registration of interests and dispute management of some kind. A mixed regime of direct leasing and purchase was not inimical to the survival or the land fund. Opposition to leasing arose more from a philosophical preference for settlers being able to purchase their own land, combined with distaste for the idea of Māori and settlers becoming embedded in a landlord/tenant relationship.

Even though Earl Grey's 'wastelands' instructions were not implemented, they were very influential. The idea that Māori valued only the land that they actively occupied was pervasive. Allied to it was the idea that Māori were really only entitled to be paid a nominal price for their land. It was not right that they should benefit from a land market created by Europeans, whose application of technology and labour provided the potential for the land to be worth even more. This was another reason for discouraging leasing. Land that had been leased would be likely to attract more than a nominal price, and owners might be reluctant to sell it at all.

Earl Grey backed down from his original instructions and reaffirmed the Treaty, but, as the Te Tau Ihu Tribunal observed, this really spelled the demise only of the wastelands theory, not its practice. What did die was the idea

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that Māori would retain a range of lands for a variety of uses. Alternatives that had been formerly proposed, which would have seen Māori able to keep lands sufficient for grazing, for wide-ranging resource use or for lease to Pākehā (under the regulation and security of Crown supervision), were dropped.

Earl Grey's ideas about wastelands led to Governor Grey's counter-proposal for securing the Crown's ends, his 'nearly allied principle'. To come up with something that would persuade Earl Grey, Governor Grey discarded other ideas he had been exploring. The model for colonisation that was to eventually unfold was taking its final shape. Inevitably, this limited rangatiratanga: it left open to Māori really only one path for participating in the colonial experiment, and this was large-scale land sale at nominal prices, with retention of sufficient reserves to be able later to reap the benefits of settlement.

The land fund was the underpinning for this method of colonisation. The Crown acknowledged that in order for the land fund model to have integrity, it was necessary that Māori should obtain from settlement at the very least 'advantages fully equal to those which they might lose'. Even Earl Grey was to concede as much.[162] But clearly, it could only work if Māori did, in fact, retain sufficient land for the anticipated benefits to occur; or the Crown made sure that 'fully equal advantages' were on offer. We shall consider, in the following chapters, whether that would prove to be the case.

2.6 The Native Land Purchase Ordinance: A Dead Letter?

2.6.1 Introduction

Māori were not liable to penalties under the ordinance, and no prosecutions were brought against squatters in the Wairarapa. So how did it prejudice Māori of the district? The Crown's response is that it did not; the law should be characterised as a 'dead letter'.[163] Māori abandonment of leasing as their preferred mode of dealing with their land should be seen as a natural development rather than as a result of any form of government coercion.

The claimants did not accept that argument. Governor Grey always intended to use the ordinance to persuade squatters rather than penalise them. This was signalled not only in Grey's correspondence and speeches, but also by the form of the legislation, which expressly reserved to the surveyor general or a 'duly authorised officer' the power to institute proceedings. It was a policy tool, not a punitive measure designed to eradicate all illegal agreements between Māori and Pākehā (a point made by Loveridge).[164] And the claimants contend it is in that light that the ordinance must be judged. Its purpose was to cut them off from any option but sale by declaring illegal all the other informal arrangements that settlers had been happy to engage in with Māori. It worked. That was how they were prejudiced: they could not continue to do things in the way they had chosen. In future – if they wanted the benefits of settlement – their only avenue of engagement would be to sell the bulk of their land to the Crown.

2.6.2 The New Zealand Company targets Wairarapa land

As noted earlier, Grey's immediate goal in the Wairarapa was to assist the New Zealand Company in its purchase of 150,000 acres. In early 1847, Grey met with William Wakefield to discuss the situation in the valley, advising him to get the squatters on side by offering them the right to purchase their homesteads and 20 to 30 acres for paddocks at a fixed price. This strategy was to be followed by both the company and the Crown, and proved successful in securing squatter cooperation. Grey also told Wakefield that the company would need to set aside 'ample reserves' for Māori, which were to encompass not only cultivations but the sorts of acreages required for sheep and cattle runs.[165] Francis Dillon Bell, a company employee, would be assisted by George Clarke to negotiate the purchase of an extensive tract of territory for the company's settlement.

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2.6.3 Initial rejection of the company's overtures

But at this stage Māori had little appetite for the permanent transfer of their land, at least on the scale and at the price that Government and company were suggesting. The senior men of the district almost universally rejected Bell's overture. Bell reported his surprise at 'so violent and decided an opposition': although some of the younger, southern-based leaders like Mānihera and Wiremu Kingi supported the company and Crown proposals, the northern leaders were firmly opposed. Haimona Pita, a senior rangatira based at Te Kōpi, who had sponsored some of the first settlers in the district, was not at the hui. But, according to Bell, Haimona Pita wrote to the Governor:

> declaring his resolution never to sell any of his land, and asking His Excellency to permit the present system of leases to continue.[166]

Bell blamed those leases for the failure of his negotiations. He met with Grey in March, and told him that:

> The real obstacle in the way of the acquisition . . . is the receipt by the natives of a rental already exceeding £300 a year, for only a portion of the valley used as runs for stock; and notwithstanding the repeated assurances Mr Clarke and I made to the natives as well as to the squatters, that your Excellency would never consent to the present system of leases continuing in the district, now that it was required for regular colonisation, I am sure that neither believe you will really interfere to put a stop to it.[167]

He asked Grey to 'write a few lines to the Wairarapa chiefs', warning them that 'after a certain time they would not be allowed to receive rents from private persons, and recommending them to sell their interest in the land, subject to ample reserves for their own use'. And would Grey send a letter to the same effect to the squatters? Grey obliged. A few days later Richmond replied to Bell, enclosing the letter that Grey drafted in Māori. In translation, it read:

> I have been told that you will not make any arrangements 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.[168]

However, it is by no means clear what became of this letter. According to Bell's later report, it was destroyed by the first person to read it.[169]

2.6.4 Enforcing the ordinance

Lieutenant-Governor Eyre, who was the official on the spot, attempted to prevent an expansion of leasing. He sought to avoid further problems for a Government already struggling with the complications arising from pre-Treaty and pre-emption waiver land transactions. Writing to Grey, he suggested that the best course of action would be to ignore squatters already in occupation, and even new arrivals, if they were 'content to go where their presence [was] not likely to be productive of immediate disputes'. However, those entering districts where their presence was likely to 'sow the seeds of dissension' or 'raise up obstacles not easily overcome in the way of future Government arrangements' should be warned that they would be prosecuted and fined.[170] Eyre inserted a notice in the *Gazette* with the ordinance, and informed Grey that he had in 'one or two instances directed the Crown Solicitor to send Notices to the Parties offending that if they persevered the Government would enforce the penalties'. Eyre recommended the 'most stringent measures', arguing that:

> until this is effectually done or some means devised by which the Crown can grant licences the peace and

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> tranquillity of the country can never be secured or depended upon.[171]

Grey himself at first evinced little interest in implementing the Native Land Purchase Ordinance – to the disappointment of the New Zealand Company and of Eyre. Grey's position was that taking Native Land Purchase Ordinance proceedings was the company's responsibility.[172] However, further efforts were made to broker the company's purchase in Wairarapa in late 1848.

2.6.5 How much land could safely be purchased?

Meanwhile, views changed dramatically on the question of how much land the New Zealand Company could purchase in the Wairarapa without harming Māori.

In March 1848, Earl Grey had instructed Governor Grey to assist in the purchase of 300,000 acres on the company's behalf. The directors had wanted more, but at that point, the Secretary of State 'could not with prudence' agree to the acquisition of the entire valley.[173] A few months later, Earl Grey had been persuaded to modify this opinion, and in June 1848 he ordered the Governor to assist in the purchase of 1,000,000 acres should 'a sufficient quantity of disposable land be found to exist there'.[174] The object was now to purchase as much land in the district as possible.

2.6.6 The second attempt at purchase

It was ultimately agreed between Eyre and Wakefield that Henry Tacy Kemp, a Native Land Purchase Commissioner, should assist in the negotiation, end the 'illegal squatting and payment of rents to natives', and use all endeavour to complete the connecting Remutaka road from Wellington. Francis Dillon Bell was to accompany him. Bell's job was to secure the squatters' cooperation by negotiating with them compensation for the runs they would have to vacate to make way for company settlement. Kemp was instructed that, if the settlers did not cooperate, he should threaten them with the ordinance. Executive Council minutes record that:

> if other & more conciliatory measures failed, [Kemp was] to point out to the Squatters that upon being called upon to do so by him the Government would enforce the Native Lands Purchase Ordinance against them & thus it might be in his power to convince them that whilst every disposition existed on the part of the Govt. & the Company to treat them with the greatest consideration & liberality; there was yet a *controlling power in existence which would be exercised if necessary*. [Emphasis added.][175]

He was to purchase as much as possible of the country east of the Remutaka and Ruahine Ranges – as far as the Hawke's Bay if possible – setting aside 'such reserves as it may be necessary to make'. What 'necessary' meant in this context was unclear. Would reserves include the sweep of lands used for mahinga kai (traditional food gathering) – the sort of expanse required for sheep farming – or would they be limited to kāinga and key spots like favoured fishing sites? Big or small, they would be 'clearly defined in . . . position, and extent and . . . marked out upon the ground'. Five thousand pounds was available for the purchase, to be paid in five annual instalments, with annuities of £25 each for the four principal chiefs. An estimated £2000 would be required to compensate run holders.[176]

2.6.7 Second purchase attempt fails

The overtures were again unsuccessful: Māori did not like the scale of the proposed purchase, the price, nor the demand that land be given up forever. Nevertheless, the arguments deployed by Kemp and Bell – and by Eyre, seeking Colenso's support – are interesting, because they prefigure what the Crown said when it began purchasing on its own account in the early 1850s.

The message to Māori was that they must choose between two options: permanent alienation of tracts

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Colenso Opposed to Land Sales

In his journal, Colenso wrote of a conversation he had had with William Mein Smith:

> I told him moreover, plainly, what I had ever advised the Natives, not however, in my Ministerial capacity, but as a private person.
>
> 1. Not to sell their lands in Wairarapa
> 2. Not to lease them beyond 21 years
> 3. Not to lease the whole of their good grazing land; but to retain some, and use it, and get into the way of grassing cattle, growing wheat, and breeding sheep etc.
> 4. Not to lease it in very large blocks such as 10 miles 'run' of good pasture land to one person
> 5. To make deliberate choice of the persons to whom they would let it
> 6. Faithfully to fulfil their leases
> 7. To be kind to the whites who come to dwell among them.

Officials were of a different mind, however, and insisted on the purchase of most of the best grazing land of the district as the only way for settlement to proceed.

Colenso was strongly opposed. He was reported as having counselled Ngātuere that 'the moment the land went to the white men, go they must into the hills'.

By the end of the decade, Colenso's influence had begun to wane. His potency as a healer was in doubt and, in 1850, leading Ngāti Kahungunu rangatira, offended by his overbearing manner and denigration of so many of their practices, were challenging his ministry at Ahuriri.

At Castlepoint, Wiremu Te Pōtangaroa and his community at Mātaikona 'had entered into a period of deep spiritual questioning'. Colenso reflected sadly that even Te Kaikōkirikiri – the village that had supported him the most – was starting to turn against him.

Then Colenso was exposed as an adulterer; the Church Missionary Society dismissed him. His mana was fatally injured at a time when his cautioning voice needed most to carry weight – when the Crown began negotiating the huge Castlepoint purchase. By that time, though, he would not have been able to offer the advice quoted above, advocating leasing over sale. He gave that advice in September 1846. By November, the Native Land Purchase Ordinance was passed. This really closed off the possibility of Wairarapa Māori pursuing leasing in preference to sale.

of land for many settlers to come or no settlement at all and a return to the old ways. Eyre echoed the views of Normanby before him, that 'the real payment' would be the 'advantages which civilisation, and the valuable institutions by which it is accompanied, will afford to them and to their children', as well as the 'greater money-value' of their reserved lands.[177] Māori also were told that instead of their 'paltry rents', which the Government would some day stop, they would receive 'a good payment' – and they would have access to a large body of white men, including church leaders and schoolmasters. Or:

> If they preferred their old life, let them return to it and its wretchedness, let them abandon their faith, their food, their clothes, their horses, and turn again to the pigs they were before. Let them send away the white man altogether and give up their rents, or let them receive him as a friend indeed, and welcome members of his people to settle among them.[178]

Bell subsequently reported that it was the 'constant pressure we maintained on them and a keen appreciation of their interests' that resulted in the beginning of a shift in Māori attitude – although they still wanted to know why they should not sell directly to settlers. Bell rather optimistically reported 'almost unanimous consent' for the sale – in consideration, so his co-negotiator Kemp stated, of the 'great benefits they would at once derive by

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Māori Opinion Captured at a Moment in Time: Ōtāraia, November 1848

In the late 1840s, the hot topic for Māori leaders in southern Wairarapa was whether to sell their land or continue to lease it.

A major hui was held at Ōtāraia in November 1848 to debate the matter. Had the time come to reconsider the New Zealand Company's big land purchase proposal?

Simeon Peter stood first to speak. New Zealand Company agent Bell recorded:

> When I came last year with Mr Clarke, they had fully expressed to me their determination never to sell the land to the white man. They had kept to that resolution in spite of all our efforts to obtain their consent: they had held the land; and would do so still. It had belonged to their forefathers, and was theirs now: the land was in fact their great parent, to surrender whom would be death to themselves and their children. If it were true that another emigration was coming there like the first emigration to Port Nicholson under 'Wairaweke' let it come – there was plenty of room, and the white man could occupy land as the squatters were now doing without buying it.

Native Land Purchase Commissioner Kemp reminded all present that without settlement and Christian peace, they would not be in occupation of the southern region at all. Bell chimed in with the assurance that they would 'get a good payment; they would see a large body of white men among them, with a Bishop, Ministers, and Schoolmasters who would teach the maori as well as the pakeha'. Kemp and Bell were persuasive. Rangatira Simeon Peter, Tati, Ngāiro, Rāniera, E Paro, Te Hamaiwako, and 'other principal chiefs' had a change of heart:

> We were welcome, they said, we the harbingers of a better day for them. It was good that they should change their minds: good that they should put an end to the squatting of a few settlers in exchange for the promised emigration. That emigration was good; it was founded in Christian belief . . . It would protect and cherish them, the denizens of the soil – and in return they would give the members of it their greatest love, and would live in peace and good will with them for ever.

Others remained opposed, though. Mānihera and Ngātuere expressed the contrary view:

> Manihera followed on Ngatuere's side. 'What good had the white men done, that we should talk about the bringing them there being [*sic*] a benefit to him? who introduced the musket, and taught the maori the use of gunpowder? By the white man's instruction in a new art of war his country had been deluged with blood. . . . Would the Ngatikahuhunu [*sic*] now welcome the white man, only to find themselves banished once more? No – let the pakeha stay on the land and pay tribute for it – but never let it pass into his hands by sale.'

the selection of Wairarapa as a site for an inland town, and the consequent influx of trade.'[179] Bell recorded Māori present as saying:

> Give us our new settlement – give us our white man to carry on our shoulders and bring here! Pour the white men like sea-sand into our hands, that we may see their numbers – they shall be all our wealth and all our property. From the greatness of their love they come to us, from the greatness of ours let the land go to them![180]

Nevertheless, the transaction foundered. There was still clear opposition to the sale, especially north of Ōtāraia. When the boundary was laid down, it emerged that those who supported permanent alienation held the smaller and poorer portion of the valley. They could provide only a third of the land sought by the company – and that 'of the very worst description.'[181] Kemp later acknowledged that 'The majority of the natives at that time were averse to selling the land and appeared to have by far the greatest claim upon the district.'[182] In addition, there was a wide gap between the vendors' asking price of £16,000 for their

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poorer lands and the company's offer of £4000 for the whole of the area south of Whareama. The Māori demand was seen as 'exorbitant', even though they were acknowledged to be receiving rents (for the whole district) in excess of £1000 per annum.[183]

According to Kemp, and later, William Fox (the company's Wellington agent), at this point Māori did not see as credible the threat to use the ordinance to evict settlers. They saw it only as a device to force them to sell – but not a very effective one, because they did not think the Government was in a position to follow through on the threat.[184]

The company, for its part, began to look at Canterbury as a better site for their settlement. Wairarapa was put on hold.

In late 1849, McLean was instructed to make a third attempt to purchase Wairarapa on behalf of the company as soon as possible. However, events in Taranaki and Manawatū delayed him, and in the meantime the New Zealand Company collapsed. The Imperial Parliament had allowed a three-year period for the company to work, and this had now elapsed. The company's debts were such that the shareholders instructed the directors to surrender their charter in July 1850.

From this point on, the Crown negotiated for land on its own account. Thus, it was for the Crown that McLean now directed his efforts to acquiring first the southern Hawke's Bay area (Waipukurau and Ahuriri) before leasing spread there, and thence the Wairarapa.[185]

2.7 McLean, Leasing, and the Land Purchase Ordinance

2.7.1 Introduction

We leave our substantive discussion of McLean's 1851 negotiations, and the tactics that he and Governor Grey employed, to the next chapter. Here, we focus on the effect of the Native Land Purchase Ordinance and how McLean handled the question of leasing.

2.7.2 McLean authorised to implement the Land Purchase Ordinance

Before us, Crown counsel acknowledged that the Crown's assumption of the purchasing role in the Wairarapa, and McLean's arrival on the scene, brought new resolve to use the Land Purchase Ordinance to deter squatting.[186] Kemp's instructions told McLean to undertake a district-wide purchase, and specifically authorised him to make prosecutions under the ordinance – although he was to exercise this power with great discretion.[187] The reluctance to eject squatters continued and, the Crown argued, the effect of the ordinance remained limited.

2.7.3 What did McLean do to deter leasing?

Crown counsel identified four occasions when McLean is known to have directly cautioned individual squatters against illegal leases:

1. In 1851, he warned John Wilson, who was already squatting in the Wairarapa, against extending his grass lease to land at Castlepoint that was earmarked for purchase.
2. The next year, McLean gave John Sutherland notice to leave Castlepoint, and then arranged for him to run his stock on the reserve at Mātaikona cut out of the Castlepoint purchase.[188]
3. A dispute had arisen when Clifford and Weld attempted to transfer their interests to another settler. Māori considered that they (and not the departing Clifford and Weld) had the right to dispose of these lands, and they had entered into an agreement with someone else. McLean informed Clifford and Weld that they were not legally entitled to occupy the land, and so had no interests to sell. He then successfully warned Kelly off the land.[189]
4. A similar situation arose at Tūranganui, where again the departing run holders presumed to transfer their lease (the Taylor and Ling case). Rāniera Te Iho objected. McLean again issued a similar warning to prospective run holders in 1852.[190]

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Crown counsel argued that these instances comprised a very limited exercise of the Crown's powers, so that it could not really be said that:

> Crown officials 'actively' discouraged leasing in the Wairarapa . . . The few cautions to individual runholders were not issued until leasing had taken root over much of the area and were confined to two recent occupations of the Castlepoint area and two assignments of leases that had attracted opposition from Maori.[191]

Crown counsel conceded that none of the disputes were serious. Up to this point, as we discussed earlier in section 4 of this chapter, the only really contentious incident was at Barton's Run. This happened before the 1846 Native Land Purchase Ordinance was passed, and was notable more for the Crown's reaction than the magnitude of the actual threat to peace and good order. Otherwise, and despite the occasional grumbling of interested parties, relations between settlers and Māori were remarkably peaceful.

2.7.4 A fraught situation?

But now Wairarapa squatters, led by Mein-Smith, asked the Lieutenant-Governor for Crown intervention, warning that the situation was becoming more fraught. Whereas past disputes between Māori and Pākehā had been capable of 'speedy adjustments', questions of a 'more complicated nature' now arose. This affected the boundaries of their runs, 'the validity of [their] leases, and the security of [their] properties'. They requested that 'some legal authority should be here established which should have ample jurisdiction in all cases of dispute between Europeans and the natives', and urged completion of the Government's purchase as soon as possible, for the protection of their person and property.[192]

They were reassured on these points, even though they were held partly to blame for the situation. Domett, on Eyre's instructions, replied that this problem had long been feared by the Government; that only cession would guarantee certainty and security of title (in which object the run holders should thus fully cooperate); and, that McLean, even then, was:

> upon a mission to the Ahuriri for the express purpose of facilitating the acquisition of the former district [Wairarapa] by first purchasing if possible the country immediately beyond.[193]

Purchase was obviously on the horizon. The squatters were encouraged to expect their runs to be freeholded, and were told that their tenure was secure. At the same time, McLean was insisting to Māori (in his negotiations at Waipukurau and Ahuriri) that 'the system of leasing land from them would not any longer be tolerated'. They should not, therefore, expect to obtain a price for the freehold that reflected the level of rentals that they had received in the past.[194]

2.7.5 The Hawke's Bay dimension

The Hawke's Bay blocks fall outside our area of inquiry, but, in the view of the historians whose evidence was led by claimant parties, the Crown's policy there was integral to the swing in favour of sale in the Wairarapa. In particular, the Crown deliberately acted to undermine the leasehold economy of the Wairarapa. Grey, Eyre, and McLean all hoped that the squatters would leave to take up runs under the more secure tenure of a Crown grant in Hawke's Bay. Moreover, they knew and intended that the capacity of the Wairarapa chiefs to refuse sale would be diminished by that development, and by the example of their northern kin.[195]

Crown counsel did not take issue with these facts, but argued that:

> It is hard to perceive any impropriety in such a policy. The Crown was entitled to conclude purchases with Hawke's Bay Maori and was not obliged to support squatting in the Wairarapa. The pursuit of negotiations in Hawke's Bay with the expectation that this would enhance the prospects of buying land in Wairarapa does not taint the Crown's actions in either district.[196]

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2.7.6 Our assessment

We accept that the Crown was entitled to pursue land purchase outside the Wairarapa, and to do so in the hope that land purchase in nearby Hawke's Bay would persuade the Wairarapa people that they too should sell.

We take issue, however, with the proposition that the Crown was not obliged to support squatting in the Wairarapa. If leasing was more likely to enable Māori to continue to exercise te tino rangatiratanga, and it was an option that they preferred to outright purchase, the Crown certainly was obliged to support it. By this, we do not mean that no sale of Māori land could or should take place, but that Māori should have had available to them the option of retaining lands to use in a way that preserved their authority in the colonial economy. Although lessees in the Wairarapa did express disquiet about the security of their leasehold tenure, Crown purchase was not the only or inevitable alternative. It was only because of wholesale commitment to the land fund system that the possibility of the Crown regulating leasing was entirely abandoned.

There is a further point we wish to make in relation to the Land Purchase Ordinance and related policies. Inherent in them was a failure to treat Māori and Pākehā fairly and equally – a guarantee implicit in the grant of the rights of British citizens in article 3 of the Treaty. We agree with the claimants that the evidence in this district inquiry shows the Crown favoured the interests of the squatters over those of their Māori landlords, promising protection to one and threatening withdrawal of favour and livelihood from the other. At the same time as settlers' investment in the land they were leasing was being secured to them (by means such as intervening to protect them in on-leasing situations, and offering them a 'better' title elsewhere), Māori were being told that they had to give up their rents. This was combined with the message that Māori land had no monetary value without the promise of European labour and technology, and so only after the sale of most of it at nominal prices would they be eligible for any increase in the price.

We consider that the Crown acted deliberately to undermine leasehold tenure in the Wairarapa, and that its insistence on purchase was in breach of the Treaty principles of protection and equity. Wrongful Crown conduct included the statements of Crown officials when they presented sale as the only alternative to losing all settlers and the benefits they brought. The peace of the colony did not require Māori to sell the whole district. There were other options, and at least some of the land could have continued to be leased. The relationship between Māori and settler was likely to have become more complex and perhaps more difficult, but solutions to such problems were not sought.

The Native Exemption Ordinance of 1844 showed the Crown understood that wholesale introduction of English ways was not always desirable or necessary, and that a hybrid approach might work. Some parallel thinking around supervision of leasing could have produced a result altogether less absolute, and much more amenable to Māori. It should have been possible to derive revenue from registering leases to give security of tenure, and also from giving both lessor and lessee the certainty of a leasehold interest in land the subject of a fully-investigated Crown grant.

The prejudice caused to Māori by compelling them into purchase when they preferred to continue leasing would obviously be compounded if they were denied fair value for their land, or were left without enough land to be in a position to benefit from higher land values later. These factors feature in our discussion in the next chapter.

2.8 Was the Leasehold Economy Doomed to Fail?

2.8.1 What the Crown argued

In response to criticism of its acting to curtail the leasehold economy in the Wairarapa, the Crown called into question whether that economy was sustainable anyway. The Crown's arguments in this regard really go to the question

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of how badly Wairarapa Māori were prejudiced by the Crown's determination to oust leasing in favour of sale.

In brief, the arguments focus on 1: the local leasing situation, and whether it would have been able to carry on or grow; and 2: the colonial context, and whether colonisation would have been possible if leasehold tenure had been allowed to expand.

The gist of the argument in 1 is that leasing of Māori land in the Wairarapa had reached its zenith, so that further expansion was unlikely. The reasons included limited availability of further suitable land, and disincentives concerned with security of tenure. The Crown's interpretation of events was that it did little, in fact, to stop the expansion of squatting. Rather, the system had reached its limits by the end of the 1840s, so that Māori turned to sale as the preferred means of fulfilling their aspirations.[197]

In 2, the argument focused on the necessity for the Crown to purchase land and resell it at a profit in order to generate the funds required to build the infrastructure of the new colony.[198] Moreover, in order for the colony to develop, settlers needed to make the kinds of investment encouraged by ownership. In these circumstances, it was inevitable (and not blameworthy) that the Crown would favour purchase and freehold tenure over leasehold tenure. Indeed, the Crown was right to encourage the trend towards sale. The Crown also questioned how much control it had, because the settlers' drive to obtain the freehold of land was as much the subject of wider global economic forces as of local government initiatives.

Rejecting these arguments and interpretation, the claimants before us contended that the leasehold economy was successful, and might have given their tūpuna (ancestors) the opportunity to participate in the colony's economic development on terms of greater equality had the Crown not acted to bring it to an end.

2.8.2 How big was the area under grass lease by 1853?

The lands leased by pastoralists in the initial stages of settlement can be grouped into two distinct regions: the valley lands and the east coast country. The valley consisted of flat-to-undulating land lying between the western ranges of the Remutakas and Tararuas, and the eastern hill country, stretching from Palliser Bay to just north of the present-day township of Masterton. The east coast stations took in the coastal hills and flats from Cape Palliser in the south, to Castle Point in the north.

These two areas together comprised possibly 380,000 acres by 1855,[199] when the Crown insisted that Māori sell their lands outright. The figure is a best guess, however, since a detailed survey was not made. Patterson makes it clear that, pre-1865, survey plans for the district were 'notoriously unreliable', and that stated acreages for the land purchase transactions that ensued 'are generally little more than rough "guesstimates"'.[200] Early colonists had made several assessments of the district by this stage. Surveyors C H Kettle (1842) and H S Tiffen (1845) had produced rough sketch plans, while the New Zealand Company had commissioned William Mein Smith, in December 1848, to produce a 'sketch' survey of the Wairarapa Valley. His map was not accurate, though, because he could not achieve a trigonometrical survey of the valley.[201]

Bearing that in mind, the best we can do is estimate the area under lease from Māori. In 1847, 15 runs had been established.[202] By June 1853 the number had increased to 27, so we can expect the area leased to have increased considerably.[203]

Bell made another estimate in 1855. He thought the 26 licences that had been issued for pastoral runs on what was now Crown-owned land in the Wairarapa covered about 380,000 acres.[204] This included some blocks that were not part of the grass-lease economy, but excluded some blocks that were. To summarise, we simply do not know the actual area held under grass lease, but a best guess would put it at between 300,000 and 400,000 acres.

2.8.3 Was sheep farming in the Wairarapa profitable?

We ask this question in order to provide a basis for exploring what might have happened if Māori had kept the area

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comprising the better grasslands, and continued to lease them while acquiring the necessary skills and capital to become sheep graziers themselves. Would that have been, as the Crown's case suggests, an economic dead-end for them and the colony?

The importance of wool to New Zealand's economy in the colonial period cannot be over-emphasised. Development in the second half of the nineteenth century was stimulated by returns from wool, and pastoralism was, apart from gold mining from the early 1860s to the early 1870s, the most important industry in the country from the mid-1850s until the 1890s. Wool exports dragged the Wellington settlement out of the doldrums in the 1840s and, by the 1860s, wool accounted for over 90 percent (by value) of all exports from the region.[205]

The expansion of pastoralism into the Wairarapa was part of an international movement in the nineteenth century in which Europeans, in particular British entrepreneurs, introduced their livestock, techniques, technology, and capital into what they conceived of as the empty landscapes of the new world. The drive behind this expansion was the opportunity to profit from the growing woollen industry in Britain, and later in Europe and the United States of America. Mechanisation of the complex processes that turned raw wool into finished cloth had reduced manufacturing costs, and there was increased demand from a burgeoning population. At the same time, sheep farmers in Britain and Europe, who had traditionally grown wool, turned to fattening their stock to meet the growing market for food. With the increase in demand for raw wool and the decline in local supplies, British and European manufacturers looked to the Australian colonies, southern Africa, South America, and New Zealand for supply.

The high demand was reflected in high prices, especially for the fine merino wool that could be produced in the Wairarapa conditions. This sold at a premium until the 1870s, when the development of the new worsted process enabled coarser wool to be used, producing a strong, smooth, flat cloth that became the new fashion. From that time onwards, the differences in value between fine merino and coarse wools declined, and cross-bred and half-bred wools from New Zealand became popular with English manufacturers.[206]

Prospects were good when the pastoralists began moving into the Wairarapa, with wool prices starting to lift after some poor years earlier in the decade. In the late 1840s, New Zealand wool fetched over 11 pence a pound.[207] In the early and mid-1850s, anticipation of possible conflict with Russia and the subsequent Crimean War boosted wool prices; in 1855 in England, wool reached nearly 21 pence per pound and, the following year, fleece wool averaged 22¾ pence.[208] Official New Zealand statistics do not reflect the high prices that wool returned to New Zealand growers over this period, with the *Lyttelton Times* noting that the official value of wool, at 16 pence, was 'plainly below the mark'.[209] The American Civil War disrupted supplies of cotton to the British textile industry in the early 1860s and kept wool prices high.[210] This was a particularly profitable time for pastoralists. In Canterbury, for example, Samuel Butler famously doubled his capital in Mesopotamia Station between 1860 and 1864.[211] Then prices fell to below 14 pence, but recovered in the early 1870s with the outbreak of the Franco-Prussian War. The last quarter of the century was far less profitable. In the early 1880s, prices dropped below 10 pence a pound and did not recover until the First World War.[212]

From the settler's point of view, then, sheep farming was highly profitable in these years, with wool prices buoyant through the late 1840s to the end of the 1860s. However, without detailed sheep numbers, production figures, and expenses, it is impossible to estimate the profit margins for individual run holders. We should be careful of some of the claims made. For example, Hill states that Weld (and Clifford) made a net profit of £4000 from a gross income of £6000 in 1850.[213] This was exceptional and would have included their South Island run, Flaxbourne. Using an average figure of four pounds of wool per sheep at 14 pence per pound, it would have taken 25,714 sheep to accrue Weld and Clifford's £6000 gross income. This was beyond

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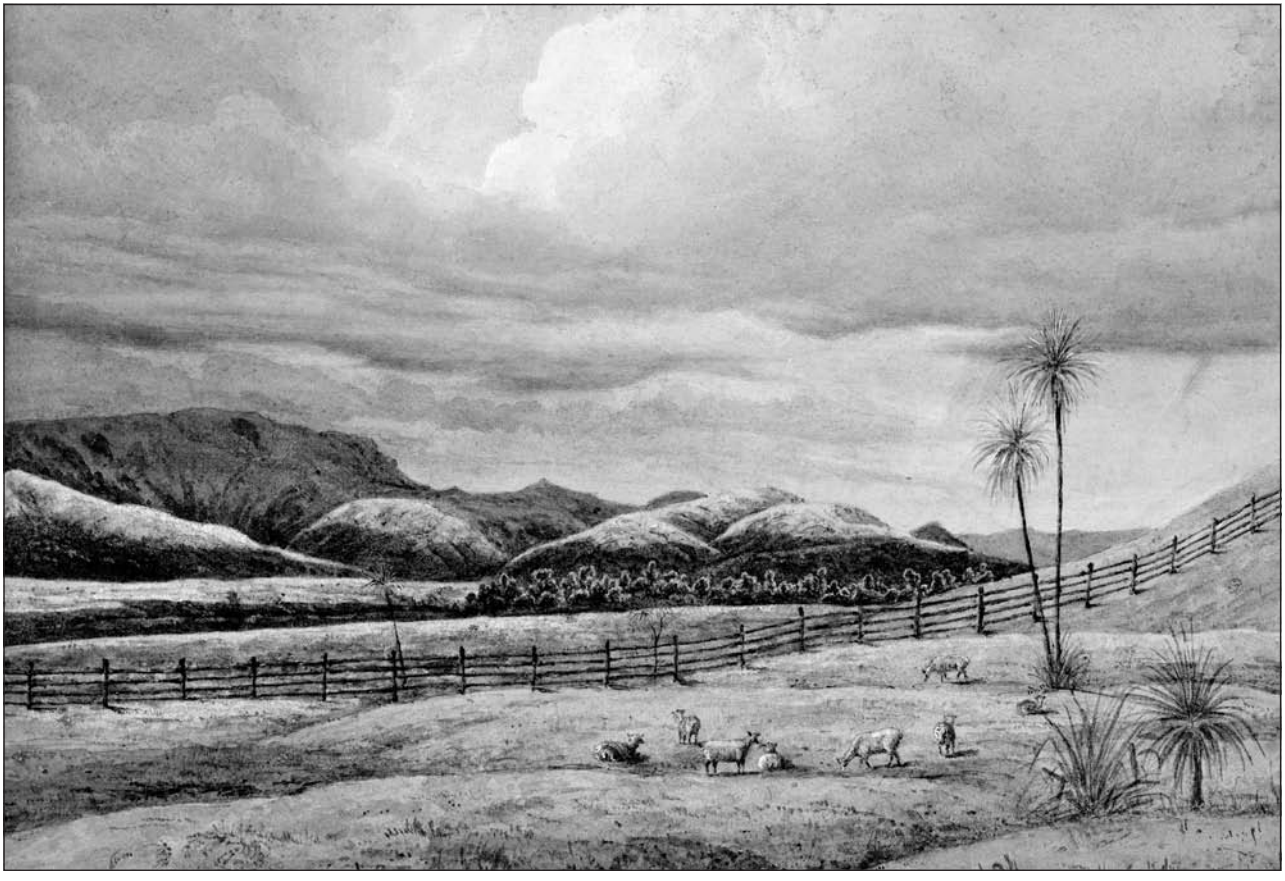
other Wairarapa pastoralists, as in 1853 there were only around 37,000 sheep in the whole district.[214]

The 37,000 sheep in the district in 1853 could have produced a gross income of £8,633 from wool alone, using the same figures of four pounds of wool per sheep at 14 pence per pound.[215] At that value, the 27 runs in the district would have had an average gross return of nearly £320 each from wool, and, with costs estimated at around £130, this would have given a net return of £190.[216] Considerable capital was needed to get these ventures underway, but good returns could be made once established. According to Weld, a prospective run holder would need between £1000 and £1500 to set himself up in the business.[217] One hundred and ninety pounds represents an annual return of 19 percent on an initial investment of £1000, and a 12.6 percent return on an investment of £1500. As well as selling wool, graziers could sell sheep. Wairarapa pastoralists were the first large-scale sheep owners in New Zealand, and so were in a prime position to take advantage of the demand for livestock as settlers ventured into new districts. There was also a ready market in Wellington for mutton. In 1848, average sheep prices in Wellington were around 18 shillings per

Sheep grazing on a Wairarapa run in the 1840s



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head, whereas in Nelson they were 21½ shillings, and 20 shillings in Canterbury and Otago.[218] In the early 1850s, sheep prices went up as pastoralism expanded in Hawke's Bay and Canterbury. In 1852, average sheep prices in the Wellington region were around 21 shillings, and 30 shillings for a breeding ewe was not uncommon. In the early 1860s, good ewes sold for 35 shillings in Canterbury and 37½ shillings in Otago.[219]

All in all, in the first 20 years, for a run holder who got in on the ground floor, there were good returns for those who had surplus stock to sell. We do not have data from individual stations on the extent of this practice. But we do know that flocks in the Hawke's Bay, and Clifford and Weld's flock at Flaxbourne in Marlborough, were founded on sheep from the Wairarapa. Thus, pastoralists in the Wairarapa may have achieved up to a 20 percent return on their invested capital.

Professor Gary Hawke notes that until the development of refrigeration, more meat than could be consumed locally was often produced and had to be boiled down or simply scrapped.[220] In 1870, for example, two boiling foundries had been opened in the Wairarapa and an estimated 40,000 sheep were waiting to be slaughtered and boiled down for tallow and other by-products.[221]

2.8.4 The Crown's reliance on Professor Hawke's economic model

The Crown's argument about the inherent limitations of leasehold tenure derives largely from two evidential sources.

(1) *Hawke's owner–operator model*

In evidence given initially in the Hauraki inquiry, Hawke proposes the economic model of the 'owner–occupier'.[222] Although Hawke champions what he calls the owner–occupier model as the most effective system for running a farming business, we think a better term for what he means is 'owner–operator'. This is because an owner who lives on (occupies) the farm does not necessarily run it, but the model of the owner living on and managing the farm is what Hawke espouses as best economic practice.

According to Hawke, owner–operator units are more successful for two main reasons. First, they are small, and run by the farmer and his family and, he argues, achieve 'better results . . . than by larger units with many employees'.[223] Secondly, because they own the land and stock, owner–operators are likely to be better farmers as they:

> have more incentive to look after animals and crops than employees . . . and it is a very general experience that people look after their own property more than they look after the property of others.[224]

He provides no evidence to support this statement apart from suggesting that it fits with 'modern economic analysis' and that it has been a 'very general experience'.

(2) *What is wrong with Hawke's analysis?*

In the following discussion, we query the two main planks of Hawke's analysis, suggesting:

1. That a leasehold farmer who occupies the land and manages his own stock has a lot more in common with an owner–operator farmer than he has to distinguish him. Hawke does not assist with how to quantify the difference it would make in this scenario that the lessee did not actually own the land – if indeed it would make any difference at all.
2. His argument suffers for lack of specific knowledge about farming in the Wairarapa in the nineteenth century, and as a result makes assumptions that we think are dubious, as we go on to explain.

(3) *Wairarapa lessees analogous to owner–operator*

Hawke distinguishes between farms run by owner–operators on the one hand, and farms run by employees on the other, but we do not agree that this is necessarily the distinction to make. If farming in the Wairarapa had continued under leases, lessees would presumably have continued to run their own stock, live on the land, and manage the

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farm. This is more analogous to a share-milking situation (in today's terms) than a commercial farm scenario where the ownership and the workers are entirely distinct. In the leasehold or 'squatting' situations that appeared to operate in mid-nineteenth century Wairarapa, employees worked closely with the lessee, and he would see to it that the employees worked to maximise profit from the enterprise. This is just what an owner–operator would do.

(4) *Employees' role can be critical to success*

Moreover, the role of good employees in the success of a farming enterprise should not, we think, be underestimated – especially where the lessee is not an experienced farmer. A number of the Wairarapa pastoralists had no experience in sheep farming and it was their Scottish employees who taught them the business.[225] Weld, for example, depended on and learned from the skills and know-how of Tom Claverhill, a border Scotsman who brought his native Cheviot knowledge to the conditions of Wairarapa, and to whom Weld paid a wage of £40 per annum.[226] A few examples drawn from the general literature also serve to illustrate the point. In the late 1860s and early 1870s, for instance, Charles Tripp employed Andrew Grant as manager at Orari Gorge Station, South Canterbury. During that time, Tripp wrote to his brother-in-law saying:

> I always tell people here I am Grant's servant, not Grant my servant; respecting the sheep I do as he bids me, and all the shepherds are under him . . . If I want anything done, I go to Grant and if he approves it is done, if not it is left undone. The consequence is I have one of the best flocks in Canterbury.[227]

Farms can also succeed where there is no one with an ownership interest involved in running them. Today, the largest farming operation in New Zealand by far is Landcorp. At November 2009, Landcorp had 105 farms with a total of 374,948 hectares owned and leased, and 599 permanent staff.[228] It is a highly successful business and we would imagine that the managers of these farms would bridle at any suggestion that they were anything less than professional and conscientious in the way they look after the stock and land under their direction. Conversely, there are plenty of examples country-wide of owner–operators who have inherited family farms, have proved to be poor farmers and, in some cases, have lost their properties either through their lack of skill or lack of interest.

There are many variables that combine to make a farming venture successful and being an owner–operator is not always at the top of the list. Hill stresses that knowledge was vital in the success of early pastoralism.[229] Hawke himself acknowledges that experience and skills were more important than land in New Zealand's economic development.[230] This seems inconsistent with his championing of the owner–occupier model, because it seems unlikely that having a vested interest in the land and stock is ever more important than skill, knowledge, and experience.

(5) *Small scale an advantage?*

Hawke's owner–operator model also implies that small is best. Again, we doubt that this is always the case. While small owner–operator properties do well in some situations, large units are more efficient for some types of farm production.

In fact, until early in the twentieth century, wool was by far the most profitable product for pastoral farmers and extensive wool growing was more profitable on large properties than on small ones. It was simply a matter of scale: large runs using a minimum of labour produced higher returns than smaller properties carrying a few sheep. It was for this reason that in New Zealand in the nineteenth century, large estates and stations dominated the agricultural scene. They had the capital to take the risks in undertaking the experiments necessary to increase agricultural and pastoral production, and led the improvements in New Zealand agriculture. The large-scale operator, not the small-scale farmer, was more progressive. For example, the all-important frozen meat export industry was established in 1882 by William Soltau Davidson and Thomas Brydone, two employees of one of the largest farming operations

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in New Zealand, the Australian and New Zealand Land Company, and they were backed by the large landowners of Otago and Canterbury.[231] Similarly, the large operators were the leading stock breeders; they could afford to import superior animals from Australia, the United States, Britain, and Europe to upgrade their flocks while small owner–operators did not have the resources to embark on such ventures.[232] Large concerns could also move stock around to different parts of the property to maximum advantage in different seasons.

Hawke's analysis fails to take sufficient account of the actual character of the agricultural economy of the nineteenth century. New Zealand was a 'big man's frontier' and, in general, small farmers struggled. With the technology of the time, and limited knowledge and capital, many of them survived at only a little above subsistence level. Few made enough to invest in improvements. Indeed, contemporary agricultural writers were more critical of the farming practices of small farmers, especially their over-cropping of land, than they were of the large estate owners.[233] The cost of breaking in new land was too expensive, so their existing cultivated land was overused until it produced little but weeds.

It was refrigerated shipping that first made owner–operator farms viable: it was only when the prices for frozen meat lifted and costs came down, in the mid-1890s, that small farming really got off the ground. With dairy products, frozen meat, and wool, small farmers now had several income streams that ensured their profitability. From that time, the owner–operator model slowly became more successful, and the subdivision of the big estates got under way.[234] Labour costs could be kept to a minimum, as the family did all the work. In tough times, family farmers could cut expenditure and live off the land. At times this was incredibly tough, but they could survive.

Thus the twentieth – rather than the nineteenth – century was the era of the owner–operator family farm. If Māori in this district, Tāmaki-nui-ā-Rua, had been left with sufficient lands under a usable title, and had been equipped with the knowledge, skills, and starting capital to take advantage of it, they might have been able to flourish as farmers in this later period.

2.8.5 The Crown's reliance on Dr Patterson's analysis

(1) *Robber pastoralism*

We move now to the second key source used by the Crown, Patterson's analysis of the development of pastoralism in the southern North Island, in which he discusses the leasehold economy of Wairarapa using the terms 'quarry' or 'robber' pastoralism.[235]

Patterson emphasised how rough and ready pastoralism was in the Wairarapa in the 1840s. He described the animal husbandry practised as being of the crudest kind, with the fleeces 'literally hacked off' the sheep at shearing time, and other work performed with more enthusiasm than skill. He labelled this 'robber' and 'quarry' pastoralism, to convey the idea that the natural resources of the country were plundered for short-term profits and to the long-term detriment of the environment.[236] In its closing submission, the Crown relied on Patterson's work for the argument that this kind of exploitative farming had a 'limited lifespan'.[237]

We now look closely at Patterson's analysis of the pastoralism of the period, to see whether, as alleged, it was by its nature inherently time-limited.

(2) *The beginnings of pastoralism in the North Island*

The period from the 1840s to the early 1850s was a time when pastoralists were coming to grips with their new environment. They were learning how to deal with Māori; how to read and work with the vagaries of the climate; how to manage their livestock; and how to prepare wool for sale. Some had never farmed before. They had capital and experienced employees, but sheep stations had to be built from scratch. Their early methods were inevitably simple.

Pastoral expansion, wherever it took place, involved a series of distinct but often overlapping phases. The first stage saw the rapid spatial expansion of the industry as newcomers moved out into new country beyond the

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earlier established stations. During this time, conditions were rough and methods basic. The objective was to find 'unoccupied' country, negotiate its lease, burn, and stock it. Sheep were expensive – rarely less than a pound sterling and often over thirty shillings a head.[238] Money was also required to cover labour, shearing, supplies, and animal health costs until the wool returns from the first shearing came in. As we noted earlier, Weld estimated that £1000 to £1500 was required to establish a sheep farming business.[239]

Run holders and their men lived in rough whare (huts) and tents. One of the first tasks was to build a stock yard, but generally they handled the sheep only at shearing time. This was done outside, on boards or tarpaulins. There were no facilities for handling the wool, so it was simply rolled up and forced into fadges. Patterson is scathing about these methods, but this was standard practice at this point in the development of pastoral ventures.[240] It is not clear to us what other options were available in the establishment phase. Afterwards, of course, methods became more sophisticated.

The second phase was a period of consolidation. Once money became available, permanent housing was built, a shearing shed erected, better yards put up for handling sheep, and sometimes a dip. These improvements made it easier to sort the wool, sort the sheep, and control scab. The management of the flock remained simple. The sheep were let go and checked on a regular basis and, at times, boundary keepers were employed to separate mobs or to keep them where they were put.

In the next phase, as their wealth increased, pastoralists began to invest their capital in development programmes. Considerable effort and cost went into upgrading the quality of the sheep and their wool. Superior merino rams were imported from the Australian colonies and England, and later from France and Saxony. Pastoralists worked to improve the management and feeding of sheep. They built fences, drained wetlands, cut and burned ferns and scrub, and sowed English grasses and clovers.[241]

Fencing was one of the most important improvements in the management of the early runs. Light-wire fencing did not become widely available in New Zealand until the mid-1860s. Before that, ditch and bank fences, and stone walls were constructed, and, where timber was readily available, post-and-rail fences were used. Erecting such fences was extremely laborious.[242] Trees had to be felled and cut for posts, or split using a mall and wedges to make rails. The posts were dug into the ground and four rails fixed to the posts by mortise-and-tenon joints. Fences like this were not used to subdivide large tracts – they simply used too much labour and material. Instead, they were usually built to enclose relatively small areas, such as holding yards for stock and to protect cultivated paddocks and gardens.

(3) *Pastoral development in the Wairarapa*

There is evidence that post-and-rail fences were erected in the Wairarapa in the 1840s to create grass paddocks, presumably to improve stock management.[243]

There is evidence, too, that Wairarapa pastoralists were not simply 'quarrying' the natural resources of the grassland environment. Hill's analysis of various tasks carried out on Whatarangi Station in September 1847 shows that, over the month, work with the stock took place on 12 occasions, and they cleared land and sowed grass seed on 10 occasions. For example, on 22 September, half a day was spent sowing seed.[244] That was not haphazard practice; spring is the ideal time for spreading grass seed, when there is plenty of moisture for it to strike and time for the seedlings to become established before the summer dry sets in. Construction and household work were ongoing.

At least some of the Wairarapa pastoralists made considerable effort to improve their flocks. As early as 1846, Clifford and Weld went to the expense of importing two rams and four ewes from Lord Western's highly regarded merino flock. Bidwill imported sheep from Macarthur's flock in New South Wales. At the time, Macarthur's sheep grew some of Australia's finest wool and he was one of the country's pre-eminent merino breeders. These early importations of superior breeding stock suggest that Clifford, Weld, and Bidwill were planning for the future, and conceived their enterprises as long- rather than

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short-term ventures. Upgrading their flocks by introducing high-quality sires would have required careful management rather than the 'animal husbandry of the crudest kind' that Patterson describes.[245] The ewes to be mated with the superior rams would have been kept separate from the main flock throughout mating and lambing, and their progeny identified. This necessitated running several mobs – a difficult task without light-wire fences to subdivide the run into grazing blocks.

It does not surprise us that, in the 10 years of the Wairarapa leasing economy, pastoralists did not embark on major cultivation programmes. Wool growing was far more profitable at that time than growing crops. Indeed, New Zealand did not open up a major export market for grain crops until the late 1860s, when experimental shipments of wheat were sent from South Canterbury to London. Since the technology of getting meat to a major export market had not been developed, there was no point in growing paddocks of high-quality feed for fattening stock. Cultivation was expensive, time-consuming, and required considerable labour during harvest. At first, for pastoralists in the Wairarapa, it was cheaper to buy grain and other crops from nearby Māori who had readily adopted European methods of production. However, this market for Māori-grown produce was short-lived: increasingly pastoralists did cultivate land near the homestead to grow crops for their own requirements, and developed extensive gardens.

Wairarapa pastoralists also invested in improving their accommodation – and in this they replicated the pattern of development in other pastoral regions. Bell and Kemp, who negotiated on behalf of the New Zealand Company, reported that 'with regard to the squatters, many of them (indeed nearly all) had improved their houses and the other property they had placed on their stations.'[246] Bell felt sorry that the squatters might not be the ones to reap the ultimate benefits of their land improvements if they were moved off the land after it was sold:

> The settlers who first went to the country in reality opened it and made it available – discovered its capabilities, and improved by depasturing stock there, the quality of the land to a degree which it requires personal inspection to appreciate. In the event of their having to leave, their buildings (in some instances very substantial ones), their fencing, their tillage and other improvements, must of course possess some value to their successors in the occupation of the District.[247]

Weld also remarked on the improvements made in the 4½ years since he arrived in the district: 'Now the Wairarapa contains some dozens of good houses – fenced enclosures – wheatfields – bridges drains etc. flower gardens in front of the cottages and poultry yards in their rear.'[248]

(4) *Leasing inevitably a dead-end?*

These contemporary comments contradict Patterson's description of pastoral methods in the Wairarapa. Capital development in the form of houses, fences, cultivation, drains, and bridges, as well as domestic improvements, and all taking place within a short time of the first runs being established, does not sound like robber pastoralism. Nor, as we explore further below, does it support the Crown's argument that development of the colony required the settlers to have freehold titles. The progress described in the Wairarapa had been made on the basis of leasehold tenure – and in circumstances where the pastoralists were adapting to their new environment and learning the business of sheep farming themselves. They were starting from scratch; there were no roads or support networks; they had to learn by trial and error; and they made do with what was at hand. Yet, in the 10 years of the grass lease economy, they built houses, woolsheds, and post-and-rail fences, they sowed grass seed, and improved their stock. Had the system not been cut short by the Crown's purchase of the land, who knows how far they might have continued

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along the path of developing their properties, despite the lack of freehold? Greater security of tenure was probably required; also, serious thought and money needed to go into devising and setting up a means of enforcing the terms of leases. There is every reason to suppose that, with tenure assured, leases would have served to support pastoralism in the Wairarapa for a lot longer. This would have given Māori more opportunity to gain the capital and skills to farm sheep on their own account, or to enter into partnership with settlers.

2.8.6 Our assessment

The claimants argue that the Crown acted wrongly, and in breach of the Treaty, in taking action designed to end direct leasing of land in the Wairarapa. The Crown's response was that its actions really didn't amount to much – and we examined the effect of the ordinances in that context. In this section, the Crown's arguments are effectively pleas in mitigation. They say that, if the Crown did intentionally bring the leasehold era to an end, the negative consequences were minimal because leasehold in the Wairarapa really had no future, for the reasons offered by the Hawke and Patterson evidence. Anyway, leasehold tenure was not a basis on which the colony could prosper, so the Crown really had to act as it did.

We have considered the evidence in the light of the first mitigating contention that, even if the Crown acted to close down leasing in the Wairarapa, prejudice to Māori was minimal because leasing could not have persisted and prospered. We do not find the analyses of the factors said to inherently limit leasehold tenure persuasive. In particular:

- The claim that better results were obtained by small-scale owner–occupiers than by larger units with employees is ahistorical. The leasing economy in Wairarapa was based on wool production. Properties were large and they operated on a low-cost system. These runs were highly profitable because of the economy of scale. Even after the purchase of the district by the Crown, the Wairarapa remained largely run country, with runs ranging in size from 5000 to 30,000 acres.
- The analysis does not explain how the difference between an owner–operator and a lessee-operator was a critical one. We see no reason to believe that it was. The most important consideration was the security of leasehold tenure, and an adequate return on outlay (neither of which required that Māori sell most of the district and all the best lands for grazing). We agree with the claimants that leasing created no particular bar to further settlement and development of the Wairarapa.
- The robber pastoralism model is not borne out by the evidence, which shows that the squatters did invest in improvements like homesteads, gardens, woolsheds, fences, bridges; they drained wetlands; cultivated paddocks for crops; cut and burned fern; and sowed the land with English grasses and clovers.[249] This was not robber pastoralism but the normal process of development from a simple system to a more complex one. It may not have served as an economic model for the whole of the colony, but it was appropriate to the Wairarapa environment.
- The leasing economy does not seem to us have reached its zenith at the time when the Crown moved to end it in 1853 to 1854. The number of settlers coming to the Wairarapa increased steadily from 1844 onwards, until the Crown began making a more concerted effort to discourage squatting from expanding into new parts of the region. Returns from wool and sheep meat remained attractive throughout the 1840s and for several decades thereafter, and rents were also increasing.

Nor do we perceive any pressing need for the Crown to replace entirely the arrangements operating under customary authority by its own outright purchase of the land

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so that the colony could progress. While it may have been difficult for the Crown to raise sufficient revenue if leasehold tenure had prevailed everywhere, limited leasehold should have been tenable. A system of regulated leasing could have enabled the Crown to clip the ticket somewhere in the process. But the worst was feared, and policy developed and actions taken to steer everything in the direction of outright purchase.

2.9 Tribunal Analysis and Findings

2.9.1 The questions to be answered

In this final section of the leasehold chapter, we identify the questions we consider go to the nub of whether or not the Crown acted in accordance with the principles of the Treaty in relation to the Wairarapa leases. They arise from our reading of the claimants' and Crown's arguments set out in sections 2.1.2 and 2.1.3, and from the evidence presented.

The questions are these:

- Did the Crown's right of pre-emption include all alienations – that is, leases as well as sales? If so, was this adequately explained to, and understood by, Māori? Did the Crown have to tell Māori about its intention to change how it exercised pre-emption? In prohibiting direct leasing was the Crown acting in good faith?
- Did the idea of 'good government', goals of 'systematic colonisation', and considerations of law and order demand Crown intervention in the squatting economy? Did wider policy considerations excuse or mitigate any breach of the Treaty that might have occurred?
- Were there sound economic reasons – either in or out of the Crown's control – for the leasehold economy to come to an end? Would settlement have been stultified by its continuation? In particular, we test the validity of the following propositions:
  - The high point of leasing in the Wairarapa may well have been reached by the time of the first sales to the Crown.[250]
  - The Wairarapa squatting model – if allowed to persist and spread – would have imposed a low ceiling on the development of the colony.[251]
  - Lack of security of tenure would have limited investment by pastoralists.[252]
  - Exploitative management techniques meant that pastoralism had a limited lifespan.[253]
  - With no formal process there was no way of enforcing agreements – between pastoralists and Māori landowners, or between pastoralists.[254] This made the system inherently unstable.

We turn now to consider each of these in turn.

2.9.2 What were the Crown's pre-emptive rights?

Did the Crown's right of pre-emption include all alienations – that is, leases as well as sales? If so, was this adequately explained to, and understood by, Māori? Did the Crown have to tell Māori about its intention to change how it exercised pre-emption? In prohibiting direct leasing was the Crown acting in good faith?

The Crown contended that it had a right under law to control the actions of British-born subjects, and that the Crown's pre-emptive right had a basis in legal doctrine independent of the agreement reached with Māori under the Treaty. We accept that these statements are accurate.

The Crown also contends that the agreement reached at Waitangi encompassed the Crown's exercise of control over all types of land transaction, not just sale, and that it consistently asserted that this was the case. In submissions in reply, claimant counsel suggested that the 'argument that leasing was always prohibited as "direct dealings" is a novel one' and that it 'certainly was not as clear cut as Crown counsel suggests'.[255] We think that the evidence supports the Crown's contention, despite any apparent confusion amongst the settler population or ignorance of the right

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asserted at the time. Officials always considered that the Crown's pre-emptive right encompassed leasing and all other forms of non-permanent transactions in customary land. Normanby, Gipps, Hobson, and Grey all said so.

But our acceptance of the validity of the Crown's propositions in the foregoing paragraphs does not dispose of the matter. In our jurisdiction, the principles of the Treaty come first. Thus, even where the Crown can legitimately exercise power pursuant to a legal or Treaty right (such as pre-emption), there is a further question to be asked: did the Crown act 'in good faith and with the interests of Maori in mind'? In this, we agree with the claimants' submissions.[256]

The next step is, therefore, to inquire into the Crown's intentions: when it included leases among the land transactions that Māori were not allowed to make, did the Crown intend to protect Māori, or rather was its intention to 'force' them into a 'position of inevitable sale of land'?[257]

There is also the question of fairness. The claimants characterised the Crown's curtailment of leasing as neither fair nor reasonable, and as a broadening of the Crown's powers.[258] To know whether what the Crown did was fair, we must inquire into whether Māori understood the Crown's conception of pre-emption, and whether it was ever explained or discussed with them. We must also inquire as to whether the Crown was acting in the best interests of Māori when it introduced measures to prevent leasing, or whether it was motivated by other factors.

(1) *What did Māori understand about pre-emption?*

We noted earlier that the use of 'hokonga' to translate 'pre-emption' is controversial: what did Māori understand by the term?

Both contemporary commentators and historians generally agree that it is unlikely anyone explained to Māori at the time when the Treaty was signed the idea that the Crown had sole right to purchase. But the significant point for our purpose is that pre-emption for the Crown went beyond sale, and extended to all direct dealings in land. Although some Māori may have had limited exposure to English concepts like licences and leases, we think it unlikely that many Māori understood the niceties of land law so as to understand clearly that, after the Treaty, they would be allowed to make binding arrangements concerning their land only with the Crown. The word hokonga is, we think, certainly an inadequate vehicle conveying such an idea.

Historian Claudia Orange's assessment, in her seminal study of the Treaty, is that the record of what was said in negotiations suggests that the:

> exclusive nature of pre-emption was not always clearly understood. Nor did Māori grasp the financial constraints that pre-emption might bring; it was presented, it seems, either as a benefit to be gained or as a minor concession in return for the guarantee of complete Māori ownership.[259]

Certainly, when Governor Gipps had tried to persuade Māori visitors to Sydney to sign a treaty by which they agreed not to sell or otherwise alienate any land except to the Queen at a price to be fixed later, they had refused.[260]

Contemporary observers also agreed that the matter was not well explained at the time; nor were Māori consulted when the Crown brought in different ordinances clarifying what it considered its power to be. Opposed to land sales though he was, Colenso did not 'for a moment' suppose that Māori were 'aware that by signing the Treaty they had restrained themselves from selling their land to whomsoever they will'.[261] This view was echoed by the editor of *The New Zealander*, who condemned Grey's 1846 ordinance because it cut across 'free trade'. He said it was 'obvious' from the speeches at Waitangi that the chiefs had not the slightest intention of surrendering any portion of the right they possessed of exercising an unlimited, discretionary control over the disposal of their own lands. In his view, Māori leaders should have been consulted before Grey's 1846 ordinance was introduced, but they were not.[262] Daamen's study of what was said about

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pre-emption at Waitangi, and its subsequent implementation confirms that the editor was right. She suggests that only one or two chiefs showed any understanding that the Crown would stop settlers from purchasing lands directly from them. In Daamen's view, the Crown would have better signalled the importance of what was being asked if the right of pre-emption had been discussed in connection with sovereignty in article 1, or in a separate article after it. Instead, the position and wording of the clause indicated that pre-emption only operated as a limit upon the essential guarantee that chiefly authority would be respected over all their lands and settlements. There is no evidence that anybody engaged with Māori about the subsequent introduction of ordinances that specifically stated leases were prohibited and that penalties would apply.

The Crown's interpretation of the pre-emption right is that Māori could not bring Pākehā to live among them until they first sold, or otherwise alienated, their land to the Crown. We think that it is highly unlikely that Māori understood this to be the case, and therefore it cannot be said that they agreed to it. Certainly, as far as Māori whose interests lay in the Wairarapa Valley are concerned, there is nothing to suggest that they were at all clandestine in inviting settlers to come, negotiating payment for their stock to graze there, and arranging to be paid for timber taken. We have seen nothing to suggest that they understood this conduct to be wrong or illegal.

We agree completely with what Professor Alan Ward said about this in the Rangahaua Whanui *National Overview*:

> A most serious area of misunderstanding related to the leasing of land, or dealing with timber, or other kinds of transactions short of actual sale. The officials intended that all such transactions would be controlled by the Government. Some Maori took away the view that the Queen had the first right of 'hokonga' of the land; others that she had the sole right. But that related to the near-permanent and more total kinds of transfer, not to the myriad other kinds of dealings relating to the land. It is unthinkable, in the author's view, that Maori would have considered that all of these too had been interdicted except through the Crown; after all the chiefs had just been confirmed in the rangatiratanga of the land![263]

The fact that pre-emption was inadequately canvassed at Waitangi operates to show that 'the Crown' did not communicate the Treaty effectively to 'Māori'. However, it is worth noting that the Māori of this inquiry district would not have benefited directly if they had, because they were not at Waitangi. They had no opportunity to view the Treaty, nor to hear what Crown officials had to say about the concepts enshrined in it. Neither did the Crown talk to them about introducing penalties for unauthorised leases in 1846, when their interests were directly affected. The message to them was simple: they had no choice; they had to accept the Crown's right to control all land transactions undertaken by Europeans; and further, they had to sell to the Crown or lose all chances of 'good settlement'. Ultimately, 'their' settlers would be made to leave.

(2) *Protection and good faith*

The Crown argued that it was acting in good faith, and in order to protect Māori, both when it secured for itself a pre-emptive right in the Treaty, and when it insisted that leases were included in the right. The choice for Māori at Waitangi was between Crown-controlled settlement, and settlement that would be 'uncontrolled, disorderly, and random'.[264] They chose the first option, and it is in those terms that the Crown interposition in Māori transactions with Europeans should be seen. We agree – and it is in those terms; that is, in terms of the Crown's duty of protection – that the Crown's actions should be judged.

It was recognised very early on that when Māori ceded the right of pre-emption to the Crown, a fiduciary

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relationship was born. Loveridge quotes Under-Secretary Merivale, speaking on behalf of Earl Grey, saying that the Crown was required to act as 'trustee for the public good, and more particularly as guardian of the native races'.[265] The Supreme Court of the time, in *Queen v Symonds* (1841), also found that the rule of pre-emption 'contemplates the native race as under a species of guardianship'. Otherwise the 'great mass of the natives, if sales were declared open to them, would become the victims of an apparently equitable rule'. It was possible, the Court warned, to 'oppress and destroy under a show of justice'.[266]

But was the inclusion of leasing in the range of transactions covered by pre-emption really intended to protect Māori interests? Or were other forces at play?

When he introduced the Native Land Purchase Ordinance in 1846, Governor Grey assured the Colonial Office that the ordinance was in the best interests of Māori.[267] It was needed for their protection: stronger tribes would take the lands of weaker ones if the Crown did not regulate all land dealings. Less clearly expressed were the other imperatives motivating pre-emption. First, Māori had to be prevented from entering into arrangements that would complicate the title to large tracts of country needed for settlement. And secondly, pre-emption was integral to the Crown's capacity to purchase land very cheaply by preventing competition.

It is clear that Grey and other officials saw pre-emption as a way of acquiring uncultivated Māori land as cheaply as possible. Grey said so when responding to Earl Grey's instructions, and he and other officials used the new ordinance prohibiting leasing to threaten Māori with the future ejection of their Pākehā, and as a device to apply pressure for an outright sale. Pre-emption underpinned the Crown's ability to limit Māori options: they were told they had no choice but to sell if they wanted the Crown's protection and the benefits of Pākehā settlement. They were not given the option of retaining customary tenure of land and the Crown's favour. They would be able to lease only those lands reserved out of sales (which would thus be Crown-granted) and that prospect was soon to be much reduced as a result of Grey's drive to purchase land ahead of settlement.

The Crown's handling of the squatters themselves was different, though they had been made liable to prosecution under the ordinance. There was no intention to use the power to institute criminal proceedings where settler interests had been already established; the new law was intended to deter new leases being taken up. But while Māori were being told that the squatters would have to go, squatters were being told the opposite. The Crown did not want to drive them off, it wanted to 'perfect' their titles. This would be accomplished if the settlers threw their weight behind the Crown's negotiations – they could help by withholding rents to increase pressure on Māori to sell.

The Treaty principles underlying the pre-emptive right have been well canvassed in previous Tribunal reports. They generally focus most on how the Crown conducted its purchases under the monopoly conditions it created, but the findings of the Hauraki Tribunal are particularly relevant in this inquiry. That Tribunal looked at the application of the pre-emptive right to leasing, and found the Crown's actions protective neither in intention or effect. On the contrary, the Native Land Purchase Ordinance denied Māori:

> the opportunity for entering into transactions which offered them experience in commercial enterprises . . . while still retaining the beneficial ownership of their land.[268]

To us, it is difficult to discern the ordinance having any protective effect for Māori at all. It was intended primarily to benefit Europeans, even those who were clearly in breach of it, and not for the protection of Māori – except in the most attenuated sense of the benefits that might be gained from white settlement contingent upon the sale of land to the Government.

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2.9.3 Was the Crown entitled to intervene in the squatting economy?

Did the idea of 'good government', the goals of 'systematic colonisation' and considerations of law and order demand Crown intervention in the squatting economy? Did wider policy considerations excuse, or mitigate, any breach of the Treaty that might have occurred? Did the arrival of squatters put peace and good order in jeopardy?

Two directly opposed views were expressed at the time. One was that the running of stock on grass leases had resulted in little friction between the two races and that, on the whole, both parties respected these arrangements. Where disputes had arisen they were settled peacefully and – though this went largely unremarked – essentially by customary means: debate and other displays of leadership. Squatters were incorporated within the customary system and, as Weld's experiences demonstrate, could be adept in using it to their advantage. The opposing opinion was that unregulated dealing in land jeopardised the peaceful development of the colony. Māori were encouraged to deal in land to which they had no real title, putting squatters at the mercy of what Grey referred to as the 'caprice of the Natives'.[269] Numerous disputes and squabbles resulted, both among Māori and between Māori and Pākehā. To prevent further conflicts from developing, the government needed to intervene and bring all dealings in land under Crown control.

These opposed views had their modern parallel in closing submissions. While both sides agreed that no serious disorder occurred, the Crown emphasised the concerns that were expressed at the time, and argued that in the colonial context good order included responsibility for ensuring that settlement progressed in an orderly and controlled fashion. The land fund was essential to this goal, and leasing interfered with it. Leasing had to stop if Normanby's goals were to be achieved.

Looking at the evidence of the leasehold situation in the Wairarapa, it was not one of clear and present danger. Such risks as existed were not to life and limb, but were about the potential for rents to go to the wrong people, or to only some of the right holders, and for inter-hapū disputes to arise. Yet these were not of such a character as to justify Eyre's claim that the 'most stringent measures' were required to secure the 'peace and tranquillity of the country'.[270] If the need was pressing, it was elsewhere than in the Wairarapa.

Having said this, we accept the need for some means of settlers ascertaining that they were dealing with the correct right holders in all transactions (including leases). Lessees could not be sure that their title was secure if they might be dealing with the wrong people. This was less of a problem where squatters dealt with those they encountered on the land and negotiated with them on the spot – though payments might have to be repeated as other groups holding interests (or asserting them) made claim.

Although this was a genuine problem, it seems to us there was more interest in emphasising its seriousness as justification for prohibiting leasing than in seeking a practical solution of another kind. There was certainly some support for leasing from Māori under such 'rules and regulations' as the Crown thought fit.[271] The Crown could have authorised officials such as the native protectors to oversee the situation, ensuring that the rightful owners were dealt with and that arrangements were fair. Indeed, various officials contemplated the introduction of supervised leases before it was decided that a 'uniform system' of Crown purchase was the best means of furthering colonisation.[272]

The Crown has also suggested that only its intervention (which had to be paid for somehow) could guarantee the conditions necessary for Māori to benefit from peace and good order, security of title, development of infrastructure, and provision of services.[273] It was necessary, in effect, for leasing to be brought to an end so that the land fund could operate properly. This is the more persuasive argument. We accept that the land fund was intended to benefit Māori, along with the colony as a whole. Grey assumed this to be the case. But there were other influences at work. Very pervasive was the underlying assumption – one shared by Grey – that Māori only really required the land

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they were actively cultivating. In his view, along with that of most officials and colonists, the sooner Māori settled 'permanently' onto their cultivated and built-upon sites, giving up their migratory and seasonal habits, the better for them and for the colony as a whole. Grey's attitude was that Māori were leasing lands they did not really own, and, in any case, leasing land while it was still held under native title interfered with the larger goals. These thoughts may be broadly labelled 'wasteland thinking', and, in our view, this influenced policy about leasing as much as concern for the land fund.

Thus, although we see the concern to fund colonial infrastructure (and Māori civilisation) a s a legitimate one, it was not the only motivation for ending leasing in the Wairarapa. The ordinance, and the policy underpinning it, was intended to have a serious impact on Māori rangatiratanga in that it was a deliberate move to limit Māori choices. Some would argue that such interference with te tino rangatiratanga could never be justified, but we think that judgement should be suspended. If, in return for giving up their choices and their land, Māori received benefits that together comprised fair compensation for what they lost, the result might be fair. If, for example, Māori had sufficient capital to develop their remaining lands, and they could therefore participate in the growing economy on terms of equality like those they had enjoyed under the leasehold system, that might be a fair result. On the other hand, though, if they received only nominal payment for the bulk of the district, and were left with only small occupation reserves and no capital to develop even those, the assessment would be otherwise.

2.9.4 The Crown's grounds for ending leasehold

Were there sound economic reasons – either in or out of the Crown's control – for the leasehold economy to come to an end? Would settlement have been stultified by its continuation?

According to the claimants, the leasing economy was both successful and important, bringing direct and indirect economic benefits in the form of rental income, trade with squatters, and exposure to new ideas. In their view, the early leases provided a platform from which to engage with the modern economy. Most importantly, of course, they retained the ownership of the land itself, for future generations to use themselves or to generate rents or, perhaps, for later sale.[274]

In contrast, the Crown argued that Wairarapa Māori were not disadvantaged by the 1853 and 1854 land sales because the grass-leasing system was, despite appearances, doomed to fail. This, the Crown told us, was because:

- the high point of leasing in the Wairarapa may well have been reached by the time of the first sales to the Crown;[275]
- the Wairarapa squatting model – if allowed to persist and spread – would have imposed a low ceiling on the development of the colony;[276]
- lack of security of tenure would have limited investment by pastoralists;[277]
- exploitative management techniques meant that pastoralism had a limited lifespan;[278]
- with no formal process, there was no way of enforcing agreements – between pastoralists and Māori landowners, or between pastoralists.[279]

We deal with each of these propositions in turn.

(1) *Proposition 1: The high point of leasing in the Wairarapa may well have been reached by the time of the first sales to the Crown*

Two points contradict the Crown's claim that leasing may have reached its zenith by the time of the first sales in June 1853.

First, a considerable area of the district had still not been taken up in lease arrangements. At the time of the Castle Point purchase in June 1853, large areas of the Wairarapa district had not been converted into grass leases. Pastoralists were still keen to take up grazing land, but Crown officials discouraged them from doing so. The

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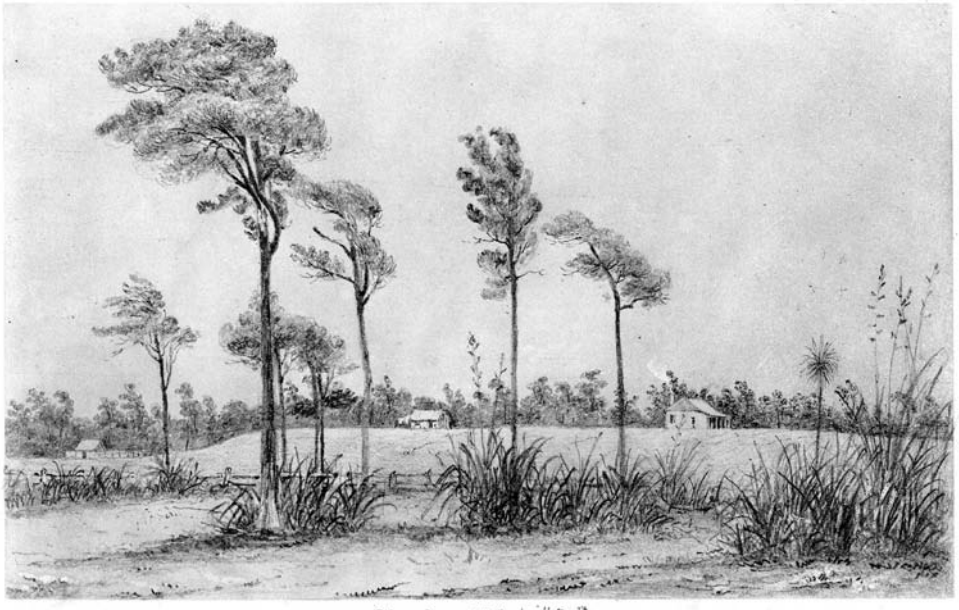

Bidwill Station, Pihautea

area was already marked by McLean for future purchase, and he dissuaded John Wilson and others from proceeding with their plans to take up grazing rights there. The Native Land Purchase Ordinance gave him powers to act if he needed to.

Since no proper survey had been made of the Wairarapa by 1853, we can only speculate how much land had been taken up and how much remained available. But it is worth doing so in order to get at least some idea of available country. Bell estimated that in 1855, 26 licences for pastoral runs took in around 380,000 acres.[280] In 1889, there were 48 runs in the Wairarapa of 5000 acres or more, which accounted for 637,461 acres.[281] We also know that, in 1853, W H Donald's Manaia Station, near present day Masterton, was the most northerly run in the valley, while on the east coast a large stretch of country between Castle Point and Cape Turnagain, near the district's northern boundary, had not been taken up. If we accept Bell's estimate that 380,000 acres were already in grass lease and that there was over 600,000 acres of grazing land in 1889, then there were between 150,000 and 200,000 acres still open for pastoral settlement in 1853. So there was still plenty of potential for the leasing economy to continue to expand at the time the Crown succeeded in purchasing most of the good grazing land.

The second point is that the pastoral economy was still in a growth phase in 1853 and that phase continued for the next 20 years. The early 1860s was a particularly profitable time for wool growers. Moreover, as pastoralism expanded in other regions, such as Hawke's Bay, Nelson (Marlborough), Canterbury, and Otago, Wairarapa sheep owners had a ready market for their surplus stock, which attracted high prices. As noted, for much of the 1850s and early 1860s, good sheep sold for around 30 shillings and more, so even with the cost of shipping there was a good profit to be made.

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The Crown argued also that Māori:

> landlords demanded and received increments beyond the original bargain, but presumably any such trend could not be projected indefinitely.[282]

We accept the point, but in our view there is no intrinsic reason why landlords should not get a share as their lessees' prosperity increases. Nor is it likely that the pastoralists would have said no while their businesses remained so profitable. Had the leases been regulated by some means, of course, more formality could have been introduced to the arrangements.

Thus the Crown did not really establish before us that leasing had probably reached its high point. There was room to expand the number of leases and, with that, the rental income. And there was room to increase the rentals themselves. Over the next decade, income from rents could easily have trebled without becoming ruinous for the lessees. Patterson estimates that Māori landlords received £1200 a year in rentals at the end of 1852. If the area rented had increased by half in the following year or two, it would have added another £600 per annum to make a total of £1800. If doubled over a period of 10 years, the area would have returned £3600 in rents.

We add, though, that we do not suggest that the renting regime could have gone on forever, with Māori living off the proceeds. We think that longer experience as landlords would have afforded Māori the necessary time and space to learn what they needed to be able to run farming businesses on their own account, or participate in joint ventures with settlers.

(2) *Proposition 2: The Wairarapa squatting model would have imposed a low ceiling on the colony's development*

This argument is based on Hawke's evidence first presented to the Hauraki Regional Inquiry in September 2000. The Crown has embraced Hawke's economic model and applied it to the Wairarapa inquiry. Hawke said that Pākehā society 'evolved from a belief that the separation of landlord and farmer which existed in much of England was undesirable.'[283] He concedes that 'some racist attitudes and opposition to the idea of Pakeha leasing from Maori' did exist, but says that the freehold versus leasehold debate was essentially about which form of tenure would most contribute to the economic 'progress' of the colony.[284] It is his view (and the Crown's) that history and economics prove that this preference for freehold was sound – indeed, essential for the development of the colony.

The Hauraki Tribunal responded to Hawke's first articulation of this theory. It acknowledged that:

> the prospect of acquiring land under freehold tenure was an important and indeed necessary incentive to immigration, and that the settlement and development of New Zealand had potential benefits for Maori as well as settlers.[285]

But it considered other elements to be more crucial: security of tenure, which could have been provided for by other means, and adequate returns on capital and labour invested in land. In our view (as we discuss further below) those returns were present for lessees in the Wairarapa.

The other main element of the Crown's argument refers again to the importance of the land fund for the creation of infrastructure and for colonial development so that all could benefit. If Māori had retained their lands and simply leased them to settlers, the Crown maintains, the colony would have been unable to fund development and to borrow capital from overseas markets. Its growth would have been stunted.

This is, however, a one-sided argument. Māori were clearly willing for the settlement of Wairarapa to go ahead. They wanted the material benefits brought by Pākehā settlers. It is clear, too, that Māori had a long tradition of growing food and were quickly learning the skills and techniques required to grow European crops and livestock successfully. They were also hard-nosed traders, and enterprising. Weld's record of Māori interest in setting up commercial endeavours with him demonstrates that Martin's

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belief in the possibility of joint business ventures was not just the wishful thinking of a humanitarian. Early flax and timber contracts between Māori and British merchants and naval captains testified to their entrepreneurial ability.[286] Similarly, Colenso's advice to Māori – that they should be 'kind to the whites who come to dwell among them' but not sell all their land, and lease only discrete areas while retaining 'some, and us[ing] it' and 'get[ting] into the way of grassing cattle, growing wheat, and breeding sheep etc'– does not suggest that the prospect of a leasehold system developing was inconceivable and anachronistic.[287] In our view, it was quite feasible that, had Wairarapa Māori kept their land, or a large share of it, they could have become productive farmers and business people. From the time they sold their land this opportunity was largely closed to them.

Hawke's position is an 'all or nothing' argument; either Māori had the land or Pākehā got it. He makes no allowance for any other scenario. We agree with the claimants that other options were possible – in particular, that Māori might have sold some land at a price that gave them the capital to develop the remainder. While it is true that the Government used cheap land to fund the development of the colony, it came at a very great cost to Māori. In the Wairarapa, as we explore further in the following chapters, they were to be left almost landless and without capital. Ultimately, they were so marginalised that it seemed they had benefited least from the improvements that their cheap land had brought to the rest of the population.

(3) *Proposition 3: Lack of security of tenure would have limited investment by pastoralists*

In testing this proposition, we look first at just how concerned the Wairarapa pastoralists really were about their tenure; then we ask whether the supposed lack of security deterred them from improving their properties during the leasing period.

Inevitably, problems arose for both the pastoralists and Māori from their different conceptions of how leases should work. The pastoralists understood that leasing brought them a bundle of rights, which included exclusive use of the land for the term of the lease. Consequently, they were frustrated when Māori planted gardens or grew crops on land that they had leased – and then demanded compensation when the lessee's stock damaged their plantings. Another source of frustration was that Māori landowners restricted cutting rights and made the settlers pay for any timber used. With experience, timber dues tended to become a separate provision in leases, in accordance with English law.

Despite these frustrations, there is evidence that the pastoralists were not particularly concerned about the security of their leases at any immediate or practical level – though they certainly preferred the idea of freehold, and readily fell in with Grey's plans to that end. Tiffen, one of the early pastoralists in the Wairarapa, recalled that, 'the Maories rigidly respected the primitive leases made between them and their white tenants'.[288] Similarly, Alfred Matthews who grew up in the Wairarapa in the 1840s, recorded in his memoirs, 'I may state that at that time the leases were not what might be called legal leases, but I never heard of a single instance in which the Maoris broke faith with the settlers'.[289] When Kemp and Bell set out to purchase land in the Wairarapa on behalf of the New Zealand Company, they noted that the pastoralists agreed to support the purchase only 'after much deliberation'.[290]

So while the lack of security of tenure may have been an issue for the squatters, it does not appear to have been an overwhelming anxiety for them. And, as we have said, that anxiety could have been assuaged by an extension of the powers of native protectors or other officials, such as magistrates.

And the evidence is clear that almost from the beginning of settlement pastoralists began to develop their properties – investing in homesteads, wool sheds, stocks yards, fencing, drainage, bridges, cultivation, over-sowing, and the upgrading of their sheep flocks.[291] This pattern of development was typical of the progress that took place in comparable situations, notably, the South Island runs in the 1850s and 1860s on land leased from the Crown.

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Anxiety about security of tenure does not appear to have operated to deter Wairarapa operators. Whether this situation would have continued when time began running out on the leases is impossible to know. The squatters may have thought, too, that the Crown would work towards securing them in those ventures (as indeed it did). However, longer leases and compensation for improvements might have achieved a similar result. As the leasing system developed it became more finely tuned and both parties continued to benefit, so there is no reason to think that a more formal system might not have developed. It simply never got the chance.

(4) *Proposition 4: Exploitative management techniques meant that pastoralism had a limited lifespan*

The Crown based this proposition on Patterson's conclusion that the methods of the pastoralists equated to 'quarry pastoralism', as run holders squandered the natural resources of the Wairarapa grasslands for their own short-term profits. In our view, however, this is a misinterpretation of the pastoral development in the district. Settlers necessarily started with basic systems and then, if conditions were suitable, they became more sophisticated. It is hard to understand how the Wairarapa pastoralists could have started farming from scratch in a new country with no model to follow and no infrastructure, otherwise than as they did: very simply. They were learning on the job.

Pastoralism evolved through a series of distinct but often overlapping stages. The initial phase involved the spatial expansion of the business where would-be pastoralists explored new land, moving ever outwards from the established sites. At this stage, they operated at a basic level: land was claimed, stock purchased, and rudimentary shelter built for the run holder and his men. During the next stage, the run was consolidated: better housing was built, gardens planted and fenced, stock yards were constructed, and stock management techniques improved. If economic and environmental conditions were suitable, a development phase often followed in which pastoralists undertook major improvements, such as cultivation, drainage, over-sowing, the construction of a superior wool shed, fencing to improve stock management, and the upgrading of the sheep. A later and final phase widely seen in 'new world' pastoralism was the subdivision of the large runs into farms and smaller runs.

Pastoralism in the Wairarapa followed this pattern. The industry expanded rapidly as newcomers negotiated leases with Māori and established new runs. Indeed, it expanded up to the time when land purchases were in prospect and representatives of the Crown began actively discouraging newcomers from taking up leases. The consolidation phase is readily apparent in the Wairarapa situation. Having taken up their leases and stocked them, the pastoralists began the process of learning how best to run their stock, what worked, and what did not in their new environment.

Clifford and Weld, and Bidwill, found their initial sites too wet for sheep and moved to drier ground. They experimented with the timing of the lambing season before eventually realising that the spring was the optimum period. Stock management remained simple, with the flock being left to run free, although checked every few days. They began building more substantial accommodation, and planted and fenced gardens.

In the short time that the leasing economy lasted, there is evidence, too, that some pastoralists moved into the development phase. Improvements such as fencing, cultivation, over-sowing, the construction of bridges, and drainage were all commented on by contemporary observers.[292] Superior sheep were also imported to upgrade flocks, which then required more refined stock management techniques.

We think that this evidence suggests that characterising the management of sheep runs in the Wairarapa as exploitative is to misread the situation. What we see here is the gradual evolution to a more sophisticated system from the rough-and-ready practices of the expansion phase. How much further this would have gone can only be a matter for speculation now. It seems logical, though, that while the business remained profitable, development would have

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continued through to the final stage where large runs were subdivided into smaller properties.

(5) *Proposition 5: With no formal process there was no way of enforcing agreements – between pastoralists and Māori landowners, or between pastoralists*

The Crown argues that without any formal process for enforcing lease agreements, conflict would have inevitably arisen – firstly, between Māori landowners and their lessees, and, secondly, between individual leaseholders.

The Crown acknowledges that disputes between squatters and their landlords had not reached 'an acute stage in the Wairarapa.'[293] The example it uses to emphasise the case that 'occasional explosive incidents' arose between Māori landowners and leaseholders – the dispute on Barton's Run – took place early in 1845, almost at the outset of the leasing economy. Cultural misunderstanding was the underlying problem, and there are other examples where this remained an issue. However, the Barton affair stands out as the only case that escalated to a level that required intervention by an outsider. Elsewhere it appears that the pastoralists and their landlords were able to resolve their disputes without recourse to violence or the authorities in Wellington. Indeed, Tiffen, Matthews, and others commented on how well Māori respected the leases they had negotiated.

There were also disputes between competing pastoralists. The most notable example was the quarrel between Peter Hume, who held Tauānui, and W H Donald of Manaia. Donald complained that Hume had offered his Māori landlords a higher rental for part of his Manaia Run and was in the process of building a house and stock yard on it. He urged that run holders should band together to get some legal authority established to adjudicate on such disputes. Donald was supported by an overwhelming majority of established pastoralists.[294]

Did the absence of any system of enforcing lease agreements at this early stage of the colony's development justify the Crown in bringing the entire system to an end? Disputes over leases and stock trespass were quite common elsewhere (Canterbury, for example), and were sometimes more problematic than they were in the Wairarapa. We infer from this that such tensions were not necessarily a result of the extra-legal character of leaseholds on Māori land. The Crown notes that the squatters were 'conscious, if not anxious about the insecurity of their position' and that leasing of customary land 'persisted in the Wairarapa for some decades apparently without serious disharmony.'[295] Ultimately, such leases would have become more formal and the means of enforcing their terms and of arbitrating such disputes as did arise would have developed along with the court system.

2.9.5 Māori and pastoralism after 1853: what if?

The Crown has speculated that the grass lease system was doomed to fail, and that consequently the 1853 to 1854 land purchases did not disadvantage Wairarapa Māori. Speculation and the counterfactual are dangerous ground for any historian, but there are, of course, scenarios other than the Crown's. We now venture briefly into what might have happened had Wairarapa Māori retained ownership of their land, and the leasing economy had continued beyond 1853 to 1854.

First, we can be confident that had the leases lasted their full term of 21 years, they would have remained highly profitable. Leases negotiated in 1844 were due to expire in 1865. Buoyant wool prices and high stock prices throughout the period meant that pastoralism would have expanded to take up all the open country in the Wairarapa, and pastoralists would have had money to invest in their properties. At the same time, Māori would have continued to enjoy a good rental income from leasing out their land.

On land that they retained, Māori would have continued to grow crops and gardens, and run livestock. As they became more familiar with the workings of the commercial economy, they would have begun to trade directly with Wellington businessmen rather than through Wairarapa pastoralists acting as middlemen. In 1850, around one-fifth of the Māori population in the Wairarapa was literate.[296] This would have assisted them to participate in commerce

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without being at the mercy of unscrupulous dealers. Moreover, we know from Weld and others that Māori drove a hard bargain: trading was not new to them.

As the flocks in the district increased, there would have been more opportunity for Māori to work on farms and more of them would have learned farming skills. The growth of flocks meant more sheep to shear and more work for shearers, and the job continued to be well paid. Wairarapa Māori already owned livestock before 1853 and as they learned animal husbandry skills, we anticipate that they would have been in a position to increase their flocks and thereby participate in the wool economy.

Possibly, they might have chosen to sell some land while retaining favoured parts for their own use. These sales would logically be at a higher price than the minimal amounts paid out by the Crown in 1853 and 1854. Better money from land sales would have given Māori the opportunity to improve their own lands, or to establish other businesses.

Nor would the Wairarapa have necessarily become a backwater without roads and bridges, as the Crown has suggested. These were already being built by 1853, and it would have been in the interest of both the pastoralists and Māori to extend and improve communication throughout the district and with other regions.

As landowners, Māori would have been able to control the pace of development in the Wairarapa, but it would have been in their best interests to do so in conjunction with the needs and wishes of their lessees. Moreover, as Māori became increasingly active in farming, the wool business, and trade, they would have been drawn into the greater colonial economy. Their interests and those of the pastoralists would have been aligned.

Certainly, problems would have remained to be solved. Both pastoralists and Māori were keen to have a formal means of settling disputes. Security of tenure would have remained of concern, especially as leases neared their termination date. But were these challenges so overwhelming that leasing was bound to fail? There really is no reason to think so. Leasing was widespread in New Zealand from the earliest days of Pākehā settlement, and continues today. It was common practice for Māori to lease their land to settlers later in the nineteenth century, and the Crown leased millions of acres to pastoralists and other settlers. Why should it have failed in the Wairarapa?

Of course, in time, Wairarapa Māori would have come under pressure from the settler Government to individualise land titles and, as happened elsewhere, this led to land sales. How long Wairarapa Māori could have held their lands is arguable. However, it is certain that the longer they did, the more they could engage in the growing colonial economy, and the greater chance they had of developing skills and knowledge. When they lost their land after only 10 years of engagement with the larger commercial world, they were left without a capital base from which to build. The Crown has made the point that retention of land was no guarantor of prosperity. But while we may not know what would have happened if they had retained their lands under a leasehold economy, we do know what happened when that estate was purchased by the Crown: the outcome for Māori was not good.

Although both the Crown and settlers had a preference for purchase, a different kind of system in which Māori enjoyed a more substantial share of the economy was clearly within the bounds of possibility – more starkly so in the Wairarapa, because it was already underway. In our view, the Crown's active opposition to leaseholds in the development of the colonial economy was the loss of a major opportunity for Māori engagement on a more equal footing, and one that must ultimately be laid to the Crown's account.

2.9.6 Findings

In the light of all the evidence, we have come to the following four conclusions:

- While we accept that the Crown had a legal right to control all transactions in customary land between British subjects and Māori, we do not think that this was exercised in good faith. Firstly, we have found

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no evidence that the Crown explained to Māori that its control of land transactions would include leases, or that Māori really understood pre-emption at all. Nor was there a 'law and order' imperative that gave legitimacy to the exercise of such a power.

- Making leases illegal so that Māori had no alternative but sale if they wanted the benefits of settlement was neither fair nor reasonable. The Native Land Purchase Ordinance 1846, and the pressure it put on Māori, represented an unwarranted interference in Māori rangatiratanga, undermining their capacity to engage with settlement on equal terms and on a self-sustaining basis. We consider this to be a serious breach of Māori rights under as article 2.
- Notwithstanding the way it was drafted, the 1846 ordinance privileged settler interests in its application. Māori were threatened with the removal of squatters, but the squatters themselves were reassured: their tenure would be protected and strengthened if they assisted the Crown in acquiring the freehold from Māori. This differential treatment breached the Treaty principles of good faith and equity.
- The Crown's demand that Māori cede an extensive tract of land at Maungaroa/Barton's Run breached the guarantees in article 2, and the principles of active protection and equity.

Notes

1. Document I5 (Ngāti Hinewaka closing submissions), p 6
2. Document I1(a) (Ngā Hapū Karanga closing submissions), p 16
3. Document I5 (Ngāti Hinewaka closing submissions), p 6
4. Document I1(a) (Ngā Hapū Karanga closing submissions), pp 5–6, 16; doc A48 (Stirling), pp 41–42; doc A118 (Gilling), pp 91–92; *Southern Cross*, 3, 10 June 1843 (doc A81 (Loveridge), pp 137–138)
5. Document I8 (Rangitāne closing submissions), p 33
6. Document I5 (Ngāti Hinewaka closing submissions), p 6
7. Ibid, p 8
8. Ibid, p 9
9. Ibid
10. Ibid, p 10
11. Document I5 (Ngāti Hinewaka closing submissions), p 10
12. Ibid, p 8
13. Document I8 (Rangitāne closing submissions), p 36
14. Document I17 (Crown closing submissions), p 23
15. Ibid, pp 18–23
16. Ibid, pp 10, 15
17. Ibid, p 10
18. Ibid, p 23
19. Ibid, pp 4–5
20. Ibid, pp 5–6
21. Ibid, pp 8–9
22. Ibid, p 10
23. The term 'robber pastoralism' comes from Brad Patterson, 'Laagers in the Wilderness', *Stout Centre Review*, vol 1, no 3 (April 1991): p 10 (doc I17 (Crown closing submissions), p 11)
24. Document I17 (Crown closing submissions), p 16
25. Ibid, p 23
26. Ronald D Hill, 'The Land and the Squatter – Wairarapa 1843–1853' (MA thesis, Victoria University of Wellington, 1962), pp 41–42
27. S C Brees, 'Report on the Wairarapa,' *New Zealand Journal*, 6 June 1844 (Hill, 'The Land and the Squatter', p 5)
28. Charles Massy, *The Australian Merino* (Victoria: Viking O'Neil, 1990), pp 118–120. Massy describes the crisis in sheep-farming in the Australian colonies in the early 1840s when wool prices collapsed and sheep became virtually worthless. This meant that, at the very time that sheep farming was expanding in the Wairarapa, pastoralists could buy sheep in Australia at very cheap prices. In the early 1850s sheep prices lifted in Australia and it became too expensive to ship them across the Tasman. Pastoralists in the Wairarapa were then in a position to profit from selling their surplus sheep to others in areas where the business was expanding, such as Canterbury and the Hawke's Bay.
29. A G Bagnall, *Wairarapa: An Historical Excursion* (Masterton: Hedley's Bookshop, 1976), p 75. H S Chapman visited the Wairarapa in November 1847 and reported that Clifford's and Weld's sheep were expected to clip, on average, 4½ lbs of wool per head. Weld noted in his pamphlet *Hints to Intending Sheep Farmers in New Zealand* (London: Trelawney Saunders, 1851) that in NSW, at that time, wool weights were closer to 2½ pounds per head.
30. Bagnall, *Wairarapa*, p 93. McLean reported that McMaster expected 100 percent lambing, which is an excellent return from merino sheep, even by modern standards.
31. Document A48 (Stirling), pp 25–31
32. Tiffen to Wakefield, not dated, dispatch 93, NZC 110/0, ArchivesNZ (doc A43(k) (Walzl supporting papers), pp 2754–2763)
33. Frederick Weld, diary, 3 January 1845, ArchivesNZ (Bagnall, *Wairarapa*, p 56)
34. Bagnall, *Wairarapa*, p 59
35. 'Wairarapa: A Statistical Table Showing the Population, Amount of Stock, &c in the District, at the Commencement of March 1847', BPP, vol 8, cmd 570, p 58

36. Bruce Hardie, *Statistics of New Zealand for the Crown Colony Period, 1840–52* (Auckland: Department of Economics, Auckland University College, 1954), table 9
37. Document A48 (Stirling), p 41
38. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, p 49
39. Ibid
40. Weld, diary, 11 December 1844, Weld, journal, 1844–46, Weld papers, IV, ArchivesNZ (Williams, 'Pastoralist and Maoris', p 36)
41. 'Report of the Native Affairs Committee', 25 August 1899, MA 1 5/13/29, pt 1, ArchivesNZ (doc A121(a) (Batson supporting papers), pp 1131–1132)
42. Document I1(a) (Ngā Hapū Karanga closing submissions), pp 4–5
43. Document A48 (Stirling), p 33; doc A59 (Stirling), p 62
44. Document A48 (Stirling), p 41
45. Patterson, 'Laagers in the Wilderness' (doc A46 (McCracken), p 7); Bell to Fox, 31 December 1849, NZC 3, 1849/1804 (doc A43(k) (Walzl supporting papers), pp 2915–2916)
46. Document A44 (Walzl), pp 54, 123
47. Document A48 (Stirling), p 41
48. Document A118 (Gilling), pp 48, 57
49. A J Allom, 'The Bloody Cutlass', story read to the New Zealand Literary and Historical Association, 14 September 1899, MS 0060, ATL (doc A43(k) (Walzl supporting papers), pp 2861)
50. Document A48 (Stirling), p 44
51. Alice Lady Lovat, *The Life of Sir Frederick Weld, GCMG: A Pioneer of Empire* (London: John Murray and Co, 1914) (Williams, 'Pastoralist and Maoris', p 32)
52. Bagnall, *Wairarapa*, p 75
53. Ibid, p 113
54. Document A118 (Gilling), p 47
55. Weld, diary, 2 January 1845, Weld, journal, 1844–46, Weld papers, IV, ArchivesNZ (Williams, 'Pastoralist and Maoris', p 38)
56. Bagnall, *Wairarapa*, p 194
57. Document A118 (Gilling), pp 49–50
58. Ibid, p 72
59. Document A81 (Loveridge), pp 365–366
60. Document I1(a) (Ngā Hapū Karanga closing submissions), pp 7, 11
61. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed (Wellington: GP Publications, 1996), pp 193–206; Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 2, pp 215, 219, 233, 238, 240, 241, 251–252, 270, 333, 494, 503; vol 3, pp 831, 836, 967, 1011, 1015
62. Document A81 (Loveridge), pp 260–261
63. Normanby to Hobson, 14 August 1839, Alexander Mackay, comp, *A Compendium of Official Documents Relative to Native Affairs in the South Island*, 2 vols (Wellington: Government Printer, 1872–73), vol 1, p 15
64. Normanby to Hobson, 14 August 1839, p 14
65. Ibid, p 15
66. Ibid
67. Governor Grey to Earl Grey, 15 May 1848, BPP, vol 6 cmd 1120, 1849, no 11, p 25
68. Normanby to Hobson, 14 August 1839, Mackay, comp, *Compendium*, vol 1, p 14
69. Various translations of this passage can be found in Rose Daamen, *The Crown's Right of Pre-emption and Fitzroy's Waiver Purchases*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1998), pp 16–17
70. Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen and Unwin, 1987), pp 100–106
71. Gipps to Hobson, 6 March 1841, BPP, vol 3, cmd 569, 1842, p 91 (doc A81 (Loveridge), p 82)
72. Ibid, (p 81)
73. Land Claims Ordinance 1841, s2
74. Daamen, *Crown's Right of Pre-emption*, p 42
75. Document A81 (Loveridge), p 368
76. Waitangi Tribunal, *Hauraki Report*, vol 1, p 109
77. Document A81 (Loveridge), pp 103–116
78. Ibid, pp 201–202, 309
79. Daamen, *Crown's Right of Pre-emption*, pp 71–75
80. *New Zealand Journal*, 12 October 1844, p 589 (doc A81 (Loveridge), p 178)
81. Document A44 (Walzl), p 194; F Weld to C M Weld, postmarked 4 October 1848, Weld MSS, no 2, ATL (Williams, 'Pastoralist and Maoris', pp 49–50); Paul Goldsmith, *Wairarapa*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), pp 7–8
82. For examples of settlers' descriptions of their relationship to Wairarapa Māori, see doc A44 (Walzl), pp 133–134; doc A48 (Stirling), pp 44–46.
83. Grimstone to McLean, 7 October 1850, NM 50/0746, p 547, ArchivesNZ (doc A44 (Walzl), p 331)
84. Ibid (pp 331–332)
85. Document I5 (Ngāti Hinewaka closing submissions), p 11
86. Ibid, pp 12–13
87. Document A59 (Stirling), pp 21–22; doc A44 (Walzl), pp 40–41
88. Waitangi Tribunal, *The Kaipara Report* (Wellington: Legislation Direct, 2006), pp 98–99
89. Document A59 (Stirling), p 24
90. Ibid, pp 27, 36
91. Forsaith to Richmond, 29 March 1845, encl 1, NM 8 52/1323, ArchivesNZ (doc A43(k) (Walzl supporting papers), pp 2900–2902
92. Forsaith to Richmond, 29 March 1845, encl 1, NM 8 52/1323, ArchivesNZ (doc A43(k) (Walzl supporting papers), p 2903
93. Document A59 (Stirling), pp 33, 38; doc A44 (Walzl), p 47
94. Document A59 (Stirling), pp 53–67; doc A44 (Walzl), pp 49–50
95. Colenso, diary, 11 April 1845 (doc A44 (Walzl), p 49)
96. Goldsmith, *Wairarapa*, p 24
97. Colenso, journal, 19 April 1845, 27 February 1846, 5 May 1847, 27 April 1849 (doc A45 (Smith), pp 53–61)

98. Ibid, 12 April 1851 (Ibid, p 73)
99. Ibid, 17 April 1852 (Ibid, pp 73–74)
100. Document A44 (Walzl), pp 50–51; doc A59 (Stirling), pp 54, 58, 62
101. Document A59 (Stirling), p 53
102. Ibid, p 37
103. Anonymous letter to Grey from Peretanginoa, 11 October 1851, MS 32, fol 675–I, ATL (doc A45 (Smith), pp 89–92); doc A59 (Stirling), p 23. Stirling notes that '[a]lthough anonymous, the letter was sent the same day as another from Te Wereta's niece, Maraea Toatoa (a key figure in Barton's tukuwhenua), Iraia Te Ama and Karauria Hape, all leaders of Ngati Hinewaka, and seems to be linked'.
104. Colonial Secretary outward correspondence, 5 April 1845, NM 10/4, pp 80–81, ArchivesNZ (doc A59 (Stirling), p 49)
105. Richmond to Weretā, April 1845, NM 8 52/1323, ArchivesNZ (doc A59 (Stirling), p 51)
106. Document A59 (Stirling), p 35
107. Ibid, pp 25–26
108. Waitangi Tribunal, *Kaipara Report*, pp 91–92
109. Document A59 (Stirling), pp 47–48
110. Clarke to Domett, April 1845, BPP, vol 5, cmd 237, NM 8 52/1323 5, 1846, encl no 67, p 136, ArchivesNZ (doc A44 (Walzl), p 50)
111. Colonial Secretary, memorandum, 11 April 1850, NM 8/1852/1323, ArchivesNZ (doc A59 (Stirling), p 54)
112. McLean to Colonial Secretary, 3 September 1853, AJHR, 1861, C–1, pp 259–260 (doc A59 (Stirling), p 63)
113. McLean to Grey, not dated, McLean papers, MS 32, fol 4, ATL (doc A59 (Stirling), p 64)
114. Document I17(e) (Crown closing submissions), p 3
115. Ibid
116. Ibid
117. Ibid, pp 4–5
118. Waitangi Tribunal, *Kaipara Report*, p 85
119. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in the Nineteenth Century* (Auckland: Auckland University Press, 1973), pp 66–67
120. Document A59 (Stirling), pp 24–25, 31, 50–51
121. McLean to Grey, not dated, McLean papers, MS 32, fol 4 (doc A59 (Stirling), p 64)
122. Hope to Stanley, not dated, draft dispatch, 'New Zealand', CO 209/38, pp 317b–327a (doc A81 (Loveridge), pp 262, 271). This quote comes from Hope's suggestions for Stanley, but according to Loveridge, Stanley used Hope's suggestions and 'adapted and expanded upon' them for his instructions to Grey.
123. Governor Grey to Lord Stanley, December 1845, dispatch 9, BPP, 1846, cmd 712, no 11, p 18 (doc A81 (Loveridge), p 275)
124. Document A81 (Loveridge), pp 275–276
125. 'Legislative Council', *New Zealander*, 21 November 1846, vol 2, issue 77, proceedings, 14 November 1846, 'Native Land Purchase Bill'. The quotation comes from the first reading of the Land Claims Bill, which Loveridge refers to as 'the Governor's Land Claims Bill'.
126. Governor Grey to W E Gladstone, 21 June 1846, GBPP 5, cmd 837, no 13, pp 27–29 (doc A43(j) (Walzl supporting papers), pp 2666–2668); dispatch 104, 7 October 1846, CO 209/45, pp 303b–307b (doc A81 (Loveridge) pp 284–285)
127. Governor Grey to Earl Grey, 15 May 1848, dispatch 45, GBPP, vol 6, cmd 1120, 1849, pp 22–26 (doc A81 (Loveridge), p 374)
128. Wakefield to Grey, 18 February 1846, encl to no 19/46, 30 March 1846; Wakefield to Harington, NZC 3/6, pp 118–125 (doc A44 (Walzl), pp 68–69)
129. 'Legislative Council', *New Zealander*, 21 November 1846, vol 2, issue 77, proceedings, 14 November 1846, 'Native Land Purchase Bill' (doc A81 (Loveridge), p 300)
130. Document A81 (Loveridge), pp 296–297
131. 'Legislative Council', *New Zealander*, 21 November 1846, vol 2, issue 77, proceedings, 14 November 1846, 'Native Land Purchase Bill' (doc A81 (Loveridge), p 82)
132. Ibid (pp 300–301)
133. Ibid (p 299)
134. Document A113 (Loveridge), p 26
135. *Queen v Symonds* (1847) NZPCC 387 (doc A113 (Loveridge) p 27)
136. 'Legislative Council', *New Zealander*, 21 November 1846, vol 2, issue 77, proceedings, 14 November 1846, 'Native Land Purchase Bill' (doc A81 (Loveridge), p 298)
137. *New Zealander*, 28 November 1846, vol 2, issue 78 and 'Public Meeting' supplement (doc A81 (Loveridge), p 303); 'The Petition of Inhabitants of the Northern District', *New Zealander*, 28 November 1846, vol 2, issue 78 (doc A81 (Loveridge), pp 303–304)
138. *New Zealander*, 28 November 1846, vol 2, issue 78 and 'Public Meeting' supplement (doc A81 (Loveridge), pp 303–304)
139. 'Native Land Purchase Bill', *New Zealander*, 21 November 1846, vol 2, issue 77 (doc A81 (Loveridge), pp 301–302)
140. Governor Grey, 27 November 1846, duplicate dispatches, October–December 1846, G30/11, pp 773–784, no 136, Legislative Government House (doc A44 (Walzl), p 114)
141. Governor Grey, dispatch 136, 27 November 1846, CO 209/46 (doc A81 (Loveridge), p 304)
142. Governor Grey to Earl Grey, 28 November 1846, dispatch 137, pp 790–791, ArchivesNZ
143. Governor Grey to Earl Grey, 28 November 1846, G30/11, no 138 (doc A44 (Walzl), pp 118–119)
144. *New Zealander*, 21 November 1846 (doc A81 Loveridge), p 302
145. Weld to Weld, 9 January 1847 (doc A44 (Walzl), p 120)
146. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: First Preliminary Report on Te Tau Ihu Customary Rights in the Northern South Island* (Wellington: Legislation Direct, 2007), p 123
147. Document A81 (Loveridge), pp 260–261
148. 'Treaty of Waitangi, New Zealand', *New Zealander*, 13 December 1845 (doc A81 (Loveridge), p 264)
149. This was the subject of findings in the Waitangi Tribunal's *Te Tau*

Ihu report: see Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: First Preliminary Report*, pp 124–129.

150. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: First Preliminary Report*; Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 64–68

151. Document A81 (Loveridge), pp 314–315

152. H Merivale to J Beecham, 13 April 1848, BPP, vol 6, cmd 1002, encl 2 in no 30, pp 154–157 (doc A81 (Loveridge), p 398)

153. Governor Grey to Earl Grey, 15 May 1848, dispatch 45, BPP, vol 6, cmd 1120, p 23

154. Ibid, p 24

155. Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, p 163

156. Governor Grey to Earl Grey, 15 May 1848, dispatch 45, BPP, vol 6, cmd 1120, 1849, p 25 (doc A81 (Loveridge), p 318)

157. Document A81 (Loveridge), p 318

158. Governor Grey to Earl Grey, 15 May 1848, dispatch 45, BPP, vol 6, cmd 1120, 1849, p 25

159. 'General Legislative Council', *New Zealander*, 28 August 1849, proceedings, 25 August 1848 (doc A81 (Loveridge), pp 355–356)

160. Document I17 (Crown closing submissions), p 4

161. Ibid

162. H Merivale to J Beecham, 13 April 1848, BPP, vol 6, cmd 1002, 1847, encl 2 in no 30, pp 154–157 (doc A81 (Loveridge), p 399). As noted in Loveridge (p 322), this letter actually expresses the views of Earl Grey.

163. Document I17 (Crown closing submissions), pp 21–22. Note that the term 'dead letter' actually comes from the Mohaka ki Ahuriri Tribunal. The Tribunal stated that the ordinance 'was largely a dead letter as far as the Wairarapa and Hawke's Bay pastoralists were concerned': see Waitangi Tribunal, *Mohaka ki Ahuriri Report*, vol 1, p 63.

164. Document A81 (Loveridge), p 296

165. Document A48 (Stirling), pp 59–60

166. Bell to Wakefield, 23 March 1847, NZC 3/7 (doc A48 (Stirling), pp 60–61)

167. Bell, memorandum, 17 March 1847 (doc A44 (Walzl), p 128)

168. Richmond to Bell, 20 March 1847, enclosing a letter Grey intended to send to the Wairarapa chiefs, (doc A44 (Walzl), pp 128–129).

169. Bell to Fox, 21 December 1849, NZC 3/9/25 (doc A48 (Stirling), p 62)

170. Eyre to Governor Grey, 13 September 1847, NM 4/1, no 19, pp 20–21, ArchivesNZ (doc A44 (Walzl), pp 135–136)

171. Eyre to Grey, 15 October 1847, NM 4/1, no 59, p 72, ArchivesNZ (doc A44(Walzl), p 136)

172. Document A44 (Walzl), p 137

173. Earl Grey to Governor Grey, 23 March 1848, GBPP 6, cmd 1002, 1847–48, no 19, p 96 (doc A43(j) (Walzl supporting papers), p 2743

174. Earl Grey to Governor Grey, 29 June, 1848, GBPP 6, cmd 1002, 1847–48, no 27, pp 162–169 (doc A44 (Walzl), p 144)

175. Executive Council, minutes, 4 October 1848, NM 7/01, pp 111–112, ArchivesNZ (doc A44 (Walzl), p 198)

176. Domett to Kemp, 12 October 1848, NM 10/09/48/1102, pp 334–337, ArchivesNZ (doc A44 (Walzl) pp 202–203)

177. Eyre to Colenso, 7 November 1848, Colenso papers (doc A48 (Stirling) p 66)

178. Kemp, journal, 24 November 1848, BPP, vol 6 [1120] (doc A48 (Stirling), p 69)

179. Bell to Fox, 21 December 1849, NZC 3/9/25 (A48 (Stirling), pp 68–70); Kemp to Domett, 4 December 1848, BPP, vol 6, cmd 1120 (A48 (Stirling), pp 70–71)

180. Bell to Fox, 31 December 1849, NZC 3, 1849/1804 (doc A44 (Walzl), p 220)

181. Kemp to Domett, 18 January 1849, BPP, vol 6, cmd 672, no 23, encl 2, sub-encl 3, p 85 (doc A44 (Walzl), p 240)

182. Kemp, memorandum, 27 May 1850 (doc A44 (Walzl), p 323)

183. Kemp to Domett, 18 January 1849, BPP, vol 6, cmd 672, no 23, encl 2, sub-encl 3, p 85 [672] (doc A44 Walzl, p 241)

184. Document A48 (Stirling), pp 74–75

185. Document A33 (Rigby), p 5; doc A48 (Stirling), p 77

186. Document I17 (Crown closing submissions), p 20

187. Document A48 (Stirling), pp 77–78

188. Document I17 (Crown closing submissions), p 20

189. Ibid, pp 20–21; Goldsmith, *Wairarapa*, p 28

190. Document I17 (Crown closing submissions), pp 20–21

191. Ibid, p 23

192. Smith and others to Eyre, 10 October 1850, NM 8 50/1054, ArchivesNZ (doc A44 (Walzl), p 333)

193. Domett to W M Smith, 26 November 1850, NM 10/10, 50/0860, pp 605–606, ArchivesNZ (doc A44 (Walzl), p 334)

194. McLean to Domett, 9 July 1851, AJHR, 1862, C–1, pp 311–312 (doc A48 (Stirling), p 80)

195. Document A48 (Stirling), pp 78–79; doc A44 (Walzl), p 427

196. Document I17 (Crown closing submissions), p 22

197. Ibid, pp 10–13, 15–17, 23

198. Ibid, pp 4–5, 8–13, 39–42

199. F D Bell, 'Pastoral Leases', *New Zealand Government Gazette*, 15 July, 1855 (Hill, 'The Land and the Squatter', p 21)

200. Document A1 (Patterson), p 29

201. *New Zealand Journal*, no 267, vol 10, 1850, pp 56–57; F D Bell to W M Smith, 14 December 1848, encl to F D Bell to sec NZC, 31 December 1848, NZC 3/9 (doc A1 (Patterson), p 7)

202. Hill, 'The Land and the Squatter – Wairarapa 1843–1853', unnumbered page, fig 4 following p 21; Bagnall, *Wairarapa*, p 73

203. Document A46 (McCracken), p 7. McCracken, extrapolating from Patterson's figures, estimated that 27 runs had been established by the end of 1852.

204. Patterson, 'Laagers in the Wilderness', p 10; Hill, 'The Land and the Squatter', p 21. Bagnall, *Wairarapa*, p 135, reports that a schedule from July 1855 listed 26 'in the Wairarapa and East Coast'.

205. Patterson, 'Laagers in the Wilderness', p 14

206. Robert L Peden, 'Pastoralism and the Transformation of the Rangelands of the South Island of New Zealand, 1841 to 1912 – Mt Peel Station, a Case Study' (PhD thesis, University of Otago, 2007), pp 290–291
207. Hill, 'The Land and the Squatter', p 61
208. Bagnall, *Wairarapa*, p 237
209. *Lyttelton Times*, 18 May 1861, p 4
210. *Statistics of New Zealand 1871*, table 28
211. Peter Bromley Maling, *Samuel Butler at Mesopotamia* (1960; reprinted Wellington: Government Printer, 1984), p 28
212. B L Evans, *Agricultural and Pastoral Statistics of New Zealand, 1861–1954* (Wellington: Government Printer, 1956), p A34, tbl 31
213. Hill, 'The Land and the Squatter', p 19
214. Ibid, p 21
215. Ibid
216. 'Outlay and Increase of a Flock of 500 Ewes in New Zealand,' *New Zealand Journal*, no 273, vol 10, May 1850, pp 115–116. This is the source for estimated costs. Hill and Patterson used this article for their analysis of the profitability of pastoralism in Wairarapa. McCracken, extrapolating from Patterson's figures, estimated that 27 runs had been established by the end of 1852: doc A46 (McCracken), p 7.
217. Weld, *Hints to Intending Sheep Farmers*, p 5
218. Alfred Domett, 'Return of the Average Prices of Provisions', *Statistics of New Munster, New Zealand from 1841 to 1848* (Wellington: Government Printer, 1849) no 26
219. *Lyttelton Times*, 11 July 1863, p 3; 12 November 1863, p 4
220. Gary Richard Hawke, *The Making of New Zealand: An Economic History* (Cambridge: Cambridge University Press, 1985), p 84
221. 'Wairarapa', *Wellington Independent*, vol 24, issue 2958, 22 February 1870, pp 3–4
222. Document A114 (Hawke), p 27
223. Ibid
224. Ibid
225. Hill, 'The Land and the Squatter', pp 26–27
226. Williams, 'Pastoralist and Maoris', p 31
227. Charles Tripp to Charles Harper (R M Burdon, *High Country: The Evolution of a New Zealand Sheep Station* (Auckland: Whitcombe and Tombs, 1938), p 101)
228. Landcorp, 'Home', Landcorp, http://www.landcorp.co.nz (accessed 23 November 2009)
229. Hill, 'The Land and the Squatter', pp 18, 27
230. Document A114 (Hawke), p 26
231. G R Macdonald, *The Canterbury Frozen Meat Company Ltd. The First Seventy-five Years* (Christchurch: Whitcombe and Tombs, 1957), pp 4–5
232. Hill, 'The Land and the Squatter', p 33, notes that Clifford and Weld imported a ram and some ewes from Lord Western's English merino flock, and Bidwill imported merinos from the famous Macarthur flock from Camden, New South Wales. The *Lyttelton Times*, 12 October 1861, p 4, notes that George Rhodes of the Levels Station, near Timaru,

Sidebars

Page 32: 'Wairarapa Leasehold Tenure 'Precarious'?'. Sources: Jeanine Williams, 'Pastoralist and Maoris: Frederick Weld at Wharekaka', *New Zealand Journal of History*, vol 11, no 1 (1977), pp 28–53, 28, 40–42, 44. On page 38, Williams discusses Māori ideas of justice and utu and uses two quotes from Weld in illustration. On page 39, Williams quotes Weld's 'hourly uncertainty' concerning Māori changes of attitude. F Weld to C M Weld, postmarked 4 October 1848, Weld MSS 2, ATL (Williams, 'Pastoralist and Maoris', p 50), and Weld, diary, 11 December 1844 (doc A44 (Walzl), pp 38–39). Walzl (p 75) notes that 'Simon Peter' was also known as 'Te Hinaki'.

Page 42: 'Maintaining the Peace of the Colony – Did English Law Apply to Māori?'. Sources: Normanby to Hobson, 14 August 1839, and Russell to Hobson, 9 December 1840 (Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), pp 83, 840); Russell to Hobson, 9 December 1840, GPP, 1840 (311), p 27; Claudia Orange, *The Treaty of Waitangi* (Wellington: Allen and Unwin, 1987), pp 106, 110–113; *Southern Cross*, 23 March 1844, (doc A59 (Stirling), p 45); Native Exemption Ordinance 1844, preamble, cls 1–9; Alan Ward, *A Show of Justice: Racial 'Amalgamation' in the Nineteenth Century* (Auckland: Auckland University Press, 1973), pp 66–67

Page 52: 'Defence of the Native Land Purchase Ordinance'. Source: Governor Grey, 28 November 1846, dispatch 138 (doc A81 (Loveridge), p 303)

Page 53: 'The Principles on which the Colony was Founded: Normanby's Colonisation Model'. Sources: Normanby to Hobson, 14 August 1839, dispatch 39/1 (as shown in Robert McNab, ed, *Historical Records of New Zealand*, 2 vols (Wellington: Government Printer, 1908–14), vol 1, pp 729–739; doc A81 (Loveridge), pp 22–30)

Page 54: 'The Principles under which Wairarapa was Purchased: Governor Grey's Colonisation Model'. Sources: Governor Grey, 27 November 1846, duplicate dispatches, October–December 1846, G30/11, pp 773–784, no 136, Legislative Government House (doc A44 (Walzl), pp 113–114); Governor Grey to Earl Grey, 28 November 1846, G30/11, no 138, (doc A44 (Walzl), p 119); Governor Grey to Earl Grey, 15 May 1848, dispatch no 45, BPP, vol 6 [1120], 1849, pp 22–26

Page 62: 'Colenso Opposed to Land Sales'. Sources: Colenso, journal, 16 September 1846; NZC3/9 (doc A3 (Hippolite), p 18); Goldsmith, *Wairarapa*, p 33; doc A44 (Walzl) pp 76, 112–120

Page 63: 'Māori Opinion Captured at a Moment in Time: Ōtāraia, November 1848'. Sources: Bell to Fox, 31 December 1849, NZC3, 1849/1804 (doc A43(k) (Walzl supporting papers), pp 2937–2938, 2941, 2944–2945

toured England, France, and Germany, and returned with six merino rams and five ewes.

233. *Timaru Herald*, 5 April 1871, p 2; *Otago Witness*, 13 March 1886, p 6; *Country Journal*, vol 18, no 5 (September 1894), p 371; *Country Journal*, vol 20, no 6 (November 1896), p 511; *Country Journal*, vol 21, no 2 (March 1897), p 105; *Country Journal*, vol 21, no 2 (March 1897), p 106

234. Gordon McLauchlan, *The Farming of New Zealand: The People and the Land* (Auckland: Penguin Viking, 2006), p 110

235. Patterson, 'Laagers in the Wilderness', p 10

236. Ibid, pp 10, 13

237. Document I17 (Crown closing submissions), p 11

238. The *Wellington Independent*, 3 June 1846, noted sheep prices at between 20 and 25 shillings per head while four years later the *New Zealand Journal*, vol 10, no 273, 18 May 1850, listed the price of sheep at 18 to 25 shillings per head. John Deans, *Pioneers on Port Cooper Plains: The Deans Family of Riccarton and Homebush* (Christchurch: Simpson Williams, 1964), pp 81, 86, reported sheep selling for 30 and 35 shillings each in May and September 1853.

239. Weld, *Hints to Intending Sheep Farmers*, p 5

240. Patterson, 'Laagers in the Wilderness', p 13; Robert L Peden, 'Pastoralism and the Transformation of the Rangelands', pp 233–234

241. Hill, 'The Land and the Squatter', pp 42–43, 66; Bagnall, *Wairarapa*, p 78

242. Hill, 'The Land and the Squatter', pp 65–66

243. William Mein Smith, watercolour, 1840s, B–062–022, ATL. This painting of a rural scene in the Wairarapa shows sheep fenced in by a post-and-rail fence in the 1840s.

244. Hill, 'The Land and the Squatter', p 66

245. Patterson, 'Laagers in the Wilderness', p 10

246. Bell to Fox, 31 December 1849, NZC 3, 1849/1804 (doc A43(k) (Walzl supporting papers), p 2916)

247. Ibid, (pp 2920–2921)

248. Weld to Weld, October 1849(?) Webster collection, ATL (Bagnall, *Wairarapa*, p 78)

249. Bagnall, *Wairarapa*, p 78; doc A44 (Walzl), pp 210–211, refers to Bell to Fox 31 December 1849, NZC 3, 1849/1804, (doc A43(k) (Walzl supporting papers), pp 2920–2921)

250. Document I17 (Crown closing submissions), p 16

251. Ibid, p 10

252. Ibid, pp 10–11

253. Ibid, p 11

254. Ibid

255. Document I25 (Ngā Hapū Karanga reply submissions), p 7

256. Document I5 (Ngāti Hinewaka closing submissions), p 10

257. Ibid

258. Document I8 (Rangitāne closing submissions), p 35

259. Orange, *Treaty of Waitangi*, p 100

260. Daamen, *Crown's Right of Pre-emption*, p 18

261. Ruth Ross, 'Te Tiriti o Waitangi: Texts and Translations', *New Zealand Journal of History*, vol 6, no 2 (1972) (Daamen, *Crown's Right of Pre-emption*, p 23)

262. 'The Native Land Purchase Bill', *New Zealander*, 21 November 1846, vol 2, issue 77 (doc A81 (Loveridge), pp 301–302)

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264. Document I17 (Crown closing submissions), p 4

265. H Merivale to J Beecham, 13 April 1848, BPP, vol 6, 1847, cmd 1002, encl 2 in no 30, pp 154–157 (doc A81 (Loveridge), p 327)

266. *Queen v Symonds* (1847) NZPCC 387 (doc A81 (Loveridge), p 327

267. H Merivale to J Beecham, 13 April 1848, BPP, vol 6 cmd 1002, 1847, encl 2 in no 30, pp 154–157 (doc A81 (Loveridge), p 326)

268. Waitangi Tribunal, *Hauraki Report*, vol 1, p 168

269. 'General Legislative Council', *New Zealander*, 28 August 1849, proceedings, 25 August 1848 (doc A81 (Loveridge), p 356)

270. Eyre to Governor Grey, 15 October 1847, NM 4/1, no 59, p 72, ArchivesNZ (doc A44 (Walzl), p 136)

271. 'Colonial Politics', *Auckland Chronicle & New Zealand Colonist*, 21 March 1844, vol 2, no 33 (doc A81 (Loveridge), p 180)

272. Governor Grey to Earl Grey, dispatch 28, 26 March 1847, BPP, vol 6 cmd 892, pp 7–9 (doc A81 (Loveridge), p 335)

273. Document I17 (Crown closing submissions), p 11

274. Document I5 (Ngāti Hinewaka closing submissions), pp 5–6

275. Document I17 (Crown closing submissions), p 16

276. Document I17 (Crown closing submissions), p 10

277. Ibid, pp 10–11

278. Ibid, p 11

279. Ibid

280. Patterson, 'Laagers in the Wilderness', p 10; Hill, 'The Land and the Squatter', p 21

281. Bagnall, *Wairarapa*, pp 532–533

282. Document I17 (Crown closing submissions), p 15

283. Document A114 (Hawke), p 26

284. Ibid, p 27

285. Waitangi Tribunal, *Hauraki Report*, vol 3, p 1216

286. Ibid, p 1222

287. William Colenso, diary, 16 September 1846 (doc A44 (Walzl), p 76)

288. Tiffen, memoirs, c1902, ATL (doc A43(k) (Walzl supporting papers), p 2867

289. Alfred Matthews, memoirs, ATL (doc A43(k) (Walzl supporting papers), p 2869

Maps

Page 29: 'Rendering of "Sketch Map of the Runs in the Wairarapa and East Coast District"'. Sources: F D Bell, commissioner of Crown lands, July 1855, LINZ SO 10474; Peter B Maling, *Historic Charts and Maps of New Zealand, 1642–1875* (Auckland: Reed, 1999), pl 86.

290. Document A44 (Walzl), p 263
291. Bagnall, *Wairarapa*, p 78; doc A44 (Walzl), p 210
292. Ibid
293. Document I17 (Crown closing submissions), p 16
294. Bagnall, *Wairarapa*, pp 90–91
295. Document I17 (Crown closing submissions), pp 17, 18
296. Document A48 (Stirling), p 50

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CHAPTER 3A

CROWN PURCHASING: POLICY AND PRACTICE, 1853–65

3A.1 Introduction

The preceding chapters describe the early contact between Wairarapa ki Tāmaki-nui-ā-Rua Māori and settlers, and how the New Zealand Company, assisted by the Crown, tried to buy the entire valley area.

Wairarapa ki Tāmaki-nui-ā-Rua Māori were clearly interested in settlers and their new economy, but until 1853 their mode of engagement was through land leasing. This changed dramatically in the eight months from June 1853 to January 1854. By early 1854, the Crown had purchased about three-quarters of the Wairarapa valley, along with significant portions of the Wairarapa coast. Donald McLean, the Crown's senior land purchase officer, signed up 56 deeds and receipts for blocks ranging from over 100,000 acres to smallholdings of 20 acres. Over the next two years – from November 1854 to February 1856, when his first stint in the district ended – McLean organised further deeds and made down payments on other undefined blocks. By 1865, when the Native Land Court was established and Crown monopoly of purchase ended, more than 1.5 million acres had been purchased in the Wairarapa ki Tararua district by means of some 207 deeds and receipts.[1] Although this was not the single, district-wide purchase originally sought by the Crown, the end result was much the same: an enormous area had been acquired for settlers to buy and occupy.

3A.1.1 Four key negotiations

How did the transfer of ownership come about? There were four key sets of negotiation:

1. First, negotiations between McLean and rangatira based in the Hawke's Bay, Pōrangahau, Mātaikona, and Kaikōkirikiri culminated in the Castlepoint purchase in June 1853. The claimants called this a 'breakthrough' purchase for the Crown.[2]
2. The second was a big hui at Tūranganui in August 1853 (the 'komiti nui'), when Governor Grey asked the chiefs of Wairarapa – rangatira to rangatira (chief to chief), kanohi ki te kanohi (face to face) – to hand over the whole district to the Crown before he departed New Zealand.
3. Third were McLean's negotiations to ameliorate the legacy of Sub-Protector Thomas Forsaith at Maungaroa (Barton's Run). It will be recalled that Forsaith investigated and judged Te Weretā's muru of Barton in a high-handed and inappropriate manner.

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The Mataōperu deed of October 1853 was partly to make amends. McLean followed it up by touring the district organising deeds, reserves, and payments.

4. Fourth were the negotiations of Crown purchase officers (George Sisson Cooper, Isaac Featherston, and William Searancke) to buy up remaining lands, and deal with problems arising from earlier purchases: complaints, disputes, unrealised promises, and the difficulties Māori were experiencing with Pākehā settlement.

(1) *Understanding the komiti nui: the crux of the claimants' concerns*

The first set of negotiations, which led to the Castlepoint transaction, was significant as the first 'sale' of land in our inquiry district. In comparison with later purchases, Castlepoint was fully and carefully negotiated by the Crown in accordance with the standards that had been set for its officers. There is, however, disagreement between parties (claimants, historians, and the Crown) as to what Māori really understood when they signed the Castlepoint deed.

The same kinds of differences apply to the komiti nui that followed in August 1853. All parties, including the Crown, concur that the agreement reached between Grey and the chiefs on that occasion were not an 'arms-length commercial transaction'. However, the parties differ as to whether it was:

- a treaty or kawenata (covenant);
- a tuku, or reciprocal arrangement according to customary understandings;
- the equivalent of a forced cession; or
- a confirmation of Māori citizenship in the modern economy that entailed no special obligations on the Crown.

There is disagreement about other important questions too:

- How instrumental was the komiti nui in changing Māori attitudes to selling land?
- What were the promises made, and how were they understood by the parties?
- What were the duties or the obligations assumed by the Crown as the result of those negotiations?

(2) *Multiple deeds signed*

In the ensuing months, rangatira signed multiple deeds in which they purported to extinguish the rights of all their people in defined blocks, although the description of boundaries was sometimes imprecise. The deeds set the terms of payment, the areas to be retained as reserves, and any other conditions of sale. Most notably, a number of deeds contained 'koha', or '5 percent' clauses, by which the Government agreed to set aside 5 percent of the profits of on-sale (after deduction of survey and administrative costs) for the future benefit of Māori.

At first McLean seems to have carried on in the spirit of the agreement reached at the komiti nui and according to Grey's instructions and intent. We shall see, however, that standards began to decline. During the third and fourth sets of negotiations, both the Castlepoint model and the understanding reached at Tūranganui were abandoned, as the Crown pursued more expedient means of securing agreement to its purchases. Deeds were transacted with fewer chiefs, without survey plans, with purchases overlapping and boundaries disputed – and, increasingly, lands reserved from earlier purchases were bought.

Complaints ensued almost immediately, and were to continue: lands transacted without consent of all right holders, boundaries unclear, land sold that should have been excluded, payments not received, reserves not set aside, promises of 'koha' not kept. Much of the activity of Crown officials in these years was directed to solving problems left by the unsatisfactory nature of its earlier dealings by which settlement had proceeded.

(3) *Chapter outline*

In this chapter, we look at Crown purchasing in the district during the period when it exercised pre-emption,

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before Māori land could be purchased directly by settlers as occurred when the Native Land Court was introduced.

We begin by looking at what the Crown ought to have done, according to the articulated standards and established procedures of the time, and so that Māori could ultimately benefit from settlement, and would have a fair chance of doing so.

Then we discuss what actually happened. We trace the activities of McLean and his successors in undertaking the many transactions with tangata whenua to purchase their land in the period up to 1864. We describe the deals, the problems, the deals raised, and the attempts to resolve those problems. In that general discussion we focus our attention, in particular, on a number of key events: the 'break-through' at Castlepoint, the komiti nui, the negotiations at Mataōperu/Maungaroa, the problems at Tautāne, and the growing dispute at Pāhaoa and Wainuiorū.

Then we look at it all through the Treaty lens. Crucial to our analysis are these questions:

- What was the likely Māori understanding of their land transactions at this time? Did customary perspectives still dominate, or had they been affected by prior experience with leasing and their discussions with Crown officials, missionaries, and others?
- Did Māori understanding of and attitude to Crown purchase change over the period under consideration?
- What were the Crown's standards of purchase conduct at the time, and were those standards met?

Before proceeding to our discussion of Crown purchasing policy, we set out the claimants' and Crown's arguments in brief. It is useful to bear in mind their respective perspectives, and the main points on which they differ, when reading the historical narrative.

3A.1.2 What the claimants say

The claimants scrutinise the nature of the agreement reached at the Tūranganui komiti nui in 1853, which resulted in alienation of land on a scale 'not otherwise seen in New Zealand'. They say that 'it is altogether unlikely' that alienation would have gone ahead at the pace that occurred without that agreement and the personal appeal of Grey.[3] They all agree that the komiti nui of 1853 was of prime importance to Wairarapa, though various views are held as to what was intended by the participants, both Māori and Crown. Some claimants emphasise the continuation of traditional ways of looking at land transactions; others accept that modifications had occurred in custom while still emphasising the importance of treaty-making and of establishing on-going relationships in the thinking of Māori at the time; some argue that the Crown had left their tīpuna with little choice if they wished to continue to engage with settlement.

Did what took place at Tūranganui really justify the Crown proceeding to purchase the bulk of the district without further ado? The claimants say no. They characterise the Crown's conduct as having undermined the right of tangata whenua to elect to use and derive a cash income from their lands by means other than outright sale (as discussed in the preceding chapter). They argue that there is nothing wrong, in principle, with the Crown's holding a major political hui attended by the principal right holders to seek their consent to the opening up of the district on terms acceptable to them. If those right holders' consent was freely given, careful negotiation about land transfer could follow. That transfer would involve limited areas of land; it would involve all the acknowledged right holders; and it would painstakingly nail down all the details as to boundaries, reserves, and payment.

Had that happened here, the process might well have met Treaty standards. But it did not: owners were not properly identified, their consent was not informed and willing, boundaries were not clearly defined, payments were neither adequate nor properly distributed, ample reserves were not set aside, and appropriate provision was not made for their future. What constituted correct practice when it came to buying Māori lands was known, but

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not followed. The claimants condemn how 'consent' was achieved (in particular, the signing of deeds in Wellington and the payment of secondary right holders without the prior knowledge and agreement of the principal owners), and the Crown's failure to follow through on its promises that a sufficient land base would be retained and an endowment created for their future sustenance. They also stress the consequences of the Crown's failure to properly define the boundaries at the time of transactions, and to make deed information readily available – information that would have enabled Māori to know exactly how much land was leaving their control, and ensured that their reserved areas were properly protected. Instead, survey for settlers invariably took precedence and, in a significant number of instances, Māori were to find that lands they thought 'reserved' had been already on-sold.

There was ample scope for such misunderstandings, given the sloppy documentation and the 'haphazard' approach to recording agreements, and especially surveys. The claimants consider that this amounted to a systemic failure of process which distanced Māori from their whenua and failed to protect their core lands, a Treaty breach in its own right.[4]

They argue, too, that the price paid was utterly inadequate considering the rents or returns that might have been realised had they been given time to equip themselves with the necessary capital and knowledge to utilise their lands in the settler economy. By the time medical services and educational facilities were provided, and employment opportunities flowed from economic expansion predicated on government investment, it was too late for Māori to benefit fully, or on equal terms with the general settler population. By the time the Crown acted on its promises, and Wairarapa Māori in more isolated areas received substantial infrastructure, 'a state of effective landlessness had long since been in evidence'.[5]

As noted earlier, a feature of the Crown's Wairarapa purchasing was the introduction of a clause into some transaction deeds stating that part of the proceeds of on-sale would be devoted to schools, hospitals, medical attendance, mills (to be decided in consultation with Māori), and future annuities for rangatira (at the Government's discretion). The claimants acknowledged that the inclusion of this clause in only some deeds presents problems. Does the benefit extend to all, or only some? And what about the Crown's statements, when seeking Māori consent to the opening up of the district, that all would benefit from settlement among them?

Finally, the claimants argue that the Crown's development of the koha clause shows it acknowledged its obligation to provide actively for their future benefit. In Māori, koha means a present or gift. Counsel for Ngā Hapū Karanga submitted that the general promises and the specific koha clauses dovetail with each other: the written clauses were evidence of an intention to fulfil the promises more generally made.[6]

3A.1.3 What the Crown says

The Crown does not accept that there was a recognised standard of practice for purchasing Māori land, and contends that its purchase policies were evolving to meet changing circumstances. It also denies that promises were made at Tūranganui beyond those specifically contained in individual deeds.[7] The Crown does not comment directly on the adequacy of reserves policy, and how this relates to the operation of the land fund, which it uses to justify colonisation policy (then and now). Counsel submitted, however, that sufficient land was left after the first round of purchasing to provide Māori with a buffer.[8] The Crown concedes, though, that Māori of 'Wairarapa ki Tāmaki nui ā Rua today are virtually landless' and that 'the potential for insufficiency ought to have been apparent to the Crown' by the turn of the nineteenth century.[9] However, the Crown accepts very limited responsibility for landlessness. It argues that Māori willingly engaged in sales to gain the advantages that would come with settlement, and had no expectation that such advantages were guaranteed.[10]

The Crown concedes that reserves should have been surveyed in a timely manner, but contends that there were

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fewer negative effects where the transacting parties had a clear understanding of what had been agreed, or if the situation was remedied later.[11]

The Crown denies that the koha or 5 percent clause evidenced a more general, district-wide obligation. Rather, the existence of specific commitments meant that no general commitment was intended, or understood. As noted, the Crown does accept that where deeds included 5 percent or koha provisions, it is bound by them, as well as by specific provisions for reserves. It also concedes that it was:

> justifiable for Māori to expect a reasonable degree of government activity in such areas as education and medical treatment – since these were so often mentioned – and fair access to the services that lay within the government's capacity to provide.[12]

But the Crown maintains that its obligations went no further, and a:

> distinction should be observed between these specific undertakings on the one hand and, on the other, the projections of development and advantages that Māori would share.[13]

3A.2 The Pillars of Crown Purchasing Policy as at 1853

In the previous chapter, we discussed the Crown's attitude to direct leasing in the context of the theory of colonisation then applied to New Zealand. We talked about the Crown's assertion of its pre-emptive right, how it interpreted that right to mean control of all land transactions (not just sales), and how the land fund was conceived as the key mechanism through which to promote orderly settlement. We also explained how popular theories about 'waste' or 'unoccupied' lands influenced official policy, and undermined the guarantees and protections in the Treaty.

In 1846, the Colonial Office, having earlier wavered on what its acknowledgement of Māori rangatiratanga meant, reaffirmed the Treaty's recognition that Māori customs applied, and that Māori did in fact own their 'wastelands' under their own laws. As a result, owners had to be properly identified and their consent to the purchase of all lands gained. However, their ownership was not really regarded in the same way as European ownership, and their entitlements were differently perceived. In the view of most Pākehā:

- Māori really valued only the land they lived on or cultivated, and this should be protected as reserves;
- when Māori sold land, they were not entitled to any part of the value already brought by settlement: that should go to the Government in order to finance colonisation; and
- only kāinga and cultivations were really essential to Māori, and these would be protected as reserves. Māori would not suffer as a consequence of the low prices the Crown paid, because they didn't really need much land. Moreover, they would ultimately benefit from the rise in value of land they retained and, as well, enjoy the future advantages of schools, hospitals, public works, and development.

These were the pillars of Crown land purchase policy: that Māori would benefit from settlement, that Māori land would be reserved for their long-term economic well-being, and that part of the proceeds of on-sale would be spent on Māori purposes. These at once acknowledged that the Crown had responsibilities, and provided justification for conduct that might otherwise be judged unconscionable.

Let us now examine the origins of these three pillars, their development over time, and their crucial place in the Crown's policy.

3A.2.1 Pillar 1: Māori would benefit from settlement

(1) *Benefits of settlement available only via sale of land*

In this period, the Crown framed its purchase proposals in terms of the future benefits for Māori who agreed to them. The message was that Māori could benefit from settlement

and the good things it brought only via sale of their land to the Government. If they said no, they would have to return to the old ways and forgo all the new foods, new goods, new knowledge, and the new way of living.

Access to the benefits of settlement and the rising value of their reserves was thought to be the 'real inducement' to Māori to sell to the Government.[14] The Crown could provide secure titles, roads and railways, ports and schools and hospitals, mills, and all the 'civilising' forces of government. This, officials thought, was incentive enough for Māori to choose selling to the Crown over keeping lands under their own laws and customs.

They regularly recorded their views and their speeches to this effect. Thus Eyre, echoing Normanby (whose famous 'instructions' underpinned the Treaty), wrote to Colenso from Wairarapa in 1848:

> The real payment . . . will be the advantages which civilisation, and the valuable institutions by which it is accompanied, will afford to them and to their children, whilst the enhanced value of their Reserves by the occupation of the country around them will at the same time give a greater money-value to their comparatively small possessions over what the whole territory now possesses.[15]

Although there is no record of what McLean and Grey said at their key negotiations in 1853, this would undoubtedly have been their theme.

(2) *Only the Crown could deliver the benefits of settlement*

Another imperative of that time was to ensure that Māori understood that private settler purchasers could not deliver the same advantages as the Crown. The low price was part of the sacrifice Māori had to make, just as the Crown bore the cost of making sure that the right sort of settlers came. Thus McLean stated at Waipukurau:

> it was but right that they should know that land when in Govt hands would rapidly increase in value as we would expend money in making roads, bridges and other improvements to render the land attractive to the Queens subjects and induce them to come and live among them as friends bringing their wealth with them to a strange land among a strange people who they were to enrich by so doing whereas the land in [its] present state produced and reproduced nothing, but from it should hereafter produce wealth and abundance to the rising generation of their race.[16]

Grey himself later recalled how he had emphasised the 'good many things' that came with settlement, doctors and schools; he confirmed before the Smith Nairn Commission of 1879 that this had been his usual practice both in the South Island and Hawke's Bay.[17] Other officials said the same, including McLean, Eyre, and Gore Browne. Both claimant and Crown counsel cited them in submissions, and earlier Tribunal reports refer to them too, so we do not rehearse them here.[18] The Crown does not dispute that it was its practice to win Māori agreement by emphasising the benefits that would flow.

3a.2.2 Pillar 2: Māori would benefit from reserves

(1) *Reserves policy confining for Māori*

Ample or sufficient reserves were the other cornerstone of Normanby's policy: no land was to be purchased from Māori that was essential to their future welfare. Ensuring that Māori retained such land was the policy counterweight to the idea that orderly settlement would be funded by resale of large tracts of cheaply acquired land.

Officials accepted this obligation in principle, but there was no consensus about how much and what kind of land would need to be reserved to ensure what Normanby called Māori 'comfort, safety or subsistence'.[19] Options considered included setting aside a percentage of the land sold as an endowment, and Māori leasing the land reserved to them (under Crown grant) for income. As it turned out, though, in most instances reserves were lands already intensively occupied by Māori – kāinga, pā, cultivations, particular stands of bush, or eel and fishing sites. Any

surplus was usually offered to win the consent of particular rangatira, or to create a buffer until Māori gave up their 'migratory habits' and settled into their role as self-reliant small cultivators. Making reserves like this did ensure that Māori kept some land, but it also served to confine them to their 'occupied' lands. In 'Intentions and Possibilities', page 102, we note key statements about reserves made by Crown officials in the years immediately before its purchases in our inquiry district.

(2) *What level of provision should be made for Māori?*

Thus we see that Crown officials accepted that, though the freehold of most Māori territory must go to the settlers if the colony was to progress, some sort of provision had to be made for Māori. But how much?

At its most expansive, the Crown contemplated a range of future options for Māori arising out of their land reserves. Where Māori had to give up their customary land usage, help might be provided for them to acquire other skills. There was also a less generous strain of opinion, though: rather than 'ample', reserves were to be 'sufficient', an 'adequate portion', or 'small portions of land, for the purposes of cultivation'.[20] But it did seem to be accepted that, at a minimum, Māori should retain the lands they intensively occupied.

We turn later to identify where the actual provision for Māori in Wairarapa ki Tāmaki-nui-ā-Rua came in this spectrum of possibilities (see ch 3B).

3A.2.3 Pillar 3: Māori would benefit from part of the proceeds of on-sale being spent on Māori purposes

(1) *Where did the idea of a fund to promote Māori welfare come from?*

It was intrinsic to land fund theory that the Crown's investment of the proceeds of resale in general government purposes and immigration would benefit Māori, along with Pākehā. Some thought that the Crown's duty went further than this, though. A number of important officers of the Crown acknowledged that Māori would need to be actively assisted so that they had a fair opportunity to engage with settlement on terms of equality with Pākehā.

Normanby's instructions had laid down the general aim of 'promoting [Māori] civilization, – understanding by that term whatever relates to the religious, intellectual, and social advancement of mankind'.[21] He did not elaborate on how this might be achieved – though he did advise Hobson to support and aid the work of missionaries, and establish schools for Māori as a means of teaching them literature and other aspects of 'civilisation'.

But, then, in January 1841, Russell sent additional instructions to Hobson that introduced the idea of using a portion of the profits from on-sale of land to create an endowment fund specifically to benefit Māori:

> As often as any sale shall hereafter be effected in the colony of lands acquired by purchase from the aborigines, there must be carried to the credit of the department of the protector of aborigines a sum amounting to not less than 15, nor more than 20 per cent in the purchase-money, which will constitute a fund for defraying the charge of the protector's establishment, and for defraying all other charges which, on the recommendation of the protector, the governor and executive council may have authorized for promoting the health, civilization, education and spiritual care of the natives.[22]

(2) *What happened to Russell's instruction?*

This instruction remained in force for the next two years, but lack of funds meant that there was no practical result. When Earl Grey became Secretary of State for the Colonies in 1846, the direction was dropped from Colonial Office instructions. The Crown chose to channel surpluses generated by resale of land into immigration, rather than the provision of services to Māori.

Governor Grey, however, championed the idea of making 'purposes connected with the benefit and improvement of the native race' a direct charge on the land fund; he promised it to Māori in his purchase negotiations, and

Intentions and Possibilities: What Key Crown Officials Said, 1840–52

The main elements in the development of thinking about reserves policy were:

- 1839: Normanby instructed that no land should be purchased from Māori 'the retention of which by them would be essential, or highly conducive, to their own comfort, safety, or subsistence'. Normanby thought that the rising value of lands they retained would compensate Māori later for selling cheaply to the Crown now.
- In January 1841, Russell instructed Hobson that the land belonging to Māori should be:

  > defined with all practicable and necessary precision on the general maps and surveys of the colony. The surveyor-general should also be required from time to time, to report what particular tract of land it would be desirable that the natives should permanently retain for their own use and occupation. . . . the lands indicated . . . or pointed out by the protector as essential to the well-being of the natives, should be regarded as inalienable, even in favour of local government, after the governor with the advice of the executive council, shall have ratified and approved the surveyor's reports, and the suggestions of the protector.

- Responding to Earl Grey's wastelands instructions, in 1846, Governor Grey proposed that 'an adequate portion for the future wants of the natives' be reserved from tracts purchased, and those lands would then be registered as the 'only admitted claims of the natives in that district'.
- In an exchange of correspondence regarding the situation in the northern part of the South Island, Governor Grey and Earl Grey discussed how customary rights in non-core lands should be treated and what the Crown's responsibilities were. Governor Grey thought that Māori would need a significant amount of land because they did 'not support themselves solely by cultivation, but from fern-root, – from fishing, – from eel ponds, – from taking ducks, – from hunting wild pigs'. They were not yet equipped with either knowledge or tools to enter into the settler economy. 'To deprive them of their wild lands, and to limit them to lands for the purpose of cultivation,' he said, 'is in fact, to cut them off from some of their most important means of subsistence, and they cannot be readily and abruptly forced into becoming a solely agricultural people.' Earl Grey conceded that 'an ample extent of land' should be secured, 'to meet all their [Māori] real wants'. Settlement was to take priority, but if traditional use of wastelands was impeded as a result of purchases for settlement, Māori were to be provided 'in some other way [with] advantages fully equal to those which they might lose'.
- Crown officers going into the Wairarapa to make extensive land purchases felt a responsibility to make provision for Māori. The first acknowledgement of this kind was made during preparations for the 1847 negotiations on behalf of the New Zealand Company. After meeting with Grey, Wakefield noted that 'His Excellency stated his opinion that ample reserves of land for cultivation should be made for the natives'.
- On a number of occasions, Governor Grey spoke as if Māori would have sufficient land reserved to be able to lease to Europeans. In 1849, under pressure to open lands for settlement by allowing direct lease of land still in customary title, he expounded the virtues of his uniform system of cheap purchase of 'large tracts of land', setting aside 'ample reserves' which Māori 'would be at liberty to lease to Europeans'. In 1850, Grey proposed that Māori could lease 'such portions' of reserved lands 'as the Government may not think necessary for their present wants'.
- When instructing his surveyor, in 1852, McLean stated that it is 'most desirable that the whole of this district should be obtained subject to ample reservations for the limited number of natives that occupy the coast line'. These assurances were often repeated. We note, however, that he also prepared the surveyor for 'extravagant' demands.

tried to impose the duty on the colonial authorities who would have to bear the cost.[23]

In the late 1840s and early 1850s Grey proposed that, after deducting the costs of survey and administration, 15 percent of the profits from on-selling land bought cheaply from Māori should be spent on Māori purposes. Relying on Russell's instruction (even though this had been superseded), Grey assumed authority to apply these moneys to:

- building schools and hospitals to which Māori were to have the same access as Europeans;
- paying for resident magistrates, native magistrates, and native police;
- buying 'presents' for chiefs 'of services rendered by them'; and
- 'such other purposes as may tend to promote the prosperity and happiness of the native race, and their advancement in Christianity and civilization'.[24]

When challenged on the application of land fund moneys to building a native school in Auckland, he countered that the Crown had undertaken to do this: it was a necessary part of delivering to Māori long-term benefit from selling their land. Indeed, paying to promote Māori 'welfare' and 'benefit and civilization' formed their 'real payment'.[25]

(3) *Was Grey genuine?*

In the view of Grey's critics, then as now, this was all part of the 'flour and sugar' tactics he used to attach Māori to him personally and, via his person, to the Crown's ends. In Wairarapa, there was certainly evidence of this happening. But when Grey expressed a clear commitment on the Crown's part to make active provision for long-term Māori welfare, did he really believe it to be desirable and achievable? Or was he simply soliciting Māori cooperation, without much regard for whether his undertakings were capable of fulfilment? It is impossible now to know. Certainly, Māori had no means of assessing Grey's bona fides; they took him at face value, as they were entitled to do. This is why we proceed on the basis that the Crown, through Grey, undertook to benefit Māori in this way during the negotiation that opened up the Wairarapa ki Tāmaki-nui-ā-Rua region to purchase, and the Crown is liable if the undertakings were not fulfilled.

In August 1853, the Civil Secretary, authorised by Grey, sent specific instructions to the Commissioner of Crown Lands in Auckland. He should pay:

> one fifteenth . . . of the proceeds of the sales of any lands purchased from the aborigines previously to this date, into the general treasury in order that such amounts may be devoted to the object for the benefit of the Native Race, in accordance with agreements entered into with the owners at the time of the purchase of those lands.[26]

Grey built on this idea in the Wairarapa. He promoted it to Māori as a new arrangement – one that demonstrated the Crown's concern for their ongoing welfare.[27] It was no doubt a part of what persuaded Māori to agree to sell their land, and end the leasing arrangements.

(4) *Putting Grey's new arrangement into effect*

Grey wanted the new arrangement included in the deeds that followed on the heels of the komiti nui,[28] and that is what happened at first. The Tūrakirae, Tūranganui, and other major deeds stated that 'a certain additional consideration for the lands we have sold' would be set aside. The percentage was less – only 5 percent (after deducting survey and sale expenses) – but the idea was the same. The money was to be spent:

> for the forming of schools to teach our children, for the construction of flour mills for us, for the construction of Hospitals and for Medical attendance for us, and also for certain annuities to be paid to us for certain of our Chiefs.[29]

In the Māori version this was expressed as 'he koha'. Chrisp's translation of the Tūranganui deed states that the promise was for 'certain benefits . . . derived from our homes that we have passed over' and instead of 'certain annuities' he uses the phrase, 'payment of pensions in future years for some of our rangatira'.[30]

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McLean was arranging the deeds at the time, and he gave his understanding of the new arrangement in a letter to Domett. Moneys would be set apart 'in such proportions, and at such periods as the Governor . . . (or an officer appointed by him) and the Natives themselves may mutually agree to'. But it was 'reserved entirely to the Governor . . . as to whom, at what periods, and how . . . annuities [were] to be distributed'.[31] Expenditure for Māori purposes seems here to have mutated into arrangements about pensions.

The Wairarapa ki Tararua district was distinctive for how often the 'koha' or '5 percent' clause was inserted in purchase deeds: 12 of the early deeds contained them.[32] Nevertheless, the practice was really quite short-lived; it was abandoned in the face of the hostility of the colonial government, and with no Grey there to defend it. We address the whole question of the koha or 5 percent clauses in section 3.3.

3A.2.4 What were the purchasing standards of the time?

In the previous sections, we looked at how Crown purchasing policy in these early years involved promising Māori various kinds of protection and benefit, through retention of reserves, rising land values, and the advantages offered by European settlement in terms of health, employment, and education. We now examine whether there were similar accepted standards for the process that Crown agents should follow in purchasing land. Was a standard articulated, and did the Crown, when it conducted its land purchases in this district, meet it?

These questions were very much live issues before us, because in closing submissions, Crown counsel contended that in this early period there was no accepted standard. The Crown's practice was evolving to respond to changing circumstances – especially growing settler demand, and the pressure of Māori wanting to engage with the Crown about their lands. Resources were limited, and often Crown agents were able only to react to circumstances largely outside their control.

(1) *The elements of good purchase*

During the early years of the colony, Crown agents made statements about the standard for conducting land purchases. Notions about this derived initially from Normanby's instructions. Normanby directed that Crown purchase agents should act with 'sincerity, justice and good faith', and were not to allow Māori to enter bargains that would be injurious to their well-being.

Experience of dealing with Māori about their lands soon taught agents that they could not follow these guidelines unless:

- the blocks to be purchased were clearly delineated;
- title was investigated before purchase;
- all right holders were identified; and
- there was agreement between right holders as to their relative interests or, where there was no agreement, some sort of umpire (commission, registrar, or court) could be called upon.

Only then could Māori give informed consent. Key agents such as Clarke, Shortland,[33] McLean, and Grey said as much.

Moreover, the Crown demonstrated on a number of occasions that it knew about these important elements of purchasing procedure, because it implemented them.[34]

(2) *Other Tribunals' opinions on purchase standards*

The Te Tau Ihu Tribunal put considerable weight on the example of the Crown's purchase of the Waitohi and Pakawau blocks. There, the resident right holders were approached first, the Crown's wishes were made known to all, transactions were publicly debated on the spot, and all right holders were given the opportunity to put their case at a hui. Those present then agreed among themselves with whom the Crown should deal – and the Crown complied.[35] This process was an adaptation of the traditional way – open

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debate on the marae in the presence of those who had rights in the land (both those living and those passed on).

The Mohaka ki Ahuriri Tribunal made similar points about the Rangitikei and Whanganui purchases. Although these purchases were outside that Tribunal's inquiry district, it thought they were significant for how McLean emphasised his 'minute and public investigation' of the claims of every tribe, who had 'timely notice' of three public meetings. According to the surveyor who attended, the respective claims of the members of the tribe were fully discussed during daily meetings, and the boundaries were walked with McLean.[36] Even if this was a rosy interpretation of the degree of accord and understanding reached, it showed that McLean knew what was required for Māori consent to be meaningful.

The Mohaka ki Ahuriri Tribunal summed up like this:

> 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.[37]

(3) *Was there a limit on the size of blocks?*

More debatable at the time was the question of what size blocks should be. Here, the need to purchase as much land as possible for settlement and the intricacy of native tenure – in particular, the exercise of overlapping and different rights in the same piece of ground – came into collision. Chief Protector Clarke argued in the early 1840s that a purchase had to be smaller than 10,000 acres to be valid; otherwise, there would be too many overlapping rights for it to be 'safe', and hostilities between hapū were the likely result.[38] Dr Donald Loveridge said in evidence that this limitation was impractical, though, and, in fact, it was not implemented.[39] Grey preferred large-scale purchases, with 'ample reserves', in advance of settlement.[40] But although he advocated large-scale purchase at minimal prices, Grey did not publicly abandon the need for the prior identification of all right holders, the negotiation of their informed consent, and agreement as to the distribution of payment and clearly marked boundaries. Certainly, this is what he expected from other parties if they were to enter land transactions with Māori.[41]

Grey had affirmed, in the years leading up to the acquisition of Wairarapa ki Tararua lands, that the Crown expected the question of ownership to have been settled – and any disputes resolved – before purchases were made. For example, when he contemplated a system of direct lease under Crown supervision, it was because this would enable the Government to 'take care, that equitable arrangements are entered into with the true native owners'. Settlers would not be allowed to occupy any land until the question of native title had been 'amicably arranged' between them.[42]

3A.2.5 Conclusion

This Tribunal is satisfied that we can discern an acceptance of responsibility in the Crown's approach to purchasing land from Māori. It accepted responsibility to ensure that Māori would not sell all their land; would benefit from selling the land they sold in ways other than simply by getting paid; and would be treated fairly in the practice of purchasing. The sense of responsibility was complex, and of course differently felt and experienced by those exercising authority in various ways on behalf of the Crown. But it seems to have arisen only partly from article 2 of the Treaty. Its other components were the need to balance the sacrifice Māori were expected to make in selling land cheaply, Christianity-inspired humanitarian protection, and also self-interest. If settlement were to proceed

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smoothly, peace needed to be maintained: this would happen only if purchases were 'safe'.

In order for purchases to be safe, it was important to meet certain standards. The Crown knew what it took to purchase well, and sometimes it demonstrated this by implementing good practice. To meet best practice standards, it had to ensure that:

- the rightful owners were the ones selling;
- any dispute regarding rights – as to their existence, location, and proportion – were resolved beforehand;
- blocks were limited in size to an area that could be alienated without injury to tangata whenua;
- the boundaries were clearly marked;
- the price was fair (although this is a relative concept and prevailing ideas about wastelands and the need for a land fund were influenced by contemporary thinking); and
- consent to the sale was both informed and willing.

In addition, the Crown undertook responsibility for the long-term welfare of Māori in at least these ways:

- Sufficient reserves would be made. Exactly what lands should be reserved was unclear, but at a minimum would include pā (fortified villages), kāinga (settlements), cultivations, and urupā (burial grounds). Although wastelands thinking affected reserve policy, a commitment remained to assist Māori in the transition from traditional lifestyles to engagement with settlement.[43] This meant retaining land for a variety of uses.
- Māori would be assisted to adapt to the settler economy. This commitment took the form of both general and specific promises of provision for Māori benefit as a charge upon the proceeds of on-sale.
- Māori would be given the opportunity to prosper from settlement on terms of equality.

In the following sections, we examine whether the Crown met its own standards and followed through on the basic obligations it acknowledged.

3A.3 Crown Purchases in Wairarapa ki Tararua, 1853–64

3A.3.1 Introduction

How were the policies we have discussed here implemented in this inquiry district?

We turn first to the negotiations that led up to the first 'sale' deed to be signed by Māori in our inquiry district: the Castlepoint deed. (The cession of land at Maungaroa that Forsaith demanded as punishment for Te Weretā's muru (retributive act of plunder) at Barton's Run happened earlier, but that was a different kind of transaction.)

The Castlepoint deed was signed in June 1853. The negotiations that led up to it, and its terms, teach us something about how some of the most important rangatira of the district were thinking at the time. They tell us perhaps even more about the approach of McLean. This deed is also a useful point from which to view subsequent arrangements.

We go on to consider Grey's meeting at Tūranganui – the komiti nui – which was seen at the time as a turning point. Claimants invited us to view it this way too. They contend that Grey's direct intervention in the Wairarapa situation in August 1853 was required to finally break the grip of leasing in the Wairarapa.[44] The rush of different deed signings, and offers of land for cash and promises of reserves that followed, is explicable only if understood in terms of that key event.

We then examine more closely the deeds that the Crown entered into, and how and why its purchase practice developed in this district. A key feature was how the Crown secured purchases by a stepwise process that began with advances and the promise of special reserves and benefits to key individuals, then gave extra payments to those who had held out (or missed out), and then paid the balance by instalments. Also evident was the practice of making deals in Wellington and Hawke's Bay. We look at how reserves began to be purchased, and how the early use of the koha or 5 percent clause dwindled.

We ask whether the Crown's practices undermined Māori tino rangatiratanga and their capacity to make informed

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and willing decisions about sale, and whether adequate provision was made for their future welfare. And to what extent did the Crown's practice live up to its own standards?

3A.3.2 The Castlepoint transaction

(1) *Castlepoint: the breakthrough for the Crown*

The Crown badly wanted to purchase land in the Wairarapa, both because the area was obviously good for settlement – the leaseholders had shown that – and to prevent the spread of leasing. Tony Walzl told us that what McLean needed was a breakthrough purchase of a first block.[45] The Castlepoint purchase was that breakthrough.

This made it special: there was a great deal riding on it.

The transaction was more intensively debated than those that followed, and more care was taken with boundaries and reserves. There was greater emphasis on process: more hui, more people involved, more ceremony attached. And then the particular provisions made – or promised – were more attractive to Māori. There was a good range of lands reserved, though Māori had agreed to the Crown's demand for the purchase to extend further south than they had originally intended. Thus, Castlepoint is both an important starting-point for Wairarapa purchases, and a model against which to assess the Crown's 'evolving practice'.

McLean began working actively towards an extensive purchase in the Wairarapa ki Tararua district in early 1851. This was when he first noted Wiremu Te Pōtangaroa's interest in dealing with the Government for this area.

Although the land in the Castlepoint vicinity was not considered to be of high quality, it was strategically located. It lay between the upper Wairarapa – where Māori had established relationships with squatters, and the idea of giving authority over their lands to the Crown had been rejected – and the Tautāne–Pōrangahau lands to the north. There, too, tangata whenua had evinced little interest in emulating their whanaunga (kin) who had sold land to the Crown at Waipukurau and the Mohaka ki Ahuriri.

Letters between McLean and local rangatira in the years 1851–1853 reveal much about what happened. Te Pōtangaroa, along with a number of rangatira with interests in the Wairarapa, had participated in the Ahuriri transaction, and Crown officials built on this.

(2) *Wealth displayed as an inducement*

One of the initial tactics employed was to display the quantities of money that could be gained from sale.

In September 1851, McLean set off on a three-week tour through Wairarapa and north to Hawke's Bay, carrying £3000 in gold sovereigns 'clinking on the backs of his mules'. This was the first instalment of the massive Hawke's Bay purchase. During his tour, he sought not only to display to Māori the wealth that awaited those who agreed to his 'bargains' but also to demonstrate his regard for individual rangatira; he left £1000 in the care of two rangatira during the first overnight camp.[46] Here was the promise of wealth and prosperity made real. Bruce Stirling, and Alan Ward in the Rangahaua Whanui *National Overview*, characterised this conduct as a deliberate lure.[47]

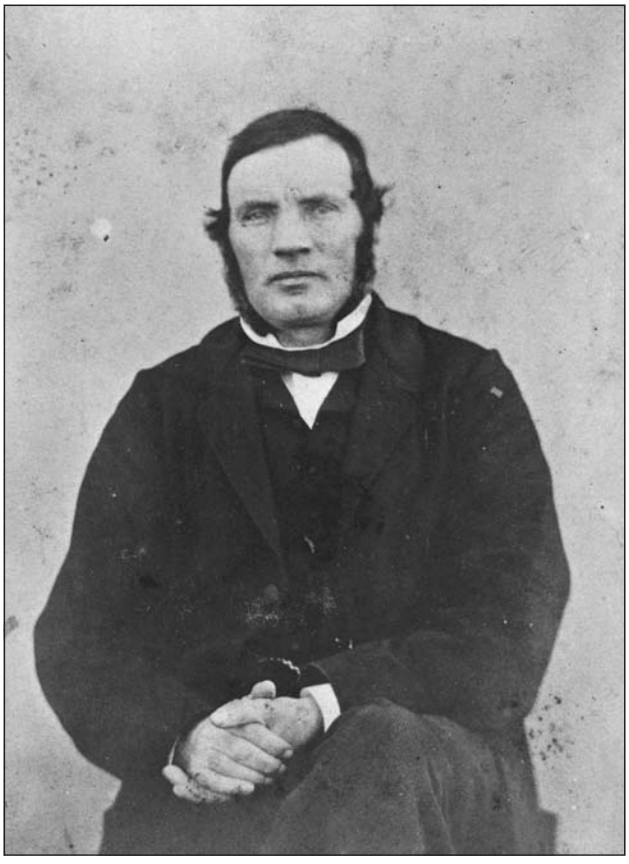
The display of wealth was a very deliberate ploy. McLean told the Governor in a letter:

> I find when negotiating with the natives that we can make a much greater impression if we can actually exhibit a sum for their acceptance the knowledge of its being at hand when discussing a sale has sometimes a talismanic effect on their movements.[48]

Perhaps it was the ultimate success of the Castlepoint transaction that ensured that the display of wealth became part of the Crown's tactical menu. Grey, although ostensibly espousing 'judicious' payment and willing consent, actually repeated McLean's performance in 1853, on his way to the Tūranganui hui.[49] As we shall see, that was another successful event, from the Crown's point of view.

(3) *The idea begins to take hold*

There is no record of the kōrero (discussion) during McLean's first tour, but it is apparent that Māori opinion



Sir Donald McLean, circa 1865

was swinging more solidly behind the idea of releasing lands into the Crown's hands. A number of factors were at play. It was becoming obvious that leasing was not going to be allowed to continue. There had been some lease-related disputes, and the immediate cash benefits of 'sale' to the Crown had been demonstrated. Other advantages seemed likely to flow from being in the Crown's favour such as mills, schools, and agricultural implements. Moreover, the influence of Colenso – who opposed sale – was beginning to wane.

At the end of 1851, Te Pōtangaroa asked McLean and Grey to come and see him. McLean replied that the Crown would be glad to accept any offer of land. He wrote: 'Governor Grey has agreed to pay compensation for the land, and after arrange a surveyor to go over the district.'[50]

McLean wrote to Te Pōtangaroa, chief of Mātaikona:

> Ehoa e te Potangaroa,
>
> Tena Koutou ko au tangata noho mai nei i tenei kainga o taua, E hoa e pai ana nga korero me nga whakahaere o tau pukapuka. Kua wakaae a Kawana Kerei kia utua te whenua, meake ka rite he kairuri he wakahaere i nga rohe heoi kua rite tau korero i ki mai koe ki au kia hui-hui. Koutou i muri i au kia korerotia nga tikanga mo tenei whenua. Kia wawe te rite.
>
> Naku, na to hoa na te Makarini
>
> Friend Potangaroa,
>
> Greetings to you all, including your people staying at this kainga of ours. Friend. The words and instructions in your letter are very good. Governor Grey has agreed to pay compensation for the land, and after arrange a surveyor to go over the districts. Your suggestion to have a meeting has been acted upon. You, after me, should discuss the tikanga for this land. Make haste with a decision.
>
> Mine, from your friend McLean

At the same time, McLean was writing to Te Weretā Kawekairangi about the Hawke's Bay 'sales', encouraging him to emulate the Hawke's Bay chiefs and consent to the sale of other land.[51] He reassured Te Weretā that he would receive due payment for his interests:

> You will not be forgotten by our friend Te Hapuku, on the contrary Te Hapuku is a modest man, his food would not be served up in a pile, that indeed is a great man, great are his thoughts and his thinking. However your thinking and his are alike – giving as a chief, you yourself have [those] ideas and that is his stance too that welcomes and takes care of people also, your thoughts are like that as well.[52]

It seems that Te Weretā was also aware of Te Pōtangaroa's plans to transact land, and McLean told him not to interfere. He assured Te Weretā that he too would be paid:

> Your word about Potangaroa has appeared . . . leave him to give that side of your land because there are a great number of kaingas remaining, yours indeed is that place belonging to your ancestor and this place is yours also, nevertheless have respect for our friend dwelling at those kaingas of ours, however on the days of the compensation payments let them show their respect for you.[53]

He told Te Weretā that Grey would pay him for his land at Whāwhānui, which had been subject to Forsaith's cession: an arrangement would be made, and McLean would 'pursue the thoughts of your friend the Governor'.[54]

Te Otene Kuku, based at Kaikōkirikiri, wrote to Grey and McLean in February 1852 to tell them that the people had met for 'formal' discussions: 'there were many people present, speakers, observers and supporters'. The Government should make haste to send a surveyor so that they could all join in the walking of the boundary of the Crown's arrangements.[55] At the same time, Te Hāpuku, Te Niania, and associated leaders from the Hawke's Bay, were bringing their influence to bear (Colenso noted) to 'transfer another large portion of their land to the Government'.[56] Te Niania joined with Te Hāpuku to write about the survey.[57] Te Hāpuku visited Castlepoint, and later advised McLean to remove all squatters from the Wairarapa ki Tararua district. 'Let them be sent this way from there,' he wrote, so:

> that the natives there may experience poverty, and that you may have the whole leaves and branches of our tree, and that we may live in a state of light and peace.[58]

(4) *The survey gets underway*

The preliminary survey work began in March 1852. McLean informed his surveyor, Pelichet, that Māori wished to 'dispose of the whole of the coast line of country excepting reserves, lying between Whareamu and the Porangahou river and extending inland as far as the Tararua ranges' and added:

> without appearing anxious or in any way urging them to dispose of more land than they seem perfectly willing to sell, at the same time it is most desirable that the whole of this district should be obtained subject to ample reservations for the limited number of Natives that occupy the coast line.[59]

Pelichet first visited Kaikōkirikiri, where he delivered a letter from McLean. Then he went on to Whareama, before proceeding to Ahuriri where he delivered letters addressed to Te Hāpuku, Te Niania and the other resident chiefs. Pelichet reported that 'from what I have heard from the Natives along the Coast' the survey would start at the mouth of the Whareama River, north to Akitio and inland to the Tararua ranges. He estimated this to be 300,000 to 400,000 acres.[60] It was his impression that 'the Natives of Porangahau are not for selling', although Te Hāpuku had assured him that they would sell.[61]

Pelichet then returned to Castlepoint, where work did not proceed to his satisfaction. He was under pressure to survey a portion of the block, but then could not survey to the desired boundary (Whareama), the 'owner of the land being absent, so they tell me'. A disgruntled Pelichet complained: 'They are not such good natives to deal with as the Ahuriri natives, very inquisitive, in fact they know too much. The first block will end at Mataikona so they tell me.' He warned that if the block boundary was to be the backline to the Tararuas, surveying this would certainly cause delay.[62]

(5) *How much land would the rangatira give over to Crown purchase?*

Hawke's Bay rangatira Te Hāpuku, Te Niania, Puhara, and Hine-i-paketia convened at Mātaikona in mid-April 1852 with a view to transferring more land to the Government. McLean was not present, but the walking of the boundary proceeded.[63] Later in the month, Te Otene and Te Pōtangaroa informed McLean that the survey had

been completed and that the land would now go as far south as Whareama River as the Government wished.[64] Te Pōtangaroa wrote to McLean, indicating that there were some issues yet to be sorted out concerning the boundaries of land owned by Retimana Te Kōrou, the resident chief at Ngāumutawa and Kaikōkirikiri:

> Kia te Makarini, E hoa tena ra ko koe, ka nui toku aroha atu ki a koe, he kupu taku kia rongo mai koe, he kupu taku kia rongo mai koe, tenei ano au kei runga i nga rohe o to taua kainga e tirotiro ana, ko te wenua iho atu ki a koe, kua rite, kua pai taku titiro ki runga ki ona rohe, ko te wenua i tukua houtia mai, kaore ano i ahua pai ki taku titiro. Ko te wenua o te Retimana. Heoi ko tetahi o taua wenua kaore ano i timata, inaianei pea i muri i tena tukunga karere atu i timata ai, Engari pea ko koe me haere mai, tae rawa mai hoki koe kua oti katoa tenei matou ko Te Hapuku, ko Te Kuini, ko Hori, ko Puhara, ko Rapana, e hurihuri ana mo te wenua mo nga rohe heoi kua rite, katoa, heoi ko koe kia horo mai
>
> Heoi ano
> Naku na te Wiremu Potangaroa
>
> To McLean, greetings. I have great regard for you. I have something to tell you. I have been looking over the lie of the land, the land that we gave over to you. That's all fine. I'm satisfied with those boundaries. As to the land we've yielded up more recently, there are still some matters to sort out. That's Retimana's land. There's a part where the survey hasn't yet been undertaken, although it might be started by the time you get this. So you should come. By the time you arrive everything will have been completed. We – Te Hapuku, Te Kuini, Hori, Puhara and Rapana – have checked out the boundaries, all of them. So it's for you now to get here as soon as possible.[65]

On the same day, Wiremu Paraone and others also wrote to McLean objecting to how the boundaries were being determined. They wanted to ensure that those who really knew the territory determined the boundaries:

> tenei ta matou korero ki a koe ko te rohe kia wakamaramatia he pouri no te rohe, he ta no te rohe noreira matou i ki atu ai kia wakatikaia ta te mea kai a matou te wahi hei wakatikanga mo te rohe, kia tika tonu ai, ko te tikanga o te rohe ki ta matou.[66]
>
> our request to you is that the boundaries should be made clear, because they are too vague on the drawing that's been made, and for that reason we say that it should be put right because it's up to us to determine what's what with our land, so that it will be consistent with what we know about it.[67]

(6) *Putting the leasing bogey to bed*

McLean's appeal to the Executive Council was fueled by his belief that Māori would only commit to sale once the possibility of leasing was ruled out. Having one general system of purchasing lands, distributing the proceeds, and making ample reserves for the 'present and future wants' of the vendors had worked in Mohaka ki Ahuriri and Waipukurau.[68] But the purchases there had been achieved only after McLean had convinced them that leasing would not be permitted, and the 'only legitimate means by which they could realise revenue from their wastelands would be by disposing of them to the Crown'. It was essential that the Crown now take steps to bring Wairarapa into its uniform system by enforcing the law.[69]

The Executive Council agreed with McLean that something should be done. There was no intention to evict established run holders, but the resolution that was passed authorised McLean to take what steps he considered necessary.

McLean moved now to finalise his purchase arrangements. As we saw in the preceding chapter, he intervened in a proposed on-lease of Clifford and Weld's run at Wharekākā. He and Grey also received a number of

McLean's Appeal to the Executive Council, 1852

In the early 1850s, after the collapse of New Zealand Company's colonisation plans, the Government focused on extending its successful purchase in the Hawke's Bay in a southerly direction. They targeted Castlepoint and the Wairarapa Valley as the next area for Crown purchase. The Native Land Purchase Ordinance of 1846 was an important tool in furthering that object. When Wairarapa Māori continued to express their preference for leasing and their opposition to the Crown's efforts to purchase the Castlepoint area, Native Land Purchase Commissioner Donald McLean advised that it was time for the Government to start putting the pressure on. He petitioned the Executive Council in these terms:

> The Natives who have sold their land and who are now in treaty to dispose of more land to the Government complain that other tribes especially those of Wairarapa are allowed to lease their lands at high annual rentals to the Europeans in defiance of the law . . . They justly state that they dispose of their lands under the full assurance that the Government, will in every instance strictly enforce this law and that one general system, that of purchasing their lands equitably, distributing its proceeds, making ample reserves for their own present and future wants, will be uniformly pursued. I may here state that 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 that a law which I translated, and explained to them 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 . . . I have only to submit that if the tribes who identify themselves with the interests of the Government by the sale of extensive districts of Country were to suppose that such leasing would be sanctioned after the repeated declarations of the Executive to the contrary they would not only decline to sell more land but they might regret having sold any, and also consider themselves as the declared friends and allies of the Government more unjustly dealt with than those who are at present reaping large advantages from being allowed to act in opposition to the as yet unvindicated laws and proclamations that have been issued in reference to the Wairarapa.

The Executive Council agreed with McLean, and passed this resolution:

> The Council recommends, that Mr McLean be instructed that in all cases of persons attempting to enter into any new arrangements with the Natives of Wairarapa Valley which could in his opinion interfere with his negotiations for the purchase of the District – he is to take immediate steps to stop such arrangements and to punish the persons who may persist in thus attempting to violate the law.

letters from Māori asking for the Government's assistance in the adjustment of leases or disputes with squatters.[70] It would seem that the consent of the Te Kaikōkirikiri people remained outstanding, however. In December 1852, Retimana Te Kōrou wrote to McLean outlining what land should be excluded, and warning that careful process was necessary to ensure that land was not taken at random. Otherwise there would be bad consequences, such as happened in the Bay of Islands and Wairau.[71]

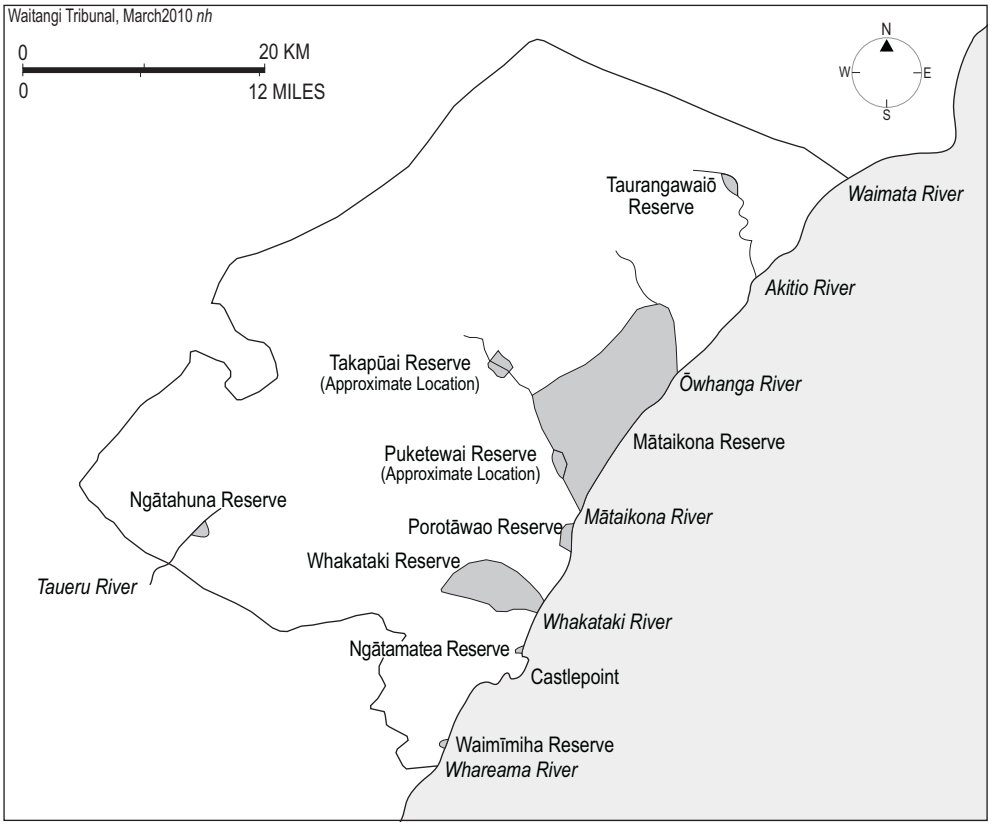
(7) *Masters and Grey play their part*

In early March 1853, Masters and other like-minded settlers convened a meeting at Bannister's Crown and Anchor inn on Lambton Quay, Wellington.[72] There, they resolved to lobby Grey for a substantial block of land in the Wairarapa to be made available for small farmers and associated settlement. Tukanohi (or Tukunohi) recounted the story to Charles Bannister, a local historian, some decades later. Masters had gone to Te Kōrou's kāinga (settlement) at

Clifford and Weld's Station at Wharekākā in 1846

Ngāumutawa (on the outskirts of current-day Masterton) and asked those gathered there whether they wanted a town, and spoke of the things that they could get in the shops 'and all the things best for the Maori'. Retimana Te Kōrou and others – 'the leading Maoris of the Masterton district' – agreed to sell land formerly leased to two squatters.[73] They signed a letter to Grey saying they would 'sell some of their land to make a town; but not all of it. They would not sell the land close to their kainga [settlements] or pa [fortified villages].' Kaikōkirikiri, Ākura, and 'some other parts' were to be reserved. Te Kōrou then sent his son-in-law (Ihāia) with Masters to Wellington, where he met with Grey. Masters also recalled that at Ngāumutawa they had 'a long conversation, part Maori and part English; however, we made Isaiah [Ihāia] understand'.[74]

Immediately afterwards, Grey went on a tour with Bishop Selwyn, visiting Wairarapa on their way to Ahuriri, and encouraging Māori to set aside lands for industrial schools. Two such gifts were made by Wairarapa rangatira – at Pāpāwai and Kaikōkirikiri. Stirling argues that the Governor would have done his bit to promote the idea of land sale, 'closer settlement', reserves, and benefit.[75] This seems more than likely. Certainly, Pene Kaha later wrote to McLean about the Whakataki reserves, saying that this was 'the land that was returned to us by Governor Grey, when he and the Bishop came in 1853'.[76] Presumably, this



The Castlepoint purchase area and the reserves made in the deed of June 1853

means that Grey specifically agreed that land at Whakataki would be excluded from purchase and made the subject of a Crown grant back to its owners. Grey probably addressed the broader kinds of benefit that Māori would derive from entering into arrangements for sale of their land. As usual, however, there is no record of what was said.

(8) *The signing of the Castlepoint deed, June 1853*

By June 1853, both Te Kōrou and Paraone had agreed to include the area between Whareama and Mātaikona in the lands to go to the Crown. Te Pōtangaroa had been preparing for the occasion, abstaining from food while a whare was made ready for McLean's arrival. Many people had gathered, but again, we do not know what was agreed beyond what was said in the actual deed. This stated that 'nga Rangatira me nga tangata o Ngatikahungunu' did 'sell and entirely cede our land', including trees, waters, and stones (the Crown's translation called 'kohatu' – literally, stones – 'minerals')[77] within the boundaries described for a total of £2500.[78] The absolute cession was expressed in the Māori deed as 'kia utua kia tino tukua rawatia to matou whenua' and was accompanied by what is now referred to as a tangi clause. This is where the idea of the finality and permanency of the transaction is conveyed by reference to 'tangi' (to cry or grieve) and 'poroporoākī' (death rituals), and by words conveying absoluteness and foreverness like

'me nga aha noa iho aha noa iho' (absolutely whatever) and 'ake tonu atu' (from this time forth and forever).

This is the tangi clause in the Castlepoint deed:

> Kua oti i a matou i o matou huihuinga korero mo te whenua te hurihuri te mihi te tangi te tino poroporoaki te tino tuku rawa i enei whenua o a matou tipuna tuku iho ki a matou hei whenua pumau na matou i tenei ra e witi nei me ona rakau me ona wai, me ona kohatu o raro ranei o te whenua o runga ranei o te whenua me nga aha noa iho aha noa iho o aua whenua ki a Wikitoria te Kuini o Ingarini ki nga Kingi Kuini ranei o muri iho i a ia ake tonu atu.
>
> Having held meetings to talk about this land, we have finished discussing it, greeting it, crying over it, making an absolute last and final farewell to these lands that our ancestors left as an inheritance for us. In the broad light of day we have completely yielded it up, its trees, its waters, every stone whether on or under the earth, absolutely everything pertaining to the land we have given over to Queen Victoria of England and her heirs and successors from this time forth and forever.[79]

The purchase price was to be paid in instalments – £1000 immediately, £1000 in the following year, and the final £500 in 1855. The boundaries were given using Māori place names and marks, and described an area extending south to Whareama. The northern boundary was at Waimata, which excluded Pōrangahau.[80] Crown surveyors estimated the block at 275,000 acres. Using modern GIS mapping techniques, and based on the sketch map accompanying the deed, the actual size is closer to 484,775 acres.[81] This is nearly double the surveyors' estimate. Ten places were named as reserves, but position and boundaries were described for only four.[82]

A total of 301 people signed the Castlepoint deed, including women and children. This indicated that the transaction was intended to bind future generations. Te Hāpuku, despite his earlier involvement, was not present at the initial distribution of payments. His interests would later be recognised in the sale of one of the reserves (see below).

(9) *A model purchase?*

Philip Cleaver, who was commissioned by the Crown Forest Rental Trust to research the purchase, concludes: 'It appears from the large number of signatories to the Castle Point deed that the negotiations were very widely attended, and that support for the transaction was extensive.'[83]

That assessment is accepted, in large, by all parties. Some claimant groups do question whether the transaction is properly characterised as a sale, and criticise the Crown's subsequent treatment of reserves. But Castlepoint is also held up as showing what the Crown could and should have done when seeking to buy land.

McLean had gathered the interest holders together to discuss and agree, and to walk all the boundaries together, before the signing of the deed. It was conducted under tikanga.

Claimants question the right of Te Hāpuku in particular to lead transactions, as well as his overall role in the alienation of the district, but they do not dispute that he and his party had some rights in the block.

The reserves estimated by Cleaver to total 27,863 acres (approximately 10 percent of the total area estimated as purchased) were also generous by later standards.[84]

There is certainly support for the notion that, by comparison with later purchases, the Castlepoint transaction was something of a gold standard. Counsel for Ngā Hapū Karanga, Grant Powell, argued that later negotiations were neither as measured nor as transparent.[85] Waitangi Tribunal researcher Dr Rigby agrees that 'The level of preparation, discussion, consultation and the sheer number of signers . . . stood in stark contrast to subsequent purchases.'[86] In order to achieve the breakthrough he needed, McLean spared no effort to conduct this purchase as well as he knew how.

Even so, significant problems with survey and protection of reserves emerged later, and often took many years

to resolve. We do not want to anticipate our later analysis of these important issues here; we simply note briefly what happened next.

(10) *Problems with survey and reserves*

McLean knew very well that reserves were a priority. Before departing to pursue negotiations elsewhere, he instructed surveyor O L W Bousfield:

> As it is important that the boundaries of the native reserves in the Castle Point district should be as clearly defined as possible before you leave this place, and as it is also important that the boundary line . . . inland of Mataikona recently ceded to the Govt. should also be defined, I have to request that you will at your earliest convenience proceed up the Mataikona river to a place designated Arowata where you will fix the south boundary.[87]

Bousfield was also to mark out a 'small spot say about one or 200 acres around their present village which they require as a reserve.'[88] Cleaver concludes that:

> It appears that Bo[u]sfield failed to carry out McLean's instructions to define all of the 10 reserves that were listed in the Castle Point deed. While it is possible that the reserves were temporarily pegged on the ground, there is no evidence to suggest that individual plans were made of each of the reserves, or that they were all marked on a larger plan of the block.[89]

A plan entitled 'Taken from Plan attached to Castle Point deed' shows the boundaries of Ngātāhuna, Whakataki, Porotāwhao, Taurangawaiō and Ngātamatea. The other reserves were undefined and under immediate threat of encroachment. A sizeable area was set aside at Mātaikona, but some of the smaller reserves were swallowed up by 'settlement' before survey was undertaken. The table below notes what happened to the undefined 'reserves'.

Though the original estimate was that 10 percent of the total area had been reserved, modern GIS measurements show that in reality the provision was less generous: about 24,332 acres, or 6 percent, of the total lands the Crown acquired.[90]

Also in 1855, the Crown purchased a number of the reserves that had been originally promised. They included 500 acres at Porotāw[h]ao; an undefined acreage at Puketewai estimated by Cleaver as 500 acres (we do not know for sure because this reserve was not included on any plans); 386 acres at Taurangawaiō; plus 50 acres at Mātaikona for Sutherland's homestead. The Crown also purchased Whakataki in 1855. This sale was made under the auspices of Te Matakorihi to satisfy the claims of Te Hāpuku, who was not included in Te Pōtangaroa's signing and the initial distribution of payment for the Castlepoint block. However, most of this land (6298 acres) was gifted back to the right holders, with Māori buying back smaller sections for individual grant. The deed said:

> The reason for our consenting to the sale of this piece of land is to put an end to our native customs relative to that piece of land we wish to cede to the Queen that we may be enabled to purchase suitable pieces for ourselves out of that land according to the government mode of selling land . . . that piece of land is to be kept open [for three years] to be purchased by us.[91]

(11) *Conclusion*

The Castlepoint transaction was in line with the policy Grey established in 1846 to make large-scale purchases before settlement, and to set aside a range of reserves. The need to get Māori agreement to Crown purchase was a priority for McLean. His major goal was to prevent the spread of leasing into this area, and to set an attractive example for rangatira further south who had rejected earlier Government overtures. A number of reserves were promised – including a large tract of territory to allow customary uses to continue – though these were undefined in a number of cases as was the question of how far inland the purchase would go. The result was that some of this

Reserve	Area (a, r, p)	Title issued	Notes
Mātaikona*	17,768a 1r 39p	Native Land Court, 1869	Set aside as a reserve. Fifty acres sold to Sutherland for his homestead in 1855. Currently, 17,690 acres remains in Māori ownership.
Ngātāhuna	1552a	Native Land Court, 1870	Marked on the plan attached to the Castlepoint deed. All land sold by 1881.
Ngātamatea (Waihiharori)	5a 16p	Native Land Court, 1868 Crown grant, 1870	Set aside as a reserve. One rood 21 perches remains in Māori ownership.
Porotāwhao	500a		Marked as a reserve on the plan attached to the Castlepoint deed. Purchased by the Crown in 1855.
Puketewai	Undefined but estimated at 500 acres		A place named 'Puketewai' was shown on the plan attached to the Castlepoint deed but the boundaries were not described. Purchased by the Crown in 1855.
Waimīmiha	Undefined	Crown grant issued, 1909: 2r 4p	Described on deed as 'a little fishing place'. Not surveyed till 1908. Local Māori petitioned the Government throughout early 1900s for the return of the reserve claimed as 800 acres. Remains in Māori ownership.
Waitutu	Undefined		Never set aside and included in land on-sold to settlers
Whakataki	6624a 1r 2p	Crown grant, 1881	Not set aside as a reserve and purchased by the Crown in 1855 but most (6298 acres) was gifted back to Māori by the Whakataki Grants Act 1874 (backdated to 1862). About 249 acres were purchased back by individual Māori in 1858. Currently, about 92.4 acres remain in Māori ownership.
Takapūai	94a	NLC title for sections 6 and 7 of block V, Aohanga survey district, of 192 acres issued in 1910	Never set aside as a reserve and the land was sold by the Crown. In 1909, the Crown awarded 192 acres on Waihoki Stream to local Māori as compensation for the wrongful sale. Remains in Māori ownership.
Taurangawaiō	386a 3r 14p		Plan says reserve to be 410 acres but not set aside formally. Purchased by the Crown in 1855.
Akitio, section 28	105a	Crown grant 1877	Crown grant issued in 1877 was backdated to 25 February 1858. This piece was purchased by Hoera Rautū and others, with the Crown contributing over half the purchase price. About 96 acres remain in Māori ownership

* Cleaver notes that a survey carried out prior to the title investigation in 1869 found the reserve to be 18,131 acres. However, he says that more accurate surveys in 1958 and 1959 indicate the Mātaikona block to be 17,718a 1r 39p. The list of current Māori land holdings in the Wairarapa ki Tararua inquiry district filed by the Crown on 1 August 2003 (Wai 863, paper 2.255) gives Mātaikona at about 7159 hectares, or 17,690 acres.

Castlepoint reserves

territory had to be repurchased in later years, and some reserves were lost, or otherwise compromised.

The Castlepoint purchase also entailed many discussions and exchanges of letters. Other features were the pointing out of boundaries, the inclusion of a tangi clause in the deed, and a final great gathering of the people. In these aspects, at least, we can see the Crown attempting to ensure that Māori owners were all identified, and consulted; that they freely consented; and that adequate provision was made for their future, and even though it insisted on a large-scale alienation of territory.

What has not been established is what Māori understood by the transaction undertaken at Castlepoint. We come to this shortly.

First, however, we turn to the komiti nui. We discuss what we think was said there, and what we think rangatira based in the Wairarapa were likely to have taken from that meeting with Grey.

It is integral to claimant argument that what was offered at Castlepoint was not a sufficiently attractive alternative to leasing to persuade everybody that sales to the Crown were the better way to go.[92] For that to happen, Grey's personal intervention was required.

3A.3.3 The komiti nui of Tūranganui, August 1853

In June 1853, Grey sent personally signed circular letters to the chiefs all along the coast, Te Weretā included, suggesting that they convene for a komiti nui (large coming together) to discuss ceding land to the Crown Land Purchase Commissioner Henry Tacy Kemp remarked, at the time, that the 'Governor has determined to make another effort for the Wairarapa . . . upon a new principle. It is to be a "komiti nui".'[93] Stirling comments that this 'was indeed the visit the Maori of Wairarapa had been waiting for; the Queen's representative had finally come to visit and treat with them.'[94] The Wairarapa chiefs welcomed him. Te Kōrou built a special whare (with a clay chimney) for him and for Bishop Selwyn, his travelling companion.[95] As the komiti nui gathered, Grey made a 'semi-royal progress' up the Wairarapa valley, addressing Māori and showing off 'two well-guarded pack-horses carrying the money-bags.'[96] According to his biographer, James Rutherford, 'All the way up to Napier he addressed native gatherings, receiving memorials, and talked to them of the benefits of selling their land so that the Government could settle Europeans amongst them.'[97] It seems that the komiti nui occurred at Tūranganui on 18 and 19 August 1853.[98]

It was the personal power and influence of Grey that brought about a change of heart in the rangatira of the Wairarapa. As he did at the Wairau in the South Island a short time previously, he added the weight of his own mana and persuasions to McLean's negotiations. McLean was, of course, a considerable person in his own right. Alan Ward said of him that he 'acquired standing among Maori for his knowledge of their language and his respect for rank and protocol'.[99] Together, they were a potent combination.

Grey was the person of the Crown. This added to his mana, of course, and he was also very skilled at crafting a message that appealed to Māori. He played on personal attachment to him, and used his knowledge of Māori ways of doing things and perceiving the world to good effect. He endeared himself especially to key rangatira.[100] These attributes were critical to his persuasiveness and plausibility.

(1) *What did Grey say to the komiti nui?*

Again, we have no record of what was actually said at the Tūranganui hui, which took place in the vicinity of Lakes Wairarapa and Ōnoke.Grey did report to the Colonial Office shortly afterwards that, in light of the already considerable European population in the Wairarapa, and the likelihood of 'future disputes which might hereafter endanger the peace of the country', he had sought a general accommodation with rangatira:

> I therefore thought it my duty . . . to visit the Wairarapa district, and to request the natives to let me have the satisfaction before I quitted New Zealand for England of seeing this question settled; and I then

Location of Tūranganui, where the komiti nui took place in August 1853

> earnestly recommended them to adopt an arrangement which I detailed to them, which appeared to me in all respects calculated to promote their own interests as well as those of the European population.[101]

Grey does not say precisely what he 'detailed to them', but we know that it served to pave the way for the Crown's acquisition within a few months of well over half a million acres.

When Grey reported to the Colonial Office, he made no mention of Crown obligations arising from the komiti nui. But we know that Crown officials talked in the lead-up to purchases about the benefits of sale to the Crown. Sometimes they spoke broadly about prosperity and well-being, and sometimes in more specific terms, identifying what people could expect to get – money, or a mill, or a school. Grey later remembered that he had outlined direct material benefits as well as a longer-term duty of care, and a commitment to the two races living and prospering together. He told 500 Māori gathered at Waiohiki in the Heretaunga, two decades later in December 1877, that 'you have a claim upon me to do all I can for your welfare' because of their agreement to open their lands to settlement. He recalled the 'good many things' of which he had spoken – 'carts, horses, ploughs, cattle, property, which you had not then'; also 'schools for your children, and doctors to nurse you when you were sick'. Grey said that he had talked of his marrying Māori to the European race so that 'you would have to live together afterwards'.[102]

At the time of the komiti nui, Grey's departure from New Zealand was imminent. But other officials and local politicians continued to assure Māori that they would prosper from their decision to open up their lands to settlement: their interests would be not only safeguarded but actively promoted. In late December 1853 there was a banquet in Wellington, attended by a number of Wairarapa rangatira. Featherston, Superintendent of the province, addressed the assembled chiefs, and affirmed Grey's promises:

> he begged Mr McLean to dispel any doubts that may have arisen in their minds as to the intentions of the new Government – and to give them the most positive assurance, that their interests would be as zealously watched, and as efficiently promoted, under the present as under any previous Government – that in fact the great aim of himself and of the members of the Legislature, would not only be to maintain, but to cement more strongly than ever the friendly relations which had so long subsisted between the races – and to promote by every means in their power their future welfare, happiness, and prosperity.[103]

Hearty cheers and greetings connoted approval.[104]

All of this tends strongly to the likelihood that Grey's address at the komiti nui covered the usual ground in these situations. He would have talked about the benefits

of peace, settlement, reserves, prosperity, and a joining together of the two races into the future. The metaphor of marriage operated at both a material and a symbolic level. That Grey covered these topics is a reasonable inference from his and others' recollections, as well as from contemporaneous Crown statements about its policy. He must also have made some quite specific commitments, because the 5 percent clauses were inserted in the deeds that immediately followed to meet an expectation that had been raised at the komiti nui. Because undertakings about hospitals, schools, and mills were included in deeds, we can infer that these would have followed Grey's oral statements.

Māori marked the importance of the occasion by planting trees. This, according to Bagnall, was a traditional way of commemorating great decisions or the reaching of important understandings.[105] At the important Kohimārama conference of 1860, Rāniera Te Iho referred to the time when Grey and McLean had 'planted the tikanga at Wairarapa'.[106]

After the komiti nui and before leaving the district, the Governor met with leaseholders. He asked them to assist in the purchase that would follow by withholding rents from their Māori landlords, and assured them that they would have the first right to purchase the land where their homesteads stood.[107] Then Grey returned to Wellington to be feted at a dinner arranged by the Wairarapa Small Farms Association and other settlers who were 'pleased to be assured of a vast area of cheap hinterland on which settlement could expand, and nurture the struggling town [Masterton]'.[108]

Planting the Tikanga at Wairarapa

Claimant witness Nelson Francis Rangitakaiwaho remembers one of the trees planted to mark the agreement reached between rangatira and Grey at Tūranganui. Mr Rangitakaiwaho recounted his knowledge of the history of the tree:

> A ceremonial planting of trees took place in 1853 to mark the Komitinui at Turanganui which is referred to by Mr Stirling in his evidence. Governor Grey and other parties to the Komitinui stayed in the home of Mr Joseph Kelly who was a whaler who took up lease land from Iraia Te Whaiti and built a home there. I am not sure of the number of trees that were planted but believe that two Macrocarpa and two Cypress trees were planted in the grounds near where the house of Joseph Kelly used to stand.
>
> One Macrocarpa planted to commemorate the Komitinui . . . survived to 1947. That Macrocarpa suffered storm damage in 1947 and I was present when it was felled. I was told by David Warren, the owner of Turanganui Station at the time, that the tree had been planted by Governor Grey 90 odd years ago.

(2) *What was the Māori understanding of what had taken place?*

If contemporaneous sources and later recollections give us confidence that we can accurately surmise what Grey said at Tūranganui, how can we ascertain what Māori thought about what happened there? We know that they heard speeches from Grey, McLean and Featherston, that they left having agreed to something, and that their agreement later took the form of signatures on deeds.

What did the komiti nui mean to the Māori who attended, and what role did it play in getting their signatures on land transfer deeds? We do know that Māori had been debating whether to continue their leasing or 'tribute' arrangements with settlers, or to enter into a different sort of relationship. In 1853 the answer was that if Māori wanted settlers of the right kind, they would have to 'sell' their lands to the Crown. Only those who sold would be considered the Crown's friend, and eligible to benefit from orderly settlement.

We were presented with three alternative ways of viewing the komiti nui and its aftermath: as a kawenata, as a tuku, or as choosing modernity. Perhaps, in fact, the komiti nui – and the early transactions as a whole – combined elements of all three.

(a) *Kawenata:* Stirling told us that the komiti nui constituted a 'personal treaty' between Wairarapa Māori and the Crown. Grey personified the Crown, and he encouraged Wairarapa Māori to view the arrangement in this way.[109]

Stirling emphasises the political dynamic. Using a 'komiti nui' to advance the Crown's position in negotiating land purchase was, as Kemp noted at the time, a 'new principle' and 'would have included a far broader group than had consulted him [Grey] in Wellington a few months earlier'.[110] He also sees the 'new understanding' reached at the komiti as 'something more than the usual McLean mix of cajolery and coercion, brinkmanship and bargaining, favours and favouritism':

> What was needed was a sudden conversion to Grey's view of major land allocations and settlement, a broader consensus as to the merits and benefits of Crown-sponsored settlement – a 'new understanding'. Grey's undertakings amounted to a compact with Maori, the forging of a Crown alliance with Wairarapa Maori. It could also be dubbed a treaty, a treaty which was in effect their only treaty with the Crown. . . . Given the spiritual context of the agreement with Grey, it is hardly surprising that the word covenant was also applied to this new understanding, with land being designated as 'covenanted by us' [whakakawenatatia].[111]

The other 'new' feature was the insertion of the koha clause, which explicitly expressed the Crown's broader commitment to introduce beneficial government services to Māori. These services and facilities (schools, hospitals, medical attendance, and mills) were often used in government negotiations, but seldom included in purchase deeds.

(b) *Tuku:* Put simply, tuku of land was a traditional practice where land was given in exchange for other benefits, and in the context of an ongoing and mutually beneficial relationship between the parties. Tuku was fundamentally different from sale, where land is permanently transferred from one party to another, and there is no enduring relationship between them.

Takirirangi Smith and Tony Walzl argued in evidence before us that in the period of the early purchases, the Māori world view remained a traditional one, and that the 'sale' at Castlepoint and the agreement at Tūranganui were understood as tuku.

Smith points out that Māori correspondence often demonstrated the continuation of customary thinking and usage in dealings with the Crown.

Below, we quote in full a letter from Te Pōtangaroa and Te Otene Kuku to McLean about the Castlepoint sale. In it, it is plain that Te Pōtangaroa and Te Otene Kuku do not conceive of the arrangements with McLean as a sale, but as something else entirely. What they have in mind has two characteristics that are alien to the English notion of sale: they envisage themselves and McLean owning the land together on an ongoing basis, and ongoing payments being made in that regard.

Quite how they conceived the payments is difficult to pin down, but they talk in terms of payments, not payment. This could be consistent with an understanding that 'ngā utu' are instalments in the purchase price, except for two things. First, the writer talks of 'tā tāua whenua'. Use of 'tā tāua' indicates possession by the speaker and the person addressed. Thus, the writer talks of the land belonging to himself and McLean. Moreover, the symbol of marriage is interwoven with language about the proposed land transaction. The writer links himself with McLean and the land in terms of possession, and also links their children in marriage. The implication is that the two peoples will have an enduring connection with each other and with the land in question.

We give the Māori version first. We have inserted modern punctuation and spelling to make it easier to read and understand.[112] Then we give our own translation:

> Nō Mataikōna, nō te o ngā rā o Akuhata ki Pōneke ki a Te Mākarini ki a Kāwana Kerei, e hoa mā tēnā kōrua.
>
> Nā, e tā, tēnā taku reta ki a kōrua, ko tōna tikanga he ui ki a kōrua ko tō tāua hoa ko Kāwana Kerei. Tēnei kua rongo ahau ki tō tikanga kia huia tahitia ko te

karangatanga ki te whakatakoto i ngā utu. Nā te tamaiti a Te Koari i kōrero mai ki a mātou. E hoa, tēnei tāku kia kite mai kōrua, ko te tuhituhitanga ki mua o ā tāua tamariki, o taku tamāhine ki tāu tamaiti tane. Muri iho, ko te whakaaetanga. Nā tika te whakaaetanga, kātahi anō ka tukua kia karangatia. Ka oti te karanga, kātahi anō ka marenatia ā tāua tamariki. Waihoki rā, ko tō tāua whenua ko tā matou whakaaetanga te tuatahi. 1. Muri iho ko te tukunga ki a koe. 2. Muri iho ko te rūritanga. 3. Ka oti te rūri. Nā, mārama katoa ēnei wāhi e toru o tō tāua whenua, te tukunga ki a koe kātahi, te rūritanga ka rua, me ōna rohenga ka toru. Ka tāu hoki kia pēnei te mārama me te māramatanga o te rā e tiaho ana ki te ao katoa. E tā, e Te Mākarini, kia rongo mai koe ki tā mātou whakaaro, ko te karangatanga ki mua mō ngā utu o tā tāua whenua. Ka mārama te karangatanga, ka pai hoki. Muri iho, ko te whakatakototanga i ngā utu. E tā, māu hoki e tuhi mai tētahi reta he whakamārama mai ki a au mō te haere mai ki te karanga i ngā utu o te whenua. E hoa, ka hoki mai koe i Taranaki, ka haere mai ki te karanga i ngā utu o taku whenua i te tīmatanga o ngā rā o Hepetema.

E hoa, kia hohoro mai i te marama o Hepetema.
Nāku nā tō hoa aroha, nā Te Wiremu Te Pōtangaroa, nā Te Otene Kuku

From Mātaikona to Pōneke on the 9th day of August.

To McLean, to Governor Grey, greetings to you both.

Now sir, this is my letter to you both. Its purpose is to make an inquiry of you. I have heard tell of your intention to bring all the interested parties together as one to consult about payments. Te Koari's son spoke to us about this. Friend, let me put it to you like this: Let the agreement be put before our children, my daughter and your son. After that, we'll get a consensus. Once the matter of agreement is sorted out, there can be an announcement. When that's over, our two offspring are wed. When it comes to this land of yours and mine, the first thing is for our community to come to an agreement. 1. Then there's the giving over of the land to you. 2. Next, there's the survey. 3. Then the survey is completed. Now these three points concerning this land of yours and mine are absolutely clear: giving it over to you, firstly; the survey secondly; and thirdly, the boundaries. It's very important that all of this is as clear as the bright sunlight shining on the earth. McLean, good sir, listen to our Māori thinking on this, it's imperative to bring the community with us concerning the payments for this land of yours and mine. If the community is clear about it all, it will go well. Then come the proposals about payments. Sir, get on and send me a letter to explain to me about your coming here to announce the proposals about payments. Friend, you need to get back from Taranaki so that you can get here and make those announcements about the payment proposals for my land at the beginning of September.

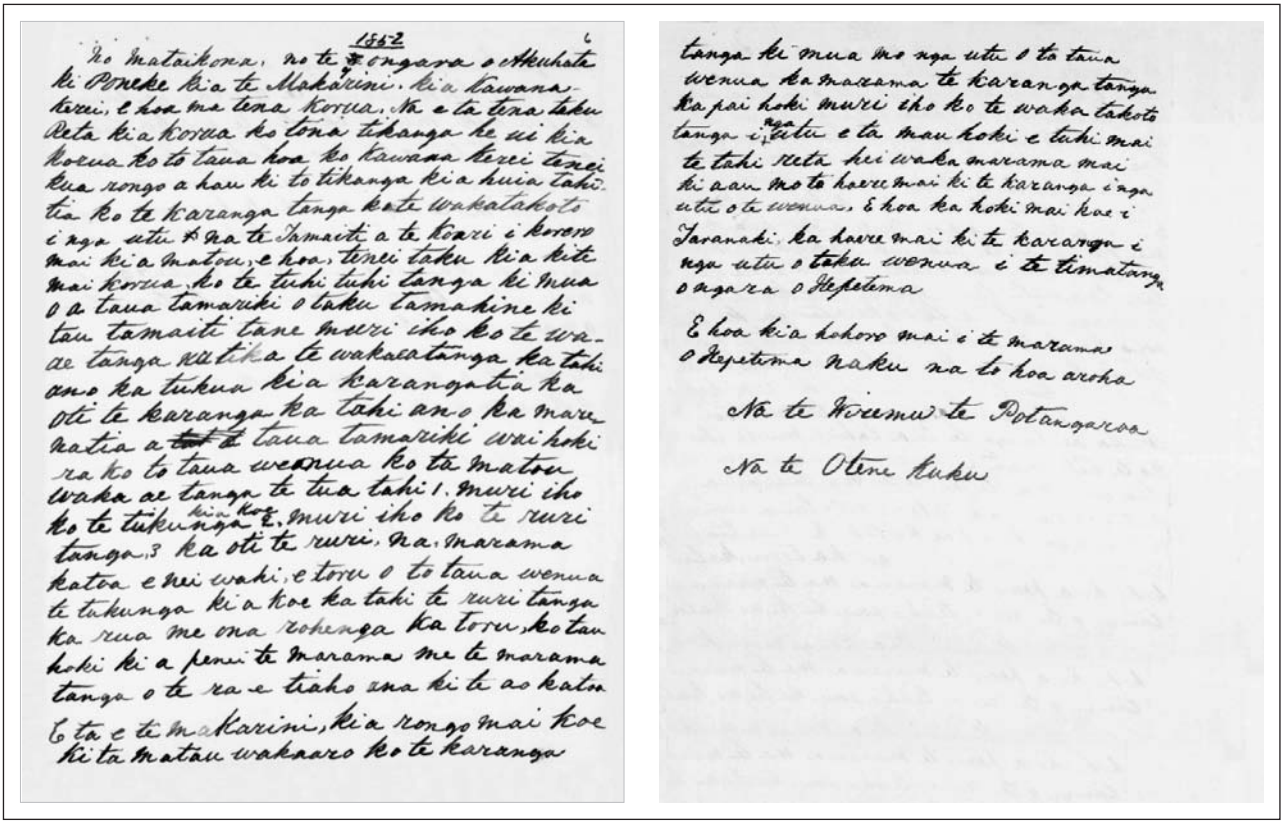
Friend, you need to hurry here in September.

From your loving friends Wiremu te Pōtangaroa and Otene Kuku.

According to Smith, what the Crown called purchases were really tukuwhenua: they were tied to the spirituality of the land, grounded in the past, and projecting into the future. Tuku meant that the 'spiritual welfare of past and future generations, was guaranteed and protected'.[113]

The tikanga (traditional rules and understandings) context of tuku would have extended to Grey's words at the komiti nui being regarded as tapu. It is Smith's contention that Ngāti Kahungunu would have drawn connections between the tukuwhenua of Te Rerewa – a key event in their tribal history – and the leave-taking of Grey. Those present would have received his utterances at Tūranganui on the eve of his departure as ōhākī in a poroporoākī (an oath made in the context of traditional rites of farewell). This lent them great weight: 'Grey's words would have been similar to the final words of a dying person and would have been viewed as extremely sacred.'[114]

In Smith's view, when Te Pōtangaroa, Te Niania, Te Hāpuku and other 'sellers' engaged in these transactions



1852

Ko Mataikona, no te Rongara o Akuhata
ki Poneke kia te Makarini. kia Kawana-
Karei, E hoa me tena Korua. Na e ta tena taku
Reta kia Korua ko tona tikanga he ui kia
Korua ko to taua hoa ko Kawana Kerei tenei
Kua rongo a hau ki to tikanga kia huia taki-
tia Ko te Karanga tanga kote Wakatakoto
i nga utu o na te Tamaiti a te Kuini i korero
mai ki a matou, e hoa, tenei taku kia kite
mai korua ko te tuhi tuhi tanga ki mua
o a taua tamariki o taku tamahine ki
tau tamaiti tane muri iho ko te wa-
ae tanga ka tika te wakaatanga ka taki
ano ka tukua kia karangatia ka
oti te karanga ka taki ano ka mare
katia a taua tamariki wai hoki
ra ko to taua wenua ko ta matou
waka ae tanga te tua taki 1. muri iho
ko te tukunga kia koe 2. muri iho ko te ruri
tanga 3 ka oti te ruri. na. marama
katoa e nei waki, e toru o to taua wenua
te tukunga ki a koe ka taki te ruri tanga
ka rua me ona rohenga ka toru, ko tau
hoki ki a peni te marama me te marama
tanga o te ra e tiaho ana ki te ao katoa
E ta e te Makarini, kia rongo mai koe
ki ta matau wakaaro ko te karanga

tanga ki mua mo nga utu o to taua
wenua ka marama te karanga tanga
ka pai hoki muri iho ko te waka takoto
tanga i nga utu e ta mau hoki e tuhi mai
te tahi reta kei waka marama mai
ki a au mo te haere mai ki te karanga i nga
utu o te wenua, E hoa ka hoki mai koe i
Taranaki. ka haere mai ki te karanga i
nga utu o taku wenua i te timatanga
o ngara o Hepetema

E hoa kia hohoro mai i te marama
o Hepetema naku na to hoa aroha

Na te Wiremu te Potangaroa

Na te Otene Kuku

Handwritten letter from Wiremu Te Pōtangaroa and Otene Kuku to McLean in August 1852

with the Crown, they were acting in a customary way. To them, the difference between lease and sale was one of degree in the context of a tukuwhenua, rather than an essential difference in the nature of the transaction. Leases were less tapu than the arrangements proposed by Grey and agreed to by Māori. These connoted marriage between two people, ensuring the survival of tangata whenua, and tying the incoming tangata heke (migration) to the land through whakapapa and kōrero.[115] Leases were tuku to lesser persons. These kinds of tuku had brought goods and moneys, but also disputes. Tuku to the Crown was of another order. It too would bring goods and wealth, but also the spiritual protection of the Queen and the Church of England, and the other future benefits promised.[116]

The idea of delivering lands into the hands of the Queen as a way of resolving and preventing disputes was actively promoted by Grey and other Crown officials. This was part of the exchange now accepted by Māori – to 'allow the use of the Queen's name over the land' to bring about 'Te Ture a Te Kuini' (the Queen's law). The Queen as a bringer of peace and goodwill, Smith argues, tapped into traditional perceptions of female ariki (leader of the people, chief) as peacemakers among Ngāti Kahungunu.[117]

Other elements of Grey's arrangements were also open

to customary interpretation. Smith cites other correspondence of the time, which suggests that Māori regarded the presence of early Crown officials as very important. The use of ritual in relation to their visits indicates this too. Both McLean and Grey were regarded as men of chiefly rank, and were received accordingly. Te Pōtangaroa, senior rangatira at Mātaikona–Castlepoint, wrote in October 1852 that he had been fasting while a house was built in anticipation of McLean's arrival.[118] In the following year, Retimana Te Kōrou also built a special whare (with a clay chimney) for Grey and his companions so that they could be housed appropriately.[119] The tohunga, Ngāika, oversaw the chiefs' preparation of food that would follow McLean's arrival at Whareama as he toured the district to make arrangements for the land.[120]

Smith characterises the Crown's promise of koha as a traditional form of tithe or tribute, and as utu (payment) for the land. In Smith's view:

> The fact that no conditions were stipulated in the Māori deeds as to the terms of the five percents, would have led Wairarapa Māori to believe that Māori would retain the rangatiratanga of the land for future generations, and that the occupiers would continue to pay koha as in the past – for the term of their occupancy. Māori therefore believed that they had ceded an occupancy right, but still held the rangatiratanga over their lands.[121]

In Smith's opinion, Grey knew how the Māori people at the komiti nui would understand his words and actions. He used his knowledge of tikanga (traditional rules and practices) to advance the Crown's position, and tikanga was also deployed in the written deeds that followed to obscure the Crown's real intention.

He points to the considerable difficulty associated with using the word 'tuku' to equate with a sale in English law. The word would have encouraged the belief that purchases were consistent with the transfer of land during traditional times. Had the Crown wanted to clarify its real intention, it could have called the transaction a 'hokowhenua' (bartering or selling land). This word derived from circumstances of barter rather than gift 'where the idea of a clear unencumbered exchange could [have been] conveyed'. Māori, Smith suggests, distinguished between hoko and tuku. McLean was regarded by some as a 'kaihoko whenua' (a person who buys land); the land 'released' or 'allocated' to the Crown was seen as a 'tuku whenua' (land given in a cultural context).[122]

According to this argument, then, Wairarapa Māori did not agree to sell their lands, and accepted neither that the last instalment would be a final payment severing all connection with the land, nor that the payment of koha would be finite. The preparations undertaken for the tuku of the land, the mana of Grey and McLean, their utterances, and the tikanga aspects of the deed, all suggest that Māori fitted the transactions into a customary paradigm rather than seeing them as something new and different. The evidence suggests strongly that they conceived the Crown's payment obligation as an utu tūmau, meaning fixed payments that would continue indefinitely. Smith emphasises a customary context of reciprocity, tribute, the propitiation required of incomers and marriage.

(c) *Choosing modernity:* Historian Lyndsay Head offered the third interpretation of what happened in Wairarapa. She looks at the numerous letters sent by Ngāti Kahungunu rangatira, and argues that they show that custom had already drastically changed by the 1850s. Māori were seeking to engage with modernity; and this vision left no room for their former usages. Head criticises what she calls the 'loss model', where westernisation of Māori society is cast in negative terms and 'counts any change [in Māori] a subtraction from the sum of Maori culture'.[123] In her view, Māori discriminated between tuku and sale, knew that they were giving up all rights, and made a deliberate and rational decision about the matter: 'Willingness to sell land to develop the new society was neither a capitulation, nor a misunderstanding, but a choice.'[124] Head expressed it this way:

Koha or 5 Percents?

Differences between the way that Wairarapa Māori and the Crown respectively understood the nature and extent of the Crown's undertakings at the komiti nui emerged almost immediately. First, what was the nature of the endowment in the koha or 5 percent clause? The deed stated that 5 percent of the on-sale price (after cost of survey and public works had been deducted) would be spent:

> in future years, . . . [on] certain benefits [he koha] derived from our homes that we have passed over to provide for the establishment of schools for our children, for the erection of mills . . . for the establishment of hospitals and [provision of] doctors for us, and for the payment of pensions in future years for some of our rangatira.

The allocation of moneys for beneficial works was to be decided in consultation though the payment of annuities was to remain solely in the hands of officials.

At first, the Native Department used the money generated from deducting 5 percent of the on-sale price as a kind of slush fund – it might pay for a mill, underwrite a school, or be used for presents to individual rangatira. Payments were distributed on three public occasions, generating controversy among the rangatira and hapū of the district.

In 1870, the Crown tried to rid itself of what it now saw as a bureaucratic burden. Māori assembled in considerable numbers at Greytown to discuss whether they would accept what the Government proposed. Should they forget the idea of benefit and accept a distribution of the fund to the signatories of those deeds that specifically contained the clause? Agreement was not forthcoming. Concerns were expressed. Speakers asked where McLean was now; and what had happened to the promised schools?

Kemp (a Crown official) opened the hui by encouraging Māori to view the promise of 'koha' as connoting more than money; they were 'in common with their neighbours and friends, joint holders of property, which otherwise must have remained a comparative wilderness and waste'. Te Mānihera agreed, but only up to a point:

> Many of the things introduced into this district for the benefit of the Natives [he said] were still here, as also were the love and good feeling which had always existed, as a

> Ngati Kahungunu knew the world had changed – that there were more things in it, for good or evil, than could be learned, or acquired, by living in what had suddenly become 'the past'. They wanted resident Pakeha in order to learn about the world, to facilitate trade for goods to arm themselves, to improve their standard of living, and to keep up with the play. They needed to trade with Pakeha because tribes such as Nga Puhi were already doing it, to devastating effect.[125]

Head suggests that Te Hāpuku and other Ngāti Kahungunu understood that they were doing something new – selling land – and that all their rights over it would cease on their doing so. What they failed to comprehend was the long-term consequences. Traditionally, a rangatira's power on the physical plane was manifested in his, or her, group of followers, not in the possession of land. Te Hāpuku considered that he was 'gaining the new power of the rich and varied European world'. He did not perceive that 'every land sale diminished the quota of Maori power' because this was not how such things had been measured in traditional society.[126] She quotes the correspondence of Te Hāpuku during the Castlepoint negotiations, arguing that it demonstrated his eager embrace of a westernised future and his 'sweeping vision of Maori society transformed through the agency of land sale'. Like the claimants, she puts considerable weight on Te Hāpuku's words to McLean that we quoted earlier:

> proof of which he would say that while almost all parts of the Island had been more or less disturbed by fighting etc all was still maintained in this district and we are living in comfort. But he must say that some of the things which had been introduced for the good of the Maoris had almost entirely failed.

He lamented especially that the schooling that was promised had turned out to be training as domestic servants – something rather short of the 'marriage' and equal treatment of which Grey and other early officials had spoken.

Wiremu Hikawera Mahupuku, one of the major opponents of accepting the Government at its word again, argued that it was more than time for the Crown to deliver on its promises. And if what had been agreed was just a commercial obligation on the part of the Crown to the owners of the different blocks in which the 5 percents had been a condition of sale, then the government should show them the books. Mahupuku pointed out:

> According to European custom interest was payable yearly, therefore they wished to be shown a proper account of the land sold and money received by the Government . . . The Europeans always talked much of fair fighting and fair play, and they wanted nothing more.

The idea of a trust for Māori future benefit was dropped and payouts of the koha fund were accepted as all that was on offer – provided that the Government gave a proper accounting at a future date. But at the next round in 1873 and 1874, the Crown officer in charge (Heaphy) commented that since 'land had risen in value, population was coming in and the place prospering, they could not understand how the amount could be so small'.

Even some 30 years after the event, the undertakings of Grey and McLean at Tūranganui were alive for Māori and for some at least, the expectation was that koha payments would continue. In the 1880s, Rakai Hikuroa wrote to the Native Department that this was 'an arrangement established by Sir George Grey and continued in Sir Donald McLean's time and it was to continue to my children and grandchildren'.

> Another subject that annoys me is our talk about the Europeans of Wairarapa. Let them be sent this way from there, that the natives there may experience poverty and that you may have the whole leaves and branches of our tree and that we may live in a state of light and peace.[127]

Whereas the claimants see Te Hāpuku's demand as a power play on his part and the outcome of McLean's 'divide and rule' tactics, Head emphasises the importance of the passage for understanding Te Hāpuku's perception of what sale would bring:

> Te Hapuku equated turning away from land sales with condemning the people to a life of poverty. The notion of poverty came easily to mind for most Maori who compared Pakeha culture with their own. In Te Hapuku's musing on the difference between the past and present, he styled cultural modernisation as 'a state of light and peace.[128]

She quotes only a limited number of letters from Wairarapa-based rangatira. The most important of these is one from Te Mānihera sent to the Governor in October 1848, which, she argues, shows that Māori understood the concept of sale. She states that:

> In 1848, at the beginning of the extensive correspondence between them and the government, Te Manihera set out the land which he would not convey

> to the government (*e kore [au] e pai ko Tauherenikau e tukua ki a koe*), or for which payment would not be accepted (*kia kaua e utua*).[129]

She then argues that 'he spoke of other places that 'I will sell to you' (*e tahi [wahi] e utu ki a koe*)', and suggests that Te Mānihera understood that the Crown was offering to buy, and that the situation was the opposite of 'traditional' because otherwise the land would have been pressed on the Governor as a gift. Head argues that 'Te Manihera's distinction between land for sale and land to keep shows that the concept of alienation was established by 1848 in advance of the major Ngati Kahungunu sales.'[130]

Head's interpretation is based on the idea that key concepts such as tapu had been devalued. Māori saw the contrast between the two worlds and abandoned the one for the other. The Pākehā world was equated to Te Ao Mārama which, in foundational stories, was the 'world that finally emerged from the void and the night, a world made fit for human life.'[131] She argues that:

> The mana of citizenship in a modern state was not simply expanded opportunities for economic gain, or personal aggrandisement. If the opportunities presented by modernisation were perceived in a 'traditional' way, these would most certainly have led to tribal fighting. Rather the mana of citizenship expressed a whole new way of being. Its intellectual framework was *te tikanga Pakeha*, the 'Pakeha way [of] life'.[132]

This phrase was often translated as 'civilisation'. As presented to Māori, this was based on the rule of law, which authority stemmed from God – and because that state was God's will, it admitted no alternative way of life.

Head's emphasis on cultural transformation and the abandonment of the customary world is clearly in opposition to Smith's emphasis on the traditional elements within land transactions (including those led by Te Hāpuku), and the idea of joining the two peoples, represented by 'tuku' to the Crown. At another level of interpretation, however, she acknowledges that Ngāti Kahungunu saw themselves as working in partnership with the Pākehā (towards that goal of cultural and economic modernisation); and further, that they had 'no naïve expectations' that the government alone would accomplish it on their behalf. Their enterprise would be required also. There were, she argues, 'no patterns of Maori subservience' in their relationship with Pākehā.[133]

In summary, Head's argument stresses what she calls the 'agency' of Māori and at the same time, the degree of transformation that had already occurred for Ngāti Kahungunu. Māori comprehended sale, and sold as an act of acceptance of kāwanatanga (government), and because they thought that this would enhance their power by affording them access to European goods and knowledge. Head characterises this process as modernity and citizenship.[134]

(3) *Conclusion*

All of the interpretations offered to us of what was really happening in this early purchase, and especially the Māori conception of what was taking place, have some attractive aspects.

The Māori experience of Pākehā was expanding rapidly in this period. They saw what was happening in Wellington; they formed relationships with their lessees; they knew about the Forsaith cession and the Ōtāraia hui. Colenso gave them his missionary views on things. They exchanged letters with all kinds of people. They listened to waves of officials telling them that leasing had to end, and purchase had to begin. All of these experiences wove together to form a conceptual backdrop against which these Māori engaged in kōrero (because, of course, it was all in Māori) with the Crown's officers about a transaction affecting their land in and around Castlepoint. We find it hard to credit that they were not aware that this transaction was different from the sorts of arrangements they had made before. Quite what they understood it to be can only be a matter of speculation now, but we do think that the foremost Māori intention was to establish an enduring relationship with the powerful newcomers.

At the hearing, claimants did not insist on a 'tuku' interpretation of the Castlepoint purchase. We think this reflected their assessment of the history outlined above. Nevertheless, we think that our translation, especially of the 9 August 1852 letter from Te Otene Kuku and Wiremu Te Pōtangaroa to McLean and the Governor, makes clear cultural elements embedded in chiefs' thinking at that time. One letter is only one letter, and too much cannot be inferred from it about the views of others. But certainly, that letter does reveal that Te Otene Kuku and Te Pōtangaroa conceived the engagement with the Crown over their land profoundly differently from a sale and purchase in English law. The language of their letter, the metaphors used, and the concepts that it articulated were widely employed by Māori correspondents of the time. Insightful Pākehā used the same metaphors in addresses to Māori in order to appeal to the Māori mind, which was much given to thinking in metaphor. Grey was particularly adept at this. This goes to show that their way of thinking was not theirs alone. But at the same time, someone like Te Mānihera may have had a keener insight into Pākehā norms, as Head claims, and may have understood sale and purchase in the ordinary way. Broadly, though, we agree with Smith's proposition that the engagement over the land at Castlepoint was part of a continuum that connected Māori with the past, where their main reference points were their traditional concept of tuku, and their experience of leasing.

Nor do we think that our general view that Māori participants in the Castlepoint transaction, and at the komiti nui, were fitting the Crown's purchases into their own cultural paradigm is necessarily inimical to the main thrust of Lyndsay Head's argument. We agree with her that Wairarapa Māori were pursuing the new, but this meant much more than wanting to sell land for cash. Their focus on the relationship context of the arrangement sprang from their experience as tribal people. They were coming to grips with what was going on in the only terms they knew. We do not find this at all surprising. People do not – probably cannot – shed all that they know and believe in the course of a few months or years. When presented with different views and ways of doing things, they see them through the lens of what is familiar. Is that not how people make sense of new circumstances? We think that it is. The past is all we know of the future. Their expanding experience and understanding of the different ways of the Pākehā would have challenged and added to their own conception of the world, but it would not instantly transform it. When Māori spoke of selling they still spoke of the whole community coming to a decision first, and then a continuing relationship with the Pākehā concerned (Grey and McLean), and also with the land: 'ta taua whenua'. They were entirely prepared to share resources with these powerful strangers, and they used the language of their world – community consent and allocation, propitiation and contribution, and marriage.

The cultural context for Māori gathered at the komiti nui to listen to Grey's pronouncements was one where mana was manifest in a rangatira's attributes, skills, and actions. There was an expectation that such a person would be punctilious in fulfilling his promises, as well as being brave, persuasive, generous, and capable of attracting important allies. Above all, he would be expected to act in a way that would be for the betterment of all, and not for his own personal advantage.[135] In any case, Māori were entitled to take Grey and McLean at their word. Their experience to this point had not been such as to equip them with the necessary filters to find implausible promises of partnership, equality of opportunity, protection, reservation of ample lands, and all the rest. They should not have needed them.

The Māori cultural context for purchase payments in instalments and the promise of koha was utu. When tangata whenua allowed others to use their land, the principle of reciprocity required benefits (like produce from the land) to be returned to those who had mana in the whenua. This recognised that incomers were there at the grace and favour of the tangata whenua, and propitiation was required. The 5 percents/koha payments were very susceptible to this interpretation. It is entirely plausible,

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we think, that tangata whenua would have seen them as the same kind of thing, and that from this would arise as expectation that they would be paid as long as Pākehā remained on the land.

Now we turn to the southern Wairarapa, and the deeds that McLean negotiated there in the wake of the komiti nui.

3A.3.4 The first wave: McLean's negotiations, 1853–54

(1) *Introduction*

In September 1853, Grey reported to the Colonial Office that:

> Eventually, the natives consented to meet my wishes, and I left the details of the arrangement to be carried out by Mr Commissioner McLean; – this he has done in the most able and satisfactory manner.

The Government was very keen to put the leaseholds onto a more acceptable footing and open up the Wairarapa lands for settlement as soon as possible. The komiti nui had, as intended, led to extensive land sales to the Crown 'under the terms of the arrangement' Grey had advocated. More sales were to come, as the 'Government are anxious immediately to purchase'. According to Grey, this turn of events gave 'the most lively satisfaction to all the inhabitants of this province' and would 'greatly promote its future prosperity'.[136]

Between October 1853 and February 1854, several public notices appeared in the *Wellington Provincial Gazette* concerning the availability of Wairarapa lands for settlement. Given that the komiti nui had occurred as recently as 18–19 August 1853, it is really astonishing that less than two months later the Government was announcing in the *Gazette* that Wairarapa land was available for settlement. Here is what Superintendent Bell's notice of 6 October 1853 said:

> With reference to the Correspondence between the General Government and his Honor the Superintendant of the Province of Wellington, relative to the disposal of land in the recently acquired districts at Wairarapa, Notice is hereby given, that those districts (with the exception of the Tauwarenikau block described at foot) will be open to selection under the Regulations of 4th March 1853, upon and after Wednesday, the 26th day of October instant. Applications will therefore be received on that day, in the usual form, from persons desirous of purchasing land in the districts referred to. In the event of two or more persons applying on that day for the same piece of land, one of whom is a settler at Wairarapa, having been in actual occupation of the land applied for previous to the acquisition of the districts, the application of such settler will take priority to an extent not exceeding 640 acres, provided that the land so applied to be situated around the homestead of such settler, be taken in one block of the usual form, and do not unduly monopolize water or bush. Where two or more . . . [none being a settler] the land will be reserved as heretofore for sale by public auction. A plan of the Wairarapa, showing the districts open for selection, may be seen at this office on and after the 15th instant.[137]

A further notice on 31 January 1854 declared more land open for public selection from March 1854. The areas listed and loosely described were the east side and the west side of the Ruamāhanga, the head of the valley, and Cape Palliser and the East Coast. The notice said that reserves might later be taken from these areas.[138]

The purchases certainly proceeded at a blistering pace.

When he had come along in Grey's wake to effect purchases in the South Island, McLean organised a series of 'blanket' purchases with different iwi, extinguishing their rights within extensive boundaries.[139] In the Wairarapa, he went about his work quite differently. With the same objective in mind – a district-wide alienation of land to the Crown – he conducted a series of 'rapid-fire' transactions for a patchwork of blocks of varying sizes.[140] According to historian Dr Brad Patterson, this approach significantly

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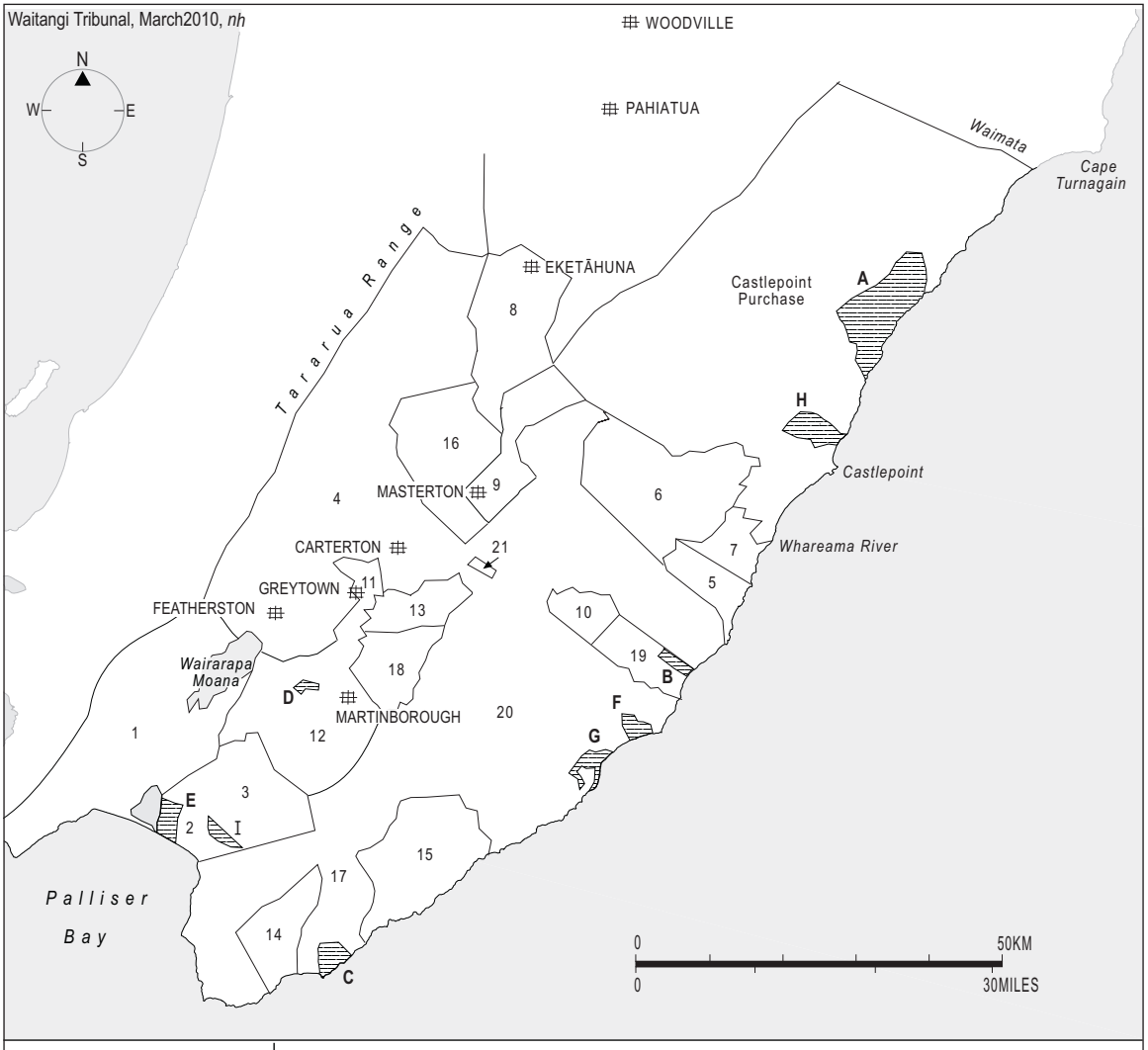


KEY TO NATIVE RESERVES

- **A** Mātaikona
- **B** Ngāpuketūrua
- **C** Ōroi
- **D** Pihautea
- **E** Rāniera
- **F** Te Unuunu
- **G** Waikēkeno
- **H** Whakataki
- **I** Whakatomotomo

KEY TO PURCHASES

1 Tūrakirae [W of Lake]
2 Tūranganui [E of Lake]
3 Tuhitarata
4 Tauwharenīkau
5 Whareama South
6 Whareama North
7 Part Whareama
8 Manawatū-Wairarapa
9 Mākōura
10 Upokongaruru
11 Kuratāwhiti
12 Wharekākā
13 Ahiaruhe
14 Mataōperu WGN 182
15 Te Awaiti Pāhaoa WGN 322
16 Kōhangawariwari
17 Āwhea
18 Paeroa
19 Kaiwhata
20 Weretā's Pāhaoa WGN 97
21 Te Whiti

The first wave of Crown purchases in Wairarapa, August 1853 to January 1854

increased the pace of alienation, and at the same time reduced protections for Māori. The 1853–1854 purchases 'cut a swathe through Wairarapa', and even after an estimated three-quarters of the valley had transferred to the Crown, the purchases did not stop.[141]

It can be inferred that, with 15 years' experience under his belt, McLean was experienced at managing Māori into sales of land to the Crown. No doubt he thought that the many-small-blocks approach would best achieve the Government's objective of opening up the district to settlement as soon as possible. He was clearly right. He achieved an incredible amount in a short time.

What is much less clear is whether McLean had in his mind the Crown's Treaty duties to protect Māori interests. How scrupulous was he about making sure that all interest holders consented? What was his understanding of the undertakings made at Tūranganui, and how meticulously did he negotiate to fulfil them? Was he mindful of Normanby's injunctions, particularly the need to ensure that tangata whenua kept enough land?

Responding to criticism about McLean's conduct of the purchases, Crown counsel told us that the demand for the valley to be dissected into individual pieces came from Māori, not the Crown.[142] No specific evidence was offered in support, but we infer that the argument is based on Grey's well-known preference for district-wide purchase of 'wastelands' from different iwi.[143] The implication is that because the many small purchases created a need for more surveys to be carried out, tangata whenua of the Wairarapa have partly themselves to blame for the delays in good survey information becoming available. Counsel says the Crown had too few resources to cope adequately with a situation where there were many would-be sellers of land, and also many would-be buyers. Mistakes were inevitable, and the Crown did its best to remedy the oversights later. Counsel acknowledged, however, that Māori had a right to timely survey, and that any later variations of the deeds' terms should have been negotiated. There was, however, no accepted 'best practice' for sale and purchase at the time; Crown officers were responding to different regional and tribal situations, and did the best they could.[144]

The claimants saw the fault as arising from haste and lack of care. Failings included:

- not investigating properly who the right holders were, or whether those rights were disputed;
- not sorting out disputed rights in an open forum, prior to purchase;
- not ensuring that all the right people knew that specific sites were up for sale;
- not properly defining price and boundaries before purchase;
- inadequate price and failures of distribution;
- inadequate and poorly protected reserves;
- inadequate opportunity for Māori to assess the overall amount of territory gone, and whether promises were being kept; and
- delay or failure to give effect to commitments in the terms of deeds, and more generally to fulfil the broader expectations that arose both from the undertakings made at Tūranganui and in the Treaty of Waitangi.

Although the Crown began selling land to settlers immediately after negotiating purchase, the details of the arrangements with tangata whenua took many years to sort out. Some, of course, were never sorted out to the former owners' satisfaction, and that is part of what their claims to this Tribunal are about.

Various officials succeeded McLean – Cooper, 1854–58, 1864; Searancke, 1858–61; Featherston as superintendent of the Wellington province in 1863. All of them continued to make down payments, seemingly on all lands offered to them, including on lands initially 'reserved'.

(2) *'The great thing is to acquire the whole of this valley'*

We now look more closely at what McLean did immediately after the komiti nui, and how.

We draw on the evidence of Tony Walzl and Barry

Rigby. Walzl's evidence covers the first stage of McLean's negotiations, describing the hectic and cursory methods dictated by the drive to acquire maximum land in minimum time. Rigby goes into the nature of the transactions themselves. They were incomplete; poorly documented; lacked surveys; blurred the lines between deeds and receipts; and failed to record all promises. Rigby used the original deed manuscripts rather than the sometimes less-accurate printed source (Turton's Deeds).

After the komiti nui in August 1853, McLean spent the rest of that year working his way north from Palliser Bay and over to the coast, sorting out with individual rangatira and hapū the details of the land deals. Writing to Grey in December 1853, he estimated that he had acquired over one million acres at a total cost of £13,000.[145]

The actual land transacted by McLean in his tour of the district was a mixed bag. Nine of the deeds concerned homestead blocks; others dealt with portions of sheep runs, formerly leased; yet others related to new areas in the interior, most notably at Forty Mile Bush.[146]

The general trend was for the standard of these negotiations to fall as time went on. As we know from the Castlepoint purchase, McLean understood what a respectable process for buying land from Māori looked like. It is therefore unsurprising to find him initially launching discussions with large hui, involving good numbers of people, and discussing and defining reserves, prices, and other benefits. His correspondence reveals, though, that right from the start he had little idea of the exact acreage involved in what he was doing.

Within months, McLean began to accept offers made at meetings distant from the community and land concerned. He entered into open-ended arrangements for purchasing land where there was little or no specific provision made for future use by, or advantage to, its Māori owners. Later, a good number of these purchases had to be renegotiated and further payments made to solve problems left by inadequate process, and the failure to survey and protect reserves.

(3) *The deeds in question (1853–54)*

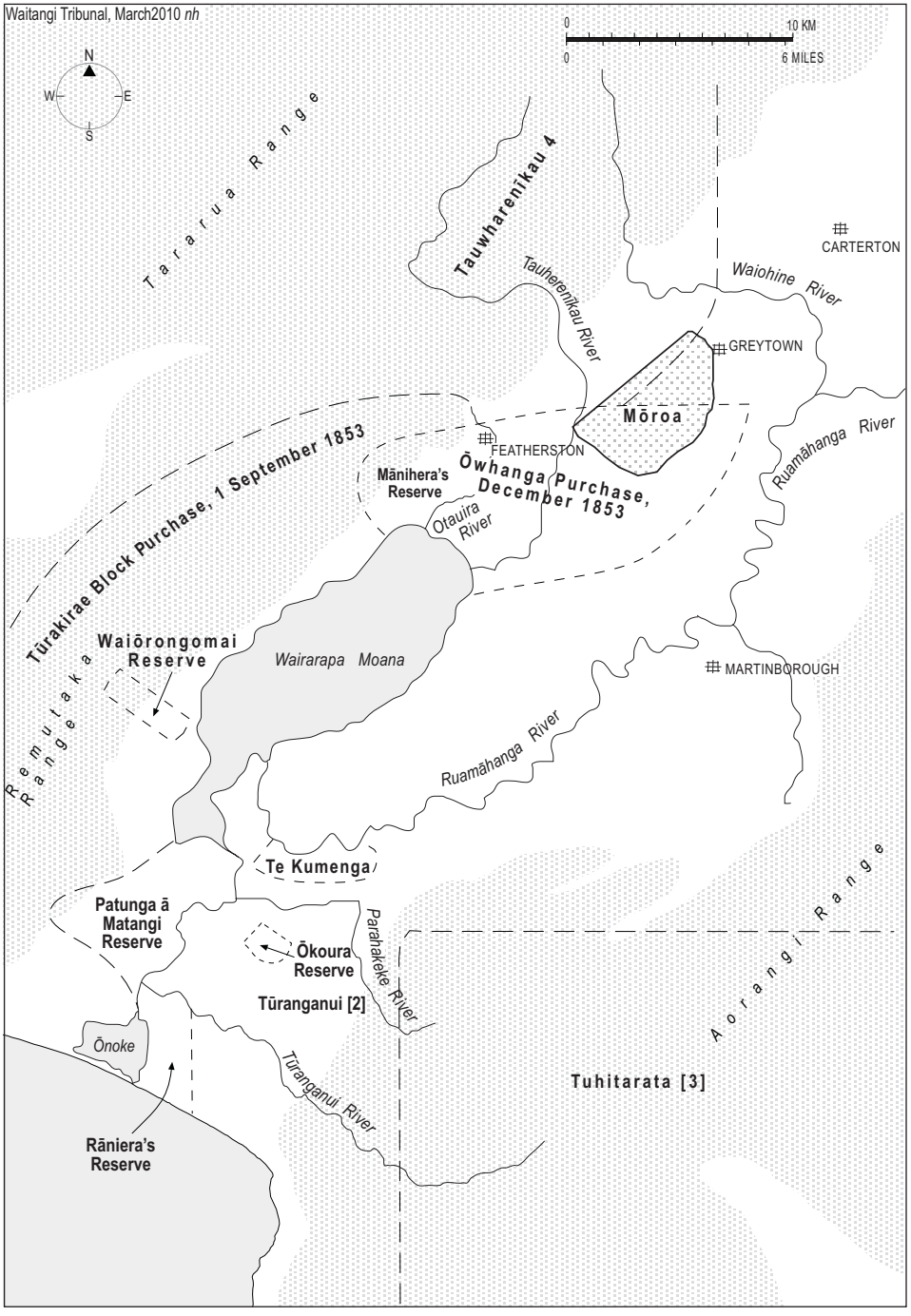
(a) *The southern valley:* The first deed to be signed was for the homestead of former lessee McMaster, who farmed at Tuhitarata. On 25 August 1853, McLean contracted to buy the 40-acre homestead block for £15. He walked the boundaries with McMaster and two signatory chiefs, and the specific place names are recounted in the deed. The deed was a simple contract for purchase, and made no mention of other benefits.[147] Among the signatories were Rāniera Te Iho, Hēmi Te Miha, Ngāiro, and Te Weretā Kawekairangi.

Next came one of the 'general' or 'blanket' deeds of the kind McLean favoured in his South Island purchases. He contracted to buy Ngāti Kahungunu interests in the Port Nicholson region, whether at Wellington, Porirua, or Heretaunga. The 12 chiefs who signed included Rāniera Te Iho, Ngāiro, Te Weretā, and Te Mānihera. The price was £100.[148]

The next Wairarapa purchase occurred two days later, on 1 September 1853. The land in question was block 1 (west side of the lake), also known as Tūrakirae. The area was estimated at 150,000 acres, and was the first of the four highly fertile blocks adjoining Lakes Wairarapa and Ōnoke that McLean was to purchase within 15 months. Tūrakirae was followed by Tūranganui on 6 September 1853, Ōwhanga on 23 December 1853, and Kahutara on 5 December 1854.[149]

Tūrakirae was the first significant deed after the komiti nui, and reflects the understandings reached there. It contained the first koha clause. McLean reported:

> The deed of sale provides that the five per cent payable to the Natives . . . should be set apart for the following purposes, in such proportions, and at such periods as the Governor . . . (or an officer appointed by him) and the Natives themselves may mutually agree to:—for schools, hospitals, and medical attendance, flour mills, and annuities for the chiefs who have ceded their lands. But it is reserved entirely to the Governor



Lower and central valley purchases, 1853

> . . . as to whom, at what periods, and how, these annuities are to be distributed.[150]

The main payment of £2000 was to be made by instalments, a method of payment that Grey preferred because it spread the cost and, he argued, would give greater control over Māori. The income from leases (£120 per annum) would cease immediately.[151] Four land areas were reserved, and also a right of eel fishing – but only in places not drained by Europeans. (We discuss the subsequent purchases of these reserves in chapter 3B.) The terms of the eel fishing reserve, and perhaps also the fewer land reserves, indicate how the needs of settlement were to take priority here on the lake's western side. On the eastern side of the lake, Māori retained control – or so they thought.

That eastern side of the lake was transacted in the Tūranganui deed on 6 September, only five days after the Tūrakirae purchase. There were eight reserves listed here (but inexactly described), and the deed contained a koha clause.[152] Significantly, the deed gave the block boundary as the margin of the lake, so the lakes themselves (and the spit extending across the mouth of Lake Ōnoke from Kiriwai to Okorewa) were explicitly excluded from sale. Because they were still owners of the lake waters and the Ōnoke spit, Māori retained exclusive control over the opening of Lake Ōnoke. This was an integral part of the agreement – that Māori eel fisheries would be preserved even should settlers wish to drain the lake – and the Crown has accepted that McLean promised Māori this level of control at the time.[153]

A mere four days later, on 10 September, the deed for Tuhitarata (also known as Paharakeke or Paharakete) was signed, completing the purchase of the lower valley. This deed included a koha clause, but set aside no reserves.

Payment for Tūranganui and Tuhitarata was set at £1000 for each, again in instalments.

There must have been considerable uncertainty about what had actually been bought and sold. The Tūranganui purchase was estimated to be 120,000 acres. Tuhitarata was said to be 95,000 acres, but McLean subsequently revised this to 40,000 acres – less than half the original estimate.[154] Neither of these blocks were surveyed before purchase, nor the boundaries walked.[155] (The implications of the lake boundary of this deed are explored in chapter 7.)

(b) *The upper valley:* Next came a number of back blocks and homesteads in the upper valley. In September and early October 1853, deeds were signed for Kaiwaka, Captain Mein Smith's homestead; for Tauherenīkau 4 – again including the koha clause but setting aside no reserves. McLean signed deeds for some formerly leased runs over several weeks: on 26 September (Morrison's), on 12 October (Gillies' Homestead and Station at Te Torohanga and Burling's Homestead and Station),[156] and on 18 October (Collins's at Te Ore Ore). These three purchases amounted to 1100 acres. There were no 5 percent clauses, though river fishing was reserved from the Morrison deed.[157] While the homesteads were named and estimated acreage given, for the Gillies and Burling homesteads (combined on one deed) no boundaries were stated. The deed for the Collins's homestead named boundary points and gave a land features clause.

This was the part of the district where the preference for leasing had been strongest, so there was considerable reluctance to enter into the Crown's new arrangements. McLean told Grey in a letter dated 14 September that it was 'the most difficult part of the Wairarapa negotiation'. He was obliged to use 'every exertion to gain an opening into te Manihera's and Ngatueri's country'. In the case of Te Mānihera, McLean promised grants of land, which the Crown purchased soon afterwards. Ngātuere, though, was initially bypassed.[158]

McLean had the bit between his teeth. In these hectic days of negotiation, he took time out to tell Grey what was on his mind: linking up the purchases in the Wairarapa valley with those at Castlepoint. He said it would be necessary to purchase another estimated 100,000–200,000 acres between the valley and the Castlepoint block to the north, and that he was awaiting further instructions as to when the surveyor Mein Smith would be made available. He noted that 'it is most essential that they should

be carried on with the least possible delay'. He had already instructed Fitzgerald to begin surveying reserves in the lower valley. Mein Smith could start at the top of the valley, while another surveyor (Pelichet) carried on with the coastline: 'unless these surveys are done shortly disputes might arise, which could not be easily adjusted until my return here in May next'.[159]

Only a couple of days later, on 17 September, McLean reported again to Grey. Chiefs 'who have already disposed of their land', including Te Mānihera, had helped him to secure the purchase 'at last' of a 40,000-acre block on the west side of the upper valley (north of Bunting's, and extending up the Waingawa to McDonald's).[160] He had 'at last succeeded' after 'a very obstinate resistance on the part of Ngatueri [Ngātuere] and his followers' in getting 'a very fair block of land', which he thought would make a good location for a small farming community.[161] This appears to be part of what became Tauherenīkau 4, which the Crown bought on 19 September 1853 for payments totalling £2000.[162]

The Tauherenīkau purchase 'supposedly extended from near the north shore of Lake Wairarapa all the way to the Waingawa River, near the site of Masterton.'[163] There was no way of accurately gauging the block's dimensions at the time of transfer. Historian Paul Goldsmith estimates the acreage at 430,000 acres,[164] which is the figure stated in the deed. But Rigby points out that most of the area in the Tauherenīkau 4 purchase was actually also included in the Ōwhanga, Taratahi, Kuratāwhiti and Mōroa purchases. Thus, Tauherenīkau 'appears as a highly complex set of overlapping purchases that made no geographic sense (and therefore cannot be mapped effectively). The only common denominator was Te Mānihera's central involvement.'[165]

The Tauherenīkau 4 deed had a koha clause, but there were no reserves. White notes that when the government later paid out the 5 percent for Tauherenīkau, the amount was much smaller than would be expected from a block of 430,000 acres.[166] Probably, the imprecise boundaries and confusing multiplicity of land transactions affecting the block made the calculation of payments difficult.

When McLean purchased Captain Mein Smith's (and Tully's) station on the Huangārua (the Kaiwaka block), he excluded the 5 percent clause 'inasmuch as the price paid for these small purchases must be considerably higher to secure the settlers in their homesteads than for the larger blocks.'[167] Already, it would seem, the endowment promised by Grey was being used as a bargaining tool, and leaving out the koha clause was, of course, a means of keeping the Crown's costs down. McLean continued that he was pleased with the Kaiwaka block purchase, even though it had been a relatively expensive undertaking. 'At the same time,' he reflected, 'I cannot help thinking that this land has been secured at a wonderfully cheap rate, when it is considered that the Natives are generally so apt to take advantage of improvements to increase their demands.'[168] McLean noted also that Captain Smith was prepared to pay 10 shillings per acre for his 800 acres immediately, yielding the Government a clear £300 profit on the deal.[169]

McLean remained full of zest for achieving the task at hand. He seems almost to have been exhorting himself to even greater efforts when he wrote to Grey two days later that 'the great thing is to acquire the whole of this valley and if it is not done now it may hereafter be a question of years.'[170]

But again, it is plain that two factors were operating simultaneously: McLean was determined to acquire all the land he could, but he really had no idea how much he was buying or who held rights in it, or in what proportions.

Two days prior to the signing of the Tauherenīkau 4 deed, McLean reported that it involved the purchase of a total of 150,000 acres.[171] Three days after that, his estimate was 300,000 acres.[172] Mein Smith's estimate of purchases to date was 560,000 acres.[173]

McLean believed he had now acquired all the inferior land in the valley, and reported that he would now work towards acquiring the better portions. He told Grey that he was anxious to push on before the Governor left the

country 'as it is not easy to conjecture what a change of circumstances legislation and govt may have on these Natives'. Mānihera was in 'excellent humour', for McLean told him that he had 'no doubt' the Governor 'would sanction his having a nice cottage built for himself at Papawai out of the proceeds of the 5 per cent'. In like vein, a Crown grant to one of the rangatira, Rāniera, was having a 'wonderfully good effect among the other young chiefs'. And Rāniera gave £120 from his share of the sale price to the Crown, for investment on his behalf. Grey saw that this was done. McLean finished his letter of 22 September by noting that he and Mein Smith would proceed together to see the boundaries of the last purchase.[174] To this Grey replied that McLean was to try to purchase the whole district and that he would be provided with the necessary funds:

> I add a few lines to say that if the additional sum of Two thousand pounds (in addition to the sum of one thousand I sent out today) will enable you to pay the first instalment for the purchase of the entire Wairarapa district you are authorized to go to that amount – that is I will retain in addition to what I now send you, the sum of Five thousand pounds at your disposal. Three thousand pounds for Te Hapuku and two thousand pounds more for Wairarapa.[175]

At the same time, Grey authorised purchase of a plough for Wī Kīngi, to be sent by boat to Te Kōpi. 'Also a cart for E Hiko . . . and a flour mill for Ngairo another chief of Wairarapa also to be sent to Te Kopi by the boat.' These 'presents' were 'to be charged against the 5 per cents reserved out of the proceeds of land to be sold in the Wairarapa district for the benefits of the natives therein'.[176]

Meanwhile, tangata whenua kept offering land to McLean for purchase. For example, Te Kaninamu Hamaiwaho and others of Waihinga wrote to McLean on 5 October offering land in the vicinity of Wainuiorū, Kaihoata, and Maungarake, noting the boundaries and saying the district would be divided between Māori and Pākehā.[177] Similarly another group from Waihinga, including Rīwai Te Kukutai, wrote offering land 'carefully discussed by us' and naming the boundaries.[178] The chiefs Hāmuera and Patoromu wrote to McLean on 9 October separately naming the land they were transferring 'to the Governor and to the Queen', and excluding an eel fishery.[179] They indicated that they wanted McLean to deal with the matter while it was fresh or 'steaming hot'.[180]

Similarly, on 10 October, Wiremu Paraone wrote indicating the districts for the Māori and those for the Pākehā, and naming the land to be transferred.[181] On the same day, Āperahama Te Ao and Hāmuera Te Rangi outlined from Waihinga 'the part to be allocated, the part to be held', but also noting that 'for the outer [or possibly coastal] part it is for each individual to discuss his places and his boundaries within it'.[182] Three days later, Rūpuha Te Māhukihuki wrote from Hurunui-o-Rangi identifying the lands they had carefully discussed offering.[183]

McLean forged on. On 21 October, he reported to Featherston, the superintendent of Wellington province, that he was making inroads into the Manawatū and Forty Mile Bush area, and that Mein Smith was ascertaining the probable extent of native reserves required (while also under instruction not to give in to 'extravagant' Māori reserve demands).[184] Purchasing these lands was a particular achievement, because it was previously supposed that Māori would never alienate them. But 33 Māori (Te Ropiha and others) signed a 'deed receipt' for the Manawatū block on 19 October 1853 at Te Ore Ore.[185] Two other receipts for Ōpaki, Waipoua, and Tūpāpakurua were also signed at the same time.[186] Rigby notes that for the Manawatū block, the names of only four of the original 33 appear on the subsequent deed of 10 December.

The Blacksmith homestead deed came next. It was completed on 22 October, conveying an estimated 20 acres for £10. The deed noted as boundaries 'land features such as a swamp, a fern patch, a small stream and a cliff'.[187] The implication is that these may not have been very definitive, and an accurate survey depended on the parties being in attendance.

Wairarapa Māori Make Overtures to the Crown

This extract from Patoromu's letter to McLean, dated 9 October 1853, is an example of the kinds of offers that were being made in this period. In the passage below, Patoromu outlines the boundaries of land to be transferred to the Governor and the Queen:

> Actually, this is an opening, an outlet. One side, is the east side; the other, this one, is the southern side.
>
> From Waipaua [the boundary] extends as far as Hungahunga
>
> Then to Taomata's house
> Then to Te Ahirakau
> Then to Te Kauotehuia
> Then to Maire
> Then to Tauwarekiokio
> Then to Nga Hape
> Then to Te Kokora.
> This is the finish of the southern boundary.
> Facing the east, there is Taukati
> Then to Waioteki
> Then to Te Punanga
> Then to Pukeatua
>
> Where it again joins the boundary line at that small stream at Kaweke.
>
> Now Sir, Mr McLean, this is to draw your attention to our land. We have now reconsidered upon your request for us to do so. This is our transfer of the land to you. And you should similarly reconsider concerning us. And we say to you, that you should continue to think about what we say, while we consider your proposal. Now, you can see, our position is that we are endeavouring to understand yours. Do not let us eat cold food; but let the feast be steaming hot, in accordance with what you said.
>
> That is all, I am finished. Those words are from us, the words of the people who own the land so that, Mr McLean, will see our conveyance of the land according to the will of the Governor and the Queen.
>
> From Patoromu

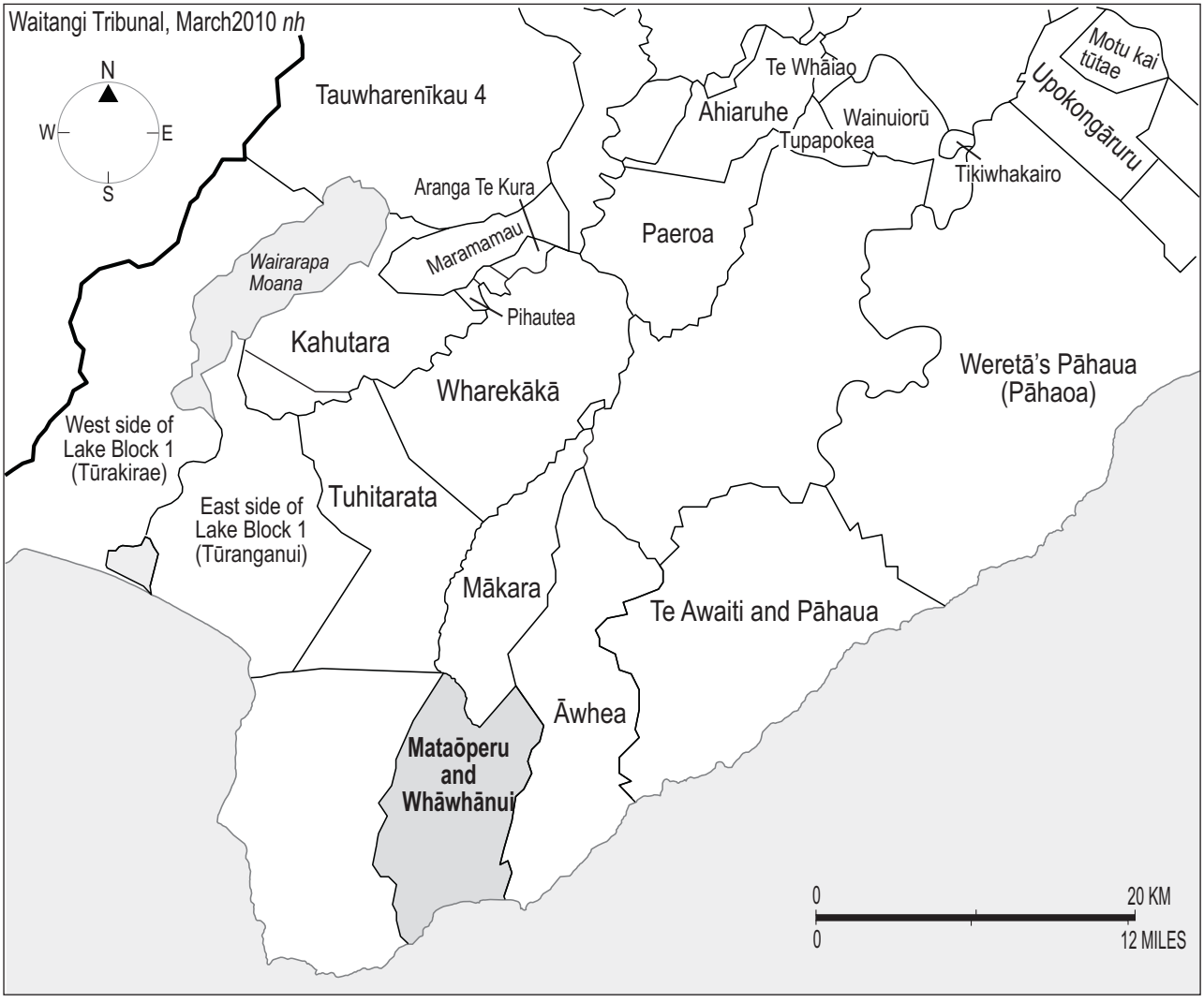
(4) *Mataōperu*

The deed for Mataōperu (otherwise known as Barton's Run), and Whāwhānui was signed on 25 October 1853. It finalised arrangements McLean made in early September regarding the cession of land at Barton's Run. This was an important step. It purported to settle the grievances arising from the earlier muru incident, and more broadly it was also the first deed conveying coastal land below Castlepoint. Its other strategic aspect was that it brought Te Weretā (who was not at the komiti nui) into the Crown's arrangements.

Five rangatira signed the Mataōperu deed. One was Te Hāpuku, whom Stirling characterises as having 'only dim ancestral rights to the land, being involved (to his great enrichment) more as a facilitator for Grey and McLean for the early Wairarapa deeds than as a true owner of any of the land'.[188] The acreage was estimated to be 40,000 acres, plus 80,000 acres in the Barton's Run area that was the subject of the 1845 'cession', plus adjoining lands.[189] These areas, including the part leased to Russell, were soon to be purchased by the Crown as part of a series of Pāhaoa deeds, and some remained as customary land.[190]

We looked at the circumstances leading up to the cession ordered by Forsaith at Barton's Run in the previous chapter. It will be recalled that Forsaith treated Te Weretā as having been in the wrong – although this judgment was controversial – and carried through the disproportionate sanction of requiring Ngāti Hinewaka to cede land to the Crown in the Maungaroa deed of 1845. The Mataōperu deed was effectively the denouement of what might be called the Forsaith saga. We now examine the events leading up to it.

(a) *Background:* We have already described how, in 1850, the Colonial Secretary's staff investigated Barton's complaints about Māori leasing to Russell (another settler) part of the land supposedly covered by the Maungaroa deed. Barton also complained that they had threatened to turn him off the land. At the time, the message to the Māori concerned was that the deed 'must be regarded as sacred'. The message to Barton was that the period



The area comprised in the Mataōperu or Whāwhānui deed and nearby purchase blocks

for which he was permitted to occupy the land had now expired: the lands in question were Crown Demesne vested in the New Zealand Company.[191] The company, for its part, was asked if it intended to survey the boundaries of the block and the cultivations that had been reserved. This was done by direction of the New Munster Executive Council, who warned tangata whenua that they were 'not . . . allowed to interfere with any persons occupying' the land at Maungaroa, because after all they had 'deliberately ceded' it to the Government.[192]

***Mr Russell's Station at Kawakawa*, 1850s ('Kawakawa' is the Māori name for Cape Palliser)**

Kemp prepared a memorandum on Barton's 1850 complaint, probably to assist the Colonial Secretary. His assessment was that the violence complained of by Barton 'did not appear to be of as serious a nature as represented by him'. It 'arose entirely' from his refusal to pay money due for occupation of land that adjoined the land conveyed by the 1845 deed. Kemp invited the Governor to consider 'whether the land held by Barton under the Crown should revert back to the Natives after the expiration of this lease'.[193]

This would certainly have been the better response, but McLean decided instead to enter into another purchase involving land overlapping the land conveyed in the 1845 arrangement.

Then the New Zealand Company, in whom the Maungaroa land was now vested, collapsed. So where did that leave ownership of the land?

Barton stayed on. In 1851, he requested a depasturing licence.[194] He was informed that his request would be considered when the appropriate regulations were introduced.[195]

Later in 1851, McLean was travelling through the Wairarapa on his way to conduct the Ahuriri purchase. Southern Wairarapa chiefs told him that they 'repudiate[d]' the cession as 'not being a fair cession, it having been acquired under threat that if they did not give it up constables and soldiers should be sent up to destroy them'.[196] They did not want to be paid for the land; they wanted it back. McLean promised to make further inquiries and consult with Te Weretā, but noted at the same time that acquisition of the area 'would be a great object to the Government'.[197]

Matters remained there until 1852, when there was another dispute between Barton and Russell as to the extent of their grazing rights, and another (rather confused) inquiry by another member of the Colonial Secretary's staff. Then, in June 1853 – a week after the Castlepoint deed was finalised and only a few weeks prior to the komiti nui at Tūranganui – McLean intervened more directly. It was clear to him that, before moving to purchase coastal land in southern Wairarapa, he had to do something about Te Weretā and those affected by the cession.[198]

(b) *McLean tries to fix up the 'cession' debacle:* McLean began by attempting to define what lands were actually involved. As Stirling points out, this was 'no mean feat', because Barton had entered into a number of different arrangements with several different rangatira, 'not to mention his loose agreement with the Crown over land that was still undefined'.[199] McLean considered that the 'whole of the coast [or east] portions of land known as Mr Barton's inland station' was included in the tract ceded to the government. He thought that once the different rental agreements had been taken into account (which Barton had failed to honour), there remained an area, extending from Opouawe River to Whāwhānui on to a sandhill three miles south (Tuhirangi or Mataōperu), for which Māori had received no payment.[200] He named over 20 other principal right holders to the area – far more than had signed Forsaith's deed, or indeed the deeds that McLean himself was subsequently to arrange.[201]

McLean was simply not prepared to overturn the cession, because the Crown was committed to it. Nevertheless, he thought it had all been misjudged and mishandled. The quarrel was 'not much worse than others of frequent occurrence'; Forsaith's threat was 'equivalent to a declaration of war'; Te Weretā's compliance was driven by fear; and expropriating land from others who had not been involved in the incident was contrary to 'equity, justice, or law'.[202] He confessed privately to Grey that he was 'quite ashamed that the Govt were ever in any way parties to Bartons imposition'.[203] Officially, though, he put it this way:

> In order to put an end to this question, without altogether invalidating a transaction that had received the official sanction of . . . the Superintendent . . . of the Southern Province, and the Governor of New Zealand, which I informed the Natives could not now that they had signed the deed be repudiated, I proposed to them that they should add an additional tract of fresh land to the run occupied by Mr Barton, and . . . I should then feel authorised to make them a payment for the whole district, that the Natives who were not in any way parties to the former cession might be remunerated. To this the Natives have after some discussion assented.[204]

(c) *McLean pays more for Mataōperu:* For Mataōperu, £1000 would be paid in three instalments over about 18 months. This was about sixpence per acre. Less than a penny per acre was paid for comparable coastal land later purchased under the deeds for Whareama, Pāhaoa, and Kaiwhata.[205] It is not clear whether the higher rate for the Mataōperu land was really oblique redress for those who had been penalised by Forsaith's demands, or was an instance of McLean's practice of negotiating more generous terms when first opening up new areas to Crown purchase.

An additional £400 might also have been paid for Mataōperu. Stirling notes that on 14 October 1855, £400 was paid for 'Kurawhawhanui', which was another name for Mataōperu. Stirling surmises that Turton probably made a transcription error, and that this is the same £400

Barton, Te Weretā, McLean, and the Mataōperu Deed

When Ngāti Hinewaka ceded land to the Crown in March 1845 as a result of the incident at Barton's Run, the document they signed was the Maungaroa deed.

We have already seen how this was a flawed agreement in more ways than one. Thomas Forsaith's heavy-handed response to the Te Weretā's muru was widely perceived as unjust. As well, the deed did not describe the land it concerned accurately. A lack of proper surveys and a failure to identify the 'cultivations' promised to Māori within its boundaries make it as impossible now, as it was then, to calculate the area with precision. Estimates start at 40,000 acres.

On the ground, the deed had little noticeable effect. As before, Richard Barton grazed his sheep over the hills and valleys of the Whāwhānui station, both within the ceded area and on land adjacent to it. The goods Barton lost in the muru were valued at £60, and the Crown let him use the Maungaroa block rent-free for five years to compensate him. This was done informally, and Barton's tenure was never reduced to writing.

As before, Ngāti Hinewaka made their own arrangements with settlers. Te Weretā, whose land rights had been overlooked in Forsaith's cession, paid Barton 40 pigs for injury done to his property during the muru. Barton himself entered into understandings with several rangatira regarding pieces of land, within and outside the affected area. Perhaps capitalising on the fact that Barton was absent from his farm until mid-1846 – his farmhands did the day-to-day work – Ngāti Hinewaka assigned a block in the west of the station to another run holder, Thomas Russell. Confrontations between the two settlers inevitably ensued, and Barton complained to the Colonial Office of Russell's trespass.

In 1850, Barton claimed Māori were threatening to throw him off 'his' run, an overblown complaint that resulted in an official inquiry by the Colonial Secretary. The dispute did not even relate to the cession area but land next door to it, and 'arose entirely' from Barton's non-payment of rents. Officials warned Māori off: the deed 'must be regarded as sacred' and they were not to 'interfere' with those occupying the land that they had 'deliberately ceded' to the Government. Although Barton was unquestionably in occupation, he had no legal rights. He did try to get the Crown to formalise his grazing rights, but there was no infrastructure to do it.

It all remained in limbo until McLean turned his attention to it. He knew what Ngāti Hinewaka thought of the Maungaroa deed: 'they repudiate [it] as not being a fair cession it having been acquired from them under threat'.

In a letter, given to McLean in 1851 to pass to Grey, Māori gave their views. Written anonymously to prevent retaliation, it spoke of a real fear that 'constables and soldiers' might be used against them. The Crown's claim to their land was 'an offence', it read; after all, the muru had involved 'just the theft of the belongings of the Pakeha'. They wanted their land back.

Kemp, who had prepared a memorandum on the 1850 complaint, probably to assist the Colonial Secretary, remarked that the violence complained of by Barton 'did not appear to be of as serious a nature as represented by him' and 'arose entirely' from his refusal to pay money due for occupation of land adjoining that within the 1845 deed – not for land within it. Kemp invited the Governor to consider 'whether the land held by Barton under the Crown should revert back to the Natives after the expiration of this lease'.

There was more at stake for McLean, however, than Ngāti Hinewaka grievances. He was furthering the larger agenda of obtaining the whole Wairarapa district for settlement. He could not do this without first appeasing Te Weretā, the leading rangatira whose treatment at the hands of Forsaith had led to a serious loss of mana and goodwill. The Colonial Secretary's pardon in 1845 had cut no ice with Te Weretā. He expressed his resentment by rejecting Christianity and resuming traditional ways, clearly signalling his antipathy towards church and state.

In June 1853, McLean set himself the task of investigating what had happened at Whāwhānui station. He uncovered the idiosyncrasies of Barton's arrangements with the Crown and

local rangatira, and the surveying problems of Forsaith's deed. Te Weretā gave McLean his account of what had happened, and identified many who had interests in the land that had been 'ceded'.

Mindful that the cession had been officially sanctioned, McLean proposed a solution that fell short of rescinding it. He said that the Crown should negotiate an entirely new deed. Te Weretā would be paid, and also others whose rights were wrongly affected by the confiscation.

The Mataōperu deed was ultimately signed on 25 October 1853. Of greater area than the Maungaroa deed, it overlapped Forsaith's cession but did not entirely incorporate it. To the west, a tract was left as customary Māori land, including parts of Te Kōpi, Waitetuma, Kawakawa and Mātakitaki; to the north, McLean added a new inland section. Again there are problems in ascertaining acreage, and reserves. The Crown would pay £1000 in instalments. As we have said, this equated to sixpence an acre, which was well above the going rate.

It is debatable whether McLean's solution gave Te Weretā and others affected by the 1845 confiscation a real choice. The situation left by the Maungaroa deed was unworkable, but with McLean unwilling to overturn Forsaith's actions, all that was available was a compromise. Ngāti Hinewaka's land would not be given back. The Mataōperu deed undoubtedly dispelled fears Māori fears that soldiers would march in to enforce the Crown's title. In paying for land already ceded to the Crown, and paying generously, McLean may have been apologising, yet the land was still lost to Māori – this time by purchase.

that was paid as the third instalment for Mataōperu. It is not clear however – only one of many instances of confusion about the details of the deeds.[206]

There was no 5 percent clause recorded for the Mataōperu transaction, but two reserves are noted. The first was for 10 acres to include a village or resting place at Ōpauawe. The second included land for cultivation, and although acreage was unrecorded, the reserve boundaries were given.[207] One of these reserves was purchased in 1862 from a signatory of the Mataōperu deed, Karauria Hape, because it had already been included in an on-sale by the Government to Barton.[208]

(d) *The Āwhea deed:* Barton went on to arrange purchase of critical parts of the run from the Crown at a marked-up price, guaranteeing his occupation, and also giving the Crown a quick profit.

The Mataōperu deed was not the finish of friction between Barton and Māori, however. Part of his station extended outside the 1853 agreement to the north, an area he swiftly persuaded the Crown to purchase, in what became the Āwhea deed. His motives were twofold: while freeing himself from his Māori landlords, he could secure the area in the face of increasing competition from other run holders. He quietly suggested an enticing deal to McLean. He would make the Crown, whose coffers were low, a 'loan of five hundred pounds free of interest' to help fund the purchase.[209] His own pay-off would be that he would buy a strategic part of the block himself, ensuring his control of the larger area. That Heremaia Tāmaihotua, one of the principal land owners, was considerably in debt played into Barton's hands.[210]

In less than three weeks, on 18 January 1854, the Āwhea deed was ratified. A not-so-generous £400, to be paid in instalments, was agreed upon for the estimated 15,000 acres. The signing took place not on the land but in Wellington, with just five Ngāti Hinewaka endorsing the document. No reserves were defined.[211]

Aspects of this transaction foreshadowed McLean's modus operandi in subsequent deals with Māori in the Wairarapa district: haste, inadequate consultation, a mandate from a small group of rangatira, and a failure to

provide for reserves satisfactorily. The settler's needs were to the fore. As a result of the Mataōperu and Āwhea deeds, Barton's domain became larger and more secure.

(5) *Striking while the iron is hot: purchasing more coastal land*

The Crown purchased most of the rest of the east coast south of Castlepoint between October and December 1853.

The first transaction, an estimated 250,000-acre block known as 'Part Pahaua and Wilson's run', was arranged in October 1853.[212] The deed did not stipulate the final amount that the Crown would pay. Seven hundred pounds was advanced, with the:

> remaining price to be paid for the land . . . to be fixed and decided on when the boundaries are surveyed and the land examined by the surveyors that its extent may be known, and the extent and position of the reserves for ourselves laid down.[213]

There was a koha clause, and four reserves were listed, but their location was expressed in a way that would be meaningful only for a limited time, and only to those directly involved:

> The lands for us within these boundaries are these:—
> - The piece of land shown by Hoera to te Hapuku and Mr McLean on the East side of the Pahaua river.
> - The pieces described by te Wereta Kawa Kairangi in his letter, which are to be regularly pointed out and surveyed that there may be no dispute about them.
> - A small piece called the Pa at Kaiwata.
> - A small piece of the bush only at te Waipuna.
>
> These are all the places for us.[214]

After the Part Pāhaua and Wilson's Run deed came a transaction that became known as Whareama 2 (south). This was on 1 November. The block comprised 38,000 acres, and the £400 purchase price was paid in full at the signing.[215] The 5 percent clause was included, and Walzl says that after the specification of boundaries, 'a few ill-described reserves' were recorded, although they were poorly defined – and Māori were required to share the firewood on their reserves:

> Our cultivation is still to be reserved to us at Mangapiu as a cultivation. The firewood is to be used by the Europeans as well as ourselves, a small piece at Waipupu Watakai and at te Ruru to be reserved as cultivations for us, the firewood to be used by the Europeans and ourselves the firewood for us to be taken at such times as we are living on these cultivations.[216]

Next came the deed for the Waihora block (also known as Whareama 4), which was signed on 28 November. This was the nineteenth Wairarapa transaction to be concluded since the komiti nui that took place in August of that same year, 1853. The Waihora block was estimated at 12,000 acres, and the price was £300, of which £200 was paid at the signing. There was no 5 percent clause, nor any reserves.[217]

On 2 December, McLean arranged the purchase of the adjoining block, Whareama 3 (also known as Whareama North block). This block comprised about 100,000 acres, but the price was again £300, which was paid at once. Again, there was no mention of the 5 percent clause, nor of any reserves.[218]

Between these two transactions, on 29 November, Te Ōtene, Rīwai Popa, Pēhimana Kaha and Iraia Titako signed a deed receipt for 'land inland of Whareama' for £93. Another person – Ngāika – was to receive the next instalment when the survey and payments were completed.[219]

On 9 December, McLean purchased the coastal block Part Whareama (Whareama 1), an estimated 25,000 acres, for £100. The deed included the 5 percent clause, and two reserves. 'Two portions of this land will be returned to us', said the deed. They were each to be 500 acres. One is noted as being 'on the Whareama stream'. Neither the position nor name of the other reserve is recorded.[220]

The next day, 10 December, McLean purchased a 50,000 acre inland block, Upokongāruru. He had made an

advance or initial payment of £200 six weeks earlier, on 29 October 1853. This is recorded in the 'enclosure' attached to the deed in Turton's collection. A further £200 was paid on the day of the signing (10 December), and the third payment of £87 was made to Te Weretā in Wellington on 11 January 1854. In the enclosure to the deed Te Weretā was promised a horse, but it appears that he took money instead.[221] Rigby notes that McLean did not sign the deed of 10 December, but he appeared to have signed the 'receipt' document of 29 October 1853.[222]

The fifth transaction for another part of Whareama, an inland area estimated at 25,000 acres, occurred on 12 December, with £100 paid on the day. There was no reference to the 5 percent clause, and only one reserve: 'One reserve only has been made for ourselves being the place where we reside at Hikurangi.'[223]

Reviewing these Whareama deeds, one is struck immediately by the few and inadequate reserves. Of four blocks totalling about 188,000 acres, all that was set aside for Māori use were a few vaguely defined cultivations and areas for firewood, and two reserves of 500 acres.[224] And Māori gave up their right at Mangapiu (the reserve out of Whareama South) to charge for firewood. These paltry reserves were also vulnerable. Unless what was discussed between vendors and McLean was promptly surveyed under close supervision by those parties, it would be impossible to mark out the reserves promised. To make matters worse, not long afterwards (in 1859), Crown official William Searancke acquired both Hikurangi (500 acres) and Awatoitoi (or Awatoetoe, 30 acres) out of Whareama North.[225]

(6) *Purchasing both inland and coastal blocks*

McLean also purchased inland blocks in December 1853. The deed for the Manawatū block was signed on 10 December. This was probably the same area McLean discussed in his October report: he said he paid £300 to 33 signees in that month.[226] The total cost was £800, of which that first £300 was paid on 19 October, £200 on 9 December, and then, on 10 December, a further £300. The 5 percent clause was included, and a general reference to reserves noted:

> One thousand (1000) acres will be returned to Wiremu Waka as a homestead for him. One thousand acres likewise will be returned to us when the survey is made of this land and on to Heretaunga.
>
> The Land Purchase Commissioners of the Government of New Zealand will point out the boundaries of the portion for a homestead for some of us.[227]

Also on 10 December, the Mākōura block deed was signed – 300 acres for the future site of Masterton township. According to the deed, £100 was paid at signing, and the vendors were to receive the 5 percents. There were no reserves.[228] However, in 1854 Mein Smith reported that he believed that the money was still owing on Mākōura.[229]

Walzl lists a number of smaller transactions between 12 and 22 December.[230] Most of these were arranged in Wellington, and three were for the purchase of reserves set aside only weeks earlier.

On 23 December, McLean signed two deeds for Ōwhanga. '[N]ga Rangatira me nga tangata o Ngatikahungunu' (the chiefs and people of Ngāti Kahungunu) – Te Mānihera, Wiremu Kīngi Tūtepākihirangi, Matiaha Te Aopōuri, Wiremu Tāmihana Hiko, Rāniera Te Iho, Mātini Warahi, Rāwiri Piharau, Piriki Potonga, Īhaka Ngāhiwi and Rīwai Tāmati – signed a deed conveying between 18,000 and 19,000 acres that included the site of present-day Featherston. The block included lands that had been ceded by Te Wāka Tahuahi and Te Mānihera at Te Kuratāwhiti. A reserve of 100 acres was to be set aside for Rāwiri Piharau at Motupiri, but settlers came in before it could be surveyed, and Piharau was obliged to shift more than once in the following years.[231] The price paid was £1000.

On the same day, McLean purchased 'Manihera's reserve' for the same price, the same boundaries (in the Māori version), and the same signatories as the Ōwhanga deed for Featherston above. This was McLean's thirty-fifth transaction since August.

McLean informed the commissioner of Crown lands that he had purchased:

> that block of land formerly reserved by them at the entrance of the new line of road at Burling's, including the site so much required by the small farming association for their own town and suburban lands. The whole of this block is estimated at 19,000 acres, and as it is of such urgent importance to acquire it, I have agreed to pay the Natives £1000 for it, the Natives at the same time offering to give the Government an additional block of land elsewhere in consideration of the high price they are to receive.[232]

This 'additional block' was the 'Moroa gift' of 5000 acres, to which Wiremu Kīngi and Te Mānihera had agreed in view of the relatively high price received for the Ōwhanga transactions. These 5000 acres were included in the subsequent sectional surveys as adjoining lands were purchased and on-sold, though there was no deed transferring the land from Māori to the government. It was not until 1873 that Te Mānihera, Wiremu Kīngi, and other leading rangatira of the district signed a deed of gift (see 'The Mōroa Block').[233]

Just before Christmas on 24 December, McLean paid another instalment on the 'Part Pahaua and Wilson's run' purchase of October.

Block	Date of purchase deed	Estimated area (acres)	Purchase price (£)	Reserves and/or koha
Part of McMaster's Run – Tuhitarata	12 December	640	100	Two reserves of 100 acres
Part of McMaster's Run (Hiko's claim) – Tuhitarata	13 December	640	100	None
Ōtāraia (Gillies Homestead)	13 December	100	100	None
Part of West Side of Lake – Tūrakirae (Tāmihana)	14 December	1000	400	Koha
Kuratāwhiti 1 (Te Mānihera)	14 December	2000	100*	None
Kuratāwhiti 2 (Wāka)	14 December	2000	120*	None
Northwood's homestead	14 December	100	100	None
Land on Ruamāhanga †	15 December	200	20	None
Waiōrongomai (Rāniera) ‡	22 December	400	100	None

* Initial payment, with the remainder to be determined after survey

† Rigby comments that this was a purchase of a Tuhitarata reserve apparently not referred to in earlier deeds: doc A33 (Rigby), p 133.

‡ Walzl notes that part of Waiōrongomai (forested area) was originally reserved from the 'West Side of the Lake purchase' on 1 September 1853: doc A44 (Walzl), pp 405–406. Rigby comments that the 5 percent clause 'should have applied' perhaps because this was associated with the original Tūrakirae transaction of 1 September: doc A33 (Rigby), pp 133–134.

Summary of McLean's small purchases, 12–22 December 1853

The Mōroa Block

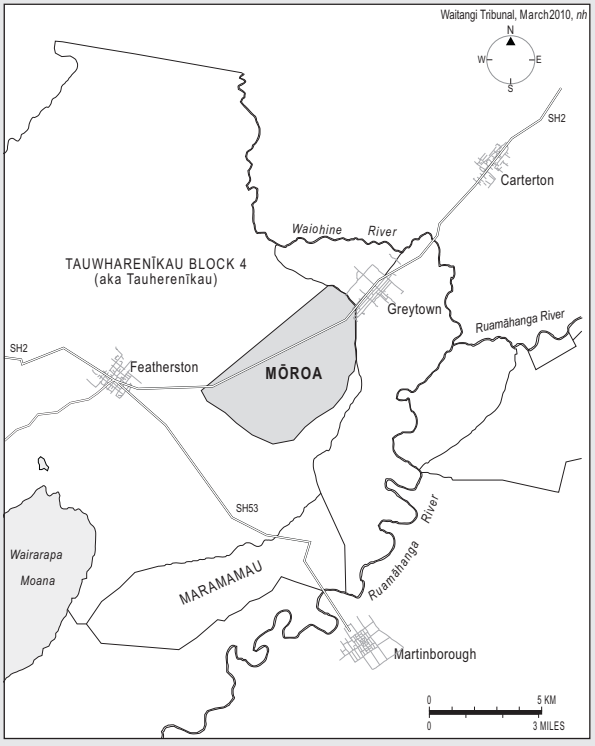
The Mōroa block was situated within the larger Tauherenīkau 4 block, south west of present-day Greytown. The ownership of Tauherenīkau 4 was transferred to the Crown on 19 September 1853 for payments totalling £2000. In December 1853, the Ōwhanga block (site of present-day Featherston) was transferred to the Crown for £1000. Because of the high price paid for Ōwhanga (a 'relatively small block of only 18,000 or 19,000 acres'), Wiremu Kīngi and Te Mānihera agreed to gift the Mōroa block (approximately 5000 acres) to the Government. Both Government and sellers were either unaware or unconcerned that the Tauherenīkau 4 deed of September 1853 included 'Moroa' block within its boundaries. Tauherenīkau, Barry Rigby concludes, 'appears as a highly complex set of overlapping purchases that made no geographic sense'.

Nothing was done to formalise the transfer of the Mōroa block until 13 December 1873, 20 years after the original gifting, when Te Mānihera and Kīngi signed a 'deed of gift'. This stated that:

> when we so gave it we believed that we should be entitled to Five pounds per centum of all net proceeds of land sales within the land so given to be returned as 'koha' to us as such sales might occur.

Heaphy reported that after the signing of the deed of gift, some prominent rangatira also signed a deed of confirmation, including some dissenters to the gifting, who were given cash payments as inducements to sign. Te Whatahoro Jury, however, never assented to the gifting of Mōroa, and there is no record of his being paid.

The Jury whānau (descendants of Te Whatahoro) claim that as a consequence of Crown Treaty breaches, they lost their interests in Tauherenīkau 4 and Mōroa; proper koha payments were not made; and they lost out on economic opportunities they might have had. In 1896, Te Whatahoro wrote to the Premier that:



Location of the Mōroa gift block, 1873

> The arrangement made at the time was that should the land be sold to private Europeans, ten acres in every hundred, were to be reserved for the Maoris.

While it is not possible to verify Te Whatahoro's claim, there is agreement amongst historians that McLean made various promises to Wairarapa ki Tāmaki-nui-ā-Rua Māori to convince them to transfer their land, not all of which were recorded in writing.

On Boxing Day, McLean was in Wellington. He wrote to Grey, who was about to depart the colony, and told him that he was most anxious to continue with his purchasing: 'I felt if I was to abandon negotiations once commenced that it might have operated against future purchases.'[234] He had purchased 1,700,000 acres in the Wairarapa since August, he told Grey. He had committed the Crown to paying £13,000; £9,000 was paid already. £6000 had been spent on homesteads of former lessees.[235]

True to his word, McLean completed a purchase the very next day, 27 December. He was probably in Wellington at the time.[236] He bought the Kaiwhata block, estimated at 10,000 acres. Two hundred pounds was paid at signing. The deed made no mention of the 5 percent, nor any reserves.[237] However, four small reserves for cultivations – Tāwhirimātea, Waipuna, Kākati and Tūtaehaohao (also known as Tūtaehauhau) – were recorded in a second deed for Kaiwhata (East of) of 11 January 1855.[238] For Waipuna, it was noted that the 'wood' would be for 'ourselves and the Europeans'.[239] Also on the same day in Wellington, a receipt was signed for Part of Paeroa – part of Captain Mein Smith's Run – for £100.

December 27 proved to be busy for McLean, who on the same day forwarded to Commissioner of Crown Lands Bell a return showing all land transacted between 22 August and 23 December, being 'The whole of this land with the exception of Native reserves'.[240] Three more receipt transactions were completed before the New Year, including one for J McKenzie's homestead.[241]

McLean continued his hectic purchasing programme into 1854, but now arranged purchases mostly from Wellington. On 3 January, he bought the 100,000-acre block of coastal land at 'Te Awaiti and part Pahaua'. The price was £1500, with £600 laid down at the signing. There was no mention of the 5 percent clause, but several reserves were noted – although, Walzl says, 'with the usual lack of specificity'[242]:

> The reserves for ourselves are not large being Kepa's settlement at Huariki the landing place at Pukaroro proceeding inland to Rerewakaitu as a cultivation our pa and the land occupied by us at Pataua and it is agreed that if we require more land for cultivating (500) five hundred acres shall be returned to us by the Land Commissioner.[243]

That was not all that happened on 3 January, though. McLean also signed the deed for Tautāne block (70,000 acres located north of Castlepoint) with Te Niania, Te Hāpuku, and 30 others.[244] McLean made an immediate payment of £500, and promised a second instalment of the same amount a year later.[245] This deed had a 5 percent clause, and provided for two reserves, including a wood.[246] (This especially contentious purchase is discussed in more detail below.)

McLean, seemingly indefatigable, arranged purchase after purchase. On 4 January, the Wharekākā block of 40,000 acres was transacted for £2000, with £1000 paid at signing. There was a koha clause, and 1000 acres reserved for Te Mānihera 'as a permanent possession', to be surveyed by Mein Smith at a later date. The same day, the Ahiaruhe block of 5000 acres cost £500, with £250 paid at the signing. There was no mention of reserves, nor of the 5 percent.[247]

The transactions arranged between 7 and 18 January included a £700 payment to chiefs of Ngāti Awa, Ngāti Tama, and Ngāti Toa to relinquish claims to the Wairarapa, and several deals concerning portions of Smith's Run. On 9 January, McLean paid £250 for 3000 acres of Smith's Run, plus £40 for a 'piece of bush'. On 11 January, he paid £150 for another 3000 acres of Smith's Run (Pohaturiki), but £100 of this had already been paid on 14 October 1853. Neither reserves nor the 5 percent were mentioned.[248]

McLean's 'last big purchase' was, according to Walzl, also signed on 11 January 1854.[249] This was Kōhangawariwari, which was about 150,000 acres. McLean had paid £300 on 14 October, and on 11 January paid £1000. There was again no reference to the 5 percent clause, but the deed did contain a vague reference to reserves:

> The portion of land as set apart for the Bishop is excepted for him out of this sale of land, also a portion of (1000) one thousand acres is to be given to us at some future time as a cultivation for us and as a possession these being the only portion for us.[250]

Soon after, McLean departed for Auckland. Kemp finished off purchase negotiations for the Āwhea block, comprising 15,000 acres. There were to be four payments of £100 each. There was no 5 percent clause, but as to reserves the deed provided: 'the portions of land out of this sale to be reserved for us will be hereafter settled by Mr McLean when he returns from Auckland'.[251]

Rigby says that another three receipt transactions occurred after this. On 17 January 1854, Te Keepa Te Rangihiwinui (of Whanganui) signed a receipt for £50 from McLean for his land at Wairarapa. This was signed in Wellington. Two more receipt transactions are recorded for 6 February and 1 March; both may have been signed in New Plymouth. It is not clear whether McLean was involved, though a later land purchase officer in the Wairarapa, Cooper, did witness one of these receipts as a JP. These receipts were, again, for land interests in the Wairarapa, though the exact nature of the signatories' connections is unknown.[252]

(7) *What do the first-wave purchase deeds tell us?*

In this section, we rely again on the work of Dr Barry Rigby, who presented to the Tribunal his findings on what the deeds of this early period tell us about Crown purchase procedure. While he makes certain useful inferences, he cautions that the paucity of documentation surrounding them means that all deed information should be regarded as indicative only of the numbers who signed, acreage, reserves, and price.

(a) *The deeds were a 'starting point':* Of the 55 deeds he examined, 13 are listed as receipts, but Rigby notes that the distinction was far from clear. McLean considered all the deeds as the starting point of the transactions, not the

Features of the First Wave of Purchasing

McLean's hectic purchasing activities in those first months after the komiti nui show some distinctive characteristics:

- The imperative to acquire the whole district does not seem to have been accompanied by a parallel, equivalent concern for how to provide for the future of Māori beyond occupation reserves.
- There was no on-the-ground investigation of either interests or the proportion in which they were held.
- McLean acted under a strong impulse to 'strike while the iron was hot' to acquire as much land as possible after Grey's breakthrough, and before Māori began to question the price, or disputes hindered further acquisition.
- At least partly as a consequence of the extremely rapid pace of purchasing, many details as to boundary, reserve, and price per acre were left unsettled.
- Reserves were arranged on the spot, sometimes specifically to win the signatures of particular chiefs, sometimes as provision for 'ourselves', or for 'us'. Precisely who would benefit was ill-defined. This was increasingly problematic as the number of signatories on deeds declined.
- Such reserves as were made were inadequately described, making it difficult later for Māori to insist upon what they thought was agreed.
- In the absence of any record of negotiation we cannot know whether Māori asked for, or whether it was McLean who offered, the 5 percents or koha. It was expected in the first purchases after Tūranganui, but the situation is less clear afterwards. The tenor of McLean's letters suggests, however, that it was he who offered the option if he thought fit, but not as a matter of course. Already there was a departure from the spirit of Grey's engagement and from a commitment of active protection.
- The centre of purchase operation shifted with McLean to Wellington. Many of the Wellington-based purchases were later disputed.
- Almost immediately, the Crown began to purchase 'reserves'.

end; he saw the deeds signed in the period 1853–1854 'as little more than receipts for initial payments'. Full payment could occur only after 'full boundary definition, both of the extent of the purchases and of the exact location of Native reserves'.[253] Later, when Swainson (the Attorney General) criticised McLean's failure to define native reserves within purchases, McLean answered:

> I am aware that some of the deeds . . . are not complete, as they were merely intended as receipts to be embodied in a final and more complete surrender hereafter, when the boundaries and reserves were accurately surveyed and defined . . .[254]

He explained that the reserves, with the approval of the Governor, were to be considered a separate arrangement with the chiefs, and were to be surveyed with the subsequent plan to be attached to the Crown grant.[255] In effect, it seems, reserves were still open to be negotiated and defined afterwards.

The characterisation of the deeds as a starting point in the overall transaction was reinforced by the instalment system. Nineteen of the 56 deeds (with 13 really little more than receipts for instalments) note that payments would be made over a one- or two-year period.[256] In the case of Tauherenīkau 4, payments would extend over four years, with final payment in early [May] 1858.[257] Two deeds, those for Kuratāwhiti 1 and 2, designated the amount of the first instalment only, stating that the balance would be decided on survey.[258]

(b) *Uncertainty about reserves and 5 percents:* Land reserves are noted in 16 of the 56 deeds. Questions immediately arise as to whether this was the full complement discussed and understood to have been promised at the time of McLean's on-site negotiations. In a number of instances, officials later agreed that reserves should have been set aside in various blocks, although this had not been actually recorded at the time (Kaiwhata, for instance).

Besides the lack of definition of what lands would be 'reserved', the purpose of reserves was far from clear. Were they to be held for Māori use or not? As previously noted, a number of McLean's purchase deeds were for blocks that had been reserved just months before. More purchases would follow. Three of the deeds specifically state that reserves would be settled once McLean returned to the area.[259] There must have been real uncertainty about whether reserved land would really be kept, and then there are the instances where, on land reserved to Māori, tangata whenua had to share resources with settlers. This happened with firewood in one of the Whareama deeds, and then eeling had to give way to settler drainage on the west side of the lake.

Twelve of the deeds mentioned the 5 percent clause, but Rigby suggests at least one other deed (Waiōrongomai) should also have included it.[260] What drove its inclusion or non-inclusion? What did owners infer from their knowledge (presumably) that the clause was sometimes in and sometimes out?

(c) *Who was entitled to sign?* Who was entitled to sign and how was it determined who should sign the deeds? What level and kind of interest must an owner have to be a signatory? Rigby identifies 12 rangatira who were 'frequent deed signers': Te Mānihera Te Rangitākaiwaho, Wiremu Kīngi Tūtepākihirangi, Ngāiro Takatakapūtea, Rāniera Te Iho o Te Rangi, Wiremu Tāmihana Hiko, Te Weretā Kawekairangi, Hoera Whakataha, Hēmi Te Miha-o-Te-Rangi, Mātini Warahi, Piripi Patoromu, Āperahama Te Ao and Te Hāpuku.[261] He suggests that certain chiefs dominated the deeds for particular parts of the valley, though leaders such as Te Mānihera appeared throughout the district. Rigby comments that Te Mānihera probably ranked as the most influential as well as the most frequent participant in the first wave of purchases: he and Te Hāpuku clearly assisted McLean in the major upper-valley purchases, though neither resided upon the land there. Rigby describes Te Mānihera as a major beneficiary of the deeds (in terms of reserves and payments), even though he was considered one of the younger chiefs at the time.[262] It was Te Mānihera who led the gift of land at Pāpāwai which,

at one point, was to be named after him. Rāniera was also known as one of the younger generation of 'pro-purchase' chiefs and, Rigby argues, able to take 'full advantage' of his residence at Tūranganui to secure a generous 'reserve' – the largest of its kind listed for the whole of the country in 1865.[263] Māori witnesses before the commission of inquiry into Wairarapa Moana in 1891 suggested that the Crown's preference for dealing with Rāniera offended the senior rangatira, Te Hiko Piata Tama-i-hikoia. (We discuss this royal commission in chapter 7.) Rigby cautions, however, that Te Hiko's son (Wiremu Tāmihana) signed along with Rāniera, and may have been a 'sort of proxy'.[264]

Te Hāpuku's instigation of purchases south of Hawke's Bay was also likely to be controversial given his non-residence. While he might have interests, he was not considered a principal right holder in the Wairarapa-Castlepoint region. As early as November 1853, some rangatira from both Hawke's Bay and Wairarapa were expressing dissatisfaction about the moneys that Te Hāpuku and others, such as Te Weretā, were receiving. Thus Wiremu Kīngi Tūtepākihirangi wrote to McLean from Heretaunga complaining about the 'compensation payments for my settlement that were given by you to Te Hapuku and Wereta'.[265] Ngāiro also objected to McLean and Te Hāpuku's activities:

> This is me endeavouring to arrange payment from you both, your friend Te Hapuku included. Boy, may you both know, the business ran into trouble after you [left]. The people of Wairarapa were very obstinate. Now why should they give it up, when the result would be trouble, inasmuch, the Deeds of Te Hapuku and yourself have been burnt in a fire.[266]

McLean's willingness to deal with Te Hāpuku for lands in which his rights were disputed was to result in armed inter-hapū fighting in the Hawke's Bay later in the decade.[267] His practice of elevating chiefs willing to sell may well have resulted in more damage to chiefly authority than did the questioning of traditional beliefs such as tapu.

(d) *Signing deeds away from the land transacted:* When deeds were signed elsewhere than on the land and in the midst of the community directly affected, questions are inevitably raised as to whether that community had a good understanding of what was going on.

Rigby identifies a number of deeds in the first wave that were signed away from the land in question – a practice that became increasingly common as time went on.

He notes that even the early sale of the three Tūrakirae reserves may have been arranged in Wellington, without the knowledge of the people who were involved in the initial transaction that was negotiated four months before in Wairarapa ki Tararua. Rigby suggests that even if those who had endorsed the initial 1853 transaction were aware of the subsequent payments, they had 'every reason to believe that these [subsequent payments] were payments for the original purchase in September, not for the sale of reserves'.[268] The matter is not clear, however, since the witnesses to the first reserve deed (signed on 14 December) were Wairarapa-based, in marked contrast to the witnesses of deeds and receipts signed a week later.[269] Again, only Wiremu Tāmihana and Rāniera Te Iho signed a deed for the Waiōrongomai reserve (on 22 December) for £500, but in this case, the witnesses included two officers of the Imperial 65th Regiment visiting Wellington. Te Mānihera and Tūtepākihirangi joined with the other two rangatira plus six others in two identical deeds for another possible reserve, Ōwhanga. Rigby notes that the area was apparently reserved for Te Mānihera (it was named as such in Turton's deed 116); however, it was never mentioned on the original deed for Tūrakirae or the other Ōwhanga purchase deed signed a day earlier.[270] At the same time, Wiremu Kīngi Tūtepākihirangi and Te Mānihera agreed to give the Crown 'Moroa' for free, in recognition of the high price paid for the land at Featherston that McLean had considered the Crown must urgently acquire.[271]

It seems likely from the witness lists recorded on the other deeds signed from late December to early January that three east coast sales – Kaiwhata, Te Awaiti and Āwhea (near Cape Palliser) – were Wellington-based, as were three

A Banquet

The *Māori Messenger* in April and May 1854 reports on a banquet held in Wellington for visiting rangatira:

> The Native Chiefs of the Province of Wellington were entertained by his Honor the Superintendent at a sumptuous feast at the Wellington Hotel, on Friday last the 30th December [1853]. The tables were handsomely decorated, and literally groaned with all the delicacies of the season. Covers were laid for fifty. The Vice chair was filled by Mr Speaker Clifford. On the right of the Superintendent sat Te Hapuku, on the left E Puni.
>
> Amongst the Chiefs present were:—Te Hapuku, Te Wereta, Te Manihere, Wiremu Kingi, Ngairo, Nopera, Wi Tako, E Puni, Porutu, Puhara, Hoera, Wi Tamihaua, Naturi, &c, &c.
>
> Te Hapuku and a large body of influentical [*sic*] Chiefs from Hawke's Bay, Wairarapa, and other parts of the Province, having come to Wellington to arrange with Mr Commissioner McLean about the sale of land . . . [A]dvantage was taken of the opportunity by the Superintendent to invite them to entertainment at Baron Alzdorf's Hotel; at which the Members of the Provincial Council, Col McCleverty, Commissioner McLean, and Mr Kemp, &c, were also present. . . .
>
> The Speaker of the Provincial Council in Wellington, being next introduced to the greetings of the meeting by Mr Wakefield, expressed himself to the following effect. – He had arrived at Wellington, like many others, without land. While in this discouraging situation he received the kind attentions of Manihere, a Chief now present. This happened eleven years since, and still he recollected with the warmest interest and gratitude the hospitable entertainment he enjoyed with the Natives at Wairarapa, – and was anxious to see similar feelings of confidence and esteem perpetuated in all the intercourse of the settlers with the aborigines, in the times yet future. The proceedings of the evening yielded him the utmost satisfaction, and he heartily sympathised in the many excellent sentiments which had been already so well and so frequently expressed.
>
> In the Maori language, Mr Bell introduced Mr McLean to the good wishes of those assembled in reference to a safe voyage which he was about to undertake to Auckland. Mr McLean replied, in the same tongue, to the Native cheers and universal applause which hailed the mention of his name, and said that he felt obliged to the Natives for the many evidences of kindness and forbearance which they had shown in his many, and sometimes difficult, negociations [*sic*] with them. . . .
>
> In connexion with this entertainment to twenty-seven Native Chiefs, who manifested so much willingness to encourage the settlement of the British amongst them, it may be stated with every satisfaction, that since September last, upwards of two millions of acres of land have been purchased from the Natives comprising the greater portion of the Wairarapa Valley, and certain other districts of land valuable for grazing and tillage, which were previously locked up against British enterprise. It is no less satisfactory to see the disposition on the part of the Natives to concede their teritorial [*sic*] rights with a view to our introduction amongst them. The rural districts are now being opened up to the industrious labors of thousands of our fellow-countrymen, who are prepared to take advantage of the auspicious circumstances of this colony. The ease and rapidity with which Mr Commissioner McLean interpreted the speeches excited the surprise and admiration of all present.
>
> 'The Members of the Provincial Council,' having been given, Mr Moore replied in suitable terms, declaring that the present was by far the most gratifying event he had ever witnessed in New Zealand.
>
> Mr Bell, in speaking of Hapuka, said that through that Chief's influence a large district on the East Coast viz, Hawke's Bay, had been opened to British enterprise. Without such additional pasturage in this district many of the flocks and herds, which now enjoyed abundance of food and scope for increase might have been reduced to the most unpromising circumstances. Now, extensive ranges of land had been secured through his aid, which might have remained, waste and unproductive. In this manner an ample outlet was made to the energy and improving spirit of the settlers

of this Province. It need not be added that the name of the renowned Chief Hapuka, will be received with unanimous applause.

Hapuka spoke to the following purpose. He was a stranger to the English customs and manners, and much more to a great feast with the Pakehas like the present. Nevertheless, he highly valued such meetings, and felt exceedingly gratified by the kind attention paid to them by His Honor the Superintendent. He desired that the British might be enabled to spread over the whole country. They (the British) were the elder brothers of a branch of the same family, and their elders in knowledge and art of every description. It would be needless for them to contend in any way with men so skilful and superior in all things. For his own part, he thought Te Puni had enjoyed long enough the exclusive advantages of the English residing with him. He would like to deprive him of some of them by their removal to his own district. . . .

He as freely wished the Ngatitoa's had been present. Such occasions as these might tend to cement and perpetuate friendly feelings between the two races, which were so necessary to the happiness and advancement of New Zealand. He had sold his land to the Queen,– and many claims here which he undoubtedly possessed to land already sold, he waived for the sake of his friends the Pakehas. His influence, in other districts where he enjoyed rights, would be employed with a view to the sale of the land to the English. They might believe him when he affirmed that the happiness and prosperity and increase of the number of British settlers, were objects near and dear to his heart and that night's festivity would ever awaken pleasant recollections.

substantial valley transactions. These were Wharekākā (including a 1000-acre reserve for Te Mānihera), witnessed by Te Ati Awa chiefs, and Ahiaruhe, witnessed by two Wellington-based Pākehā. 'Finally' Rigby notes:

> the important Kohangawariwari area, including both the site of Masterton and the 1853 Kaikokirikiri Crown grant to Bishop Selwyn, was signed away by 25 Maori principals, also probably in Wellington, on 11 January. A Presbyterian Minister and a Willis Street merchant witnessed on that occasion.[272]

This overlapped with the earlier Mākōura and the later Manaia purchases adjacent to Masterton.

The Wellington press reported the presence in town of a large number of Wairarapa and Hawke's Bay rangatira at this time. The intention to throw open various parts of the district to settlement was publicised, and a dinner was held for the visiting chiefs at which both Featherston and McLean spoke glowingly of the progress of Crown purchase negotiations. Further, the signatories were more numerous than suggested by Turton's incomplete reproduction: 13 for Te Awaiti (including Te Weretā, Hoera Whakataha and Te Hāpuku), 10 for Wharekākā and 25 for Kōhangawariwari. Rigby thus questions whether the Wellington deals can properly be characterised as secret – but he distinguishes between these 'relatively public proceedings' and the 'sales by individuals' of reserves before 21 December.[273]

So we have a distinctly public element to both the first purchases after the Tūranganui komiti nui which were negotiated in the Wairarapa in the presence of the community, and also to those undertaken in Wellington, after 21 December. But the purchase of the Tūrakirae reserves 'still leaves many questions unanswered', Rigby says.[274] In his view, these lands 'may have been sold without the knowledge of people like Hēmi Te Miha who participated in the original transaction.'[275] Rigby is cautious in his conclusions, however, partly because his analysis focuses on the character of the deeds themselves rather than on supporting documentation.

Rigby, however, does not deal with the Tautāne purchase, which took place in the Tāmaki-nui-ā-Rua area in

January 1854. Dr Angela Ballara and Gary Scott characterise this as a secret purchase: although publicity attended McLean's Wellington deals, word that their land was being sold did not reach those who were living on it.[276]

(e) *Summary:* Thus we see that the process McLean used to achieve his astonishing rate of progress through the first wave of purchases raises some very serious questions. Among those on the ground with genuine land interests, it is impossible now to know who really knew about and understood what was going on – as of course they were entitled to. For without genuine understanding, how can there be genuine consent? To leave up in the air important aspects of the deals, even as instalments were being paid out on an ostensibly agreed price, is contrary to good contractual practice. McLean apparently felt comfortable conducting an unfolding process in which all was to be confirmed later (probably much later, given the limited surveying capacity), but it left Māori vulnerable indeed. The longer the gap between the on-the-ground discussions and confirming the final shape of the deal (once survey had been done and the Governor had agreed the reserves), the more room there was for uncertainty, confusion, and error.

Although errors and oversights could theoretically be corrected later in this district that often proved difficult because almost immediately settlers moved in to occupy land they had bought.

Officials at the time complained of Māori trespass and deliberate efforts to repudiate sales – as they saw it. But Māori thought that rights to certain resources, though the surrounding area had been 'sold', would continue. The belief that rights continued was not confined to lands and resources actually 'reserved' within the wording in the deed. Many reserves were only generally described or not recorded at all; either promised but not written down or not encompassed in a general Māori understanding that their homes and cultivations, and areas rich in the resources on which they depended, would remain theirs. Only time revealed that ownership now depended on documents generated by the Crown, and that these would prove to be slow in coming.

Serious tensions were arising within Māori society as a result of the Crown's purchase practice and, in particular, those occasions when important land arrangements were made with favoured parties, in town, or located elsewhere in the region, without the community having that critical opportunity to discuss and approve.

We look now at whether these problems were remedied in the next phase of purchasing. Did what happened next – further negotiation, arrangement of overlapping purchases, subsequent payment, and allocation of reserves – help remedy the problems, or exacerbate them? Was the Crown acting to fulfil its Treaty duties, moving in to solve problems as they surfaced? Or were Crown officers driving their own agenda, and in the process undermining te tino rangatiratanga (the full chiefly authority) of tangata whenua?

3A.3.5 The second wave: purchases from November 1854 to August 1864

(1) *Features of the second wave of purchasing*

McLean's momentous six months of buying up the Wairarapa for the Crown ended the Wairarapa leasing regime and transferred about 1.5 million acres of land from Māori to Crown ownership.[277] After all that, one might have thought that it was time to stop, draw breath, reflect. But no. Before the end of 1854, the Crown put McLean, and later Cooper, into the field again for a second round of purchasing. For information on this period, we rely on the work of Helen McCracken.[278]

Between November 1854 and March 1855, McLean signed 50 transactions, often in Wellington. Of these 50, around nine appear to be deeds for new purchases. The rest were receipts for later instalments on first-wave purchases, or advances for 'deeds' to come, or payments to settle individual claims to unspecified Wairarapa lands.[279] For example, another payment was made for Te Keepa Rangihiwinui's interests in Wairarapa lands.[280] Between

August and November 1855, Land Purchase Officer Cooper arranged 10 transactions.[281] Of these, three appear to be deeds for new purchases.[282] McLean was then involved once more on his return to Wairarapa ki Tararua in a further 18 transactions, all signed in January 1856. Four of these were apparently new purchases.[283]

The second wave of purchasing still featured McLean's personal arrangements, but his practices for ensuring proper consent now departed further from the Castlepoint model. Full community involvement in decision-making was also exemplified at the komiti nui. There was surely an expectation that this was how things would continue. But they did not. There must have been disappointment, perhaps even disillusionment – about this, and also about koha or 5 percent clauses and provision for reserves, which also became a thing of the past.

(a) *Few reserves recorded in deeds:* The transactions for which reserves were recorded in the deed or transaction receipt were:

- Waikaraka DR33, 9 December 1854, two reserves.
- Te Karamu TD131, 27 December 1854, one reserve.
- Hikawera and Taratahi TD132, 28 December 1854, one reserve (three more in the later deed of 1858).[284]
- Maungaraki DR38, 14 February 1855, one reserve.

Only four of these 78 second-wave transactions to January 1856 included explicit provision for reserves in the deed. This amounted to a total of five reserves though 24 more were granted relating to later second-wave transactions. Of these, around 16 were granted to individuals only. Most (14) were awarded under the Crown Grants Act 1862 between 1863 and 1865. Following McLean's efforts to January 1856, there were to be another 71 second-wave Crown purchase transactions to 1865.

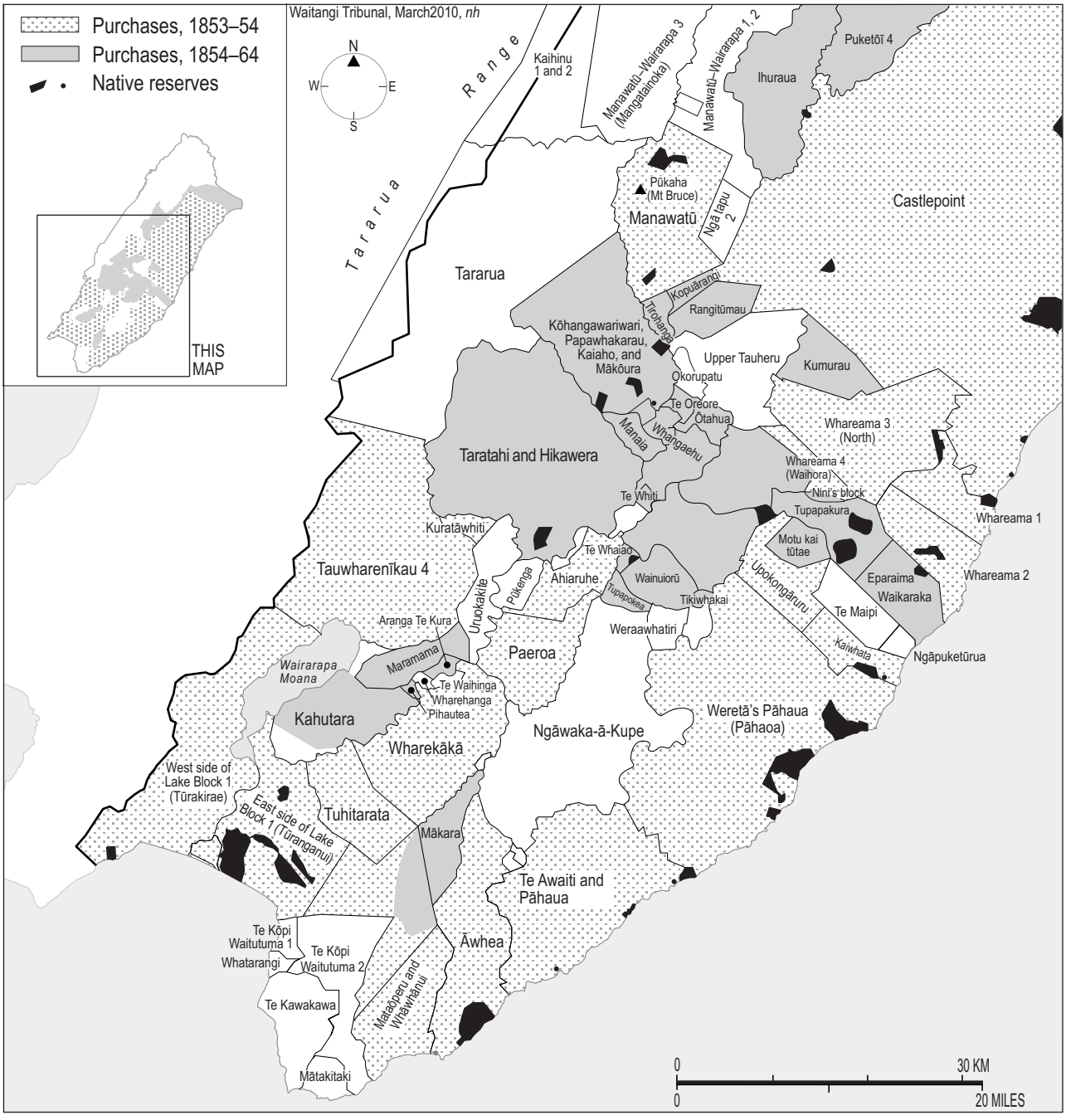
(b) *Acquisition of lands originally reserved:* Many of the acquisitions in the second wave involved lands originally reserved under earlier deeds. In November 1854, Wī Te Riwai's portion of Waiariki reserve was bought.[285] Then in December 1854 came the purchase of the bush reserve 'Ritokau', originally reserved from the 'Part of Smith's run and piece of bush' purchase 11 months earlier.[286] A number of the Castlepoint reserves – for example Porotāwhao, Puketewai, and 50 acres at Mātaikona for J Sutherland's homestead – were also bought.[287]

(c) *Dubious decisions about who held rights, who could sell, and who should consent:* Whether right holders properly gave their consent, and the integrity of McLean's decisions about who held rights and who could initiate sales, were matters of increasing concern in the second wave. McLean noted a number of protests at the time, and later acknowledged that he knew land rights to be contested. Indeed, he suggested that he had purchased them in the first place to prevent further dispute. If that was so, his strategy failed; problems continued to arise.

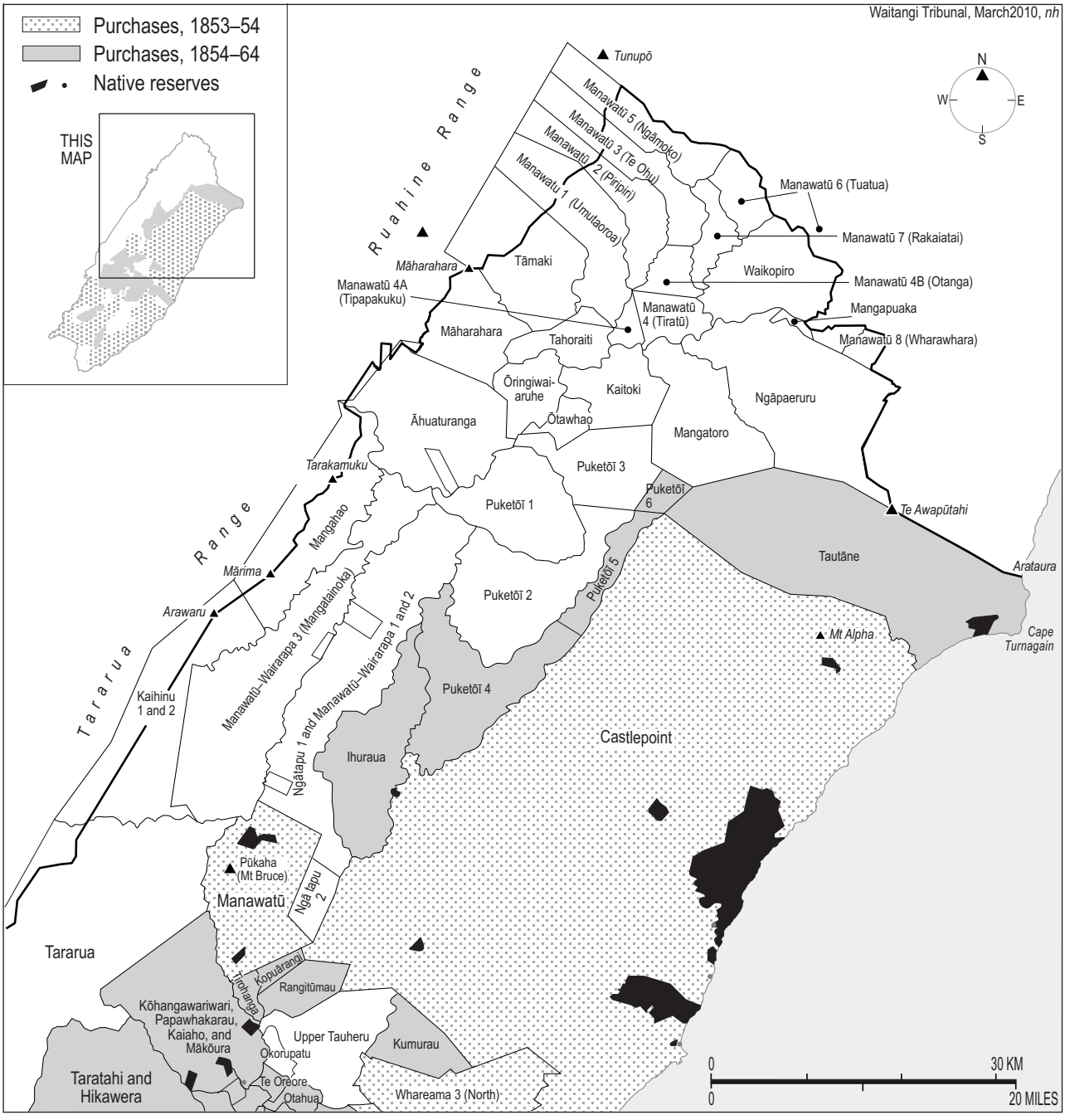
(d) *Failure to ensure that the right people were paid:* Similar questions arise about whether moneys paid to rangatira were distributed to all right holders.

McCracken gives the example of Aranga Te Kura, which was sold by Matiaha in January 1856 for £60. Te Wāka Tahuahi, Ngāiro, and Marutuna Heremaia Piriki disputed the sale because Matiaha, who was paid in Wellington, did not distribute the money when he got home.[288] Yet those same chiefs excluded Matiaha from payment for an earlier sale of a block (Maramamau) that he had interests in. In the case of the Aranga Te Kura block, McLean met with the complainants and agreed to pay a further £20 to Te Wāka Tahuahi to settle the dispute.[289] Other instances of complaint included the sales of Taheke (Te Kumenga), Tuhitarata, Whangaehu, Papawhakarau and Rangitumau ('Rangitoto'). The issue also came up at Tautāne (see below).[290]

(e) *Deploying the 5 percents and other moneys in dubious ways:* Money was spread around in a way that gave the impression that Grey's vision of a prosperous future for Māori was coming true. The money came from various sources – purchase price instalments, down payments,



The two waves of purchasing in southern Wairarapa between 1853 and 1854 and 1854 and 1864



The two waves of purchasing in northern Wairarapa between 1853 and 1854 and 1854 and 1864

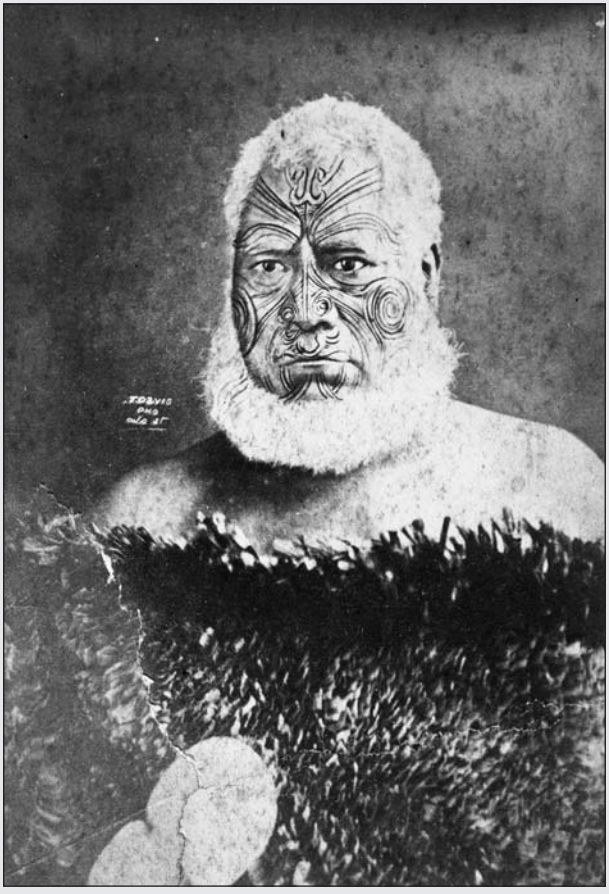
How McLean Dealt with Ngātuere's Interests

An example of McLean's handling of a case of disputed ownership is the 'Hikawera and Taratahi' block of about 30,000 acres, purchased for £1450 on 28 December 1854. McLean anticipated objections from a likely right holder, Ngātuere Tāwhirimātea Tāwhao (shown at right in about 1875). He estimated that £400 might be required 'to complete' the purchase, depending 'upon the settlement of disputes among the Natives, – size of reserve, and other matters to be hereafter adjusted'. In effect, he identified as a contingency the possibility that he might later have to pay more to extinguish rights, if they continued to be asserted.

The day before, on 27 December, Ngātuere had been party to the Te Karamu transaction. He had sold about 2500 acres for £600, from which a bush portion of unspecified acreage was to be reserved. But the next day, McLean included this same bush portion in the Hikawera and Taratahi sale. According to McLean's account later, Te Mānihera and Wiremu Kīngi had witnessed the Te Karamu transaction. Observing that Ngātuere had sold Te Karamu, Te Mānihera 'determined to sell the whole of the Taratahi plains, including the bush in question; to which he proved he had a better claim than Ngatuere'. McLean did not indicate exactly how Te Mānihera was able to demonstrate his better claim to the bush portion, but it is not surprising that he made provision for a likely dispute.

There was one reserve from the Hikawera and Taratahi block – a site for 'houses for our eel-fishing expeditions', not to exceed 100 acres. (On the same day also, McLean paid Te Mānihera and Piraka Pō £40 for a bush area – Ritokau – originally reserved in the deed for 'Part Smith's run' signed in January 1854, as mentioned above.) Advance payments were made for both Te Karamu and Hikawera and Taratahi in November 1854 – £200 to Ngātuere and two others for Parinuiokuaka attached to the Te Karamu deed, and a 'temporary receipt' for £200 to Wiremu Kīngi and others attached to the Hikawera and Taratahi deed.

Nearly three years later, in August 1857, Ngātuere pulled down a whare 'in the course of erection for the



accommodation of the workmen engaged on the Wairarapa Road' on a site marked as the 'Ferry Reserve' on the banks of the Waiohine River. Ngātuere claimed that this was trespass, because he had not alienated his rights in the land concerned. He was summoned to the Resident Magistrate's Court, where his defence raised a 'difficulty' for Resident Magistrate Hill. Te Mānihera testified that Ngātuere had left the pā before McLean's arrival for the distribution of the payment of the

block. Ngātuere – who did not object to the sale at the time – received no portion of the payment for the bush area (Waiohine). A year later, he expressed his determination to keep the land.

Magistrate Hill was in a quandary:

> Had Ngatuere either executed the deed of sale or received any portion of the purchase money, the difficulty would be solved; but in the present position I am at a loss to suggest a remedy, for if the matter is permitted to rest where it is, it may be a hazardous precedent, and the Road as now laid out will have to be diverted.

He told Ngātuere that the court had no jurisdiction 'where there had been no breach of the Peace'; its only duty was to report the incident to the Government, where 'his conduct would be represented in its proper light'.

A few months later (in March 1858), Crown officer Searancke paid out £200 – half the sum initially reserved for Ngātuere – to settle his interests in the Hikawera and Taratahi block. (McCracken notes that Te Mānihera told Searancke that he was still owed £200 for the block.) The land at Waiohine was confirmed as a ferry reserve for Ngātuere, though problems continued because there was no survey of the reserve, and Ngātuere was still seeking his official Crown grant in 1882.

'endowment' payments from the 5 percents, and also personal loans.

In fact, the endowment was being used as a source of patronage, and tribal lands were being further encumbered.

McCracken reproduces a number of entries in McLean's account books for November–December 1854 (when he was based in Wellington). These show that he was lending money to Wairarapa ki Tāmaki-nui-ā-Rua rangatira, with amounts ranging from £5 to £160 (to Te Mānihera) and £200 (to Wī Kīngi). She notes that a loan to Kīngi later appeared as a charge against the account of contested reserves at Taratahi and Hikawera.[291] In early 1856, McLean made a number of small loans (with receipts) to chiefs, to be repaid from future sales. For example, he lent £37 12s 6d to Te Mānihera 'to be refunded by me from the purchase of my lands', and £10 to Ngātuere 'which I will repay out of future land purchase'. Three chiefs borrowed £26 on their undertaking that 'these moneys will be refunded by us when our lands are paid for hereafter'.[292]

Thus, McLean was paying moneys to individual chiefs on undefined lands, with no evidence of wider consent. As we later explain, we think that practices like these undermined the capacity of Māori to make informed community decisions about whether and how much land they should alienate, and at what price.

(f) *Important contractual terms left at large:* McCracken notes a number of blocks in Seventy-Mile Bush in which the price was left undecided until survey was made.[293] The vendors agreed to sell at a price that the purchaser would ultimately determine.

Nine of the 18 transactions recorded by McLean in early 1856 were really receipts for advances on blocks. Final payments were dependent on survey, or the amounts advanced were really personal loans against the security of individual chiefs' claims that were 'to be repaid from future land purchases'.[294] Earlier in November and December 1854, Donald's Station, Kaimatarau, Kaiaho, Otahauao (also known as Ōtahuao), Papawakarau, and Waikaraka were also examples of these practices.[295]

(2) *A changing climate*

(a) *Land-related disputes:* A pause in new purchasing finally occurred in late September 1855, after McLean instructed Cooper not to negotiate any new purchases until the

current disputes were resolved.[296] McLean did not heed his own instructions, though. He returned to Wellington in January 1856, and began negotiating for new areas in Wairarapa ki Tararua. Still, it appears that there were no new payments for land in the district between February 1856 and February 1858 – except for Tautāne (discussed below).

There was a new climate of dissension, as the effects of McLean's hurried and unsurveyed transactions began to be felt. Disputes erupted over boundaries, reserves, and even about whether the land had been sold at all. McCracken comments:

> As the settler community began to spread out onto the plains of the Wairarapa Valley and beyond, the opportunities for conflict resulting from misunderstandings between Māori and settler grew. The origin of many of these disputes could be found in the manner in which the land had been acquired in previous years, and particularly problems over survey.[297]

McCracken gives examples. At Kahutara, a settler encroached on unsold land in 1856, causing conflict until purchase and creation of a reserve at Ōtāraia (Te Mānihera, was the objector) in 1862.[298] The eastern and northern boundaries of McMaster's homestead block were contested over a long period until Māori finally gave up, 'and [Mein Smith] caused stakes to be put in and branded'.[299] And then there was the altercation described in 'How McLean Dealt with Ngātuere's Interests', page 156, where Ngātuere disputed Te Mānihera's sale at Taratahi, and burnt a whare being built for the road gang at the ferry reserve at Waiohine.

Tensions were also rising in the lead-up to conflict in Taranaki. McCracken and Stirling both discuss the growth of the King movement in the Wairarapa from 1856 onwards.[300] And, as noted earlier, inter-hapū fighting broke out within Ngāti Kahungunu at Pakiaka in the Hawke's Bay in 1857, over Te Hāpuku's right to sell lands.

(b) *The Government steps in:* The Government was obliged to recognise that there were serious and ongoing disputes over Crown purchases in the Wairarapa and in Hawke's Bay, and that something needed to be done. In November–December 1857, the Imperial Government guaranteed a loan of £500,000 to the New Zealand Government. Colonial Secretary Stafford proposed 'settling disputes as to former purchases in the Wairarapa which have been long calling for settlement', along with completing negotiations in the Hawke's Bay District and taking a new initiative in the contentious Manawatū.[301] Colonial Treasurer Christopher Richmond recommended that McLean proceed first to the districts of Ahuriri, Wairarapa and the Cook Strait. McLean's instructions were to:

> use his best efforts to close all questions with the Natives in the Wairarapa and on the East Coast, as to the boundaries of former purchases or Native Reserves, and all questions relating to Homesteads, and to recover the large outstanding advances to Native Chiefs.[302]

Richmond authorised McLean to allocate particular reserves to hapū and individual chiefs where appropriate, but cautioned him to broach the topic of the individualisation of Māori title with due care:

> [The] Chief Commissioner [is] to report whether it be practicable or expedient to attempt individualisation of Native Title in any, and what districts, and without committing the Government to any course, or holding out any expectation, to ascertain the disposition of the natives to allow this work to go hand in hand with Land Purchasing operations, by disposing of their surplus lands after setting apart an ample provision for their own immediate wants, and the possible requirements of their posterity.[303]

Richmond also recommended that where large-scale purchases were concerned, McLean should persuade the vendors to enter 'into collateral agreements with Government, that some proportion, instead of being directly paid to them, shall be laid out for their special benefit, in hospitals, school houses, mills, or other works of permanent

utility'.[304] He deplored some of the purchasing practices to date:

> There has often been an unpardonable laxity in the mode of conducting Land Purchase operations; which has however, in the vast majority of cases, as it is believed, been taken advantage of by the Natives, and never by the British Government. If there be any instance to the contrary, the sooner the matter is set right the better. It is the earnest desire of His Excellency's Advisors to see the terms of Contracts with the Natives reduced to the greatest degree of certainty, and performed with the utmost exactitude. Vague promises and expectations, His Excellency's Advisors absolutely reprobate, 'That *something* more should be paid, if on survey of the Block should turn out larger than was expected.' – 'That some *little* addition to the price to price should be taken into consideration.' – 'That some present should be made to such a Chief, who rather expects something to be done for him' – these, and such as these are not the kind of terms Ministers have ever recommended, approved of, or thought necessary. [Emphasis in original.][305]

Richmond approved making provision for endowments in purchases. But he emphasised that this meant retaining a definite sum as part of a stated purchase price, 'under engagement to lay out the same in some manner, to be specified', and with the 'full understanding that the money is not to be claimed by the Natives for any other purpose'. He distinguished between this and what he considered Grey and McLean had done when purchasing. Their practice had resulted in repudiation of purchases, and inflated, ongoing demands – as well as lack of security of title for settlers.[306] However, McLean and his officers showed no disposition to include endowment clauses in their purchase deeds; in fact, to the contrary.

(3) *The Tautāne purchase: a disputed transaction*

This was the climate in which McLean and Cooper set out in December 1857 to address the problems with the Tautāne and other adjoining purchases. We now examine that particular transaction, the disputes arising from it, and how the Crown elected to deal with the problems it faced.

(a) *What was wrong with the Tautāne purchase?* When the original sale of Tautāne was arranged by Te Niania and Te Hāpuku's party in Wellington in early 1854, the principal right holders were not there. A total of 32 signatures were attached to the deed, but Ballara considers the transaction to have been engineered by Te Hāpuku, with Hine-i-paketia (Te Hāpuku's cousin), Pūhara (Hine-i-paketia's husband), and Hōri Niania (her cousin) – people who had 'little or no right to participate in a sale of Tautāne'.[307] Certainly, in Ballara's view, neither Te Hāpuku nor Niania had the right to lead it. A number of Wairarapa rangatira whose interests lay to the south also signed 'according to the customs of Māori courtesy because they happened to be there, and not because they had any rights in the block'.[308] Ballara identifies very few signatories whose interests really related to Tautāne. There was:

> Te Kuru, who may actually have had claims in the block, Te Hirawanu Kaimokopuna of Rangitāne, whose claims were close to the Manawatū Gorge, Te Hūtana of Ngāi Toroiwaho, whose lands were in the Whenuahou area and Pāora Te Rangiwhakaaewa . . . who had claims in the Mangatoro block, south of what later became Dannevirke.[309]

Ballara and Scott characterise the Tautāne purchase as showing 'the degree of fraud and avarice of which Donald McLean and Te Hāpuku were capable'. It was clear from the outset that Te Hāpuku did not have the right to enter into negotiations for the sale of Tautāne without the explicit 'consent of the people living on the land'.[310] Given McLean's local knowledge of the Hawke's Bay, he should have known this.[311] Signing the original deed in Wellington, along with other deeds that were later disputed, indicates that McLean was not concerned about whether his process had integrity or not. He would do business with any rangatira prepared

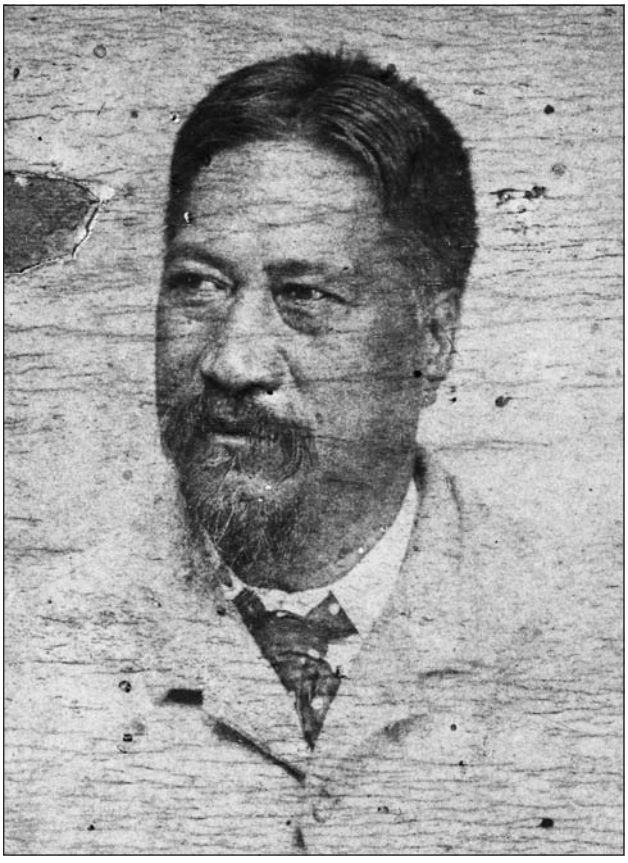
to sell, and would favour them, even if they were not primary right holders in the land concerned.

That some were willing to join with Te Hāpuku in signing cannot be seen as community support for the transaction; rather, it was a matter of those in town attaching themselves to the sale. The critical signature of the leading chief at Tautāne, Hēnare Matua of Ngāti Hāmua (Rangitāne), was missing; his 'consent' was sought only later.[312] As soon as he learned what had happened, he voiced vigorous opposition. The transaction was 'bitterly disputed by the owner/occupiers of the land': the hapū living on the block maintained they neither knew about nor consented to the sale, and received no part of the payment.[313]

(b) *Similar problems at Pōrangahau:* When Cooper went to Pōrangahau to negotiate the government's purchase in early 1856, he reported to McLean in a private letter, that 'the first thing was a row about the sales at Tautane and the Umuopua (Hori Niania's.)'[314] Cooper acknowledged that Niania was only a secondary right holder in the block, and that he had squandered the money received in Wellington.[315] This was confirmed in a Native Land Court rehearing of the Pōrangahau block, and also in evidence before a Native Affairs Committee inquiry in 1887. Both these concerned Pōrangahau, but Tautāne was mentioned often. Hēnare Matua told how certain Wairarapa chiefs had joined with Hōri Niania and Hāpuku in the Pōrangahau sale. When one of the principal right holders based at Pōrangahau, Rōpiha Te Kōrou, heard about this, he threatened Te Niania and Te Hāpuku, and repeated the threat in their presence and in front of their party of supporters.[316]

The import of this evidence was that the Crown had proceeded incorrectly by accepting offers without requiring prior community discussion. Cooper confirmed this when he appeared before the 1887 Native Affairs Committee inquiry into Pōrangahau. Asked whether:

> Te Hapuku and Hori Niania had any right to sell the blocks without the concurrence of the various hapū in payment, or even with their concurrence excepting as agents?, Cooper replied, 'Certainly not' and added, 'there was a tremendous row about it.'[317]



Hēnare Matua before 1894

He told the inquiry that the principal right holders to Tautāne were Hoera Rautū, the Matua whānau, and others living south of Pōrangahau. He also confirmed that the north Pōrangahau block belonged to Te Rōpiha Te Takou, Apiata Kuikāinga, Te Kuru and Matiu Meke. Te Takou had confronted Te Hāpuku and Niania over the sale of Te Umuopua and Tautāne, and 'about lands generally over which Te Hapuku claimed mana but which he did not

own.'[318] The solution was to offer money to the principal right holders, who had little choice but to accept it.

(c) *Cooper and McLean deal with the Tautāne situation:* When McLean rebuked Cooper for tardiness in dealing with matters at Tautāne, Cooper wrote explaining that he had been delayed in Ahuriri, trying to prevent another dispute about Te Hāpuku's sales from escalating to fighting (though he noted that Te Hāpuku's party was very poorly armed). Te Hāpuku's rivals included Tareha, Te Moananui, and Karaitiana Takamoana. Travelling on to the Pōrangahau area, he found that the people there were also in an uproar about land being sold from under them. Cooper reported to McLean that he had told them that they had no alternative but to sell, and also:

> I told them that as money had been paid it must remain – but that as the sellers were only secondary claimants, & none of the money having reached the principal ones, the best way would be for them to sell all the land from Parimahu to Waimata, and inland including Hori's block; and let the money which had been paid and squandered in Wellington remain as a compensation for all claims represented by those who had signed the deeds.[319]

This proposal was apparently accepted, and a week of intensive bargaining about the level of payment followed with Cooper reporting back a final price of £3500. Survey of reserves had been delayed but, in the meantime, Cooper began ordering graziers off the land.[320]

George Sisson Cooper in about 1885. Cooper was one of the Crown purchase agents who worked in Wairarapa after McLean.

(d) *When did Hēnare Matua capitulate?* Exactly when Matua bowed to the inevitable and consented to Tautāne going to the Crown is unclear.

In July 1857, surveyor James Grindell, who had been engaged to arrange the reserves, noted that Matua still opposed settlement of the block and, according to Rapana (who supported the sale), was refusing to allow settlers access from the interior to the sea.[321] Grindell's journal records that Rapana was anxious for McLean to arrive and settle the sale, and bring 'Henare [Matua] to his senses'. Rapana thought that Matua was 'monopolis[ing] the whole of the open country & sea coast at that place, leaving to the whites only an inland bush'.[322] Grindell recorded that the other right holders had consented to sell.[323] It was a week later, on 3 August 1857, that the official return for Native Land purchases in 1860 listed a further £1000 for 'Tautane (additional)' of 70,000 acres.[324] No deed with this date or purchase price has been located. It was almost certainly a down payment on the second Tautāne deed, which

Fighting at Pakiaka

In August 1857 – the month when that 'additional' payment was made on Tautāne – fighting broke out within Ngāti Kahungunu at Pakiaka (Hawke's Bay) when Te Moananui and Karaitiana Takamoana challenged Te Hāpuku's right to sell yet more lands. Although the lands at the centre of the dispute lay further north (between the Mohaka ki Ahuriri inquiry district and ours), land at Tautāne was also involved. It was one of the several blocks netted by the government when Te Hāpuku and his party visited Wellington and were feted by Superintendent Featherston. There were seven deeds in all signed at that time, transferring an estimated 1.5 million acres. While the socialising and associated activities were publicly acknowledged and reported in Wellington, the sales had not been discussed with or endorsed by other leaders or resident hapū in the Hawke's Bay or, by inference, in the Wairarapa. According to missionary, educationalist, and pastoralist Samuel Williams, when news travelled back to the other Hawke's Bay leaders – most notably Te Moananui and Karaitiana Takamoana – there was the 'greatest state of excitement & indignation'.

was to be signed early in the following year at Hawke's Bay. That deed noted that the £500 that was paid over then was the 'balance of the payment for our land which was sold by our relatives at Wellington on the third day of January in the year 1854'.[325]

In the wider Hawke's Bay context, Te Moananui and other Ngāti Kahungunu rangatira had begun to refuse final payments and reject land selling as a means of engaging with settlement.[326] This gave rise to the events at Pakiaka in 1857.

(e) *The second Tautāne deed:* Tautāne was supposedly settled in March 1858. It was dealt with as part of a wider adjustment of Ngāti Kahungunu disputes fuelled by Government purchases in the Hawke's Bay, but which also affected Wairarapa-based Ngāti Kahungunu and Rangitāne. McLean travelled from Pōrangahau to Tautāne, where the second Tautāne deed was signed by 90 people on 11 March 1858.[327] Signatories included Te Niania and Matua, as well as Paora Pōtangaroa, Ani Kanara, Hēnare Te Atua, and Āperahama Te Wakaanga. This deed reserved two areas; the first was recorded as being 1000 acres from Te Wainui's southern boundary to the sea; and the second named 'Tautane reserve', was described as 50 acres to serve as 'a burial place for our dead and for cultivations also'.[328] It is unclear whether these reserves were in addition to the two reserves listed on the first deed, which set aside an unspecified acreage between Waimata, Kohaekura (aka Kohaikura) and Pā-o-te-ratunga, and another area called 'Tautane' that included 'part of a wood'.[329] Hēnare Matua subsequently explained to the Native Land Court in 1867 that the 'Tautane Native Reserve', incorporating both reserves listed on the 1858 deed and comprising 1050 acres, was reserved for Hoera Rautū and himself:

> It was made for us two and for those related to us. . . . The other persons who signed the Deed have no interest in this Reserve, they sold the land and received the money; this Reserve and some money was our share. We demanded and got it after the others had sold the land.[330]

It seems that there may have been uncertainty about the size of the proposed reserve, or reserves. Ballara and Scott refer to a Native Office map from about 1860 with a Tautāne reserve area marked as 3800 acres.[331]

For an additional payment of £500, signatories also agreed to give up the 5 percents from the resale of the block, which the January 1854 deed had promised. Ballara and Scott are particularly critical of this:

> Loss of a major source of such benefits to the community as ongoing income, schools and medical care for a sum of money which, when distributed among more than 100 people, was less than the current price

> of a horse, a cart, or plough with draft animal, was, in such circumstances, nothing less than fraud.[332]

McBurney points out also that £500 represented 5 percent of a resale rate of two shillings sixpence per acre. This price was half the Government's minimum upset (or resale) price.[333]

(f) *Tautāne problems really settled?* In general, Crown officers viewed objections and demands from disaffected Māori landowners as proof of Māori deficiencies, rather than as reflections of shortcomings in the Crown's process. They blamed weaknesses in native character; their system of customary tenure; the influence of the King movement; or unscrupulous Europeans. When confronted with the protests of the Māori occupants/owners here, the Government elected to offer more money, rather than let the purchase lapse. Government officials – especially McLean – seemed to regard the money given to Te Hāpuku in 1854 as some sort of deposit, which bound all the right holders to the Tautāne purchase agreement.[334]

In the case of Tautāne, the Crown acknowledged then, as now, that some of the resident right holders had been left out of the original transaction.[335] But rescinding the original flawed deed was never seriously contemplated. The response was similar to that at Barton's Run-Maungaroa-Mataōperu: a patch-up job. The Crown signed a second deed for an overlapping area, and set aside further reserves – in this case just over 1000 acres – for those who had not been party to the first transaction.

In March 1858, the conflict at Pakiaka came to an end with Te Hāpuku withdrawing from the disputed ground.[336] However, matters remained unsettled at Tautāne, as well as at Pōrangahau.

In May, Cooper reported quarrels about the division of the money for Pōrangahau which, in the case of Tautāne, had also given rise to a 'great deal of discontent'.[337] Māori had sent in papers showing how the money had been distributed, and it took another six months before survey could begin, because:

> In the first place, the dissensions amongst the Natives about money were so bitter as to nearly occasion a fight, and it was impossible to get Natives to go on the survey, and point out the boundaries; so after laying off the reserves at Tautane and Porangahau pa, Mr Bousefield [the surveyor] reported himself to the Commissioner of Crown Lands, and went on with his ordinary work.[338]

It was September 1858 before Cooper could send in Bousfield's survey plan for Tautāne, along with that for the Pōrangahau block to the north. Even then, a complete survey was not done, though for reasons of cost rather than Māori dissension. Cooper did not commission a survey of Tautāne's northern boundary along Pōrangahau because he did not think 'it worth it to incur the expense of cutting across so very rough a country where no one is likely to purchase'.[339]

Ultimately, Matua's people did what the Crown always intended. They remained settled on the lands that they intensively occupied, while the bulk of their lands went to Pākehā. They accepted the Government's money (the £500 additional payment) because they had no other option, and at the same time gave up practical control of the district. Understandably, a good deal of dissatisfaction remained amongst Matua's people about how the Crown purchased Tautāne, and about how the moneys were distributed. In the interim, attention focussed on what solution the Kīngitanga (the Māori king movement founded in the 1850s) offered. Their sense of injustice found subsequent political expression in the 1870s in Hēnare Matua's 'repudiation' message. We discuss both the Kīngitanga and the repudiation movement later.

(4) *Searancke's negotiations and purchases, 1858–61*

(a) *Searancke's tentative first steps:* The problems at Tautāne were not unique to that block. Searancke, working in the Wairarapa, encountered similar difficulties there. Purchases had excluded major right holders, boundaries were disputed when surveyed, promises had not

been kept, and there was dubious use of the endowment fund.

Searancke, who began his career as a surveyor and had married into Ngāti Maniapoto in the Waikato in about 1850, was appointed Commissioner and Surveyor for the district of Wellington in late 1857. He made his first visit to Wairarapa in January 1858, on his way back to Wellington from Hawke's Bay. He had left McLean behind to settle the differences between Te Hāpuku and other Ngāti Kahungunu rangatira. Though armed with letters of introduction to the principal Wairarapa rangatira, Searancke deliberately avoided local Māori as he felt unprepared 'to enter into any discussion with them' as their 'habits and ways of doing business were strange to me.'[340]

Searancke went to Wellington to pick up the deeds and papers relating to his new post, but found some were missing. Nor did McLean's papers help him ascertain the truth about the various claims and disputes he encountered straight off. In particular, Searancke found that deed moneys paid in Wellington had been spent 'then and there', and so not all right holders had received their portion of payments.[341] In view of the incomplete state of the records and the amount of dissatisfaction, Searancke wanted McLean, with his knowledge and memory of what had happened, to resolve the disputes.[342] He was conscious of McLean's status in Māori eyes.

On his return journey through the Wairarapa in February to meet up with McLean, Searancke visited every settlement and found Māori 'complaining of' McLean's 'long absence'. Although they were anxious to sell their 'wastelands', it was McLean they wanted to deal with.[343] Eventually, in March 1858, McLean joined up with Searancke at a 'settlement near Masterton' where a meeting had been called. There, local Māori were given the message that from now on 'when it came to land purchases' they would be dealing with a new officer of the Crown – Searancke.[344] Meantime, cash payments to Wairarapa Māori, including rangatira, continued to be doled out. McCracken notes a number of koha payments, presents, and payments for 'general claims', some of them made via Searancke, between January and March 1858.[345]

(b) *Searancke encounters difficulties:* The relationship between local Māori and Searancke proved to be fraught. Searancke complained, repeatedly, about how earlier transactions were unfinished, and how Māori expected further payments, reserves, the underpinnings of the new economy (mills, stock, ploughs, schools), as well as its trappings. The expectations arose, Searancke thought, from McLean's promises made both in and beyond the written deeds, from 'native deceit', and 'from their being so hard up for money.'[346] Yet as he sought to settle disputes, Searancke had to concede that mistakes had been made by previous Crown officers: lands intended to be reserves had not been adequately defined and protected, legitimate right holders were left out of transactions, and payments were outstanding. He reported that Māori in the southern valley, in particular, could ill afford to sell more land and were in an increasingly impoverished state.

Even so, Searancke continued to purchase whatever land he could, using the purchase practices of his predecessors. These included accepting offers of Wairarapa ki Tararua land while in Wellington, paying advances before boundaries and all right holders had been properly identified, delaying surveys to save expense, and purchasing more land (including reserves) to settle disputes.[347]

Back in Wellington, Searancke proceeded to sign a number of deeds away from the land and its communities. He began on 24 March 1858 with the reserve at Taratahi; disputed land at Hikawera and Taratahi; and at Whangaehu, adjacent to Collins's homestead at Te Ore Ore, where a new reserve was set aside for cultivation (Tukuwahine).[348] For the Whangaehu block, he made a down payment, but the final price was dependent on survey. When the survey was done, Searancke refused to pay any more, because he was getting less land than he

had thought.[349] In late April he advanced £100 for land at Seventy Mile Bush (Ngāawapūrua) while he was in the Manawatū, leaving the settlement of the balance until he had sorted out the claims of conflicting parties.[350] While at Ahuriri, he paid £80 to Te Mānihera for land at the Ruamāhanga that he had not seen.[351]

Searancke returned to the Wairarapa ki Tararua district in May 1858. At Greytown, he attempted to settle issues relating to the mill Grey had promised at Pāpāwai. Reporting to McLean, Searancke expressed his intention to undertake another sweep through the district, to acquire the land that McLean had left unpurchased, fill in gaps in settlement, and quiet disputes.[352] At Masterton on 26 May, Wiremu Wāka and James Grindell were witnesses to Searancke's payment of £7 as part of a koha (5 percent) owing on the Mākōura block to Irihapeti. Next he made a payment of £200 as a full and final settlement for land at Kuhangawariwari and Ōpaki, while reserving a portion (Ngāumutawa) for the Bishop of Wellington. One hundred pounds of that sum was to settle a dispute arising out of an earlier payment to Te Mānihera alone. Since a large number of settlers had already acquired land in the block, he deemed it prudent to pay the additional sum, writing privately to McLean that he feared a fight if the question had not been thus settled.[353] In the same private letter, Searancke complained:

> A more unmitigated set of Scoundrels than your Wairarapa Pets it never was my fortune or misfortune to meet. What with disputed boundaries of blocks & of reserves and claims for payment over again of lands sold & settled years ago I am almost crazy. The fact is this they are fearfully hard up and are now trying it on with me to raise the wind by any means.[354]

At this time, Searancke decided to stay clear of Te Mānihera, whom he saw as now more of a liability than a help. He complained that the chief claimed that he had been promised stock, and even a chapel; condemned him as importunate; and turned to other potential vendors instead. Although Searancke noted that so much land had been purchased in the lower valley that any more might 'inconvenience' Māori, he proceeded in late May with negotiations for Manaia, Tirohanga, Rangitumau and Maungaraki, all located near Masterton.[355] In the case of Maungaraki, he reported in February 1859 that he was unable to complete the purchase of the area due to 'the absence of and disputed ownership among the Natives themselves'.[356] He reported numerous complications, but it is unclear what he did to sort them out. No formal hui were convened, it seems.[357]

Like McLean before him, and despite the legacy of problems that had resulted, Searancke considered it was impossible to undertake surveys before purchase, though he agreed that he should walk the boundaries. He reported to McLean accordingly:

> I cannot possibly comply with my instructions, respecting the land being surveyed before purchase, it will be endless trouble and work with after all only the chance of the purchase being made.[358]

Searancke also complained about the lack of qualified surveyors in the district and argued that the inability of surveyor Kempthorne to understand or speak Māori was adding to his problems. He lamented to the Chief Commissioner that disputes were mounting:

> I . . . call your attention to the numberless claims made by the Natives on lands already alienated to the Crown; also from the boundaries of former purchases not having been defined on the ground, the actual boundaries are now very much disputed; also the vague notions entertained by some of the Natives that large sums (of money) are still due to them on their lands. I may here mention that meeting the Natives on these claims disputes, &c, . . . have occupied a very large portion of my time since my return.[359]

Searancke, like many of his Pākehā contemporaries, laid the blame for disputes squarely with Māori themselves:

> The extreme jealousy of the Natives amongst themselves respecting the ownership of claims of different families, thereby rendering it necessary that the boundaries of lands offered for sale should, when possible, be surveyed or very clearly defined by perambulation previous to completion of purchase. . . . The inability of the Natives to sell large blocks of land involving a numerous ownership, makes it almost impossible to agree amongst themselves in dividing the payment: and so little faith have they in each others honesty that they now invariably insist, either on my portioning the money, or doing so themselves in my presence.[360]

Searancke returned to Wellington in early July 1858, and reported to McLean on the difficulties he was encountering in finalising purchase of the Tauherenīkau 4 and Mōroa blocks:

> I have tried in a quiet way to do business with them but find them most atrocious schemers, They are *all* so much in debt and so completely out of credit that they are completely at their wits end to get money. [Emphasis in original.][361]

Local Māori, for their part, were apparently equally unimpressed by Searancke. Valentine-Smith, a local landowner and former member of the House of Representatives for the Hawke's Bay and Wairarapa electorate, told McLean in July 1860 that:

> Mr Searancke appears to be very much disliked by the natives here, not only by Manihera and his own people, but also by the natives in this the upper part of the valley who have kept entirely aloof from the King movement. They dislike his excited manner and epithets and a style of language passes between them, which cannot fail to lower the government in the eyes of the natives.[362]

(c) *Past lessons not learned:* Searancke's experiences in Wairarapa ki Tararua confirmed the earlier advice of Clarke (Chief Protector of the 1840s) to the Government that purchases needed to be defined and clearly marked to be considered valid by Māori. But Searancke continued as before, making numerous payments on Wairarapa lands; sometimes to settle 'disputes' – or, in other words, patch up earlier transactions which had left people out. On other occasions, advances were paid to individuals, but without any record as to how he had satisfied himself as to the legitimacy of their claims, and the portions in which they were held, or as to the views of other possible right holders in the land.

In June 1858 alone, Searancke acquired land at Ahikauru, a small piece adjacent to it (Waikakariki) 'to prevent disputes in future', and a portion of land at Wainuiorū called Tikiwhakairo. He paid the final instalments on Tuhitarata (McMaster's Run) (the receipt acknowledged that only koha was now owing), and also on Kaiaho and Kuripuni. Searancke commented that these two blocks had been surveyed and sold by the Provincial Government, and so he offered £150 to settle outstanding claims before the land increased in value and Māori expectations expanded accordingly.[363] He made a further payment on Manaia, paying more than authorised in his general instructions because of its desirable location adjacent to the Masterton Small Farm settlement.[364] Then followed payment of £100 advances on Matapihi-Rangitumau, located at the top of the valley, and £160 to Ngātuere and four others for land at Tirohanga.[365]

On his return to Wellington in July, Searancke complained about the poor quality and lack of progress in survey, and reported that sickness had prevented his performing his 'very complicated duties' with 'any zeal'. He would be entering into no fresh negotiations in the Wairarapa for the present, 'the Natives wishing to sell the land in small blocks, according to their individual claims'.[366] Over the next few months he devoted himself to tidying up outstanding matters. He attended to the purchase of

Searancke in Wairarapa: 'Troubles like Mushrooms'

William Searancke was land purchase commissioner and surveyor for the district of Wellington. As he worked in the Wairarapa, from 1858 to 1861, he struggled constantly with the legacy of Grey and McLean.

He faced expectations of peace, prosperity, schools, hospitals, mills, annuities, and Crown grants for their lands on the one hand; on the other, unfinished transactions, problems with boundaries, lack of survey, and failure to issue grants. And there were the consequences of the Government's persistent failure to follow through on its early commitments. These consequences included the growing poverty of local Māori.

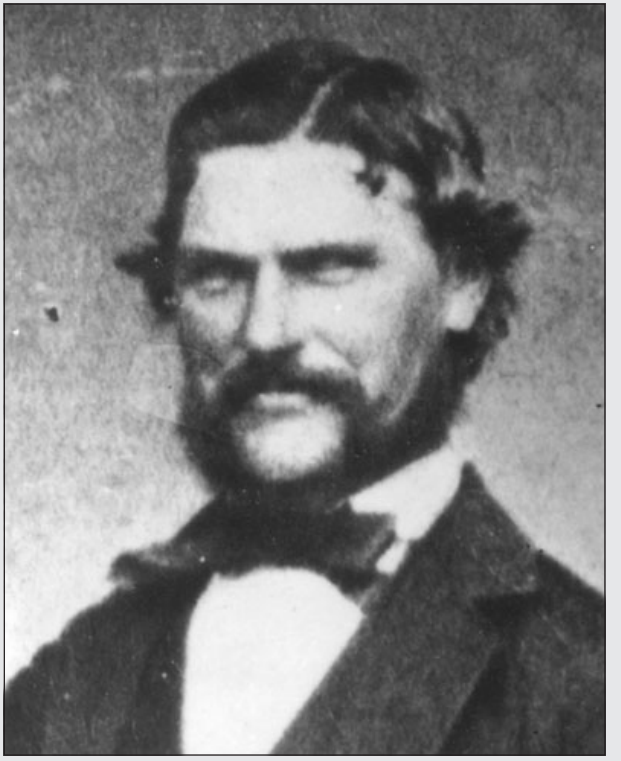
Searancke often called rangatira 'scoundrels' when they claimed that promises had not been met, that lands that ought to have been reserved for them had instead been onsold, that land had been sold without their knowledge, or that they had the right to sell lands when they did not. He saw no fault in the Crown in any of this, nor in the parlous state to which debt had reduced Wairarapa Māori. In 1859 he wrote to McLean:

> The Natives appear to be very much depressed in spirit in the valley generally and more than half starved. I have no authority but have been compelled to give them some food.

And then a few months later:

> Troubles here are like Mushrooms in a field springing up on every side, old Rawiri [Piharau] is as obstinate as ever and is strongly supported by the Kings party or Runanga of whom Manihera is now the head, there is a good deal of excitement generally in the valley not on Rawiri's account but a general discontent against the Govt induced in a great measure by their poverty and their debts, as if the Govt were responsible for them.

Although Crown counsel questioned Searancke's reliability as a commentator, there is no denying that he was struck by the reduced circumstances of the Māori he saw in the Wairarapa. We see no reason to doubt Searancke's estimation that they were hungry, impoverished and debt-ridden. We note that this situation arose within a very few years of the Crown's commencing its purchasing activities in this inquiry district.



William Nicholas Searancke as a young man

Because he did not attribute any of the circumstances he bemoaned to his or his predecessors' activities in the district, Searancke carried on as they had before him. He toured the district, buying all that he could. He made down payments, and retained funds to settle the claims of others who might later be shown to have interests. He accepted offers when away from the district, claiming that this prevented disputes and meant savings for the Crown. His sense of cultural superiority prevented his questioning the Crown's practices, even when vividly describing their ill effects.

Tauherenīkau and Mōroa, back rents owed on lands at Manaia, an instalment on Ngāawapūrua, and an advance on Tūpurupuru. He responded to the claim of several Māori at the head of the valley (probably Rāniera) that, as part of the 5 percent fund, they had been offered assistance to build a mill for themselves.[367] In October, he arranged to purchase Te Kōpi block for £150 with 100 acres to be 'returned as a lasting possession for Maika Purakau'.[368]

Searancke's return to the Wairarapa at the end of the year caused a 'great deal of excitement' but, the missionary Ronaldson reported, he was 'unable to treat with them' because they wanted more than the 10 shillings per acre that the Government had set as its on-sale price.[369] He completed the purchase of Bidwill's homestead at Pihautea on 14 December. Then he advanced further moneys on Waikaraka, and tried to sort out what was owing in koha. He was finding the division of money between the purchases in the different blocks 'a most troublesome operation'.[370]

(d) *The work goes on:* Throughout 1859, and in between purchase activities in the Manawatū, Searancke continued his work in Wairarapa. Over the course of the year, he:

- Made final payments on Maungaraki in four separate pieces, Tūpurupuru, Whaiao, Tupapokia, and Maungaraki. He paid 14d per acre, which he thought too high, although 'not much considering their increased knowledge of the value of their lands'.[371] For the Tūpurupuru transaction, five reserves were to be set aside: at Tūpurupuru kāinga (100 acres), at the Whararikі for the Kaninamu (100 acres), at the Wainuiorū for the Wairua (400 acres), at the Kōhangaumu for Wiremu Kīngi Te Hiakai (500 acres). At Whāio (aka Whaiao), there was to be a 200-acre reserve.[372]
- Settled a 'disputed' sale at Kōrakonui (or Kurakonui) and Ngāpaiaka by paying £100 of the promised amount (£400) for the portion claimed by Anaru and his 'friends', while retaining £100 'to give Piripi and the disputing parties an opportunity of joining in with him'.[373]
- Worked with McLean in October 1859 to purchase 'Mākuri' on-site at Mātaikona, and 'Ihuraua' (part of Forty Mile Bush) at Castlepoint.[374]
- Finalised purchase arrangements at Waikaraka, where price had been left contingent upon survey, on 2 November 1854.[375]
- Made an advance (£100) on Wainuiorū on 22 November 1859 to Hoera and others, and another (£10) on 13 January 1860 to Te Keepa. The deed receipt for these advances was not signed until two years later, when a final payment of £40 was made on 30 January 1862.[376]

While Searancke continued to made acquisitions where and when he could, the socio-economic position of Māori appears to have deteriorated. McCracken comments that Searancke was so far from connecting 'the poverty of their position with his own recently lauded success in acquiring land' that soon after remarking on the decline in Māori health and well-being, he purchased another two reserves (Hikurangi and Awatoitoi). The purchase would, he claimed, 'prevent further dispute'.[377]

It is inevitable that, when land is purchased badly – especially from multiple owners – disputes arise. And it is sad that so often the remedy for the dispute seems to have been to purchase more land.

In January 1860, Searancke confronted the case of Tūpāpakurua. There, Māori who had leased land to a Mr Moore disputed that they had ever sold it to the Crown. Although Searancke was predisposed to reject such claims as an attempt to extort more money, in this instance he was satisfied that the owners had a good case. He offered to buy at what he considered to be a high sum (£500 in addition to the sum already paid in advances in February 1859). The reason given was to prevent trouble between the owners and settlers who were already installed on the block.[378]

Meanwhile, his other work went on. Searancke made final payments on Ōtahuao, Matapihi-Rangitūmau, and Te

'Considerable Discontent': Wardell Describes Māori of this District in 1861

In 1861, Resident Magistrate Herbert Wardell reported to recently re-appointed Governor Grey on the state of Māori in the Wairarapa ki Tararua district. 'Considerable discontent exist[ed]' amongst Māori about 'their position as compared with what it was before they sold their land to the Crown'. Wairarapa ki Tāmaki-nui-ā-Rua Māori could be divided, Wardell stated, into two groups, the Kāwanatanga and the Kīngitanga. Of the former, Wardell commented, 'they are more strictly neutral', while he deemed the latter 'violent nationalists'.

In Wardell's view the two parties – 'Queen's' and 'King's' as he called them – shared a number of common complaints about how the Crown purchase system operated. Particularly criticised were:

> First, . . . the restrictions on the sale and leasing of land; second, that no tribunal has been established for the settlement of their disputes about land; and, third, that the Government has failed to interpose the strong arm for the prevention of fighting between hostile tribes.

He also detailed a number of specific complaints pertaining to the district:

> that great delay takes place in surveying their Reserves, and in the completion of the purchase of lands sold, by which they are kept in debt. They complain, also, that many promises made to them, when first induced to sell their land, have not been fulfilled. They complain, that the proper persons have not always received the payment for lands sold.

In Wardell's view, however, Māori making that complaint had:

> overlook[ed] the fact that this has resulted, too often, from an intentional withholding of information on their part, for the purpose of afterwards disputing the sale or obtaining a further payment.

Wardell also reported that Māori were aware that, as a consequence of the Crown no longer requiring Māori land (as, by this stage, the Crown owned the majority of the land in the district), the Crown's attitude towards them had changed. However Wardell thought that the blame for this change in their circumstances was to be laid at their own door:

> Considerable discontent exist at their position as compared with what it was before they sold their land to the Crown; they were then, they say, courted, and could obtain money and credit, while now they can obtain neither, not perceiving that their indolence and extravagance have been the cause of the change.

Whanga. He then paid out advances on the Upper Tauheru block (also known as Whangaehu 2), because many of those interested in the land were in a 'very distressed state for want of proper food'; he also paid out advances on Te Whiti. Rāniera received money for a mill (£20, for a total of £50 towards a mill), and Ngātuere £12 as a loan to be paid following the completion of the Tauheru sale. Searancke's final transaction in the Wairarapa (August 1860) was a retrospective payment to 'Hiriwanu and the Rangitane Natives for their claims on lands sold by the Ngatikahungunu' in Forty Mile Bush.[379]

(5) *McLean's 1862 visit to Wairarapa ki Tararua*

Searancke did not make the progress hoped for in settling disputes, so McLean was sent in – as Māori wanted – to sort it all out.

In 1861, the Superintendent of Wellington province, Featherston, said that McLean was the man for the job because he had 'great influence with the natives in this Province, and especially from his having purchased the lands in respect of which most of these disputes have arisen.'[380] McLean went to the Wairarapa early in 1862, with Searancke in tow. From mid-January to late-February, they

addressed disputes over reserves and other matters, and also paid further instalments.

McLean addressed himself to the many problems requiring solutions. The boundaries at Aranga Te Kura were in dispute from the first payment on the purchase in 1856. To settle it, McLean paid an additional £20.[381] Then he made a final payment on Mākara. When he paid Mitai Pōneke £30 for Tuhitarata, he saw it 'more in the light of a present than a payment' to an 'old and influential Chief' who had received nothing from the last instalment in 1858.[382] Next, he offered £150 to settle claims of those who had protested his earlier payment of the same amount to Te Mānihera for Te Kumenga (adjacent to Tuhitarata); he also set aside three reserves of 100 acres each. McLean was pleased to have finalised this purchase, for it was good land at the confluence of the Ruamāhanga River and Wairarapa Moana.[383] McCracken notes, however, that claims still came in for some of the payment that 'Mr McLean gave Manihera some at Napier', even though McLean thought it was settled.[384] Later in January, McLean located some Crown land to satisfy an unrecorded promise that had not been fulfilled – the setting aside of two reserves (Otupere and Hikawaia) in Manawatū block.[385]

Then his focus shifted to Pāhaoa (see discussion below).

McLean also made several payouts from the 5 percent fund, and more payments on different blocks for purchase (some of them unsurveyed). He paid £100 to Ngāiro, money that had originally been 'withheld' because the chief had attempted to 'sell lands which had been already purchased'. (This may refer to the dispute over Pāhaoa lands including Wainuiorū, which we discuss later.) But McLean reported that Ngāiro's 'subsequent good conduct in connection with all sales of land conducted by him induced me to pay him this amount'.[386] Other chiefs, including Hoera Whakataha, Wiremu Hikawera Mahupuku, and Retimana Te Kōrou also received small amounts for their assistance in 'adjusting disputes'.[387]

He arranged the deed for Te Whiti, paying £100 for a block of 740 acres near Masterton that contained valuable stands of tōtara. At first glance, the price (paid in three instalments) seems relatively high, but the block had been 'rendered comparatively valueless to its Native owners' by the Crown's acquisition of Tauherenīkau and Taratahi – and, McCracken points out, £100 was just over half what was offered in 1855.[388]

On 27 February 1862, McLean purchased Whāwhānui Reserve, which was promised at Mataōperu (Barton's Run) as part of the settlement of the problems arising out of Forsaith's cession. Its purchase was justified, McLean said, because the block was inland and had never been occupied by Māori. Both Whāwhānui and another promised reserve at Te Ōroi had already been on-sold.[389]

As we discuss later, McLean also tried to address the problem of a lost reserve at Pirinoa, in an ultimately unsuccessful attempt to prevent settlement from swallowing up Māori eel-fishing rights there.

Before leaving the district in March, McLean told his surveyor to lay out all native reserves in the immediate vicinity of Pākehā settlement and delineate the boundaries of land for sale. The surveyor was to get all Māori right holders to accompany him on his work to reduce the risk of further boundary disputes, and to help resolve existing disputes.[390]

So ended McLean's last visit to this inquiry district in his role as Native Land Purchase Commissioner. But purchasing was not at an end, and neither were the problems arising from the Crown's purchasing practices. Those practices had given rise to tensions throughout the country; an increasingly dissatisfied and impatient settler population; and an increasingly troubled Māori community seeking ways to ensure that the Crown dealt with the right people in the correct manner. For some Māori groups this meant holding the land under the mana of the Māori king, for others, the solution was to demand that the Crown dealt with them fairly within the European system.

A prime example of what lay in store is the case of the Pāhaoa purchase.

(6) *The Pāhaoa and Wainuiorū dispute*

(a) *Complex transactions:* The origins of the Pāhaoa (sometimes Pāhaua) dispute can be traced back to the 'Barton

Incident' and the resulting purchase of Barton's Run (Mataōperu) in October 1853. The Mataōperu purchase was the first of four adjacent (probably overlapping) transactions in the Āwhea-Pāhaoa area (northwest of Cape Palliser). The later purchases included the area known as 'Pahaoa', sold in two separate transactions in October 1853 and January 1854, and the Āwhea block.[391] Both Te Weretā and Hoera Whakataha featured in all four transactions, while Te Hāpuku participated in three of them.[392] As in the case of its earlier purchases in the Wairarapa valley, the Crown did not survey the lands immediately (in either 1853 or 1854). Neither did it survey the reserves detailed in all four purchase deeds.[393] There were also propitiatory payments to rangatira. For example, Arama Karaka received money before there was any effort to define boundaries on the ground with all right holders present. There seems to have been little certainty about exactly which areas were included in the four transactions.

(b) *Dispute over Smith's lease at Wainuiorū:* In 1860, Mikaera, Arama Karaka, and Te Weretā complained to Searancke that they were still owed grazing money on lands formerly leased by James Smith at Wainuiorū. This land formed part of Pāhaoa-Wilson's Run that Te Weretā and his party supposedly sold in 1853. But not according to the complainants, who threatened to expel Smith and another pastoralist (Vallance) on the grounds that the land they were occupying was part of about 30,000 acres that had not been sold. Wī Te Weu (aka Wiremu Hikawera Mahupuku) disputed Arama Karaka's right to have sold the land between the Puapuatapoto and Ngāawapūrua Creeks, and there was also purchase money owing on it.[394]

Two years later, 18 people including Wenerei and Mikaera wrote to McLean again alleging that Wainuiorū (the land leased to Smith) was not included in the sale.[395] McCracken said this about McLean's response:

> In his report of the meeting McLean stated that the claimants had only begun to repudiate the sale of the Pahaua block with the rise of the King movement; an explanation that conveniently absolved McLean of responsibility for any deficiencies in the original agreement, and which likewise, negated the possibility that Māori simply held a different view of the agreements – one shaped by their very different practices and cultural preconceptions – and were attempting to assert that different understanding rather than responding on a more political level to the emergence of the King Movement.[396]

McCracken also notes that one reason why tangata whenua wanted to deny the purchase and expel Smith was that his behaviour had offended local rangatira. McLean recounted an occasion when Smith ordered Hoera Whakataha off his property when that rangatira, weary from an arduous day's travelling, called at his house for some food.[397] Ngāi Tahu based at Hurunui-ō-Rangi were similarly insulted. All of this must have fuelled Māori resolve to be rid of the settlers at Wainuiorū.[398]

(c) *Reneging not allowed:* At the hui in Greytown in January 1862, McLean held forth on a familiar theme: bargains freely entered into could not be reneged upon, nor deeds repudiated, if acknowledged rangatira had signed and been paid. McLean did not see the Government as having any responsibility to the wider community of owners if chiefs did not distribute payment fairly and openly – a view to which he persuaded those who had missed out:

> The Natives after full deliberation, openly allowed, that they had no fault to find with the manner in which the negociations [*sic*] were conducted on the part of the Government, that the blame rested with their own chiefs, whose acts in terminating the payment for the block, they would not ratify, excepting to such portions as they, the chiefs, had the exclusive right to alienate. The acts of the chiefs, were, at the time when the payment was concluded, considered fully binding upon all parties interested in the land and they generally recognise Wereta's power to conclude this sale.[399]

McLean tried to defuse the problem by offering additional payments – a frequently deployed device, as we have seen. McLean offered another £500, plus the outstanding koha (5 percents) on the block, which now amounted to £200. But the aggrieved parties turned him down.[400]

McLean was unhappy. He was worried that tangata whenua really would drive Smith off, especially given heightened political tension. But Fox (then Colonial Secretary) would not agree to a higher offer. More money might be called for where owners were absent at the time of sale, but to 'allow those who have signed the deed to repudiate the sale would be a most pernicious precedent'. He instructed McLean to tell the claimants that there would be no advance on the offer already made. Furthermore, 'any attempt to drive off Smith [would] subject them to legal punishment which sooner or later will assuredly be inflicted that no other white man will be allowed to lease the land from them, and that the 5 per cents upon the rest of the block [would] be withheld'.[401]

(d) *An impasse:* There it remained for a year. But Māori dissatisfaction did not go away.

In mid-1863, local Māori served pastoralist Vallance with a notice of eviction. Soon after, a hui was held at Waikēkeno where, according to Bagnall's account, Smith's Run was divided between the respective hapū with rights in the area. Following this meeting, Māori acted as if they owned the land. They went there at will, requesting food and on one occasion burnt a shepherd's hut. Māori asked Smith to sign an agreement that he would leave Wainuiorū, and in August, he departed for Wellington.[402]

The Crown continued to resist any attempt by Māori at Pāhaoa to renounce the sale of Wainuiorū.

(e) *Cooper holds the Crown line:* In July 1864, Cooper returned as the Crown purchase agent, and called a hui at which he tried to put the matter to rest. He read out the deeds that had been signed, including one by Hoera Whakataha who had led the protest. Cooper told the assembled claimants that he himself had seen further moneys paid over by McLean for the same lands, although these amounts 'were not named in the Deeds mentioned':

> Well, Mr McLean afterwards [after the initial deeds?] made further payments on account of these lands the amount of which were not named in the Deeds mentioned – £100 to Wiremu te Weu – £200 to Ngairo and £50 to Hoera, all these sums being for the lands we are now talking about, I myself saw the £200 & the £50 paid. Mr McLean paid these sums, thinking the lands had not been sold, for he had not seen the boundaries, and he thought that the people who sold him the lands spoke the truth. This was why he paid the money. When it was shown to the old chiefs, to Te Wereta, to Te Hapuku, and other old Chiefs who don't tell lies, it was discovered that all these sales were thefts. Those men confessed and said yes, they are thefts, and we will repay the money, and pay the fines for the offences. Ngairo paid £100 for his offence, and Mr McLean afterwards returned it, as a token of his good will to Ngairo; the £200 still remains upon the land as well as the other sums – £350 in all which are not named in the deeds.[403]

That was why McLean had withheld Ngāiro's money in 1862 (see the previous section) – although he returned it later, as a 'token of his good will' as Cooper phrased it.[404]

Cooper told Māori at Greytown that the Crown had already paid too much for the land. Still, he was prepared to pay over another £500 – not for the land itself, but to carry out McLean's earlier promise. He would also hand over any of the 5 percent fund that was owing, by now around £200.[405] Hoera protested, by letter, that the people had attached their name to Te Weretā's deed without knowing that it had included Wainuiorū. According to Hoera, when they had threatened to destroy the deed:

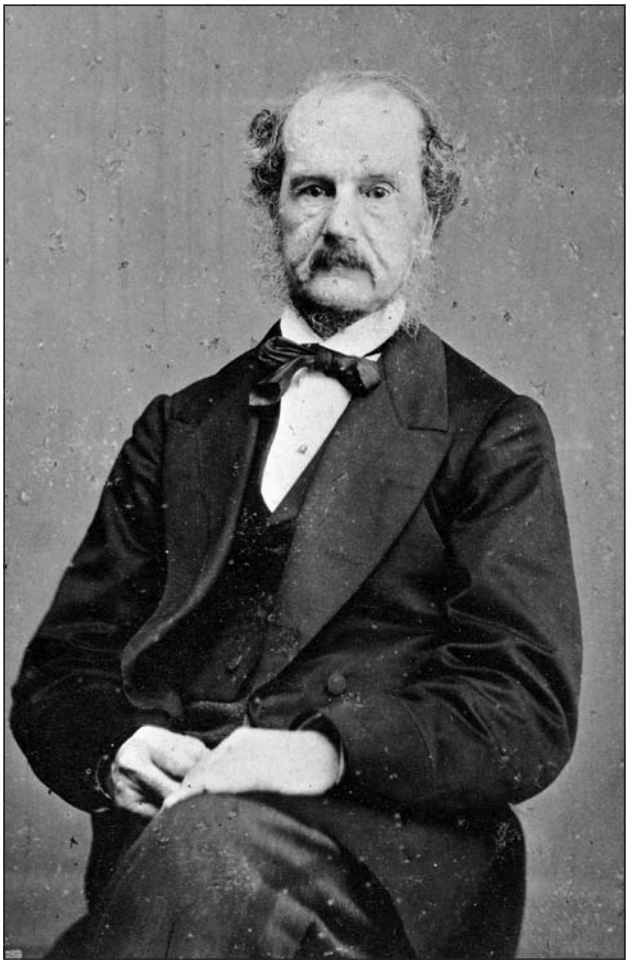
> Mr McLean said "No" Don't tear it, let Wereta's boundary go on the outside of the block, and all the people can then come and sell their individual claims within it.

This was acceptable to some, but others were 'still . . . angry [with Te Weretā] and some families spoke of going away'. Hoera maintained that McLean offered more money, and he detailed what he thought these payments should be.[406] At first Cooper refused to budge from his earlier offer, but after further discussions with Te Mānihera, Ngāiro, and Rāniera, he agreed to a further £100. Later, Cooper reported to McLean that he had told them that as they had fairly sold the land, they were 'not entitled to a farthing' but as 'the Govt would not go back from its word' he would make a further and final payment:

> They must understand that his offer was final and would not be repeated – if they accepted it, well and good, their insolent speeches would be forgotten and all would be well – if not they would never get the £500, and if they turned off Smith the 5 percents would be withheld, no other pakeha would be allowed to go there & the punishment due to their offence would sooner or later fall upon them.[407]

And that was the end of the Pāhaoa imbroglio, after several troublesome years. Certainly Cooper thought that the payment of an extra £100 had settled the matter. But had it really? From the point of view of Hoera and those of similar mind, the answer is probably 'no'. In fact, reserves were not settled until the 1880s, and the question of koha on Pāhaoa lands also continued to be argued for some years between Māori right holders and the Crown.

And such problems continued in other purchases involving Featherston and Cooper.



Dr Isaac Earl Featherston, superintendent of the province of Wellington from 1853 to 1857 and 1858 to 1871

(7) *Featherston's deeds, 1862–63*

(a) *The superintendent's role:* Featherston undertook four transactions as superintendent of the province of Wellington.

Opening the second session of the Provincial Council in 1862, Featherston took the opportunity to air his views on his role as Superintendent and the shortcomings of McLean's purchases. He saw himself as being in 'close and intimate relations' with both Government and 'Natives'. As such, he was bound to 'acquire an accurate knowledge of the feelings, wishes, and requirements of the natives' and also assist the Government in their 'endeavours to remove the existing causes of irritation'. Without '*teasing* of the Natives to part with a single acre' (emphasis in original), he would let them know that they would not be subjected to 'vexatious delays'. Once the terms of purchases were arranged, and 'the boundaries of the block offered for sale,

after due notice, publicly defined and marked out, the purchase [would] be at once completed'.[408]

(b) *Problems with documentation:* Early on in his tenure, Featherston was briefed on a problem concerning documentation.

Surveyor Malcolm Fraser told him of several promises that he (Fraser) had made to Wairarapa Māori that were yet to be fulfilled. Fraser had undertaken that copies of 'final deeds of sale should be furnished to the leading man or men of each hapu interested in such sales'. Copies of plans of all tracings of surveys of native reserves would also be furnished to prevent the 'many vexatious and sometimes perplexing minor questions' raised 'to the officer negotiating on behalf of the Government' as Māori 'dissembled ignorance of past transactions'.[409]

Featherston's own experience led him to concur with Fraser about the problems caused by poor documentation. He expressed his frustration to the Colonial Secretary:

> During the short time I have acted as Land Purchase Commissioner I have frequently experienced considerable difficulties from the absence of the original deeds or of authenticated copies. From the documents left in the Land Purchase Office here it is often impossible to gather when the negotiation for the purchase of a particular block was initiated, when they were brought to a conclusion, or what was the total amount paid for the block. On few or none of the deeds in the Office here are there any plans, so that it is well nigh impossible to make out the boundaries of the block purchased.[410]

Given Featherston's experience, it is hard to see why Fraser characterised Māori 'ignorance' of past transactions as dissembling.

(c) *Featherston's Wairarapa transactions:* Featherston's attention was initially focused on the Manawatū region, but between 22 January and 16 May 1863 he undertook the following transactions in the Wairarapa:

Response to Te Mānihera's Debt Problem

Te Mānihera was a signatory to two of the transactions which Featherston finalised. He was suffering from a burden of debt, and Native Minister Fox asked Featherston to arrange the chief's affairs to get him out of it. Featherston now proposed that the General Government advance Te Mānihera £1000 from the Native Purposes Fund. Half of the money would go to his creditors, and half would be invested in sheep, in trust. The loan would be secured by mortgage on his two remaining reserves, and the interest would be chargeable on the wool and meat income.

Colonial Secretary Alfred Domett endorsed Featherston's proposal, once he understood that Fox had asked Featherston to help sort out Te Mānihera's debt. Domett wrote to Featherston that the Government was 'fully sensible of "Manihera's" claims' and considered generally that 'some provision should be made against the contingency of native chiefs, who have sold all, or the chief part of their lands to the Crown'. In an 'exceptional case, like that of Manihera, the Province, which has had the practical benefit of the land sold by him (the disposal of which was the primary cause of his difficulties) should bear the cost of assisting him'.

- He made final payment of £140 for Tauheru, a block of about 21,000 acres where McLean had made an earlier down payment of £80. Seven Māori signed the deed;
- At Kahutara Bush, Featherston bought about 900 acres for £200, and three Māori signed the deed;
- Featherston bought Otūmaunga (no acreage given) for £40, and four signed the deed; and
- He bought Te Kōhutu, a block of 62 acres, for £15, and again there were two signatories.[411]

(d) *The wider political context:* Starting in June 1863, there was a pause in land purchase activity in the Wairarapa ki Tararua area because of what was happening politically outside the district. In the latter half of 1863, relations

between settler and Māori communities in the Wairarapa were shaken by the news that fighting had broken out in the Waikato. The settler community appealed to Featherston to call out the militia. Initially, Featherston refused, commenting that there was little to fear except for over-excited settlers acting rashly. Wairarapa Māori were split between supporters of the Kīngitanga and the Kāwanatanga. Rangatira such as Te Mānihera and Ngātuere gave assurances of settler support, but the settler community nonetheless put together a militia. '[F]or the next few months', McCracken comments, 'their drills and general activities sought to intimidate potential Māori adversaries.'[412]

Crown purchase of Māori land in the Wairarapa halted, for the meantime at least.

(8) *1864: Cooper returns to sort out problems*

In 1864, Crown purchase agent Cooper was sent back to the Wairarapa to sort out disputes and finalise purchases there. Here, he faced more of the same problems. According to McCracken, those receiving Cooper's attention included Whangaehu, Kopuāranga, Pouawatea, Wainuiorū within Te Weretā's Pāhaoa block, Rangitoto (Rangitūmau) and Pukengaki (Buck and Kemble's).[413] In April 1864, payments were made on the Whangaehu, Kopuāranga, and Pouawatea blocks, and in August on Tauheru (Kumurau), Motukaitūtae (Upokongāruru), and Rangitoto.[414] In summary:

- At Kopuāranga, Cooper agreed to pay £300 but it turned out that most of the land was already sold. Where land had not been sold, there was a dispute about who was entitled to sell. Cooper ended up paying more to appease both factions, but did not really get to the bottom of the matter.[415]
- The acquisition of Pouawatea supposedly ended a long-standing grievance over Piharau's reserve (from the Ōwhanga purchase of 23 December 1853). In fact, the grievance continued, as we discuss in a later chapter.
- At Rangitoto, a rangatira (Paraone) had acceded to the surveyor's request for an extension to the block to be sold. Land belonging to the community at Te Ore Ore, led by Retimana, was thus included without their consent. Cooper paid another £100 to settle the grievance, and the deed was signed. Then Paraone complained that his 'piece at Kahumingi was included' wrongly. Retimana supported his claim, and Cooper reluctantly paid another £200 (though Paraone had demanded £1000).[416]
- At Tauheru, Cooper made a final payment of £200 for the 12,000-acre Kumurau block.[417]
- As to the 4000-acre Motukaitūtae block (part of Beetham's Run at Upokongāruru), Cooper concluded that the boundaries described in the deed (signed by Te Weretā) were 'so far from distinct or intelligible' that he was obliged to pay Rīwai and his party £100 in the hope that this would end the matter once and for all.[418]
- At Whakataki, one of the Castlepoint reserves that the Crown purchased, Cooper dealt with claims that the owners had been promised they could buy back the land for individual grant, and that portions would be returned as reserves for particular individuals and hapū.

Cooper also had to deal with claims that particular resources had been promised but not actually protected. In the case of Kōhangawariwari, a party led by Ngāiro, Mikaera and Āperahama Te Ao wrote from Masterton, claiming they had been promised access to the bush for bird snaring. Cooper forwarded the letter to Featherston, advising him that the claim could 'give rise to some trouble' and would require 'firmness'. As a result, Māori were informed that the land was sold and would not be returned; they would have to be satisfied with their 1000 acres of reserves, including those located at Kaikōkirikiri and Taumata o te Waihīrere (both of 300 acres), and Waipoua, where Searancke had set aside 200 acres for pigeon snares.[419]

McCracken notes that a similar situation arose at Pukengaki. There, settlers (Buck and Kemble) made a selection of land that local Māori disputed. They said

their alienation to the Crown was more limited, and contained none of the timber resources that Buck and Kemble thought they had bought. This was a survey problem: only a little over half of the settlers' selection was actually contained within the block that Māori had sold. In Cooper's opinion, now that the survey had been completed, there was 'no dispute or question . . . pending between the Maoris and the Crown' and since Māori were unwilling to sell the area in question it would be impolitic 'to urge them about it'.[420]

It was also during this second stint in the Wairarapa that Cooper dealt with the disputed Pāhaoa and Wainuiorū transactions that we discussed above.

(9) *Conclusion: the second wave of purchases*

To sum up, from late 1854 to 1865, the Crown endeavoured to purchase and settle the Māori land that remained in the Wairarapa ki Tararua district after McLean's initial flurry of deed signing. Between these dates, it has been suggested that 220,000 acres were sold.[421] Title was transferred to the Crown via about 150 separately recorded transactions, 'deeds', 'receipts', 'enclosures', or 'advances'. Land prices were higher than in the earlier period (1853–54), but the number of Māori signing the purchase deeds decreased. The practice that developed in the Wairarapa ki Tararua district was for a small number of chiefs to sell land to gain financial benefits and other rewards. Crown officials, in most cases, were happy to do business with those few, and encouraged the arrangement. Even when Crown purchasers recognised the flaws in such arrangements, they did not desist. They paid individual rangatira, made serial payments away from the lands concerned or to patch up problems, and the land had not been surveyed.

3A.4 Tribunal Analysis and Findings

We come now to analyse whether the Crown's purchasing policies and practices in Wairarapa ki Tararua between 1853 and 1864 breached Treaty principles, including the guarantee of te tino rangatiratanga and the Crown's duty of active protection.

We identify and respond to the key issues that we think arise from the material presented in this chapter, and from the claimants' and Crown's arguments before us.

3A.4.1 What was the understanding reached at the komiti nui of August 1853?

(1) *What was the Māori conception of purchase?*

We heard much debate on exactly what sort of outcome Ngāti Kahungunu and Rangitāne envisaged when they entered into the purchasing arrangements we have described. Did they fully understand what purchase was for Europeans? Did they know they were giving up all rights over their lands forever, in exchange for a certain amount of coin and some additional and quite specific benefits? Or did they think that they were doing something different? Did they conceive of it as a kind of treaty-making with the Crown, in which the Crown made undertakings about the future so that a sort of partnership was established, analogous to the customary practice of tuku/gift exchange? How would Māori have understood the utterances of Grey and McLean, and the words and meaning of the deeds themselves? Was there that necessary 'mutuality of understanding' between Māori and the Crown when Māori agreed to 'tuku' or 'hoko' their lands to the Queen, and the Crown agreed, in purchasing, to make reserves, create an endowment, and promote Māori 'civilisation' and general welfare?

(2) *Changes in Māori ideation*

First of all, it is clear that by the early 1850s, Māori society in Wairarapa ki Tāmaki-nui-ā-Rua was engaged in a process of change. Europeans were welcomed, and their material culture was partly adopted, and also adapted. We have observed how the introduction of pigs and potatoes changed traditional occupation patterns, encouraging settlement further inland. Then there was the foraging of pigs, followed by sheep; the cultivation of crops for

settlers; rental moneys – all these had impacts, both environmental and social. Colenso's reports suggest, also, considerable exposure to Christian ideas. Māori vigorously debated Christianity in the 1840s and some chose to adopt Christian beliefs, at least to some extent. By 1850, over half of the Wairarapa ki Tāmaki-nui-ā-Rua Māori population were recorded as being Christian.[422] The missionaries demanded some important changes as part of conversion, most notably the end of warfare, slavery, cannibalism, and polygamy.

We are of the view, however, that the missionaries' success was considerable but not absolute. We discussed this earlier in our report, noting the considerable interest in the Christian god, and the many challenges to traditional authority posed by the newcomers and their ideas. These ranged from the deliberate ridiculing of tapu to the elevation of the Native Teachers, and included the failure of traditional remedies and responses in the face of sickness and mortality. However, there is evidence, too, that some crucial customary concepts were very resilient. For example, traditional decision-making by means of open debate continued alongside the displays of physical threat that European observers so liked to emphasise; marriages were still arranged to settle conflicts and form alliances.

Nor was adaptation a one-way process. Although Colenso denounced many Māori beliefs and practices, he, like the early pastoralists, had to adjust his responses to meet Māori understandings. Also, western medicines and Christian theology were proving little better than traditional measures in combating sickness, and there is evidence of reaction against Colenso's teachings.

Most importantly, chiefly authority seemed unaffected, although some different chiefly attributes and skills became important. But the mana of the rangatira continued to depend on community respect and traditionally desirable traits like prowess in war, seniority of descent, and generous hospitality.

Māori debated the presence among them of European squatters running stock. The squatters had to pay chiefs a kind of tribute in the form of grass moneys. This augmented a tribe's power and strength. Exact definition of boundaries was not required. Fences were built for only limited purposes – as holding yards for stock, and to protect cultivated paddocks and gardens. Pou (upright posts) sufficed as markers for squatters as for Māori. There were disputes, both between Māori groups as to who had authority to place strangers on the land, and with the squatters themselves, about 'trespass', or demands for increases in rents. These were not so different in character from the disputes that could arise between neighbouring hapū over rights to use certain resources, or questions about the tribute to be paid to tangata whenua by occupiers with lesser rights. Such disputes that did arise were settled largely by traditional means – though local Māori demonstrated that they would accept the Crown's authority in cases of disagreement with Europeans.

Up until the period of the Crown's purchases, there was no fundamental change in how hapū exercised land rights. Where they took up occupation somewhere else, or began cultivating crops for barter, they did so under the authority of their local leaders. Where they leased, they debated the issue, continued to harvest kai, to camp, and to come and go.

We also see much in the conduct of the early transactions in Wairarapa to suggest that basic institutions and understandings remained intact. Māori saw their agreement to 'release' land in a customary way – as an exchange for access to money, goods, and knowledge. These customary elements were present in the ceremony associated with the early transactions: the spiritual preparations, the karanga, the idea of tribute that was expressed in letters to various Crown officers. There is clearly much weight in Smith's argument that traditional aspects of conduct were often obscured in translations of Māori correspondence, and that although Europeans characterised what was going on as lease or sale, the Māori people involved understood it differently. The gathering of the community and the debating of the question between rangatira in their presence, and also the personal appeal made by Grey, were readily accommodated within a customary conceptual

framework. We only have to look at the language in which offers to 'sell' were couched to appreciate that this was so. The shared possessive of 'ta taua whenua', the symbolism of marriage when speaking of the land, and the linking of the writers with those to whom the offers were being made, all assume shared possession in the future. The idea of tuku was part of this underlying metaphor, assumption and purpose.

(3) *Land sale part of a cultural continuum?*

Māori in the Wairarapa region had intensively debated the question of sale versus lease over a number of years, and had opted for lease. They had received advice of varying kinds on what it would mean to sell. There was the example of an expanding European settlement in Wellington, the Government's use of the tangi clause, and officials' reiteration that deeds were immutable and irrevocable. Māori must have known that more was being asked of them than before, and they expected more back as a result. What exactly they thought they were giving up is not clear. We think it likely that they understood and agreed that they would no longer control who came and went on the land. Whether they understood that transactions were complete and permanent no matter what happened in the future is less clear, however.

Māori were not thinking only in the present; they did not focus exclusively on money. Other benefits both tangible and intangible were promised, and were expected. This was not 'sale' pure and simple. So say the claimants, and the Crown does not dispute it. Why would Māori conceive Crown purchase as 'just a sale' when Grey talked of marrying the two peoples, future benefits, equality of access to schooling and medicine, and Māori participation in the progress of the district as a whole? Clearly, this was something different from landlord and tenants in leasehold tenure. Whereas before, tangata whenua retained control and practical authority, this now went to the Queen. But the Queen was no mere landlord. Here, we do agree with the argument of Ngāi Tūmapuhia-ā-Rangi that this was:

> the fundamental difference between the earlier grass leases (with individual settler families) and the 1853–54 deeds. It was partnership, not mere citizenship, that rangatira sought when they signed the deeds.[423]

We also agree that the idea that this could be accomplished by 'tuku' of land – which the Crown insisted would be by 'sale' – was inherent in gift exchange, and carried the intention of creating a continuing relationship between the Crown and Māori.[424]

(4) *Partnership*

We see this idea expressed in the language and metaphor of linked possession and marriage which continued to be used by rangatira. At the Kohimārama Conference called by Governor Gore Browne in 1860, Rāniera Te Iho pronounced the Governor's words good:

> that the Pakeha and Maories [*sic*] should cleave to each other and live together, and work together, and that they should be of one mind. These words were spoken by the first Governors. They have remained down to the present time and are now spoken by you. Your words are all to the same effect, they all mean good.[425]

We also see it in letters to McLean offering land to the 'Governor and the Queen', accompanied by pleas for a warm relationship with the Crown.[426] At that time, Māori had no reason to question whether this was likely to be true.

(5) *Compulsion*

There was an element of compulsion too, though. McLean had talked to the Executive Council about how crucial it was for the Government to take steps towards ending the Wairarapa leases, for otherwise the prospects of further Crown purchase on the eastern side of the North Island would be seriously impaired. Though the government could not act immediately against established settlers – even where their leasehold was illegal – there was no doubt

that in the future the Crown would act to prevent a continuation of land tenure under Māori customary authority. McLean also made it clear that only those who sold their lands could be considered friends of the Crown.

This message grew stronger over time, as officials urged comparison between what the Crown could offer, and what ordinary settlers could provide in a direct relationship with Māori owners. It was not just a matter of money, but who would be the more powerful ally, what the exchange entailed, and the benefits to be gained in the future.

(6) *The Grey factor*

Grey's presence and his promises were a crucial tipping point towards sale for rangatira who had an existing and hitherto beneficial relationship with individual settlers. A succession of officials (even the squatters) had touted the advantages of Crown-brokered settlement, the good intentions of the Government, and the prosperity that would result. Now Grey – the rangatira Pākehā who personalised the Crown through his acts of friendship – came to be with them in person, and said the same things face to face. What he said gained potency from his imminent departure, lending the occasion the gravitas of poroporoākī.

We think the Crown is wrong to imagine that a Māori audience would have received Grey's words as 'florid projections' of doubtful substance.[427] Indeed, Māori wholeheartedly embraced the persona of Grey offered to them – friend, father, kai whakarite (a man to make peace and resolve disputes), kāwana (governor). Why would his words not be taken seriously, especially on the eve of his departure from Aotearoa? At the very least, he was the most senior rangatira the Pākehā world had to offer. Other chiefs would of course expect him to act with honour, to be a person of his word, and to fulfil his obligations.

What happened at the beginning of the era of Crown purchasing in the Wairarapa would have encouraged belief in the Governor's word. There was an initial period of relative largesse characterised by handouts of money, gifts to individual rangatira, and special treatment (money, reserves) for those who had proved their friendship with the Government by agreeing to sell. Initially at least, tangata whenua might well have felt that selling was the right decision.

3A.4.2 Did the komiti nui generate specific Crown obligations?

From what we know about what happened at the komiti nui, can it be said that the Crown assumed, and Māori understood it to have assumed, specific obligations?

(1) *Legitimate expectations created elsewhere*

Previous Tribunals have said that in situations where Crown officers repeatedly tell Māori that they will reap future rewards from selling and permitting settlement to go ahead, Crown responsibility follows. The Kaipara Tribunal found that 'as a result, the Crown did take on some responsibility to try to ensure that Māori benefited from colonisation'.[428] The Mohaka ki Ahuriri Tribunal reached similar conclusions. It observed that 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.[429]

That Tribunal accepted the Crown's argument that many circumstances were beyond its control and that it could not be expected to have ensured continuing prosperity 'simply in exchange' for the sale of land. But this did not absolve the Crown from doing its best, and in that situation the Tribunal thought it could have done far more to give reality to the spirit of its assurances.[430]

(2) *Legitimate expectations in this district?*

We follow a similar line of reasoning. For the Crown to contend that Māori were not entitled to rely on its statements

about a brighter future if they sold land is disingenuous. Promises went further – in fact, as far as promising Māori equal sharing in the progress of the colony, and active assistance in their engagement with settlement. Why were Māori not entitled to take these promises at face value?

Grey treated the rangatira he summoned to the komiti nui, that great bringing together of people, as having an authoritative voice. He imbued the occasion with mana by his own presence, and by stressing to his audience the importance of their accepting his new arrangements before he left the country. The komiti nui agreed. All of these circumstances created a bond of trust such that the Crown was obliged to try to give Grey's promises effect. We think that this extended not only to services provided, and priorities for infrastructural development, but to how Crown officers went about their purchase activities. Fair practice was required. The Crown had to ensure that everybody understood what the Crown wanted and what it was that their leaders were agreeing to. Sufficient lands had to be reserved for a range of needs. And the money paid over had to be enough to enable engagement in the economy on an equal footing with their former tenants. Then there were the assurances about the Crown actively assisting in provision of health care and schooling, and also providing implements needed for agricultural and commercial expansion. This idea – a duty of active protection resulting in a sharing of the benefits of settlement – is not a modern invention. It was a basic tenet of the colonisation model advanced at the time, and it was often repeated – including by Grey at the komiti nui.

But once the hearts and minds of Māori were won and purchasing got underway, the practice and ideology of land purchase officers and surveyors were unrecognisably different. What they did and thought was overwhelmingly weighted in favour of settler interests. They determinedly set about acquiring as much land as possible for as little money as Māori would accept, restricting reserves to specified lands in occupation, and bargaining with the 5 percent endowments.

Grey and McLean clearly believed a better future did await Māori. But although they spoke to Māori as equals in status, in rights, and in access to wealth and power, their actions show that they envisaged something much more limited for them. Europeans would settle all lands but those being actively cultivated by Māori. There would be an undefined buffer of extra land for the future, with perhaps some extra assistance for Māori along the way, like appropriate schooling and agricultural implements. Māori would hold their remaining lands under Crown grant, and settle into their role as small cultivators and agricultural labourers. Unfortunately, however, even these modest objectives proved incapable of delivery.

(3) *Rush to modernity?*

An aspect of the Crown's argument was that the Crown did not need to lure Māori into purchase arrangements, because their appetite for engaging with all things European was such that they were happy to abandon their former lives, traditions, and beliefs with barely a backward glance. This argument seems to support the view that it was unlikely that Grey and McLean made concrete undertakings to induce Māori to sell their land, and also may be directed to suggesting a lesser duty on the Crown to fulfil its promises.

Clearly, there was some enthusiasm amongst Māori to embrace the new, or they would have acted quite differently when confronted with the opportunity for change. But as we have said, we do not think that Māori rapidly abandoned all their laws and customs, nor that they did not require persuasion to agree to what Grey, and later McLean and other purchase officers, wanted. No doubt this is why the deeds contained specific contractual obligations and conditions, and why additional undertakings were made orally.

(4) *The koha or 5 percent clause*

An issue in this inquiry is whether these clauses, deployed in some but not all deeds, expressed a general commitment on the part of the Crown rather than specific agreements pertaining to specific blocks.

When Grey came to the Wairarapa, making arrangements to fund projects for Māori from the proceeds of on-selling their land was high on his agenda. His use of the land fund for a school at Auckland had come under attack, and he was looking for ways to tie rangatira to the Crown after his departure. At one level this was another instance of Grey's acknowledged 'flour and sugar' policy. But maybe too, Grey felt a need to compensate Māori for the loss of grazier rents. Perhaps he even anticipated a time when Māori were unable to roam freely to utilise seasonal resources. Certainly, Grey drew a direct link between Crown promises of benefit in purchase negotiations and an obligation to devote part of the profits made from on-sale to purposes that would advance Māori socially.

We agree with Crown counsel that after the komiti nui, McLean used the koha or 5 percent clauses as a bargaining tool, although they ceased to feature in deeds within a few months. We shall see in the following chapter that most of the first Wairarapa deeds (except for the homestead blocks) contained provision for both reserves and the koha, although in some instances it was just one or the other. His last use of the clause was in early 1854 and it did not reappear until the 1870s.[431] However, in the early 1860s, McLean and other officers used entitlements to 5 percents as a bargaining chip when they were trying to resolve disputes about land issues. They threatened to withhold disbursements from the fund if Māori parties did not want to agree to a solution the officers were promoting. They also negotiated the 5 percents out of existence at Tautāne, in the course of supposedly addressing past failures in the purchase of the block.

Clearly, the first major deeds were political in nature: they were a direct expression of the accord between Grey and the rangatira. The deeds designated purposes for the fund, and also expressed the intention that decisions about the use of the fund would be mutually agreed. These derived from the understanding reached at Tūranganui about how the district was to progress. Māori were told that their agreement to sell would produce both immediate and long-term benefits for them beyond the price. This made price only part of a wider bargain that also included the benefits and the protection of the Queen. Both rangatira and the Crown would have a say, and would continue to be involved in a joint enterprise. For Māori, these terms in the first deeds showed that Grey's promises were true.

We accept that Crown officials at the time looked at it differently, and were consistent in that attitude. Their stance was that the Government's obligations extended only to moneys on the blocks where that condition of sale was specifically mentioned. But we do not accept counsel's argument that Māori saw it this way too.

(5) *How did Māori see the koha or 5 percents?*

In 1858, when Māori complained about non-payment of koha, they spoke of 'the koha for each individual piece' of land, but also of 'the koha monies of our kainga, that is for the pieces of land of each person which was ceded to you'.[432] The reference was as much to the undertaking made to the people (about mills, schools and hospitals) as to the fact of the moneys owed on the blocks themselves. It is not clear whether the author (Ngātuere) was seeking payments on just those blocks where the deeds specifically mentioned koha, or on all the pieces of land sold. He was challenging the stance that the Crown's new agent, Searancke, was taking. Searancke did not accept that McLean had arranged 'koha for the land previously ceded . . . However, the final payments only were given and there was no koha'. How, Ngātuere asked, were they to 'deal with the koha that remains outstanding'? By this stage, only the mill was built; not the school, nor the hospital.[433]

It seems to us that there are many indications that Māori expected koha payments to be ongoing. This expectation may have been encouraged by the initial climate of largesse, where the Crown seemed to be handing out payments of every description – koha, down payments, instalments, loans, and gratuities. We return to this discussion when examining the Crown's administration of the 5 percent fund and Māori queries about it. Then, Māori sought disbursements for a variety of purposes, for accounts to be shown, and for promises to be fulfilled. This usually

happened in relation to the blocks where the Crown recognised it was liable, but not exclusively. We see in these later developments (in the 1870s and 1880s) that Māori still made strong links between the endowment and Grey's words that the Crown had all but forgotten.

(6) *A kind of treaty?*

Did the understandings reached at the komiti nui amount to a kind of treaty about how the region was to be opened up to settlement? We think that perhaps it was, although an unwritten one. Other tribunals that looked at this sort of question with reference to major early transactions between Māori and the Crown were reluctant to pursue this line of reasoning. Maybe this was because our jurisdiction is tied to the Treaty signed at Waitangi, but we see nothing in that Treaty to preclude further engagements by the Crown, or other regional accommodations. We might take this further, were it not for two things. The first is the lack of contemporary records of just what was said at Tūranganui: this naturally makes us circumspect about asserting a radical interpretation of what happened there. And the second is our belief that, from the evidence that is available, we think that nothing happened there that took the Māori entitlement beyond their Treaty of Waitangi rights. The relevant Treaty rights in this context are partnership, respect for te tino rangatiratanga Māori, reciprocity, good faith, and active protection.

(7) *Crown conduct that Māori could legitimately expect*

When it came to purchasing Māori land in this inquiry district, the komiti nui understandings and the Treaty principles required the Crown to ensure that:

- settlement was permitted to proceed only under contracts that were 'fair and equal';[434]
- all negotiations were conducted with 'sincerity, justice and good faith', and engagements entered into were honoured;[435]
- all purchases were undertaken with 'the free and intelligent consent' of Māori 'expressed according to their established usages', which connotes open debate by leaders before their community;[436]
- there was no purchase of territory 'essential, or highly conducive, to their own comfort, safety, or subsistence', which includes not only lands intensively occupied but also sufficient other land to enable Māori to continue their customary resource-use forever, and also to benefit from future increases in land value;[437]
- equal priority was given to the procedures that followed upon sale, especially survey and issue of grants to protect remaining resources and enable their immediate utilisation;
- Māori were actively assisted to engage with settlement so that they would be on an equal footing with Europeans – including education, health services, and period-appropriate help to develop remaining lands (at least useable title, sufficient capital in terms of price received, and equal access to development finance); and
- Māori had recognised entitlement to an endowment from the Land Fund, and were consulted as to its use.

We see these as legitimate expectations and reasonable requirements. They were entirely within the compass of Crown thinking at the time, and within its capacity to provide if the political will existed.

3A.4.3 Did the Crown's land purchase methods conform to the standards of the time?

(1) *The komiti nui established the context for purchasing in the Wairarapa*

At the komiti nui, chiefs were persuaded that the district would be best opened to settlement by means of a new arrangement with the Crown, including certain protections and benefits, rather than by their previous practice of entering into direct, more mutable and limited engagements with settlers. It was agreed there that the details of this new arrangement – in terms of boundaries and reserves, payments, and any special conditions – would be

worked out later. McLean recognised, however, that Grey had reached a political accommodation with Māori, and those wider undertakings established the context for his work in the Wairarapa. He knew Māori trusted the statements of Crown officials. He wrote to Māori at the time, 'I should be listening very carefully your word is not to be swept aside, the word of an important person.'[438] He also referred to the spirit of Grey's arrangements when he warned that the Governor's successors might not share it.[439]

(2) *Purchasing processes rough and ready*

Yet, McLean's own practice rapidly departed both from the spirit of partnership and positive assistance that informed Grey's new arrangements, and from his own Castlepoint model.

We agree with the claimants that there were unnecessary shortcomings in the deeds that followed the komiti nui, which happened because settlers were privileged over Māori vendors. Although McLean instructed his officers to define reserves clearly and ensure that there were surveys before completing purchases, his own purchases typically came before surveys. Nor did he hesitate to make advances to Māori who came knocking on his door when in Wellington. There was no discernible procedure for determining who had rights. Would-be vendors simply asserted to McLean and other government officials that they had interests, and the purchasing agents used instalments as a means of including those who came along later. A 'mopping up' exercise followed to cure errors and generally put things right, but this happened in haste. We have recounted the many complaints that followed later, and how the Crown officers who followed McLean – and indeed McLean himself – tried to patch up the problems, often by buying the same land and more of it. We described how they deployed the same methods that had led to the problems they were now trying to fix. Not surprisingly, given the scrambling character of the early transactions and the lack of checks and balances, some rangatira were soon virtually landless. Others pestered Crown officers about boundaries, payments for lands already considered purchased, and annuities mentioned in koha clauses.[440] Officers acted to quell disputes and criticism, but the solutions almost always required Māori to compromise. Where promised reserves did not eventuate because they had been swallowed up by settlement, Māori had to accept second and sometimes third choice of lands found for them elsewhere. Only rarely were settlers required to move. The whole process can really only be described as rough and ready.

(3) *Crown experienced in purchasing*

We consider that during the first decade of the colony, the Crown had acquired considerable experience in, and understanding of, land transactions with Māori. There were articulated standards that needed to be met if consent to sale was to be meaningful. Purchases should be of clearly defined blocks of land and boundaries preferably walked. There should be a prior investigation of title so that all right holders were identified, and a process for them to agree on their shares. Any dispute about these key things – area, boundaries, identity of right holders and the proportions in which they hold rights – had to be resolved before purchase. Multiple hui were always required to achieve this. The price also needed to be negotiated in advance. For if all these things were not settled before the deed was signed, how could it be said that the vendors knew what they were consenting to?

Anyone doubting that this was appreciated at the time need go no further than Governor Gore Browne's instructions of 1855, which McLean passed onto his officers:

> in all future arrangements for the purchase of land, [they should] use the greatest possible caution in the cases where the Title is disputed . . . and upon no account to enter into negotiations . . . until such differences have been amicably settled between the parties concerned.[441]

Rigby also cites McLean's acknowledgement that the Crown had to investigate 'complications of native title', adjust claims of 'conquerors and conquered', and analyse the rights of the 'various subdivisions'. Then once it understood the basis of competing claims, the Government had to reconcile them before it could complete any sizeable purchase.[442] McLean knew what was required for the sale of land to be correct under custom and valid in law.[443]

Crown counsel suggested that the Crown's understanding was developing during this period. This is undoubtedly so. All those engaged in difficult tasks increase their understanding over time. The important thing to note, though, is that the ingredients of good purchase described here were known early and never really revised. They articulate good sense and fairness in a way that is difficult to question, then as now.

There is no doubt in our minds that standards did exist, and that McLean understood and probably agreed with them. He conducted the purchase at Castlepoint very much in that way, after all. But in the Wairarapa, McLean was pressed. The objective of closer settlement in the Wairarapa was seen as essential to the further development of the Wellington province as a whole. Purchasing properly simply took too long. McLean rushed it all through, and the ink had hardly dried on the first deeds before the district was declared open.

In a nutshell then, this was not a case where the standard was unknown, or misunderstood. It was a case where the standard was simply departed from, and not for any reason that is justifiable in Treaty terms.

(4) *Were the right people in the room?*

We discussed earlier the question of the role of individual rangatira in the purchase of the Wairarapa valley. The concern is not that McLean dealt with rangatira. Māori society was hierarchical, and chiefs did speak for communities. But there is more than a suspicion that McLean dealt too much with particular chiefs – more because they were disposed to give him the answers he wanted than because they had the right to speak for those who owned the land interests in question. This was a matter not only of Hawke's Bay chiefs – or on occasion, those of the Manawatū – initiating sales in the Wairarapa. It was between different layers of rights, principal and secondary rights, senior and younger generations of leadership, and between rangatira and their hapū.

We cannot now be certain who held rights and in what degree, because there was no proper inquiry at the time and the people have been largely parted from the land since. Rigby reports that McLean believed that the Crown had fulfilled its obligations in the Wairarapa, that the 'purchases progressed most favourably' despite any 'collision between rival claimants respecting their territorial boundaries'. Māori had 'openly and frankly discussed' all aspects of the purchases after 'the nature of the obligations entered into' had been 'fully explained'.[444] McLean acknowledged that disputes had arisen, but blamed the haste with which land was on-sold for settlement (resulting in encroachments upon reserves) rather than any flaws in the original negotiations. He argued that Māori fully accepted the validity of every purchase, and that the terms were regarded as 'fair' and 'binding'.[445] Rigby points out, however, that the Government could produce no credible record of any such inquiry into the source of rights or competing claims – with the exception of Castlepoint, where there was wider consultation. 'Instead,' Rigby argues, 'Crown agents appear to have accepted whoever came forward with offers of land as the people who exercised the rights to alienate that land.'[446] Then, others were told that their only choice was to come in too.

This was clearly inadequate. The practice of dealing with some chiefs first, letting others in later, and then leaving it to them to sort out a fair division of the purchase price amongst themselves, was wrong. It was driven by a desire to find sellers (whether or not they really represented the right interests) willing to say 'yes', and then to use their consent as a lever to get others in the door. Those first and keenest to say 'yes' clearly ended up in the best position, whereas it was incumbent on the Crown to ensure that all those with legitimate interests were fairly paid and fairly treated.

It may be that McLean's approach to checking out who was entitled to speak for what land was influenced by the fact that the komiti nui had taken place. Rigby suggests this in the evidence he presented to us. He is reluctant to call the Tūranganui agreement a compact or treaty, because he considers (as we do) that the record of what took place there was insufficient to justify that conclusion. But he does consider that McLean and the Crown regarded the question of consent to settlement as having been decided at a political level:

> McLean believed that in Wairarapa Grey had put a compelling argument for wholesale purchase to Maori. Their most prominent leaders (with the exception of Ngatuere) had apparently accepted Grey's purchase proposal in an appropriately public and ceremonial manner. He probably thought that the subsequent purchase negotiations could concentrate on the finer details of boundaries, reserves and price. They need not revisit the nature of the transactions *and the bona fides of the major Maori participants*. [Emphasis added.][447]

If McLean considered that the komiti nui justified his taking procedural shortcuts, he was wrong. It was tika (proper, correct) for the Crown to call a meeting of chiefs and for their people to debate the question of their opening their lands to outsiders. Crown officials had to start somewhere if settlement was to proceed at all, and the komiti nui was an appropriate starting point. But that is what it was: a starting point. It was a general 'yes' to the idea of sale on the terms the Crown offered, but it involved no inquiry into who held rights in particular lands and particular resources, and in what proportion. In fact, none of the key information required for a valid purchase (certainty about area, boundaries, rights, shares, price) was to hand: McLean's job was to attend conscientiously to all of this detail. Signatures on deeds do not in themselves connote informed consent. The quality of the consent depends entirely on the quality of the work that underpins the deal.

Particularly problematical in this inquiry is how Crown officials accepted offers and made payments on Wairarapa lands when they and cooperative Māori were in Wellington. This practice raises serious questions about informed consent. Where were the hui, the kōrero (discussion) amongst and between right holders, the community endorsement? Perhaps these were not exactly secret deals, given that they were attended by public announcements and reported in the press, but neither were they tika in any Māori sense. Tikanga Pākehā would also find them wanting because of a general absence of fairness. This is seen especially in those situations where blocks were offered for sale to the Crown before community consent had been achieved, but the momentum of the purchase process ineluctably drew everyone in. What happened in the case of Tautāne block, where Hēnare Matua found out about the sale only afterwards, is one example, but it is not the only one. There was also the failure to include Ngātuere in the advances for Hikawera and Taratahi, the 'solution' reached at Mataōperu, the purchase of the Tūrakirae reserves, the purchase from Te Weretā of Wainuiorū at Pāhaoa, to name only the most notable.

In our view:

- Article 2 of the Treaty guarantees te tino rangatiratanga of te iwi Māori. The guarantee states that Māori could keep their land until they wished to sell. This puts on the Crown a significant onus of proof: only those sales where Māori willingly, freely, and knowingly consented were made in accordance with the Treaty. Where there is no informed consent, transactions breach the Treaty, both in its terms and its principles.
- In the 1850s, the Crown and its officers knew and understood the tenets of good purchasing. Getting agreement before purchase on area, boundaries, interest holders, shares, and price is the sensible, reasonable, and fair way of making sure that there is informed consent. The Crown did not conduct its purchasing activities in this inquiry district in accordance with these tenets. In the Wairarapa, standards were lowered to facilitate speed, so that the district could be opened for settlement. In Treaty terms, the desire

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for speed does not justify dispensing with the procedural safeguards that ensure that consent is informed.

- A district-wide purchase was assumed by the Crown from the first, with Māori to be confined to occupation reserves. It is nowhere apparent that Māori agreed to this approach. Even if at the komiti nui they agreed in principle to large-scale Crown purchase, that agreement was conditional upon the details of each transaction being separately ascertained and agreed, and on the Crown delivering on its many promises of other benefits. Neither of these conditions was fulfilled.
- In the period after the first deed signings, the Crown did not conduct a proper investigation of rights before embarking upon purchase. There were no hui on the land in question where interest holders could openly debate who owned what and in what proportion. There was therefore no informed consent, and later payments and adjustments of boundaries did not remove the prejudice that flowed from this want of good process.
- We are particularly critical of the Crown's practice of making initial payments to favoured rangatira away from the eyes of other leaders and resident hapū. Especially egregious is that these payments were effectively deducted from the tribal patrimony. We see this as a deliberate strategy on the part of the Crown, and a serious breach of the principle of active protection. Nor did later settlements negotiated with those who were at first ignored mitigate the prejudice. This did not constitute free, willing, and informed consent.
- We are also critical of the way the koha fund was manipulated to pressure Māori into accepting the Crown's offer to finally settle purchases that they were disputing. Again, this breaches the principle of active protection and is, in our view, a cynical departure from the message conveyed to Māori at Tūranganui. We also think that Māori were entitled to an endowment of 5 percent of the on-sale price on all the lands that they sold. Crown officers should not have withheld entitlement to be benefited in this way as a means of keeping the costs of more expensive purchases – notably the homestead blocks – as low as possible.
- Because many of the purchases were so ill-defined, Māori could not really negotiate a deal to which they could meaningfully consent. For instance, how could there be a real negotiation on price when significant terms of the contract (such as exactly where the boundaries were, and the location and size of reserves) were at large? Perhaps at the time Māori did not feel disempowered by this, because they trusted that the Crown would deliver the wider benefits that were promised. But it did not. This makes the imposition on Māori of such an unfair bargaining situation, in which the usual advantages of a vendor with a willing buyer were effectively removed, even more serious. This was a conspicuous failure actively to protect Māori.
- The Crown's abandonment of good purchasing practice in the Wairarapa purchases we have described undermined the capacity of Māori to make informed community decisions. This was a diminution of te tino rangatiratanga, and breached the Treaty.

Therefore, we find that the purchasing practices adopted by McLean and continued by his successors breached article 2 of the Treaty, its duty to act in good faith, and the principle of active protection.

3A.4.4 Did the Crown ensure that land block boundaries were adequately defined?

In the period of Crown purchase from 1853–1864, surveys of the land the Crown wanted to buy were not available prior to purchase, nor promptly afterwards. These long delays greatly impeded the possibility of informed choice for Māori, and also left very vulnerable the lands that were to be reserved for future Māori use and prosperity.

Survey of the lands the Crown purchased in 1853–54, and also of those areas supposed to be retained by Wairarapa Māori, was always going to be fraught. No reliable maps on which to base surveys existed in 1853, nor for many years

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to come. Skilled surveyors were in short supply, costs were high, and invariably, the survey requirements for settlement (and settlers) took priority. The assumption was that there would be further purchases of adjacent lands still in native title, and of reserves as well, which would make earlier surveys redundant.[448] Needing to realise the profits of on-sale, the Government threw open the district to settlers before the sale and reserve boundaries were properly established.[449] As a result, the state of the Wairarapa Māori land surveys remained essentially prefatory for many years. The ability for vendors to get the reserves they wanted, and were promised, was jeopardised. In some cases, this resulted simply in delay, but sometimes opportunities were lost altogether.

(1) *Haste*

In addition to the usual settlers' clamour for more land to be opened, there was added pressure on the Government in the case of Wairarapa. The Wellington provincial government was in financial crisis, to the extent that even though McLean diverted £3000 from the Hawke's Bay into the Wairarapa purchase programme, the Governor still had to make a personal loan of £2000 to shore up the gaps.[450] In September 1853, after the Tūranganui meeting, Grey took immediate steps to open Wairarapa to settlers. He instructed Bell and Featherston 'that as soon as practicable the boundaries of the Blocks acquired shall be laid down [surveyed] – and the land . . . thrown open to purchasers'.[451]

Rigby relates how the financial pressures, which led to deeds being hastily drawn up and signed without proper plans, resulted in a severe lack of documentation. The Crown may have sold land in Wairarapa before it had completed the purchases that had been initiated by the Governor at the komiti nui, and while McLean was requesting survey assistance.[452] Rigby emphasises the importance of this point:

> it is necessary to reiterate the speed of the process. After having spent years preparing the Castlepoint purchase, the Crown descended upon the valley like a whirlwind in late 1853. Grey's impending departure at the conclusion of his first term as Governor helps explain the undue haste.[453]

McLean knew that boundaries had to be clearly marked before purchases could be considered complete. Rigby notes that 'All along McLean reiterated his desire to get everything properly surveyed.' He quotes McLean's urgent plea to Grey of 14 September 1853:

> I am anxiously waiting for instructions as to whether Captain [Mein] Smith can be employed to assist in the surveys; it is most essential that they should be carried on with the least possible delay. Mr Fitzgerald has instructions to commence with the reserves in the lower part of the valley at once. Capt Smith could go on at the top and Mr Pelichet . . . might go on with the Surveys on the coast line. unless these surveys are done shortly disputes might arise, which could not be easily adjusted until my return here in May next [1854].[454]

But furthering the Crown's purchase programme took priority over properly completing purchases already made. Within a few weeks, McLean sent Mein Smith to survey the Ruamāhanga-Mangatainoka watershed rather than the first four purchases (and their reserves) made after the Tūranganui hui.[455]

(2) *Consequences of purchases and reserves remaining unsurveyed*

The proper definition of boundaries was acknowledged as necessary even if only to prevent future problems arising with Māori about what lands they retained. But the external boundaries of many blocks were not established prior to on-selling, and therefore native reserves could not be fixed. This was to greatly hamper Māori in their ability to deal with the Crown, the land market, and the new economy in the future because precisely what had happened by way of purchasing and reserving lands could not be easily ascertained. Visual representation was required to give certainty. Moreover, without accurate acreages,

they could not know the unit price of each purchase, and in some instances, the Crown explicitly retained the right to set the price after survey. The lack of survey was therefore another disadvantage to Māori in the bargaining process. They could neither really ascertain the fundamental terms of the deal, nor as Rigby notes, grasp 'the cumulative effect of the forty odd first wave purchases'.[456]

After two years, Mein Smith had completed plans for only 51,700 acres. It was not until Wellington's chief surveyor Henry Jackson compiled all available information in map form in 1871 that the Crown was able to reveal the pattern of the first wave of purchases, or for Māori to have any idea of the extent of the alienations.[457] Even so, there can be 'no certainty that the boundaries suggested on the 1871 plan are in strict conformity with the boundaries agreed in purchase negotiations'. According to Patterson's assessment of the Crown's survey of its purchases, the map could be 'little more than a finding aid'.[458] Rigby comments that only about half the 1853–54 deeds can be located on the map, and concludes:

> Although the 1871 map creates an impression of a succession of logical, well-defined transactions, the available historical evidence paints a picture that was far from logical or well defined. The haste and carelessness with which the Crown undertook its first wave of Wairarapa purchases was bound to cause subsequent difficulties. The Crown's failure to survey purchase boundaries at the time of the original transactions could only impair its ability to carry out the terms and conditions of those agreements.[459]

Neither Wairarapa ki Tāmaki-nui-ā-Rua Māori nor the Crown could have been sure of what was being transacted given the inordinate haste with which these deeds were made. For the Crown, though, that was not the primary concern. Patterson told us that:

> McLean had resolved at the outset that his best chances of beating resistance lay in bargaining for a multiplicity of blocks, rather than attempting to purchase the districts as a whole or in one or two large tracts. The tactic may have been strategically sound, but it overlooked that a vast amount of block surveying would be required.[460]

The claimants also submitted that there was:

> a conscious decision on the part of McLean and the other officials involved to push through as many transactions in the shortest possible period, so as to take advantage of the goodwill generated by Grey at Turanganui.[461]

(3) *Survey problems exacerbated by Māori demands*

The Crown submitted in closing that its purchasing programme in the Wairarapa responded to Māori demands that this or that piece of land should be purchased, and that this complicated the survey requirements.

As far as it goes, this is correct. However, if the implication is that it was Māori aspirations for the Crown to purchase their land that led to the Crown's very extensive purchasing programme, we do not agree. The Crown intended wide-scale purchase from the very first. Nor does the fact that a purchase was initiated by Māori absolve the Crown of any of its responsibilities as Treaty partner. The requirement to ensure that all interest holders gave their informed consent was as important in a purchase initiated by Māori as in one initiated by the Crown. Indeed, the Crown should arguably have been more vigilant in these cases, lest the proponents of the sale had another agenda, and might not deal fairly with other interest holders. The Crown's duty of active protection also required it to ensure that Māori really understood how much of their land they were selling, that they sold only what was theirs to sell, and that they did not sell too much – especially as the Crown was not providing maps and plans that would have enabled Māori to better monitor the situation themselves.

Admittedly, it would have been difficult for the Crown to exercise this protective function, because the survey work was for so long left undone. Patterson describes the

sketch plans and surveys that did exist as 'particularly ill fitting pieces in a massive cadastral jigsaw puzzle. In theory, all of the puzzle pieces were planned to ultimately fit together . . . [but] at the end of the first purchase phase some pieces were still missing' and there was not even a measured baseboard on which to place them.[462]

(4) *The surveyors*

Few surveyors were involved in the process, and they were not privy to all the negotiations. Mein Smith was present at a number of the sales negotiated from September to December 1853, and was therefore familiar with their boundary descriptions.[463] But for purchases that took place earlier, he depended on information from others. Before the year was out, 'he was lamenting the vagueness of the boundary descriptions in the deeds', and was frustrated that many of the boundary markers, such as trees and water courses, were transient. The uncertainties hugely increased once McLean left the district, and could no longer provide clarification. McLean promised to supply all relevant details, but did not. Mein Smith requested that someone who understood Māori be sent to 'clear away such difficulties as may arise from the unsettled state of the land sales', and continued to complain about how Māori disagreed over what had been sold, or denied sales altogether. At the same time, the Wellington Survey Office was demanding that he survey lands for resale and settlement. Little wonder, then, that block and reserve surveys proceeded 'fitfully'.[464]

Mein Smith achieved little before his departure in early 1857. He appears to have made only impressionistic sketches. Even if Māori saw them (this is unclear), they would have been of little assistance.

Searancke's appointment as a land purchase commissioner only compounded the problem. This man laboured under many difficulties, most not of his own making. But as far as surveys go, he deserves to be criticised for adopting the practice of giving out only rough sketches, because he considered more sophisticated surveys to be endless trouble and work. Unsurprising, then, that in the deeds he negotiated the boundary descriptions were as vague as McLean's. He perpetuated other poor practices too. He set aside reserves without accurately recording their size or location, and declared purchases concluded before full surveys had been made. 'Not infrequently, promised reserve lands were unwittingly sold by the provincial authorities, they not appearing on any record map.'[465] Examples later identified by official inquiry included Rerewhakaiti (also known as Rerewhakaaitū), Tuhitarata and Waitutu.[466]

(5) *Survey problems ongoing*

From 1860, more staff were directed to rectify the survey problem, but Māori and surveyors had very different ideas about what had been sold, so the backlog and deficiencies accumulated. Even the trigonometrical survey undertaken in 1866 did not immediately solve the difficulties, and many re-surveys of the earlier reserves were required.[467] The situation was not helped by rapid changes in staff, and then the introduction of the Native Land Court. Patterson says that all of this was 'simply adding faults to faults'.[468]

Apparently, the problem continues to this day. Patterson notes that distortions have been carried into modern cadastral maps.[469] As a result, Patterson says, 'Block boundaries which are generally accepted today may be a far cry from those in the minds of mid nineteenth century purchasers and/or sellers.'[470]

We agree with the claimants that much of what was wrong with the survey – most especially the long delay in having their reserves defined – was attributable to the desire of McLean to push ahead. His first concern was to get Māori to sign deeds for as much of the good grazing land, in particular, as it was possible for him to acquire, and then the priority was to get settlers onto their freehold properties. Those priorities outweighed everything, including the lack of staffing resources. We are not persuaded by the Crown's contention that deeds were not necessarily deficient if signed before survey, and if price was not informed by knowledge of the acres involved. Certainly, that was not the accepted view of the time. Nor do we see any reason to doubt that contemporary confusion about

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the definitions of the land sold was genuine and reflected the Crown's practice of dealing with individual rangatira – rangatira who may not even have been the principal right holders in the lands concerned – plus its failure to properly define matters of boundary, reservation, and price.

In our view:

- The Crown's failure to survey land before the sale was finalised, or indeed within a short period thereafter, compounded the breaches already identified. Deeds signed without survey, and where the price was arrived at without information about the number of acres involved, were deficient purchases.
- The Crown knew that purchases conducted in this way were deficient. Crown officials regularly acknowledged that survey was a priority, and necessary to make sure that reserves were protected and owners received their Crown titles. But nevertheless purchasing continued without survey information. This conduct breached the Crown's obligation to act towards its Treaty partner in good faith.
- Only at Castlepoint were boundaries at all defined before the purchase was undertaken. Subsequent deeds routinely purported to transfer land ownership even though the boundaries of the land to be transferred were undefined and uncertain. Purchases arranged like this lacked informed consent, because the vendors did not know – and could not know – what they were agreeing to. This is a clear breach of article 2.
- The lack of surveys meant that there was no overall picture of what was happening for the different hapū until it was too late. By the time realisation dawned and a reaction started in the early 1860s, well over 1,500,000 acres had been sold to the Crown. The absence of maps and plans deprived Māori of the ability to monitor what was happening across the district, and protect themselves from selling too much land. Likewise, Crown officials, lacking survey information, could not act to protect Māori from excessive land sales even if they had been so minded. This breached the Crown's duty of active protection.

3A.4.5 Did the Crown pay a fair price?

(1) *The parties' position on price*

The claimants acknowledge their allegation that purchase prices in this inquiry district were too low is complicated by the Crown's failures to undertake proper survey and to document what occurred. These factors make it impossible to say what the price per acre really was in most cases. In general, claimants argue that the land fund – which depended on the Crown paying Māori low prices – was not justified. Māori were entitled to fair value for their lands.

Crown counsel contended that the question of price could not be separated from wider policy considerations: paying low prices was seen at the time as essential to the progress of the colony, in which Māori themselves would ultimately share. Nor, in the view of counsel, did the Crown pay prices that were particularly low when compared to the generality of prices paid for Māori land in this period. Crown counsel asserted in closing submissions that the final amount paid came close to the price initially demanded by southern Wairarapa chiefs in the New Zealand Company's purchase negotiations. At that time, this price was considered excessive.

(2) *The Crown's obligations with respect to price*

First, we accept that if the Crown was to take an active role in promoting orderly settlement, it had to purchase some land for resale at a profit. However, this leaves unanswered some crucial questions. How much land? How much profit? The Crown's determination to pay as little as possible paid no heed to what Māori would need in terms of capital to develop the lands that they retained. This was a serious oversight in policy and practice.

The Crown shut off leasing to private individuals, and with it the opportunity for Māori to earn an income. Although private leasing did continue, as time went on,

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Crown officials became increasingly willing and able to suppress it. This was demonstrated by McLean's representations to the Executive Council in 1852, and its response – namely, agreement that direct leasing must be discouraged at all costs. This context meant that Māori in Wairarapa ki Tāmaki-nui-ā-Rua could only enter the economy by selling their land, and in these years, they could sell only to the Crown. Also, they had to rely on the goodwill and integrity of Crown land purchase officers to look after their interests – especially once the Protectorate Department, which formerly oversaw negotiations, was abolished.

We think that there was an important relationship between the Crown's monopoly of purchase, and its obligation to deal fairly with Māori. Claimants cited these words of the Ngāi Tahu Tribunal:

> With the tribe unable to find alternative buyers, the Crown was under a strong obligation to deal with the utmost good faith in such matters as the quantity of land purchased and the price paid.

That Tribunal also said that Māori willingness to sell land should not have been 'allowed to compromise their future as a tribe'; this was implicit in Treaty protections and the guarantee of rangatiratanga.[471] We agree.

(3) *Uncertainty about prices paid*

We cannot now say how much was paid per acre throughout the district, due to a combination of factors – the overlapping purchases, survey deficiencies, and the ambiguous distinction between deeds and receipts that arose from the Crown's practice of retaining portions of the total price to give disputing parties a chance of joining in later with those selling.

Neither Crown purchase officers nor Māori knew the real price at the time either. Estimates of acreages were often wildly inaccurate, and the effective price kept changing to accommodate those whose interests had been sold without their permission.

Although there is uncertainty about price, this would not in itself deter us from making findings on this question. Indeed, not to do so for that reason would be wrong, as it would allow the Crown to derive a benefit from its sloppy purchase procedures – which are what made reliable price data unavailable then as now.

The Crown thought at the time that it was acquiring desirable land for a good price. Certainly McLean was of this opinion. He informed Grey in the first month after the Tūranganui meeting that it was 'a great thing' to have an estimated 560,000 acres of the first four purchases 'thrown open' to settlers at a cost to the Crown of 'something less than 3d an acre'.[472] Two days earlier, McLean wrote in a similar vein to Domett, 'I cannot help thinking that this land has been secured at a wonderfully cheap rate'.[473] He continued to Grey: 'the great thing is to acquire the whole of this valley . . . [because] if it is not done now it may hereafter be a question of years'.[474] Then the price would assuredly be higher: Crown officers often advocated purchasing early before Māori became fully aware of what their lands were worth, and before nearby settlement raised the price.

There is no indication that Crown officers were at all concerned to offset the Crown's monopoly position by ensuring that Māori were paid fair value. Rather, the evidence suggests that they were paying as little as they could, except in particular situations where politics called for a more liberal attitude. For example, the £1000 given for 18,000 acres at Ōwhanga (Mānihera's reserve) was thought remarkable at the time, but was clearly politically motivated. It was also offset in part by the 'gift' at Mōroa.

Rigby draws attention to the fact that there was no discernible pattern in the prices McLean paid for the land he purchased in the 1853–1854 period. Prices differed considerably even in consecutive purchases. This randomness meant that 'there could be no proper price per acre calculation'.[475] The rule of thumb was that the smaller the piece of land, the higher the estimated price per acre. The value of land purchased as homestead blocks – so called because lessees had built houses there – was considered to have been enhanced by having been built upon.

Moreover, the former tenancy meant that Māori were clearly forgoing rental by selling. In these situations, the Crown paid much more. However, although the prices were high relative to other prices paid, they still afforded the Crown a healthy profit. McLean noted in the case of Kaiwaka (Smith's Homestead), for example, that Smith said he would immediately pay 10 shillings per acre for his 800 acres, which the Crown purchased for £100 (at 3 shillings per acre). The Government made a clear £300 on that transaction alone.[476] Even so, Crown officers thought it fair that because Māori received a higher price per acre for homestead blocks, the 5 percents should not apply to that land.

Another dubious practice when it came to price was to confirm the purchase, but to leave open what would be paid until some future date. In the case of the 250,000-acre Part Pāhaua (Pāhaoa) and Wilson's Run deed, the price was left unfinalised and essentially at the Crown's discretion. Seven hundred pounds was paid when the deed was signed, but it provided for the balance to be decided after survey and determination of boundaries and reserves.[477] What kind of land sale leaves so much at large? Not one where vendor and purchaser have equal bargaining power, is the obvious answer.

(4) *Purchase price only part of the promised benefit*

Our final answer on adequacy of price depends on our assessment of the total bargain. That involves inquiring into whether the benefits promised to Māori at the komiti nui and in purchase negotiations did in fact materialise, and sufficiently supplemented a cash price that the Crown admitted at the time was not great. Our determination of ultimate benefit, then, needs to take into account more than money alone. Arguably more critical is whether promised reserves were soon confirmed, and assistance provided to Māori so they could engage with settlement through guidance in investment, security of Crown grant, infrastructure, and schooling and health services equal to that available to Europeans. Our analysis of these elements comes later. For the moment, we conclude only that the money paid for the land was not, on its own, adequate recompense for the totality of what Māori gave up.

3A.5 Did the Crown Deal Appropriately with Reserves?

Because of its importance to our overall assessment of the Crown's performance as Treaty partner in this inquiry district, we provide a fuller treatment of reserves in chapter 3B. But since we also want to provide a complete response to the questions surrounding the main early Crown purchase issues in one place, we prefigure our view on the Crown's duty to protect reserves here:

- The Crown favoured settler interest over that of Māori in its reserve policy, and this breached the Crown's duty under the Treaty principles of equal treatment and active protection.
- The Crown's practice in reserving land from purchases was to confirm Māori in the possession of pā, kāinga, and cultivations. Other favoured sites were set aside only reluctantly. Too little land was reserved.
- Most damningly, the Crown began almost immediately to make purchases within the reserves that had been set aside, and that practice continued into the Native Land Court period. We do not accept the Crown's argument that whether this breached the Treaty depends on the original purpose of the reserve, especially in the absence of specific examples of where it considers the purchase was justified.
- The Crown treated many reserves as the personal property of rangatira, and therefore theirs to dispose of at will. This was a failure to exercise active protection.
- The poor provision of reserves, and the failure to survey before or near purchase, are strongly related. The Crown's fault is made worse by its failure to act on its knowledge that surveying Māori reserves ought to be a priority; instead, it gave precedence to surveying for settlers. Provision of reserves was certainly

compromised as a result. Reserves such as Waitutu, Takapūai (both out of Castlepoint) and Kākati (out of Kaiwhata) were 'lost' as the years passed, and others ended up being the subject of dispute with settlers, who acquired lands in good faith and then found their ownership challenged.

- To its credit, the Government sometimes resolved such problems in Māori favour. For example, at Āwhea, land was purchased back by the Government so that it could fulfil its promise to set aside a reserve there.[478]
- Māori complaints about lost and ungranted reserves were often not resolved, or not resolved quickly. Their complaints were poorly received, and Māori sometimes had to accept lesser sites so that settlers would not be inconvenienced and their title would be secured. Many issues were not addressed until after the passage of the Native Land Acts, or even later. Problems with reserves were in fact still being addressed in the 1880s.

3A.5.1 Specific issues

(1) *Mataōperu (Barton's Run)*

We described earlier in 'The First Wave' (and in the leasehold chapter) how McLean tried to ameliorate the situation created by the earlier demand that Te Weretā should cede land at Mataōperu in punishment for his muru involving Barton. The purported fix-up involved inquiries by the Colonial Secretary and McLean, adjustment of rents owed, and the drawing up of another purchase deed that incorporated the ceded lands. The Crown paid more for the Mataōperu land than for adjacent areas, and promised reserves.

(a) *Who were the winners?* Looking at the Barton's Run situation in the broad, who were the winners?

The Crown was certainly a winner, even taking into account that it paid more for the overlapping lands than for other land of the same character. Wrapping it all up into a new deed glossed over the wrongs that Forsaith set in train, and avoided the loss of face that the Crown and its representatives would have suffered if Forsaith's decisions, and the legal measures that implemented them, had been undone, as they should have been. Meanwhile, the Crown used the land that had been transacted as a result of the Barton's Run incident as a springboard to buy more land, and on-sell it at a profit. A month prior to the Mataōperu deed, McLean reported that Barton was prepared to purchase his leasehold land for £1000. Given what the Crown paid Māori, this meant a significant profit. After selling to Barton, the Government still had a 'clear estate of about Thirty thousand acres', which would yield an additional £60 per annum in fees for de-pasturing licenses.[479]

Were the claimants winners too? Cross-examined on this point, Stirling suggested that the arrangements that McLean stitched together were perhaps the best compromise available for Māori, since the Crown was unwilling to see the land revert to them. Our assessment is that even if the Mataōperu deed enshrines the best compromise available at the time, it was not good enough. Effectively, Māori were in a take-it-or-leave-it situation, and that does not conform with the Crown's responsibilities under article 2 to ensure informed consent to alienation of Māori land. Not only did they have to give up the land in the cession, they were persuaded to give up other areas as well.

So was there full consent to the Mataōperu purchase? We do not think so. It bore none of the hallmarks of a purchase that was tika. That Te Weretā and others were paid in 1853 for interests that were taken from them in 1845 did not make them willing sellers. They might have been brought to the point – and we think they probably were – where they accepted that the deal McLean was offering was the best they were ever going to get. But it was not what they wanted, nor what they would have chosen had the initiative ever been theirs. We are not aware of any process undertaken to identify the correct customary owners, or to define the boundaries, before embarking upon the purchase.

(b) *Belated recognition does not remove prejudice:* The Te Tau Ihu Tribunal was clear on the point that belated recognition of the rights of owners who were at first excluded might mitigate, but does not remove, the Crown's breach of the Treaty in not doing the purchase properly in the first place. The practice undermined Māori rangatiratanga, and especially their capacity to retain land and sell only in measured ways after a customary process of debate.[480]

We endorse this approach. In Te Tau Ihu, lands sold under duress were promptly granted to New Zealand Company settlers. Right holders who were not involved in the sale had no choice but to 'sell' under later deeds. In the Mataōperu situation, when McLean came along, the land ceded had not yet been on-sold to Barton or other settlers. It was open to the Crown to overturn the 1845 deed and allow the land to revert to Māori, as Kemp had suggested. But instead, the Crown publicly supported the tenure of Barton, while privately expressing grave doubts and acknowledging that Māori had a just grievance. It insisted on an outcome that meant that it kept the land concerned, avoided admitting fault and losing face, left Te Weretā still ostensibly in the wrong for what happened in 1845, and earned a respectable profit.

The Crown's conduct here breached article 2 and the principle of active protection.

(2) *The Tautāne block*

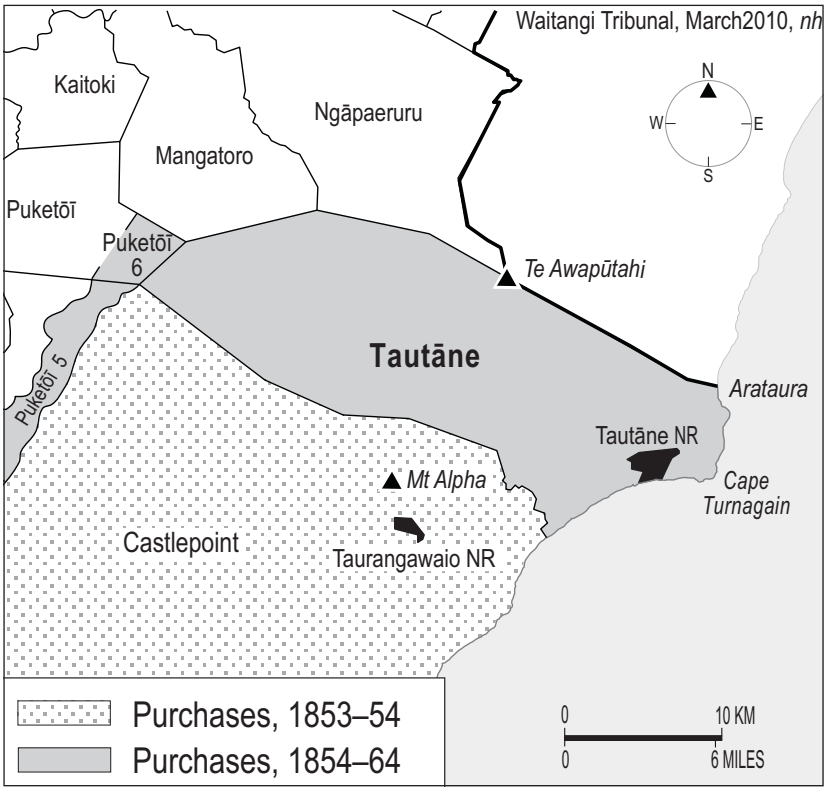
While we consider Tautāne to be part of a bigger picture, we heard particular legal submissions concerning the block.[481]

(a) *The parties' positions:* Counsel for the claimants in Wai 171 (Hēnare Matua Kani and all the descendants of Hēnare Matua) argued that the negotiations to purchase the Tautāne block were secret or clandestine dealings that breached both the Treaty and the Crown's own purchase standards. He criticised the Crown's failure to ensure Māori consent to the sale. No meeting was held to debate the question. The Crown wanted to deal only with those in favour, whereas it should have acknowledged that there was opposition, and, if necessary, postponed the purchase until opponents could be persuaded.[482] In purchasing Tautāne, the Crown dealt with rangatira from outside the district who were in favour, and it did not deal with important local chiefs – especially Hēnare Matua – who were not.

Counsel for Ngā Hapū Karanga and for Rangitāne o Tāmaki-nui-ā-Rua also addressed this issue. They contended that the Crown had 'already developed a considerable body of experience in how land sales should be conducted . . . it is beyond dispute that he [McLean] understood the components of a successful transaction' and demonstrated that knowledge in how he had conducted his own earlier transactions in the Hawke's Bay and at Castlepoint.[483] We were referred to both Tautāne and Castlepoint as examples where Hawke's Bay chiefs – especially Te Hāpuku – wielded influence.[484] Counsel cited Ballara and Scott's condemnation of the purchase of the 5 percents, and stated that while Rangitāne did not characterise this as fraud, it did breach the Treaty.[485]

Crown counsel acknowledged that a number of the right holders occupying the block did not consent to the first deed of sale, but rejected the description of the Wellington signing as secret and denied that signatures were falsely appended.[486] Instead they argue that 'the signing of a later Tautane deed by 90 people . . . indicates ultimately a robust level of acceptance for the purchase'. Crown counsel cited Tipene Matua's statement before the Native Land Court in 1898 that the second Tautāne deed was 'a hoko tika' (a good purchase). They characterise the price paid for the land to its Māori owners as 'light' but not so light 'as to enable the Tribunal to conclude that the consideration was insufficient'. As for the second deed extinguishing koha for the Tautāne lands in return for an additional payment, Counsel say that this was justified by the fact that the Tautāne land was deemed un for settlement. The Crown suggests that the Tautāne block would not have received sufficient resale profits for a koha fund to work.[487]

(b) *The first deed defective:* The Crown and claimants both characterised the original deed as defective, even though the Crown denies anything underhand about signing with



Close up of the area in the Tautāne purchase

Niania, Te Hāpuku, and assorted Wairarapa rangatira in Wellington. The issue is therefore whether the Crown's actions to fix the defects were sufficient to redress the breach.

To begin with, we look at the flaws in the first purchase, because it is necessary to fully appreciate what happened in order to be able to assess whether they could be rectified. The Crown dealt first with preferred rangatira whose interests were, at best, of a secondary nature. Thus, say Ballara and Scott, the resident right holders were under 'extraordinary pressure . . . to sell the block whether or not they were willing to do so, as the only way to salvage something from the situation.'[488] We agree.

What the Crown did to secure the first deed was a very long way from what was tika. Questions concerning the land should have been debated in open hui on the whenua. This was what Māori meant when they referred to transactions conducted in the light of day. McLean and his officers knew this, and by the 1850s, certainly knew what was required for informed consent. 'Secret' meant 'hidden from tribal view'. It was in Wellington that the pro-sale chiefs were feted, given presents and cash, promised special grants of land, and held up as an example of what it meant to be a friend of the Government. McLean thought their influence was vital, and, in their own opinion, it was their work that brought about the opening of the northern Wairarapa. If McLean believed that rangatira such as Te Hāpuku had interests throughout the region, he must

also have known that they were not the only, or even the primary, right holders in the lands in question. McLean knew that other rangatira had claims that would have to be satisfied before any purchase could be finalised. He made no public inquiry into who those people were, whether they consented to sale, in what proportion rights were held, or what they expected to receive in return for their agreement. He anticipated all of this by simply paying out those who supported the sale. This made purchase a *fait accompli*.

It would not have been hard to find out who claimed rights in the area. Crown purchase agent Cooper's inquiries on the ground quickly revealed that neither Te Hāpuku nor Niania were considered to be principal right holders at Tautāne. Much could also have been done to settle questions about the proportions in which rights were held, and therefore how payments needed to be apportioned, by the simple expedient of paying moneys on the land itself rather than in town.

We think the claimants are right that McLean's concern was to drive through a purchase whatever the opposition. In purchasing from Te Hāpuku's party and a scattering of Wairarapa-based chiefs, McLean knowingly ignored the rights of resident hapū. There was no opportunity for all legitimate right holders to exercise a genuine and informed choice about the land before any moneys were paid, or promises made. This was a clear breach of the Treaty and the principles of partnership, active protection, and equal treatment.

(c) *Were the defects of the first purchase rectified by what came after?* This was not a case where the Crown did the best it could to identify the right holders at the time of purchase, and then was later surprised when others came along to have their rights recognised. McLean deliberately ignored those who were not pursuing a sale. He adopted a process crafted to deny those who did not support selling the opportunity to present their opposition. When the situation imploded, as inevitably it would, Cooper told Māori they had no choice; moneys had been spent and their best course was to accept payment for a wider extinguishment of their rights in the district. This was what the Crown intended all along: the deed with the willing sellers (whether they owned the necessary rights or not) would propel opponents into the sale. The agreement subsequently negotiated with those initially left out does not

Letter from T E Pōtangaroa (and T E Otene Kuku) to McLean (and Governor Grey), 9 August 1852

No Mataikona, no te 9 o nga ra o Akuhata ki Poneke kia te Makarini, kia Kawana Kerei, e hoa ma tena korua. Na e ta tena taku Reta kia korua ko tona tikanga he ui kia korua ko to taua hoa ko Kawana Kerei tenei kua rongo ahau ki to tikanga ka huia tahitia ko te karangatanga ki te whakatakoto i nga utu na te Tamaiti a te Koari i korero mai ki a matou, e hoa, tenei taku kia kite mai korua, ko te tuhituhitanga ki mua o a taua tamariki o taku tamahine ki tau tamaiti tane muri iho ko te wa-ae tanga na tika te wakaeatanga katahi ano ka tukua kia karangatia ka oti te karanga katahi ano ka marenatia a taua tamariki waihoki ra ko to taua wenua ko ta matou wakaaetanga te tuatahi 1, muri iho ko te tukunga ki a koe 2, muri iho ko te ruritanga, 3 ka oti te ruri, na, marama katoa enei wahi, e toru o to taua wenua te tukunga ki a koe katahi te ruritanga ka rua me ona rohenga ka toru, ko tau hoki ki a penei te marama me te maramatanga o te ra e tiaho ana ki te ao katoa E ta e te makarini, kia rongo mai koe ki ta matau wakaaro ko te karangatanga ki mua mo nga utu o ta taua wenua ka marama te karangatanga ka pai hoki muri iho ko te wakatakototanga i nga utu e ta mau hoki e tuhi mai tetahi reta hei wakamarama mai ki a au mo te haere mai ki te karanga i nga utu o te wenua, E hoa ka hoki mai koe i Taranaki ka haere mai ki te karanga i nga utu o taku wenua I te timatanga o nga ra o Hepetema.

E hoa kia hohoro mai i te marama o Hepetema naku na to hoa aroha

Na te Wiremu te Potangaroa
Na te Otene Kuku

Letter from T E Pōtangaroa to McLean, 29 April 1852

Kia te Makarini, E hoa tena ra ko koe, ka nui toku aroha atu ki a koe, he kupu taku kia rongo mai koe, he kupu taku kia rongo mai koe, tenei ano au kei runga i nga rohe o to taua kainga e tirotiro ana, ko te wenua iho atu ki a koe, kua rite, kua pai taku titiro ki runga ki ona rohe, ko te wenua i tukua houtia mai, kaore ano i ahua pai ki taku titiro. Ko te wenua o te Retimana. Heoi ko tetahi o taua wenua kaore ano i timata, inaianei pea i muri i tena tukunga karere atu i timata ai, Engari pea ko koe me haere mai, tae rawa mai hoki koe kua oti katoa tenei matou ko Te Hapuku, ko Te Kuini, ko Hori, ko Puhara, ko Rapana, e hurihuri ana mo te wenua mo nga rohe heoi kua rite, katoa, heoi ko koe kia horo mai

Heoi ano

Naku na te Wiremu Potangaroa

cure the essential wrong of contriving this outcome. We have no reason to believe that the original nay-sayers ever gave their consent willingly and freely.

We agree with the Crown that the number of signatures attached to the second deed some four years later indicates that it achieved wider community acceptance. However, this was secured in a context of heightened intra-tribal tensions. We know, for instance, that Hēnare Matua participated in the second signing, for the Crown produced as evidence a deed with his signature, and we see no reason to doubt its authenticity. However, we do not know what proportion of the payment he received, nor whether the deed was considered tika or valid. It was at least Crown recognition of their rights in the block, and established who owned the reserves.

However, we do not consider that the Crown's later actions removed the breach. The flaws of the original purchase would have had a pernicious effect on tribal relations. The resentment of Matua and his party must have gone on for years, not just towards the Crown but also towards their whanaunga who knowingly acted to deprive them of their rights. The Crown created that situation. Talk in official reports and correspondence about further payments and disputed boundaries simply obscured the dissatisfaction that remained amongst Rangitāne and Ngāti Kahungunu (and especially in the communities based at Pōrangahau and Tautāne). Some had missed out on their fair share of the payments, and resented the moneys that had gone to those who had sold the land from under them. The records are too poor for us to assess now how many were affected by this.

Of course, the most important right taken from Hēnare Matua and the other resident right holders who were omitted from the original deed was the right to say no. Once the proponents of sale – Te Niania, Te Hāpuku – accepted in Wellington the proffered payment and reserves, Matua and the others were also committed to a purchase. This is the outcome the Crown wanted, so there was no going back. This is the fundamental Treaty breach of the Tautāne purchase. Crown failure to ensure informed and willing consent is a common failing, but here it is more profound. The Crown arranged this purchase very deliberately to ensure that only those willing to consent were initially involved, and withheld from known nay-sayers the opportunity to intervene. It is not going too far to say that the Crown trapped them into the sale. This, we think, was a case of the Crown acting in bad faith.

(d) *Buying the entitlement to koha/5 percents:* McLean and Cooper substituted a one-off sum of £500 for the koha/5 percents to which the former owners of Tautāne would otherwise have been entitled. We do not accept the Crown's argument that £500 cash was a fair exchange for 5 percent of the on-sale value of a 70,000 acre block, even taking into account deductions like 10 percent for roads.[489]

This was an abandonment of one of the cornerstone principles underlying the Crown's system of purchase, which Grey had used to win the cooperation of the Hawke's Bay and Wairarapa people in the first place. The koha/5 percents had been promoted as a means for the

Crown to ensure their long-term benefit. The mutation of these potentially long-term benefits into a single, modest payment – especially when the payment was used to compensate legitimate owners who had wrongly been omitted – was all wrong. It breached the Crown's Treaty duty to exercise utmost good faith in its dealings with Maori, and also the duty actively to protect their interests.

Notes

1. In their examination of acreage data on the Wai 863 record of inquiry in September 2003, Ellis and Small estimated that Crown purchases by 1865 amounted to circa 1,526,445 or 59 per cent of the inquiry district; see doc A70 (Ellis and Small), p 20. Paul Goldsmith estimated that the Crown purchased 1.5 million acres in the Wairarapa ki Tararua district between 22 June 1853 and 18 January 1854, and another 220,000 acres between 1855 and 1865: Paul Goldsmith, *Wairarapa*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), pp 45, 82.

2. Document I1(a) (Ngā Hapū Karanga closing submissions), p 40; doc I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 44

3. Document I1(a), (Ngā Hapū Karanga closing submissions), pp 34, 38; also see doc I1 (Ngā Hapū Karanga closing submissions), p 29; doc I8 (Rangitāne closing submissions), p 43; doc I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 43

4. Document I1(a) (Ngā Hapū Karanga closing submissions), p 21

5. Ibid, p 27

6. Document I1 (Ngā Hapū Karanga closing submissions), pp 23–28

7. Document I17 (Crown closing submissions), pp 38–39, 47

8. Document I17(i) (Crown closing submissions), p 4

9. Document I17(d) (Crown closing submissions), p 3

10. Document I17 (Crown closing submissions), pp 24–39

11. Document I17(e) (Crown closing submissions), pp 6–8; also see doc SOR 1A (Crown final statement of response – Ngā Hapū Karanga), pp 33–36

12. Document I17 (Crown closing submissions), p 39

13. Ibid

14. Kemp to Colonial Secretary, 4 December 1848, BPP, vol 6, cmd 1120, p 70 (doc A44 (Walzl), p 229)

15. Eyre to Colenso, 7 November 1848, Colenso Papers, ATL (doc A48 (Stirling), p 66)

16. Crown Counsel quoted this passage from McLean's journal in the Crown's closing submissions. See doc I17 (Crown closing submissions), p 28.

17. *Te Wananga*, 29 December 1877, p 511 (doc A48 (Stirling), p 105); doc A44 (Walzl), p 432

18. See discussions in Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1, pp 64–68, 94–95, 133–140; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, pp 303, 307–309, 472–473

19. Normanby to Hobson, 14 August 1839, BPP, vol 3, pp 85–90 (doc A81 (Loveridge), p 29)

20. Grey to Earl Grey, 15 May 1848, BPP, vol 6, cmd 1120, pp 22–26 (Ibid, p 317)

21. Normanby to Hobson, 14 August 1839, BPP, vol 3, p 87

22. Russell to Hobson, 28 January 1841, BPP, vol 3, pp 173–174

23. Grey to Eyre, 24 March 1849, BPP, vol 6, cmd 1136, pp 73–74

24. Grey to Earl Grey, 30 August 1851, BPP, vol 8, cmd 1475, p 32

25. Grey to Wynyard, 2 September 1852, G32/1, ArchivesNZ (doc A44 (Walzl), pp 360–361)

26. Domett to McLean, 8 August 1853, CS 3/5, ArchivesNZ (doc A44 (Walzl), p 361)

27. Grey to Newcastle, 27 September 1853, BPP, vol 10, p 275

28. Document A44 (Walzl), p 361

29. Document A105 (Tūranganui deed). For other examples of purchase deeds which include the koha clause see doc A100 (Turton's Deeds), deeds 91, 97.

30. Document F11 (Chrisp), p 10

31. McLean to Domett, 2 September 1853, AJHR, 1861, C-1, p 259 (doc A44 (Walzl), p 369)

32. Tūrakirae, 1 September 1853; Tūranganui, 6 September 1853; Tuhitarata, 10 September 1853; Tauherenīkau, 19 September 1853; Part Pāhaoa and Wilson's Run, 29 October 1853; Whareama 2, 1 November 1853; Whareama 1, 9 December 1853; Manawatū, 10 December 1853; Mākōura, 10 December 1853; Part Tūrakirae, 14 December 1853; Tautāne, 3 January 1854; and Wharekākā, 4 January 1854. These deeds are in doc A100 (Turton's deeds), deeds 88, 89, 91, 97, 98, 101, 102, 103, 109, 119; doc A102 (Tūranganui, East Side of the Lake, deed 219-B); doc A105 (Tūranganui, east side of the lake, deed 582); H H Turton, *Maori Deeds of Land Purchases in the North Island of New Zealand, 1877*, 2 vols, (Wellington: Government Printer, 1878), vol 2, Province of Hawke's Bay, deed 4.

33. Waitangi Tribunal, *Te Tau Ihu*, vol 1, p 292

34. Ibid, pp 291–292

35. Ibid, pp 354–378

36. McLean walked the boundaries with Māori rangatira to define the boundaries of the Whanganui purchase: see McLean, diary, 22 May – 28 June 1846, series 5, MS-1216, ATL. McLean also walked some of the south-eastern boundaries for the Ahuriri block: Waitangi Tribunal, *Mohaka ki Ahuriri Report*, vol 1, pp 74, 80, 120–121.

37. Waitangi Tribunal, *Mohaka ki Ahuriri Report*, vol 1, p 120

38. Waitangi Tribunal, *Te Tau Ihu*, vol 1, p 292; see also Clarke to Shortland, 1 November 1843, BPP, vol 2, p 360

39. Document A81 (Loveridge), pp 74–76

40. Grey, 'Reply to Report of General Legislative Council on the Leasing of Maori Land', 25 August 1849, *New Zealander*, 28 August 1849 (doc A81 (Loveridge), p 407)

41. Waitangi Tribunal, *Te Tau Ihu*, vol 1, pp 296–297. This passage refers to Grey's expectations of both the New Zealand Company and private individuals.
42. Grey dispatch 136, 27 November 1846, CO 209/46, ArchivesNZ (doc A81 (Loveridge), pp 303–304)
43. 'Wastelands thinking' refers to the school of thought inspired by Earl Grey's idea that Māori only really owned the land they intensively occupied. We discuss this fully in chapter 2.
44. Document I25 (Ngā Hapū Karanga reply submissions), pp 8–10
45. Document A44 (Walzl), p 337
46. Document A48 (Stirling), p 84; A G Bagnall, *Wairarapa: An Historical Excursion* (Masterton: Hedley's Bookshop, 1976), pp 92–93
47. Document A48 (Stirling), pp 84, 86; James Rutherford, *Sir George Grey KCB, 1812–1898: A Study of Colonial Government* (London: Cassell, 1961), p 185
48. McLean to Grey, 18 August 1852, MS-papers-0032–0004, object #1014853, ATL
49. Grey to Earl Grey, 7 April 1847, BPP, vol 6, cmd 892, pp 14–17 (doc A44 (Walzl), p 132); doc A48 (Stirling), p 84
50. McLean to Te Pōtangaroa, not dated, circa January 1852, MS-papers-0032–0676A-05, ATL (doc A45 (Smith), p 134)
51. McLean to Te Weretā Kawekairangi, 12 January 1852, MS-papers-0032–0676A-06, ATL (doc A45 (Smith), p 135)
52. Ibid
53. Ibid (p 136)
54. Ibid
55. Te Otene Kuku to Grey and McLean, 10 February 1852, MS-papers-0032–0676B-02, ATL (doc A45 (Smith), p 138)
56. Colenso, journal, 17 April 1852, ATL (doc A45 (Smith), pp 73–74)
57. Te Niania to McLean, 20 February 1852, MS-papers-0032–0676B-04, ATL (doc A45 (Smith), p 138)
58. Te Hāpuku, Te Kuini, Pahara and Te Haurangi to McLean, 20 March 1852, MS-papers-0032–0676B-08, ATL
59. McLean to Pelichet, 20 February 1852, MA 24/8/16, ArchivesNZ (Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, p 135)
60. Pelichet to McLean, 20 March 1852, MS-papers-0032–0499, object #1005726, ATL
61. Ibid
62. Ibid
63. Colenso, journal, 17 April 1852, ATL (doc A45 (Smith), pp 74, 145–146)
64. Te Otene Kuku and Iraia Te Whiti to McLean, 29 April 1852, MS-papers-0032–0676B-12; Te Pōtangaroa to McLean, 29 April 1852, MS-papers-0032–0676B-13, ATL (doc A45 (Smith), pp 146–147)
65. Te Pōtangaroa to McLean, 29 April 1852, MS-papers-0032–0676B-13, ATL (Ibid, p 147). The translation is our own.
66. Wiremu Paraone Manini and Peniamini Kaha to McLean and Grey, 29 April 1852, MS-papers-0032–0676B-14, ATL
67. This is the Tribunal's translation.
68. Minutes of the Executive Council of New Munster, 6 May 1852, NM 7/01, pp 334–337, ArchivesNZ (doc A44 (Walzl), pp 344–345)
69. Ibid
70. See Te Mānihera to McLean, 27 May 1852, MS-papers-0032–0676C-11, ATL; Te Mānihera to Grey, 27 May 1852, Grey Māori Letters, G589, Auckland Public Library; Te Harawira to Grey, June 1852, MS-papers-0032–0676C-15, ATL; Meiha Otaota and Iraia Te Ama to McLean, 30 November 1852, MS-papers-0032–0676E-12, ATL; Maika Meha to Grey, 18 January 1853, Grey Māori Letters, G493, Auckland Public Library; Ngāti Hinewaka to Grey, 3 February 1853, Grey Māori letters, G494, Auckland Public Library (doc A45 (Smith), pp 150–152, 156–157, 163–169); see also Te Mānihera to Grey, 24 March 1853 (doc A44 (Walzl), p 353)
71. Te Kōrou and others to McLean, 22 December 1852, MS-papers-0032–0676E-14, ATL (doc A45 (Smith), p 165)
72. Bagnall, *Wairarapa*, p 139; Masterton District Library and Wairarapa Archive, 'The Establishment of the Small Farms Association', http://www.library.mstn.govt.nz (accessed 19 February 2010)
73. C Bannister, *Early History of the Wairarapa* (1940; reprinted Christchurch: Cadsonbury Publications, 1999), p 10 (doc A48 (Stirling), pp 96–97)
74. Joseph Masters, autobiography, MS-copy-micro-171, p 32, ATL (doc A48 (Stirling), p 97)
75. Document A48 (Stirling), p 165
76. Pēne Kaha to McLean, 6 December 1861, MS-papers-0032–0685F-08, ATL (doc A6 (Cleaver), p 30)
77. Document A100 (Turton's Deeds), deed 85
78. Document A100 (Turton's Deeds), deed 85; doc A103 (Castlepoint deed, deed 188). Also see doc A33 (Rigby), pp 110–112.
79. Document A100 (Turton's Deeds), deed 85. The 'official' translation is on p 265 of doc A100, but this is the Tribunal's own.
80. Document A44 (Walzl), p 354; doc A6 (Cleaver), pp 22–23
81. Document A70 (Ellis and Small), p 19; doc A6 (Cleaver), p 36
82. Document A6 (Cleaver), p 33
83. Ibid, pp 31, 38
84. Document A6(a) (Cleaver), p 8. In his presentation summary, Cleaver revised his figure estimating the percentage of land reserved from the total Castlepoint purchase from around 10 percent to just over 5 percent. This revised figure was a result of a later GIS estimation of 485,008 acres recorded in map 7 in doc A76 (inquiry district map book, pt 2). This GIS figure was superseded by one of 484,775 acres recorded by Ellis and Small in their report of September 2003. Their revised reserve figure for Castlepoint of around 24,332 acres brings the estimated percentage to about 6 percent: see doc A70 (Ellis and Small), p 19.
85. Document I1(a) (Ngā Hapū Karanga closing submissions), p 30
86. Document A33 (Rigby), p 59
87. McLean to Bousfield, 27 June 1853, MS-papers-0032–0038, ATL (doc A44 (Walzl), p 355)
88. Ibid
89. Document A6 (Cleaver), p 33

90. Document A70 (Ellis and Small), p 19
91. Document A100 (Turton's Deeds), deed 133; doc A6 (Cleaver), pp 47–49
92. Document A48 (Stirling), p 95 (doc I1(a) (Ngā Hapū Karanga closing submissions), p 40)
93. The ATL transcription of this letter records the phrase as 'Komite nui', however it appears that komiti nui is the correct spelling of this word. Kemp to McLean, 24 June 1853, MS-papers-0032–0368, ATL (doc A44 (Walzl), p 362)
94. Document A48 (Stirling), p 100
95. Ibid, pp 99–100
96. Rutherford, *Sir George Grey*, p 185
97. Ibid
98. Document A33 (Rigby) p 19
99. Alan Ward, 'Donald McLean', DNZB, vol 1, p 255
100. Document A45 (Smith), p 224
101. Grey to Newcastle, 27 September 1853, BPP, vol 10, p 275; doc A45 (Smith), p 196
102. *Te Wananga*, 29 December 1877, p 511 (doc A48 (Stirling), p 105)
103. *Wellington Independent*, 7 January 1854 (doc A46 (McCracken), p 21). The date of the banquet was 30 December 1853: see *The Maori Messenger* (*Te Karere Maori*), vol 6, 20 April 1854, no 139, pp 2–3; 4 May 1854, no 140, p 3.
104. *Wellington Independent*, 7 January 1854 (doc A46 (McCracken), p 21)
105. Bagnall, *Wairarapa*, p 99
106. Kohimārama Proceedings, 11 July 1860, Raupatu Document Bank, vol 88, pp 33712–33713
107. Grey encouraged Donald and Rhodes not to pay their rents: see McLean to Civil Secretary, 2 September 1853, BPP, vol 10, p 276 (doc A46 (McCracken), pp 17–18)
108. Document A48 (Stirling), p 100
109. Ibid, p 100
110. Kemp to McLean, 24 June 1853, MS-papers-0032–0368, object #1005291, ATL (doc A48 (Stirling), pp 99–100)
111. Document A48 (Stirling), pp 99–103
112. A copy of the original letter of 9 August 1852 from Te Pōtangaroa and Te Otene Kuku to McLean about the Castlepoint sale appears on page 196. The original may be found at MS-papers-0032–0676D-05, ATL.
113. Document A45 (Smith), p 223
114. Ibid, pp 224–225
115. Document A45 (Smith), p 221
116. Ibid, p 176
117. Ibid, pp 223–224
118. Te Pōtangaroa to McLean, 29 October 1852, MS-papers-0032–0676E-07, ATL (doc A45 (Smith), pp 162–163). Also see docs A44 (Walzl), p 350 and A6 (Cleaver), p 26
119. Document A48 (Stirling), p 100
120. Whareama chiefs to McLean, 29 August 1853, Grey Māori Letters, G480, Auckland Public Library (doc A45 (Smith), p 188)
121. Document A45 (Smith), p 223
122. Ibid, p 225
123. Document A111 (Head), p 13
124. Ibid, p 65
125. Ibid, pp 60–61
126. Ibid, p 82
127. Te Hāpuku and others to McLean, 20 March 1852, MS-papers-0032–0676B-08, ATL (doc A111 (Head), p 83)
128. Document A111 (Head), p 84
129. Te Mānihera to Grey, 30 October 1848, MS-papers-0032–0672D-10, ATL (doc A111 (Head), p 45). We have inserted, in square brackets, omitted words from the original Māori into Head's text.
130. Te Mānihera to Grey, 30 October 1848, MS-papers-0032–0672D-10, ATL (doc A111 (Head), p 45)
131. Document A111 (Head), p 84
132. Ibid, pp 99–100
133. Ibid, pp 86, 96–97
134. Document A111 (Head), p 83
135. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 29
136. Grey to Newcastle, 27 September 1853, BPP, vol 10, p 275 (doc A45 (Smith), p 196)
137. F D Bell, notice, 6 October 1853, *Wellington Provincial Gazette 1853–54*, p 4
138. Featherston, notice, 31 January 1854, *Wellington Provincial Gazette 1853–54*, pp 13–14 (doc A33 (Rigby), p 57)
139. Waitangi Tribunal, *Te Tau Ihu*, vol 1, pp 297, 300, 304, 368, 374
140. Document A33 (Rigby), p 19
141. Document A33 (Rigby), pp 1–2; doc A1 (Patterson), pp 2, 9
142. Document I17 (Crown closing submissions), p 34
143. For a discussion of Grey and McLean's initial preference for district-wide purchases see doc A33 (Rigby), pp 6–8.
144. Document I17(e) (Crown closing submissions), p 7; doc I17 (Crown closing submissions), p 47
145. McLean to Grey, 26 December 1853, MS-papers-0032–0302, object #1001003, ATL; doc A33 (Rigby), p 25
146. The nine deeds for homestead blocks purchased between August 1853 and January 1854 were: Tuhitarata 'McMaster's homestead', 25 August 1853; Kaiwaka 'Capt [Mein] Smith's homestead', 16 September 1853; 'Morrison's homestead', 26 September 1853; Te Torohanga 'Gillies' and Burling's homestead', 12 October 1853; Te Ore Ore 'Collins' homestead', 18 October 1853; 'Blacksmith's homestead', 22 October 1853; Kaiotehaku Ōtarāia 'Gillies homestead', 13 December 1853; 'Northwood's homestead', 14 December 1853; 'J McKenzie's homestead', 29 December 1854. See doc A100 (Turton's Deeds), deeds 86, 90, 92, 93, 94, 95, 108, 112 and Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 20.
147. Document A44 (Walzl) p 368

148. Ibid. See also Crown purchase deed, 'Extinguishing [Wairarapa] Claims to lands at Porirua and Wellington 29 August 1853', WGN 297/TD 87 (doc A33 (Rigby), pp 112–113).
149. Document A100 (Turton's Deeds), deeds 88, 115, 128. For Tūranganui, see docs A102 (Tūranganui, East side of the Lake Crown, deed 219B), A105 (Tūranganui, East side of the Lake Crown, deed 582). See also doc A33 (Rigby), pp 19–20, 113–116; doc A46 (McCracken), p 38.
150. McLean to Domett, 2 September 1853, AJHR, 1861, C-1, p 258; doc A44 (Walzl), p 369
151. Document A44 (Walzl), p 369
152. There are two Māori language copies of the Tūranganui deed under two separate Wellington Crown purchase deed numbers; namely, 219B and 582. Crown counsel filed both copies on 22 July 2004, noting that the Māori and English texts are contained in deed 582. The Māori text in the two deeds appears identical. These copies confirm that there was a 5 percent or koha clause and provision for eight reserve areas. Neither deed was published by Turton. See docs A102 and A105, and paper 2.383(b).
153. Document I17(c) (Crown closing submissions), p 3
154. Document A33 (Rigby), p xvii; McLean to Domett, 13 September 1853, AJHR, 1861, C-1, p 261; doc A44 (Walzl), pp 379, 382
155. Boundaries were walked for the 'Tuhitarata-McMaster's' deed of 25 August 1853 but not for the 'Tuhitarata-Paharakeke' deed signed on 10 September 1853. See doc A100 (Turton's Deeds), deeds 86, 89.
156. These were two separate homesteads according to the deed, '200 acres of land at Mr Gillies' Station at te Torohanga and one hundred 100 acres at Burling's Station'. See doc A100 (Turton's Deeds), deed 93.
157. McLean to Domett, 20 October 1853, AJHR, 1861, C-1, p 263 (doc A44 (Walzl), p 395)
158. McLean to Grey, 14 September 1853, MS-papers-0032–0004, object #1004805, ATL; doc A44 (Walzl), pp 380–383
159. McLean to Grey, 14 September 1853, MS-papers-0032–0004, object #1004805, ATL
160. Ibid
161. Ibid
162. Document A100 (Turton's Deeds), deed 91
163. Document A33 (Rigby), p 31
164. Goldsmith, *Wairarapa*, p 21
165. Document A33 (Rigby), p 32
166. Document A34 (White), p 56; doc A100 (Turton's Deeds), deed 91
167. McLean to Domett, 20 September 1853, AJHR, 1861, C-1, p 262 (doc A44 (Walzl), p 385)
168. Ibid
169. Ibid
170. McLean to Grey, 22 September 1853, MS-papers-0032–0004, object #1016412, ATL
171. McLean to Grey, 17 September 1853, MS-papers-0032–0004, object #1006125, ATL
172. McLean to Domett, 22 September 1853, AJHR 1861, C-1, p 262
173. McLean to Grey, 22 September 1853, MS-papers-0032–0004, object #1016412, ATL
174. Ibid
175. Grey to McLean, 25 September 1853, MS-papers-0032–0302, object #1002300, ATL
176. Domett to Native Secretary, 26 September 1853, CS 3, vol 6, 53/1397, ArchivesNZ (doc A44 (Walzl), pp 387–388)
177. Te Kaninamu Hamaiwaho and others to McLean, 5 October 1853, MS-papers-0032–0677B-13, ATL (doc A45 (Smith), pp 199–200)
178. Riwai Te Kukutai and others to McLean, 5 October 1853, MS-papers-0032–0677B-14, ATL (doc A45 (Smith), pp 200–201)
179. Hāmuera and Patoromu to McLean, 9 October 1853, MS-papers-0032–0677B-17, ATL (doc A45 (Smith), pp 203–205)
180. Hāmuera and Patoromu to McLean, 9 October 1853, MS-papers-0032–0677B-17, ATL. Translation by Sally McKean and Tracey Mereoiti supervised by Lyndsay Head, ATL
181. Wiremu Paraone to McLean, 10 October 1853, MS-papers-0032–0677B-18, ATL (doc A45 (Smith), p 205)
182. Āperahama Te Ao and Hāmuera Te Rangi to McLean, 10 October 1853, MS-papers-0032–0677B-20, ATL (doc A45 (Smith), pp 206–207)
183. Rupuha Te Mahukihuki to McLean, 13 October 1853, MS-papers-0032–0677B-20, ATL (doc A45 (Smith), pp 207–208)
184. McLean to Mein Smith, 20 October 1853, AJHR, 1861, C-1, p 263; McLean to Featherston, 21 October 1853, MS-papers-0032–0004, object #1020560, ATL
185. Document A33 (Rigby), pp 142–143. Also see Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 5.
186. For Ōpaki, Rigby notes that the boundary description in Māori does not conform to that printed in Turton and that Ōpaki was later joined with Kōhangawariwari in the 1855 and 1858 payments. See doc A33 (Rigby), pp 143–145.
187. Document A44 (Walzl), p 398
188. Document A59 (Stirling), pp 65–66
189. Document A59 (Stirling), pp 65–66; doc A33 (Rigby), p 70
190. Document A33 (Rigby), pp 122, 136–137. See also doc A100 (Turton's Deeds), deeds 97, 118
191. See Colonial Secretary to Barton, 23 May 1850, NM 10/10, p 301 and Colonial Secretary, memorandum, 11 April 1850, NM 8/[18]52/1323, ArchivesNZ (doc A59 (Stirling), pp 54–55).
192. New Munster Executive Council, memorandum, 5 March 1850, NM 8/[18]52/1323, ArchivesNZ (doc A59 (Stirling), p 56)
193. Colonial Secretary, memorandum, 11 April 1850, NM 8/[18]52/1323, ArchivesNZ (doc A59 (Stirling), p 55)
194. The Commissioner of Crown Lands issued de-pasturing licences which permitted the holder to run stock on Crown-owned wastelands for a period of anywhere from six months to many years; a crucial condition of the licence was that the land was stocked. These leases gave the Government some control over the land, although there was still provision for run holders, and others, to purchase the land. See Ralph T

Denton, 'The early sheep runs of Marlborough' in *Journal of the Nelson and Marlborough Historical Societies*, vol 1, issue 1, October 1981 and John R Fairweather, *Land Policy and Land Settlement in New Zealand*, Research Report 165 (Christchurch: Agricultural Economics Research Unit, Lincoln College, 1985).

195. Colonial Secretary to Barton, 11 March 1851, Colonial Secretary Outward Correspondence, NM 10/10, p 798, Archives NZ (doc A59 (Stirling), p 57)

196. McLean, diary, 11 October 1851, MS-1233, ATL (doc A59 (Stirling), pp 57–58

197. Ibid

198. Document A59 (Stirling), pp 59–61

199. Ibid, p 62

200. McLean, diary, 29 June 1853, MS-1236, ATL (doc A59 (Stirling), p 62)

201. Document A59 (Stirling), p 63

202. McLean, diary, 29 June 1853, MS-1236, ATL (doc A59 (Stirling), p 63); McLean to Colonial Secretary, 3 September 1853, AJHR, 1861, C-1, pp 259–260 (doc A59 (Stirling), pp 63–64)

203. McLean to Grey, not dated, MS-papers-0032–0004, object #1023293, ATL

204. McLean to Colonial Secretary, 3 September 1853, AJHR, 1861, C-1, pp 259–260 (doc A44 (Walzl), pp 372–373)

205. Document A59 (Stirling), pp 65–66

206. Ibid, p 69

207. Document A100 (Turton's Deeds), deed 96

208. Document A59 (Stirling), pp 71–72

209. Barton to McLean, 31 December 1853, MS-papers-0032–0154, object #1017207, ATL

210. Document A59 (Stirling), pp 6, 79

211. Document A100 (Turton's Deeds), deed 126; doc A33 (Rigby), p xvii

212. Document A100 (Turton's Deeds), deed 97; doc A44 (Walzl), p 401; doc A33 (Rigby), p 61

213. Document A100 (Turton's Deeds), deed 97; doc A44 (Walzl), p 401

214. Document A100 (Turton's Deeds), deed 97

215. Rigby's appendices note that the cover sheet for Whareama 2 says 'Block between Waiorongo and Waiwarawara'. See doc A33 (Rigby), p 123.

216. Document A100 (Turton's Deeds), deed 98. Rigby, who examined the original deeds notes 'Mangahiu' instead of 'Mangapiu', which is in the printed version in *Turton's Deeds*: see doc A33 (Rigby), p 123. See also doc A44 (Walzl), pp 401–402.

217. Document A100 (Turton's Deeds), deed 99

218. Ibid, deed 100; doc A33 (Rigby), pp viii, xvii

219. Document A33 (Rigby), p 145; Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 13

220. Document A100 (Turton's Deeds), deed 101; doc A33 (Rigby), pp viii, xvii

221. Document A100 (Turton's Deeds), deed 104; doc A33 (Rigby), pp 127–128

222. Document A100 (Turton's Deeds), deed 104, encl; doc A33 (Rigby), pp 127–128)

223. Document A100 (Turton's Deeds), deed 106

224. These four blocks were: Whareama 2/South of 38,000 acres, Whareama 3/North of 100,000 acres, Whareama 1 of 25,000 acres, and Part Whareama of 25,000 acres. See doc A100 (Turton's Deeds), deeds 98, 100, 101, 106,

225. Searancke to Weld, 5 January 1861, LE/1861/229, ArchivesNZ (doc A46 (McCracken), p 130); doc A100 (Turton's Deeds), deeds 98, 100, 101, 106, 162. The 'Hikurangi and Awatoetoe' deed of 1 November 1859 was executed at Waikaraka for £100, MA-MLP 6/2, folio 128, ArchivesNZ (doc A46 (McCracken), p 130).

226. Rigby notes that few (four) of the 33 signers of the deed receipt for Manawatū block in October 1853 appear in the 10 December 1853 deed (doc A33 (Rigby), pp 142–143). Also see McLean to Mein Smith, 20 October 1853, AJHR, 1861, C-1, p 263 and Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 5.

227. Document A100 (Turton's Deeds), deed 102

228. Ibid, deed 103; doc A44 (Walzl), pp 404–405; doc A33 (Rigby), p xvii

229. Mein Smith to Bell, 18 February 1854, Bagnall Papers, MS 88–103–04/03, ATL (doc A33 (Rigby), p 27)

230. Document A44 (Walzl), p 405

231. Document A46 (McCracken), pp 302–303; doc A100 (Turton's Deeds), deeds 115, 116

232. McLean to Bell, 23 December 1853, AJHR, 1861, C-1, p 264

233. Document A34 (White), pp 56–59; doc A46 (McCracken), pp 272–273

234. McLean to Grey, 26 December 1853, MS-papers-0032–0302, object #1001003, ATL

235. Ibid. See also doc A33 (Rigby), p 25.

236. Document A33 (Rigby), p 56

237. Document A44 (Walzl), p 407; doc A100 (Turton's Deeds), deed 117

238. Document A100 (Turton's Deeds), deed 117 and enclosure. See also doc A33 (Rigby), pp 135–136.

239. Document A100 (Turton's Deeds), deed 117. This Waipuna reserve is different from the Waipuna of Part Pāhaua and Wilson's Run mentioned earlier. It is also known as 'Waipuna Section 765'. See doc A59 (Stirling), pp 150–152.

240. McLean to Bell, 27 December 1853, LS-W 2, 1853/396, ArchivesNZ (doc A44 (Walzl), p 407)

241. For the 'Te Witi (J McKenzie's Homestead)' transaction of 29 December 1853 see Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 20. For the 'Te Hapuku for Haimona Pita's land' on the Ruamāhanga transaction of 31 December 1853 see Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipts 21 and 22. Also see doc A33 (Rigby), pp 147–148.

242. Document A44 (Walzl), p 408
243. Document A100 (Turton's Deeds), deed 118; doc A44 (Walzl), p 408
244. Ellis and Small note that using GIS measurements for the boundaries stated in the deed for Tautāne the amount actually purchased was closer to 91,930 acres, with a reserved area of about 1111 acres. See doc A70 (Ellis and Small), p 21. See also doc A47(b) (McBurney), p 1.
245. Document A19 (Ballara and Scott), pp 4, 8. See also doc A47 (McBurney), p 52
246. Document E50 (Translation deeds of the sale of Tautāne, deeds HWB 18-Ai, 18-B); Turton, *Maori Deeds*, vol 2, Province of Hawke's Bay, deed 4
247. Document A100 (Turton's Deeds), deeds 119, 120; doc A44 (Walzl), p 409
248. Document A100 (Turton's Deeds), deeds 121, 122, 123, 124; doc A33 (Rigby), pp 139–140. Rigby notes that the only difference between deeds 123 and 124 is that 124 contains a copy of the 14 October 1853 receipt. See also doc A44 (Walzl), p 412.
249. Document A44 (Walzl), p 412
250. Document A100 (Turton's Deeds), deed 125
251. Ibid, deed 126
252. Document A33 (Rigby), pp 148–149. Te Keepa may have claimed rights through his Muaūpoko affiliations. See also Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipts 23, 24, 25
253. McLean to Colonial Secretary, 7 November 1854, IA 1/54/3632, ArchivesNZ (doc A33 (Rigby), p 12)
254. Ibid
255. McLean to Colonial Secretary, 7 November 1854, IA 1/54/3632, ArchivesNZ (doc A46 (McCracken, p 32)
256. We note that although we rely on Rigby's figures, ours differ because we have included the Tautāne purchase in all the calculations, whereas he did not.
257. Document A33 (Rigby), pp 64–65
258. Document A100 (Turton's Deeds), deeds 110, 111
259. The deeds were for Āwhea, Manawatū, and Ōpaki. Doc A100 (Turton's Deeds), deeds 102, 103, 126; doc A33 (Rigby), pp 126, 142–144
260. Document A33 (Rigby), pp 133–134. Rigby comments that the 5 percent clause 'should have applied' to Waiōrongomai but does not say why. We note, however, that Waiōrongomai was connected to the original Tūrakirae transaction of 1 September 1853, which did include the koha clause. See also doc A46 (McCracken), p 275.
261. Document A33 (Rigby), pp ix, 30
262. Ibid, pp 31–35
263. Ibid, p 35; 'Grants of Land or Other Endowments Made for the Benefit of the Native Race', AJHR, 1865, E-7, p 1
264. Document A33 (Rigby), p 36
265. Tūtepākihirangi to McLean, 17 November 1853, MS-papers-0032–0677C-04, ATL (doc A45 (Smith), p 209)
266. Ngāiro to McLean, 21 November 1853, MS-papers-0032–0677C-05, ATL (doc A45 (Smith), p 210)
267. Dean Cowie, *Hawke's Bay*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1996), p 67
268. Document A33 (Rigby), p 54
269. Ibid, p 55
270. Ibid, pp 55–56; doc A34 (White), p 56
271. Document A34 (White), p 56
272. Document A33 (Rigby), p 56
273. Document A33 (Rigby), pp 57–58, 136–137, 141
274. Ibid, p 58
275. Ibid, p 54
276. Document A19 (Ballara and Scott), pp 16–17
277. Goldsmith, *Wairarapa*, pp 45, 82
278. See doc A46 (McCracken).
279. We note Rigby's caveat that Turton's recording of 'deeds' and 'receipts' cannot necessarily be considered as clear cut because the 'receipt' documents were not filed any differently to 'deeds' at the Crown Lands Office during the nineteenth century. Rigby also noted that McLean pointed out that many of the 'so-called deeds were little more than receipts' in 1854: doc A33 (Rigby), p 12. Turton's deed 132 of 28 December 1854 has the same name, and covers that same land, as the later deed 143 of 24 March 1858 for 'Hikawera and Taratahi'.
280. Document A46 (McCracken), p 43. See Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 28 of 29 November 1854 for 'Kepa Te Rangi's claims' for £50. Te Keepa appeared to have already received £50 for 'Wairarapa lands' on 17 January 1854. See doc A33 (Rigby), pp 148–149.
281. Document A46 (McCracken), pp 69–70
282. Ibid; see doc A100 (Turton's Deeds), deeds 136, 137, 138.
283. Document A46 (McCracken), pp 79–81
284. See doc A100 (Turton's Deeds), deed 143.
285. See Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 27.
286. Document A46 (McCracken), p 47. See also doc A100 (Turton's Deeds), deed 122.
287. Document A46 (McCracken), pp 54–55
288. Document A46 (McCracken), pp 71–73; doc A100 (Turton's Deeds), deed 140
289. Document A46 (McCracken), p 73
290. Document A46(c) (McCracken), pp 8–9, 11, 14
291. Document A46 (McCracken), pp 40, 321
292. Ibid, p 75
293. Ibid, p 55
294. Document A46 (McCracken), p 80–81
295. Ibid, pp 36–37
296. McLean to Cooper, 15 September 1855, AJHR, 1861, C-1, p 269
297. Document A46 (McCracken), p 88
298. Ibid
299. Mein Smith, letter, 28 January 1856, 88–103–4/3, CL 56/29, ArchivesNZ (doc A46 (McCracken), p 90)

300. Document A46 (McCracken), pp 133–143; doc A48 (Stirling), pp 196–224
301. Stafford, memorandum, 17 November 1857, LE 1/1858/226, ArchivesNZ (doc A46 (McCracken), pp 105–106)
302. Richmond to McLean, 21 December 1857, LE 1/1858/226, ArchivesNZ (doc A46 (McCracken), p 106)
303. Ibid, p 107
304. Ibid
305. Ibid, p 108
306. Richmond to McLean, 22 December 1857, LE 1/1858/226, ArchivesNZ (doc A46 (McCracken), p 108)
307. Document A19 (Ballara and Scott), p 4
308. Document A63 (Ballara and Scott), p 87
309. Ibid, pp 87–88
310. Document A19 (Ballara and Scott), p 16
311. Document A47 (McBurney), p 55; doc A19 (Ballara and Scott), p 16
312. Document A19 (Ballara and Scott), pp 5–6
313. Document A63 (Ballara and Scott), p 86
314. Cooper to McLean, 19 April 1856, MS-papers-0032–0227, object #1021727, ATL
315. Document A19 (Ballara and Scott), p 5
316. Ibid, p 13
317. Cooper to Native Affairs Committee, 28 December 1887, MA 7/2, ArchivesNZ (doc A19 (Ballara and Scott), p 14)
318. Ibid, pp 14–15
319. Cooper to McLean, 19 April 1856, MS-papers-0032–0227, object #1021727, ATL
320. Ibid
321. Grindell, journal, 8 July 1857–31 July 1858, qMS-0891, entry for 21 July 1857, entry circa 10 August 1858, frame 13, ATL (doc A19 (Ballara and Scott), pp 5–6)
322. Ibid
323. Document A19 (Ballara and Scott), p 6
324. AJHR, 1860, C-1, p 5 (doc A19 (Ballara and Scott), p 6). Also see AJHR, 1858, C-1, p 8.
325. Turton, *Maori Deeds*, vol 2, Province of Hawke's Bay, deed 24; McLean report, December 1857, MS-1297, ATL (doc A46 (McCracken), p 115)
326. Waitangi Tribunal, *Mohaka ki Ahuriri Report*, vol 1, p 136
327. Turton, *Maori Deeds*, vol 2, Province of Hawke's Bay, deed 24
328. Document A19 (Ballara and Scott), pp 7, 10; doc A47 (McBurney), p 180; Turton, *Maori Deeds*, vol 2, Province of Hawke's Bay, deed 24
329. Document E50 (Translation deeds of the sale of Tautāne, deeds HWB 18-Ai, 18-B). Both of these translated deeds are dated 3 January 1854 but vary in how they describe the land to be reserved. One version describes the second reserve as 'a piece at Tautane with some forest land annexed to it' (HWB 18-Ai). The second version describes it as 'a piece at Tautane including part of the wood' (HWB 18-B).
330. Hēnare Matua's evidence to Native Land Court concerning Tautāne block, 1867 (doc A66 (Carlyle), para 7). Using GIS measurements for the Tautāne reserve boundaries Ellis and Small advise an acreage of 1111 acres: doc A70 (Ellis and Small), pp 19, 123.
331. See Native Office Map of Hawke's Bay, not dated, AAFV 997/H8, ArchivesNZ (doc A19 (Ballara and Scott), p 11)
332. Document A19 (Ballara and Scott), pp 7–8
333. Document A47 (McBurney), p 54. We note that using the GIS acreage for Tautāne in Ellis and Small (that is, 91,930 acres instead of the estimated 70,000 acres) that the price per acre would have been even less: see doc A70 (Ellis and Small), p 19; doc A47(b), (McBurney), p 1.
334. Document A63 (Ballara and Scott), pp 94, 159–163, 181–182
335. Document I17(a) (Crown closing submissions), p 3. In its closing submission the Crown says that it 'appears clear that a number of the right holders occupying the block had not consented to the first deed of sale'. The Crown also refers to Ballara and Scott's reference to the evidence of District Land Purchase Commissioner Cooper to the 1887 Native Affairs Committee inquiry into Tautāne. See also doc A19 (Ballara and Scott), pp 13–14.
336. Waitangi Tribunal, *Mohaka ki Ahuriri Report*, vol 1, p 138
337. Cooper to McLean, 13 May 1858, AJHR, 1862, C-1, p 337 (doc A19 (Ballara and Scott), p 9)
338. Cooper to McLean, 22 September 1858, AJHR, 1862, C-1, p 339 (doc A19 (Ballara and Scott), pp 9–10)
339. Ibid
340. See Searancke to McLean, 12 February 1858, MS-1298 and Searancke to Weld, 5 January 1861, LE 1/1861/229, ArchivesNZ (doc A46 (McCracken), p 112). Searancke's 1861 memorandum was tabled with the House of Representatives in response to the investigation into his competence as land purchase commissioner.
341. Searancke to McLean, 12 February 1858, MS-1298, ArchivesNZ (doc A46 (McCracken), pp 112–113)
342. Ibid
343. Ibid
344. McLean, report, December 1857, MS-1297 and Searancke to McLean, 12 February 1858, MS-1298, ATL (doc A46 (McCracken), pp 115–116)
345. Land Purchase Department, journal, 28 December 1857–24 March 1858, T10/1, ArchivesNZ (doc A46 (McCracken), pp 114–115)
346. Searancke to McLean, 12 February 1858, MS-1298, ATL (doc A46 (McCracken), pp 112–113)
347. Document A46 (McCracken), pp 116–135
348. Ibid, pp 116–117
349. Ibid
350. Document A100 (Turton's Deeds), deed 144; doc A46 (McCracken), p 117
351. Document A46 (McCracken), p 117. McCracken notes that no official deed receipt for this particular payment was made at the time of the transaction, however, it is recorded in Searancke to McLean, 5 July 1858, AJHR, 1861, C-1, p 275
352. Searancke to McLean, 10 May 1858, MS-papers-0032–0565, object #1012889, ATL

353. Searancke to McLean, 28 May 1858, MS-papers-0032–0565, object #1001385, ATL; Searancke to McLean, 5 July 1858, AJHR, 1861, C-1, pp 274–275, ATL (doc A46 (McCracken), p 118)
354. Searancke to McLean, 28 May 1858, MS-papers-0032–0565, object #1001385, ATL
355. Searancke to McLean, 31 May 1858, AJHR, 1861, C-1, pp 273–274
356. Searancke to McLean, 26 February 1859, AJHR, 1861, C-1, pp 272–273
357. Document A45 (McCracken), p 119
358. Searancke to McLean, 28 May 1858, MS-papers-0032–0565, object #1001385, ATL
359. Searancke to McLean, 31 May 1858, AJHR, 1861, C-1, pp 273–274
360. Searancke to McLean, 21 February 1860, AJHR, 1861, C-1, pp 288–289
361. Searancke to McLean, 9 July 1859, MS-papers-0032–0565, object #1000924
362. Valentine-Smith to McLean, 18 July 1860, MS-papers-0032–0580, object #1005321, ATL
363. Searancke to McLean, 5 July 1858, AJHR, 1861, C-1, pp 274–276
364. Ibid; doc A100 (Turton's Deeds), deed 150
365. Document A100 (Turton's Deeds), deeds 151, 152
366. Searancke to McLean, 5 July 1858, AJHR, 1861, C-1, pp 274–276
367. Searancke to McLean, 9 July 1858, MS-papers-0032–0565, object #1000924, ATL; Searancke to McLean, 15 July 1858, MS-papers-0032–0565, object #1018175, ATL
368. Document A100 (Turton's Deeds), deed 153
369. Ronaldson to Venn, 15 November 1858, qMS-1720, ATL (doc A46 (McCracken), p 124)
370. Searancke to McLean, 25 December 1858, MS-papers-0032–0566, object #1008702, ATL
371. Searancke to McLean, 23 January 1859, MS-papers-0032–0565, object #1013594, ATL; doc A100 (Turton's Deeds), deeds 155, 156, 157, 159; see also Searancke to McLean, 6 February 1859, MS-papers-0032–0565, object #1009351, ATL. There was a later Maungaraki deed transaction on 17 December 1873, in which the Crown purchased another 1666 acres, except for the 178-acre Katotāne reserve: see Turton, *Maori Deeds*, vol 2, Province of Wellington, deed 194, Maori Land/Wellington District plan 2978 and certificate of title 61/234 (Land Information New Zealand deeds registry, Wellington).
372. Document A100 (Turton's Deeds), deeds 155, 156; doc A46 (McCracken), p 126
373. Searancke to McLean, 26 February 1859, AJHR, 1861, C-1, pp 272–273. Note that this sum of £100 does not match the £50 in MA-MLP 6/2, folio 125, ArchivesNZ (doc A46 (McCracken), p 127). See also doc A100 (Turton's Deeds), deed 158.
374. Document A100 (Turton's Deeds), deeds 160, 161; doc A46 (McCracken), pp 130, 172
375. Document A100 (Turton's Deeds), deed 163; Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 33; doc A46 (McCracken), pp 45, 130, 172
376. Document A46 (McCracken), pp 173, 190–192; Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 66
377. Searancke to Weld, 5 January 1861, LE 1/1861/229, ArchivesNZ (doc A46 (McCracken), p 130)
378. Searancke to McLean, 3 April 1860, AJHR, 1861, C-1, p 290
379. Searancke to McLean, 20 August 1860, AJHR, 1861, C-1, pp 295–296
380. Featherston to Colonial Secretary, 23 October 1861, WP6/3, ArchivesNZ (doc A46 (McCracken), pp 184–185)
381. McLean, diary, MS-1252, December 1861-May 1862, object #1030627, ATL. See the 'Aranga Te Kura' transaction of 15 January 1862, in Turton, *Maori Deeds*, vol 2, Province of Wellington, deed receipt 63. Also see doc A46 (McCracken), p 186. We note that McLean wrote 'settled the race course for £20'.
382. McLean, report, 10 March 1862, AJHR, 1862, C-1, pp 358–363 (doc A46 (McCracken), pp 186–187)
383. Ibid
384. Tutere Kīngi to Featherston, 11 September 1862, MA-MLP-W-1, ArchivesNZ (doc A46 (McCracken), p 187)
385. Document A46 (McCracken), p 188
386. McLean, report, 10 March 1862, AJHR, 1862, C-1, pp 358–363 (doc A46 (McCracken), pp 192–193)
387. Document A46 (McCracken), pp 193–194
388. Document A100 (Turton's Deeds), deed 171. See also McLean report, 10 March 1862, AJHR 1862, C-1, pp 358–363 (doc A46 (McCracken), p 193).
389. McLean, report, 10 March 1862, AJHR, 1862, C-1, pp 358–363 (doc A46 (McCracken), p 195)
390. Document A46 (McCracken), p 196
391. The first portion of Pāhaoa, labelled 'Part Pāhaua and Wilson's run' on the deed, was sold on 29 October 1853. The original deed listed six reserves and included the koha clause. The deed for the second portion, 'Te Awaiti and Part of Pāhaua Block', was signed on 3 January 1854. The deed listed that several small native reserves would be created, but did not include the koha clause. Document A100 (Turton's Deeds), deeds 96, 97, 118, 126
392. Document A33 (Rigby), p 88
393. Ibid, p 89
394. Searancke to McLean, 29 November 1860, AJHR, 1861, C-1, p 300; Fraser, memorandum, 3 January 1862, MS-papers-0032–0036, ATL (doc A46 (McCracken), pp 188–191)
395. Wenerei and others to McLean, 20 January 1862, MS-Paper-0032–0686A-19, ATL (doc A46 (McCracken), pp 189–190)
396. Document A46 (McCracken), p 190
397. McLean, memorandum, 10 March 1862, AJHR, 1862, C-1, p 384 (doc A46 (McCracken), p 190); doc A48 (Stirling), pp 170–171

398. McLean, memorandum, 10 March 1862, AJHR, 1862, C-1, p 384 (doc A46 (McCracken), p 190)
399. McLean, memorandum, 10 March 1862, AJHR, 1862, C-1, p 384
400. McLean, memorandum, 10 March 1862, AJHR, 1862, C-1, p 384 (doc A46 (McCracken), p 191); Fitzherbert to McLean, 4 February 1862, MA13/96a, ArchivesNZ (doc A40 (Walzl), pp 12–13)
401. Fox minute, 12 March 1862, MA13/96a, ArchivesNZ (doc A52 (Smith), p 40); doc A46 (McCracken), p 192
402. Bagnall, *Wairarapa*, pp 210–211; doc A48 (Stirling), p 146
403. Cooper's address, 22 July 1864, enclosure 4 in Cooper to Featherston, 24 July 1864, MA-MLP 1/1881/51, ArchivesNZ (doc A46 (McCracken), p 211)
404. Ibid
405. Ibid
406. Wainuiorū Māori to Cooper, 23 July 1864, enclosure 5 in Cooper to Featherston, 24 July 1864, MA-MLP 1/1881/511, ArchivesNZ (doc A46 (McCracken), pp 212–213)
407. Cooper to McLean, 28 July 1864, MS-papers-0032–0228, object #1006802, ATL
408. Featherston's proclamation of his appointment as Superintendent, 30 April 1862, *New Zealand Gazette* (*Wellington Province*), no 12, pp 61–67 (doc A46 (McCracken), pp 202–203)
409. Fraser to Featherston, 16 May 1862, WP 3/1862/275, ArchivesNZ (doc A46 (McCracken), p 203)
410. Featherston to Domett, 4 March 1863, WP 6/4, ArchivesNZ (doc A46 (McCracken), p 204)
411. Document A46 (McCracken), pp 204–206; doc A100 (Turton's Deeds), deeds 173, 174, 175, 176
412. Document A46 (McCracken), p 209
413. Ibid
414. Ibid, p 220
415. Cooper to Featherston, 5 September 1864, MA-MLP 1/1881/511, ArchivesNZ (doc A46 (McCracken), p 210)
416. Cooper to Featherston, 3 September 1864, MA-MLP 1/1881/511, ArchivesNZ (Ibid, pp 214–215)
417. McLean apparently advanced £103 for the block at an earlier unspecified date but it is recorded in Turton's Deed 180. See doc A46 (McCracken), p 215; Goldsmith, *Wairarapa*, p 82
418. Cooper to Featherston, 3 September 1864, MA-MLP 1/1881/511 and Featherston's Current Account, WP 6/4, ArchivesNZ (doc A46 (McCracken), p 215). See also Goldsmith, *Wairarapa*, p 82.
419. Cooper to Featherston, 3 September 1864, MA-MLP 1/1881/511 and Featherston to Ngāiro and others, 4 November 1864, MA-MLP-W 1, ArchivesNZ (doc A46 (McCracken), pp 215–216)
420. Cooper to Featherston, 13 September 1864, WP 3/1864/804, ArchivesNZ (Ibid, p 217)
421. Goldsmith, *Wairarapa*, p 82
422. Kemp report, 15 June 1850, BPP, vol 7, cmd 1420, p 244 (doc G25 (Crown opening submissions), p 3, appendix)
423. Document I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 35
424. Ibid
425. Rāniera te Iho to Gore Browne, 14 July 1860, MA 23/10, ArchivesNZ, *Raupatu Document Bank*, vol 88, p 33970
426. Hāmuera and Patoromu to McLean, 9 October 1853, MS-papers-0032–0677B-17, ATL (doc A44 (Walzl), pp 393–394)
427. Document I17 (Crown closing submissions), p 39
428. Waitangi Tribunal, *The Kaipara Report* (Wellington: Legislation Direct, 2006), p 57
429. Waitangi Tribunal, *Mohaka ki Ahuriri Report*, vol 1, p 127
430. Ibid
431. Document A46 (McCracken), pp 32–33
432. Tāwhao (Ngātuere), Maika Purakau, and Wīremu Tutere Wakahaurangi to Pura, 9 June 1858, *Te Karere o Poneke* (doc A52 (Smith), pp 12–14); doc A46 (McCracken), p 143
433. Ibid
434. Normanby to Hobson, 14 August 1839, BPP, vol 3, pp 85–90
435. Ibid
436. Ibid
437. Ibid
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439. McLean, diary, 20 August 1853, MS-1236, ATL
440. Searancke to McLean, 28 July 1860, AJHR, 1861, C-1, pp 293–294
441. McLean to Cooper, 15 September 1855, AJHR, 1861, C-1, p 269
442. Document A33 (Rigby), p 43; McLean draft, not dated, MS-papers-0032–0006, object #1018404, ATL
443. Document A33 (Rigby), p 48
444. Document A33 (Rigby), p 43; McLean draft, not dated, MS-papers-0032–0006, object #1018404, ATL
445. Ibid
446. Document A33 (Rigby), p 48
447. Ibid
448. Document A1 (Patterson), pp 10–13; doc A46 (McCracken), pp 23–25
449. Document A33 (Rigby), p 15
450. Ibid
451. Grey to Domett, 12 September 1853, CS 1/8, 53/1229, ArchivesNZ (doc A33 (Rigby), p 15)
452. Document A33 (Rigby), pp 17, 20
453. Ibid, p 9
454. McLean to Grey, 14 September 1853, MS-papers-0032–0004, object #1004805, ATL (doc A33 (Rigby), p 22)
455. Document A33 (Rigby), p 22
456. Document A33 (Rigby), p 26
457. Ibid, p 28
458. Document A1 (Patterson), pp 27–28
459. Document A33 (Rigby), p 29

460. Document A1 (Patterson), p 9
461. Document I1(a) (Ngā Hapū Karanga closing submissions), p 67
462. Document A1 (Patterson), p 11
463. Document A100 (Turton's Deeds), deeds 90–94, 100–101, 109–110, 112; doc A1 (Patterson), p 12
464. Document A1 (Patterson), pp 12–13
465. Ibid, pp 16–17
466. Document A46 (McCracken), p 288; doc A46(c) (McCracken), pp 9–10, 12; doc A6 (Cleaver), p 34
467. Document A1 (Patterson), p 26
468. Document A1 (Patterson), pp 22–23
469. Ibid, p 30
470. Ibid
471. Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 2, p 277
472. McLean to Grey, 22 September 1853, MS-papers-0032–0004, object #1016412, ATL
473. McLean to Domett, 20 September 1853, AJHR, 1861, C-1, p 262
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Sidebars

Page 102: 'Intentions and Possibilities: What Key Crown Officials Said, 1840–52'. Sources: doc A81 (Loveridge), pp 29, 318–323, 328, 335, 407; Jenny E Murray, *Crown Policy on Māori Reserved Lands, 1840 to 1865, and Lands Restricted from Alienation, 1865 to 1900*, Rangahaua Whanui Series (Wellington, Waitangi Tribunal, 1997), p 4; doc A44 (Walzl), p 122; Alan Ward, Waitangi Tribunal, *National Overview*, 3 vols (Wellington: GP Publications, 1997), p 141; McLean to Pelichet, 20 February 1852, MA 24/8*16 (Native Land Purchase Commissioner outwards letters, 10 January 1852 to 12 September 1853), ArchivesNZ; McLean to Mein Smith, 20 October 1853, AJHR, 1861, C-1, p 263.
Page 111: 'McLean's Appeal to the Executive Council, 1852'. Source: Executive Council of New Munster, minutes, 6 May 1852, NM 7/01, pp 334–337 (doc A44 (Walzl), pp 344–345).
Page 119: 'Planting the Tikanga at Wairarapa'. Source: doc A99 (Rangitākaiwaho), p 2.
Page 124: 'Koha or 5 Percents?'. Sources: doc F11 (Chrisp), p 10; doc A40 (Walzl), pp 33–46, 72, 86.
Page 136: 'Wairarapa Māori Make Overtures to the Crown'. Source: Hāmuera and Patoromu to McLean, 9 October 1853, MS papers 0032–0677B-17, translation by Sally McKean and Tracey Mereoiti, supervised by Lyndsay Head, ATL.
Page 140: 'Barton, Te Weretā, McLean, and the Mataōperu Deed'. Sources: doc A59 (Stirling), p 48, 52–57; doc A45 (Smith), pp 89–93; doc A100 (Turton's Deeds), deed 96.
Page 145: 'The Mōroa Block'. Sources: doc A34 (White), pp 53–58, 68–69; doc A100 (Turton's Deeds), deeds 91, 195; doc A33 (Rigby), p 32; doc A46 (McCracken), pp 273–274; statement of claim 9: 6.1, 7.3, 9.1–9.4, 17.1.1–17.1.2.
Page 150: 'A Banquet'. Source: The report of the banquet appeared in the newspaper in two parts, the first appearing on 20 April 1854 and the second on 4 May 1854. See the *Maori Messenger*, vol 6, no 139, 20 April 1854, pp 2–3; *Maori Messenger*, vol 6, no 140, 4 May 1854, p 3.
Page 156: 'How McLean Dealt with Ngātuere's Interests'. Sources: doc A46 (McCracken), pp 42, 53, 91–93, 116, 144–149, 158, 169, 175; doc A100 (Turton's Deeds), deeds 122, 131, 132; Hill to Featherston, 24 August 1857, WP 3/1857/569, ArchivesNZ.
Page 162: 'Fighting at Pakiaka'. Sources: Waitangi Tribunal, *Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 1 pp 136, 138; Samuel Williams, 'Remarks upon Land Purchases in the Hawke's Bay Province', [1859 or later], MS-papers-0032–0003A, object #1002724, ATL.
Page 167: 'Searancke in Wairarapa: 'Troubles like Mushrooms''. Sources: doc A46 (McCracken), pp 118–120, 132; Searancke to McLean, 10 September 1859, MS-papers-0032–0565, object #1022429, ATL; Searancke to McLean, 20 January 1860, MS-papers-0032–0565, object #1021548, ATL; doc I17(i) (Crown closing submissions), p 4.
Page 169: ''Considerable Discontent': Wardell Describes Māori of this District in 1861'. Source: Wardell, 20 September 1861, AJHR, 1862, E-7, pp 30–32.
Page 174: 'Response to Te Mānihera's Debt Problem'. Source: doc A46 (McCracken), pp 207–208.
Page 196: 'Letter from T E Pōtangaroa (and T E Otene Kuku) to McLean (and Governor Grey), 9 August 1852'. Source: Pōtangaroa and Te Otene Kuku to McLean, 9 August 1852, MS-Papers-0032–0676D-05, object 1031922, ATL; see also doc A45 (Smith), p 158.
Page 197: 'Letter from T E Pōtangaroa to McLean, 29 April 1852'. Source: Pōtangaroa to McLean, 29 April 1852, MS-Papers-0032–0676B-13, object 1032019, ATL; see also doc A45 (Smith), p 147.

Tables

Page 116: 'Castlepoint Reserves'. Source: doc A6 (Cleaver), pp 47, 60, 106–107, 111, 112.

475. Document A33 (Rigby), p 64
476. Ibid, p 62
477. Document A33 (Rigby), p 61
478. Document A46 (McCracken), pp 292–293
479. McLean to Colonial Secretary, 3 September 1853, AJHR, 1861, C-1, pp 259–260 (doc A59 (Stirling), p 67)
480. Waitangi Tribunal, *Te Tau Ihu*, vol 1, pp 376, 528
481. Document I17(a) (Crown closing submissions), pp 3–4; doc A87 (Hēnare Matua whānau opening statements); doc I1(a) (Ngā Hapū Karanga closing submissions), pp 31, 80–81; doc I9 (Hēnare Matua whānau closing submissions). Also see doc E1(a) (Tautāne Deed), doc E50 (Translation deeds of the sale of Tautāne, deeds HWB 18-Ai, 18-B), and doc E50(a) (Tautāne Deed).
482. Document I9 (Hēnare Matua whānau closing submissions), paras 3, 15
483. Document I1(a) (Ngā Hapū Karanga closing submissions), p 29
484. Document I8 (Rangitāne closing submissions), pp 48–54
485. Ibid, p 67
486. Document I17(a) (Crown closing submissions), p 3
487. Ibid, p 4
488. Document A19 (Ballara and Scott), p 5
489. Document I17(a) (Crown closing submissions), pp 3–4

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CROWN PURCHASING: POLICY AND PRACTICE, 1853–65

The following tables are based on information in *Provinces of Taranaki, Wellington, and Hawke's Bay*, volume 2 of Henry Hanson Turton, comp, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printer, 1878). See also document A100 (Turton's deeds).

The deed names are largely based on those recorded by Turton. Macrons have been added where names have the same spelling as modern-day appellations.

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No	Block	Purchase date	Payment	Agent
	Maungaroa East Coast (84)	22 March 1845	—	Forsaith
	Kaikōkirikiri 190a to Bishop Selwyn (Crown grant)	14 June 1853	n/a	Grey
	Pāpāwai 400a to Bishop Selwyn (Crown grant)	14 June 1853	n/a	Grey
	Castlepoint (85)	22 June 1853	£2500	McLean
1	Tuhiterata Kaipapa (Tuhitarata) (McMaster's homestead) (86)	25 August 1853	£15	McLean
2	Wairarapa and East Coast Māori claims to lands at Porirua and Wellington (87)	29 August 1853	£100	McLean
3	Tūrakirae, West side of Lake block 1 (88)	1 September 1853	£2000	McLean
4	Tūranganui, East Side of the Lake (WGN 219-B and 582)	6 September 1853	£1100	McLean
5	Tuhitarata, Paharakeke (McMaster's Run) (89)	10 September 1853	£1000	McLean
6	Kaiwaka Captain Smith's homestead (90)	16 September 1853	£100	McLean
7	Tauwharenīkau 4 or Mōroa (91)	19 September 1853	£2000	McLean
8	Morrison's homestead (92)	26 September 1853	£100	McLean
9	Te Torohanga, Gillies', and Burling's Station (93)	12 October 1853	£75	McLean
10	Te Ore Ore, Collins's Homestead (94)	18 October 1853	£200	McLean
11	Manawatū block (Te Rōpiha and others) (DR 5)	19 October 1853	£300	McLean
12	Ōpaki Waipoua (DR 14)	19 October 1853	£300	McLean
13	Tūpāpakurua (DR 15)	19 October 1853	£200	McLean
14	Blacksmith's homestead (95)	22 October 1853	£10	McLean
15	Mataōperu, Barton's Run (Whāwhānui) (96)	25 October 1853	£1000	McLean
16	Pt Pāhaua and Wilson's Run (97)	29 October 1853	£1250	McLean
17	Upokongāruru (104 enclosure) (see 25)	29 October 1853	£200	McLean
18	Whareama 2, Waiorongo, and Waiwarawara (Renata Te Ao) (98)	1 November 1853	£400	McLean
19	Waihora, Mangapakia (99)	28 November 1853	£300	McLean
20	Whareama, inland of Te Ore Ore (DR 16)	29 November 1853	£93	McLean
21	Whareama 3 (North) (100)	2 December 1853	£300	McLean
22	Pt of Whareama (No 1) (101)	9 December 1853	£100	McLean
23	Manawatū (102)	10 December 1853	£800	McLean

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24	Mākōura (103)	10 December 1853	£100	McLean
25	Upokongāruru (Te Kaninamu) (104)	10 December 1853	£487	McLean
26	McMaster's Run (Part) Tuhitarata (105)	12 December 1853	£100	McLean
27	Whareama (part of) (106)	12 December 1853	£100	McLean
28	Tuiterata pt McMaster's Run (Hiko's claims) (107)	13 December 1853	£100	McLean
29	Kaiotehaku Ōtāraia (Gillies Homestead) (108)	13 December 1853	£100	McLean
30	Tūrakirae pt Block 1 West Side of Wairarapa Lake Pōnui (Tāmihana Reserve) (109)	14 December 1853	£400	McLean
31	Kuratāwhiti (No 1) (Te Mānihera's) (110)	14 December 1853	£100	McLean
32	Kuratāwhiti (No 2) (Te Waka Tahuaki's) (111)	14 December 1853	£120	McLean
33	Northwood's Homestead (112)	14 December 1853	£100	McLean
34	Ruamāhanga, Land on (113)	15 December 1853	£20	McLean
35	Waiōrongomai (Rāniera) (114)	22 December 1853	£100	McLean
36	Mōroa, Paotumokai to Waengawa (DR 17)	22 December 1853	£100	McLean
37	Ōwhanga (Featherston) including Mānihera's block (115)	23 December 1853	£1000	McLean
38	Ōwhanga including Waka and Mānihera's lands at Kuratāwhiti and at the entrance to Wairarapa roads (116)	23 December 1853	£1000	McLean
39	Wilson's Run part (DR 18)	24 December 1853	£100	McLean
40	East of Kaiwhata (117) (see no 96)	27 December 1853	£270	McLean
41	Paeroa, Part of Captain Smith's Run (DR 19)	27 December 1853	£200	McLean
42	Te Witi (Te Whiti) J McKenzie's Homestead (DR 20) (see no 110)	29 December 1853	£50	McLean
43	Ruamāhanga block (Haimona Pita Hinaki's land) (DR 21)	31 December 1853	£100	McLean
44	Rongomaiaia block (Ruamāhanga, Haimona Pita Hinaki's land) (DR 22)	31 December 1853	£100	McLean
45	Tautāne (HWB TD 4 (18-B))	3 January 1854	£1000	McLean
46	Te Awaiti and pt of Pāhaua (118)	3 January 1854	£1500	McLean
47	Wharekākā (119)	4 January 1854	£2000	McLean
48	Ahiaruhe (120)	4 January 1854	£500	McLean
49	Wairarapa and East Coast (Ngāti Awa, Ngāti Tama, and Ngāti Toa claims) (121)	7 January 1854	£700	McLean

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No	Block	Purchase date	Payment	Agent
50	Whati Part Captain Smith's Run (and bush) (122)	9 January 1854	£290	McLean
53	Pohaturiki. Captain Smith's Run part (123)	11 January 1854	£250	McLean
51	Pohaturiki pt Captain Smith's Run (124)	11 January 1854	£250	McLean
52	Kuhangawariwari (aka Kōhangawariwari) (125)	11 January 1854	£1500	McLean
54	Upokongāruru (104 'receipt')	11 January 1854	£87	McLean
55	Wairarapa (Kēpa Te Rangihiwinui's claims) (DR 23)	17 January 1854	£50	McLean
56	Āwhea Ōpouawe (126)	18 January 1854	£400	McLean
57	Wairarapa (Te Pi and Hiriona's claims) (DR 24)	6 February 1854	£50	Cooper?
58	Wairarapa (Raumoa and others' claims) (DR 25)	1 March 1854	£40	Unkown

First-wave crown purchase transactions, August 1853 to January 1854: McLean

Notes

The deed names have largely been based on those recorded by Turton. Macrons have been added where names have the same spelling as modern-day appellations.

Key

No: Number of known Crown purchase transactions in Wairarapa ki Tararua inquiry district between 25 August 1853 and 18 August 1864.

Shaded: Deed transaction; that is, a transaction where there is an official record of the title being purchased by the Crown for the particular land area concerned.

Unshaded: Transaction where the official record is a 'receipt', 'advance', or 'instalment'.

'Payment': Total price, instalment, or advance. Where known, these are noted.

Abbreviations

(xx): Turton's deed number for the province of Wellington

DR (xx): Turton's deed receipt number for the province of Wellington

HWB TD: Turton's deed number for the province of Hawke's Bay

WGN: Crown purchase deeds for the province of Wellington, ArchivesNZ

WP 6, MA-MLP 1/1881/511: Māori Affairs file reference, ArchivesNZ

AJHR, 1858, C-1: Record in *Appendix to the Journals of the House of Representatives*

n/a: Not applicable

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No	Block	Purchase date	Payment	Agent
59	Waiariki Reserve (DR 27)	24 November 1854	£6 5s	McLean
60	Land at Taratahi (Waiohine) (132)	29 November 1854	£200	McLean
61	Donald's Station (DR 26)	29 November 1854	£100	McLean
62	Parinuiokuaka (Te Karamu) (131)	29 November 1854	£200	McLean
63	Kēpa Te Rangi's claims (DR 28)	29 November 1854	£50	McLean
64	Kaimatarau (near Northwood's) Taratahi (DR 29)	29 November 1854	£200	McLean
65	Kuratāwhiti (DR 46)	30 November 1854	£50	McLean
66	Kaiaho (DR 30)	1 December 1854	£100	McLean
67	Ōtahuao (DR 31)	1 December 1854	£200	McLean
68	Papawhakarau (linked with Kaiaho) (DR 32)	1 December 1854	£100	McLean
69	Maramamau (127)	4 December 1854	£500	McLean
70	Kahutara (Part of Bidwell's run) (128)	5 December 1854	£650	McLean
71	Pāhaua (Pāhaoa)	5 December 1854	£200	McLean
72	Pāhaua (Pāhaoa)	8 December 1854	£100	McLean
73	Waikaraka (DR 33)	9 December 1854	£100	McLean
74	Kaiaho and Kuripuni (148)	10 December 1854	£150	McLean
75	Ahiaruhe (120)	22 December 1854	£250	McLean
76	Donald's Homestead (Kuripuni) (129)	23 December 1854	£150	McLean
77	W M Smith's Run Paeroa (130)	27 December 1854	£300	McLean
78	Te Karamu (131)	27 December 1854	£400	McLean
79	Tauherenīkau (Tauwharenīkau) (91)	27 December 1854	£400	McLean
80	Wharekākā (119)	27 December 1854	£500	McLean
81	Tuhitarata (147)	27 December 1854	£250	McLean
82	Hikawera and Taratahi (132)	28 December 1854	£600	McLean
83	Pt Smith's Run (122)	28 December 1854	£40	McLean
84	Kuripuni (148)	29 December 1854	£100	McLean
85	Āwhea (126)	2 January 1855	£100	McLean

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No	Block	Purchase date	Payment	Agent
86	Awaiti and Pāhaua (118)	2 January 1855	£450	McLean
87	Castlepoint (85)	5 January 1855	£1500	McLean
88	Castlepoint (Whareama claims) (DR 34)	5 January 1855	£30	McLean
89	Whakataki Reserve (Puketōī) (133)	9 January 1855	£200	McLean
90	Mātaikona (J Sutherland's Homestead) (134)	9 January 1855	£40	McLean
91	Porotāwhao (85)	9 January 1855	£50	McLean
92	Puketewai (85)	9 January 1855	£50	McLean
93	Te Aupapa, Puketōī(DR 35)	9 January 1855	£60	McLean
94	Puketōī (DR 36)	9 January 1855	£50	McLean
95	Parahihi, Puketōī (DR 37)	9 January 1855	£50	McLean
96	Kaiwhata (117)	11 January 1855	£50+£20	McLean
97	Wainuiorū/Pāhaua (97)	11 January 1855	£450	McLean
98	Kuratāwhiti (135)	24 January 1855	£75	McLean
99	Wharekākā (119)	10 February 1855	£100	McLean
100	Āwhea (126)	10 February 1855	£100	McLean
101	Tuhitarata (147)	10 February 1855	£150	McLean
102	Āwhea (126)	14 February 1855	£100	McLean
103	Maungaraki (DR 38)	14 February 1855	£200	McLean
104	Margaret Stoodley's (Kaine Te Maia) claims (DR 39)	14 February 1855	£20	McLean
105	Taueru	14 February 1855	£30	McLean
106	Maramamau (127)	17 February 1855	£200	McLean
107	Turangawaiho reserve	25? February 1855	?	McLean
108	Tareha's and Taraipina's claims (DR 40)	7 March 1855	£100	McLean
109	Kopuāranga (Te Ore Ore) (136)	8 August 1855	£100	Cooper
110	Wainuiorū (seaward of) (137)	8 August 1855	£100	Cooper
111	Te Whiti (138)	22 August 1855	£100	Cooper
112	Kuratāwhiti (135)	10 September 1855	£75	Cooper
113	Tuhitarata (147)	13 September 1855	£100	Cooper

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114	Tūrakirae (West side of Lake block) (DR 41)	13 September 1855	£500	Cooper
115	Tūranganui (East side of Lake block) (DR 42)	13 September 1855	£400	Cooper
116	Mataōperu 'Kurawhāwhānui' (DR 43)	14/24 October 1855	£400	Cooper
117	Kuhangawariwari (DR 44)	12 November 1855	£100	Cooper
118	Ngāti Raukawa (DR 45)	21 November 1855	£20	Cooper
119	Kuratāwhiti (DR 46)	8 January 1856	£50	McLean
120	Wharehanga (WGN 614)	9 January 1856	£100	McLean
121	Awaiti and Pāhaua (DR 47)	9 January 1856	£40	McLean
122	Tauherenīkau (DR 47)	9 January 1856	£200	McLean
123	Arikirau (139)	10 January 1856	£20	McLean
124	Awaiti and Pāhaua (DR 49)	10 January 1856	£50	McLean
125	Te Mānihera's claims (DR 50)	17 January 1856	£37 12s 6d	McLean
126	Pāhaoa/Pāhaua (Hoera's claims) (DR 51)	17 January 1856	£350	McLean
127	Pāhaoa (Arama Karaka's) (170)	17 January 1856	£100	McLean
128	Maungaraki (Wiremu Kīngi) (DR 52)	17 January 1856	£50	McLean
129	Mākara (DR 53)	17 January 1856	£60	McLean
130	Aranga Te Kura (140)	18 January 1856	£60	McLean
131	Wiremu Kīngi's claims (DR 54)	21 January 1856	£123 10s	McLean
132	Hikawera (DR 55) (same receipt number as below)	21 January 1856	£650	McLean
133	Pūhangina (Wharekākā) (DR 55)	21 January 1856	£500	McLean
134	Maungaraki (Arama's) (141)	22 January 1856	£100	McLean
135	Ngātuere's claims (DR 56)	22 January 1856	£10	McLean
136	Hēmi Te Miha's claims and others (DR 57)	24 January 1856	£26	McLean
137	Tautāne (additional) (AJHR, 1858, C-1)	3 August 1857	£1000	McLean
138	Tautāne (HWB TD 24)	11 March 1858	£500	McLean and Cooper
139	Mākuri (Puketōī 4, 5) (DR 58)	12 March 1858	£50	Searancke
140	Whangaehu (142)	24 March 1858	£100	Searancke
141	Hikawera and Taratahi (143)	24 March 1858	£200	Searancke

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No	Block	Purchase date	Payment	Agent
142	Te Ahi Tunu Manawa on the Ruamāhanga (AJHR,1861, C-1)	? April 1858	£80	Searancke
143	Ngāawapūrua (Seventy Mile Bush) (144)	22 April 1858	£100	Searancke
144	Mākōura (DR 59)	26 May 1858	£7 (for 5%)	Searancke
145	Kuhangawariwari and Ōpaki (145)	27 May 1858	£200	Searancke
146	Ahikauru (Papahikurangi) (146)	7 June 1858	£50	Searancke
147	Tuhitarata (McMaster's) (147)	23 June 1858	£200	Searancke
148	Waikakariki (DR 60)	23 June 1858	£20	Searancke
149	Tikiwhakairo (DR 61)	23 June 1858	£50	Searancke
150	Kaiaho and Kuripuni (Donald's Homestead) (148)	26 June 1858	£500	Searancke
151	Manaia (150)	28 June 1858	£550	Searancke
152	Matapihi–Rangitumau (151)	28 June 1858	£100	Searancke
153	Tirohanga (152)	28 June 1858	£160	Searancke
154	Tūpurupuru (155)	10 July 1858	£30	Searancke
155	Ngāawapūrua (144)	26 July 1858	£25	Searancke
156	Te Kōpi (153)	8 October 1858	£150	Searancke
157	Pihautea (Bidwell's Homestead) (154)	14 December 1858	£100	Searancke
158	Tūpurupuru (155)	28 January 1859	£1890	Searancke
159	Whāio (Maungaraki) (156)	31 January 1859	£150	Searancke
160	Tupapokia (157)	31 January 1859	£30	Searancke
161	Kōrakonui and Ngāpaiaka (158)	4 February 1859	£50	Searancke
162	Maungaraki (Puhara and Tamati Te Heke's) (159)	4 February 1859	£200	Searancke
163	Whāio (Maungaraki) (Whaiao) (156)	12 February 1859	£130	Searancke
164	Land at Taheke (Te Kumenga) (T 10/1)	June 1859	£150	McLean
165	Mākuri, Te Aupapa, Puketōī (Castlepoint) (160)	7 October 1859	£240	McLean
166	Ihuraua (Forty Mile Bush) (161)	12 October 1859	£650	McLean
167	Hikurangi and Awatoetoe (162)	1 November 1859	£100	Searancke
168	Waikaraka (163)	2 November 1859	£600	Searancke

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169	Mātaikona (Sutherland's rent to Retimana) (DR 62)	12 November 1859	£60	Searancke
170	Wainuiorū (DR 66)	22 November 1859	£100	Searancke
171	Wainuiorū (Paid to Te Keepa) (DR 66)	13 January 1860	£10	Searancke
172	Raparimu (164)	14 January 1860	£100	Searancke
173	Tūpāpakurua and Kōrakonui (Moore's run) (165)	31 January 1860	£500	Searancke
174	Ōtahuao (166)	27 March 1860	£200	Searancke
175	Matapihi Rangitumau (167)	28 March 1860	£355	Searancke
176	Te Whanga (168)	29 March 1860	£200	Searancke
177	Te Whiti (171)	13 August 1860	£20	Searancke
178	Upper Tauheru (Whangaehu 2)	circa August 1860	£60	Searancke
179	Upper Tauheru (Whangaehu 2)	circa August 1860	£50	Searancke
180	Upper Tauheru (Whangaehu 2)	circa August 1860	£10	Searancke
181	Upper Tauheru (Whangaehu 2)	circa August 1860	£12	Searancke
182	Pt Forty Mile Bush	circa August 1860	£50	Searancke
183	Aranga Te Kura (DR 63)	15 January 1862	£20	McLean
184	Mākara (169)	17 January 1862	£400	McLean
185	Tuhitarata (Mitai's claim) (DR 64)	18 January 1862	£30	McLean
186	Taheke, Te Kumenga (Tuhitarata) (DR 65)	21 January 1862	£150	McLean
187	Te Whiti (additional) (171)	24 January 1862	£20	McLean
188	Pāhaua (Pāhaoa) Arama Karaka's (170)	27 January 1862	£275	McLean
189	Wainuiorū (DR 66)	30 January 1862	£60	McLean
190	Tauherenīkau (DR 67)	February 1862	£200	McLean
191	Te Whiti (additional) (171)	12 February 1862	£60	McLean
192	Papawhakarau (DR 68)	12 February 1862	£10	McLean
193	Te Tipua (Kahutara) (DR 69)	26 February 1862	£20	McLean
194	Kahutara (DR 70)	26 February 1862	£20 10s	McLean
195	Whāwhānui Reserve (Barton's Run) (172)	27 February 1862	£80	McLean
196	Pāhaoa (Pāhaua) (DR 71)	27 February 1862	£7	McLean
197	Tauheru (173)	22 January 1863	£80	Featherston

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No	Block	Purchase date	Payment	Agent
198	Kahutara Bush (174)	22 January 1863	£200	Featherston
199	Otūmaunga (175)	22 January 1863	£40	Featherston
200	Te Kōhutu (176)	16 May 1863	£15	Featherston
201	Kurawhāwhānui (linked to Mataōperu purchase) (96)	24 October 1863	£400	?
202	Whangaehu (177)	11 April 1864	£25	Cooper
203	Kopuāranga (178)	11 April 1864	£300	Cooper
204	Pouawatea, Te Awa o te Atua (from Rāwiri Pihirau) (179)	26 April 1864	£150	Cooper
205	Kumarau (Tauheru), Kumerau (180)	19 August 1864	£303	Cooper
206	Motukaitūtae (Upokongāruru) (181)	23 August 1864	£100	Cooper
207	Rangitoto (Rangitumau) (WP 6, MA-MLP 1/1881/511)	18 August 1864	£200	Cooper

Second-wave crown purchase transactions, November 1854 to August 1864: McLean, Cooper, Featherston, and Searancke

Notes

The deed names have largely been based on those recorded by Turton. Macrons have been added where names have the same spelling as modern-day appellations.

Key

No: Number of known Crown purchase transactions in Wairarapa ki Tararua inquiry district between 25 August 1853 and 18 August 1864.

Shaded: Deed transaction; that is, a transaction where there is an official record of the title being purchased by the Crown for the particular land area concerned.

Unshaded: Transaction where the official record is a 'receipt', 'advance', or 'instalment'.

Payment: Total price, instalment, or advance. Where known, these are noted.

Abbreviations

(xx): Turton's deed number for the province of Wellington

DR (xx): Turton's deed receipt number for the province of Wellington

HWB TD: Turton's deed number for the province of Hawke's Bay

WGN: Crown purchase deeds for the province of Wellington, ArchivesNZ

WP 6, MA-MLP 1/1881/511: Māori Affairs file reference, ArchivesNZ

AJHR, 1858, C-1: Record in *Appendix to the Journals of the House of Representatives*

n/a: Not applicable

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CHAPTER 3B

CROWN PURCHASING: PRE-1865 RESERVES

3B.1 Outline

The issue of Crown purchasing to 1865 is dealt with in four chapters. Chapter 3A deals with policy and practice; 3B (this one) deals with reserves; 3C looks at how local Māori communities benefited from the settlement facilitated by these Crown purchases, particularly in the areas of education and health; and 3D deals with the koha/five percents issue.

We have outlined already how the Crown undertook to provide for the future welfare of Māori. Promises of 'ample reserves' and 'special benefits' were an integral part of its humanitarian commitment, colonisation schemes, and purchase negotiations with Māori. In this part, we consider whether the Crown's practice lived up to its publicly-stated intentions and promises. Specifically, in the 'Tribunal analysis and findings' section, we answer the key questions raised by the evidence:

- How adequate was the provision of reserves in the pre-1865 Crown pre-emption period? What sorts of lands were reserved and for what purposes?
- How well were those reserves protected? Did the differing purposes for which reserves were created entail different responsibilities on the part of the Crown? Did those responsibilities change over time as Māori circumstances changed?
- How well did the Crown respond to Māori concerns about failures of survey and other problems regarding reserves?

First, though, we summarise the parties' positions on reserves.

3B.1.1 What the claimants say

The claimants contend that the Crown ought to have had a clear policy for ensuring the provision of sufficient reserves to secure an adequate tribal land base, especially in the context of the Crown's intention to purchase much of the district.[1] It did not matter, really, whether the land retained by Māori was officially designated 'reserves' or not, provided that the Government made certain that their tīpuna (forebears) retained enough good quality land to 'ensure the maintenance of traditional needs as well as ensuring retention of enough land to participate in the settler economy'.[2] This was necessary to fulfil Governor Grey's 1847 promise that ample reserves would be made – and also the clear expectation that the Crown would honour reserves as reserves, and not treat them as just

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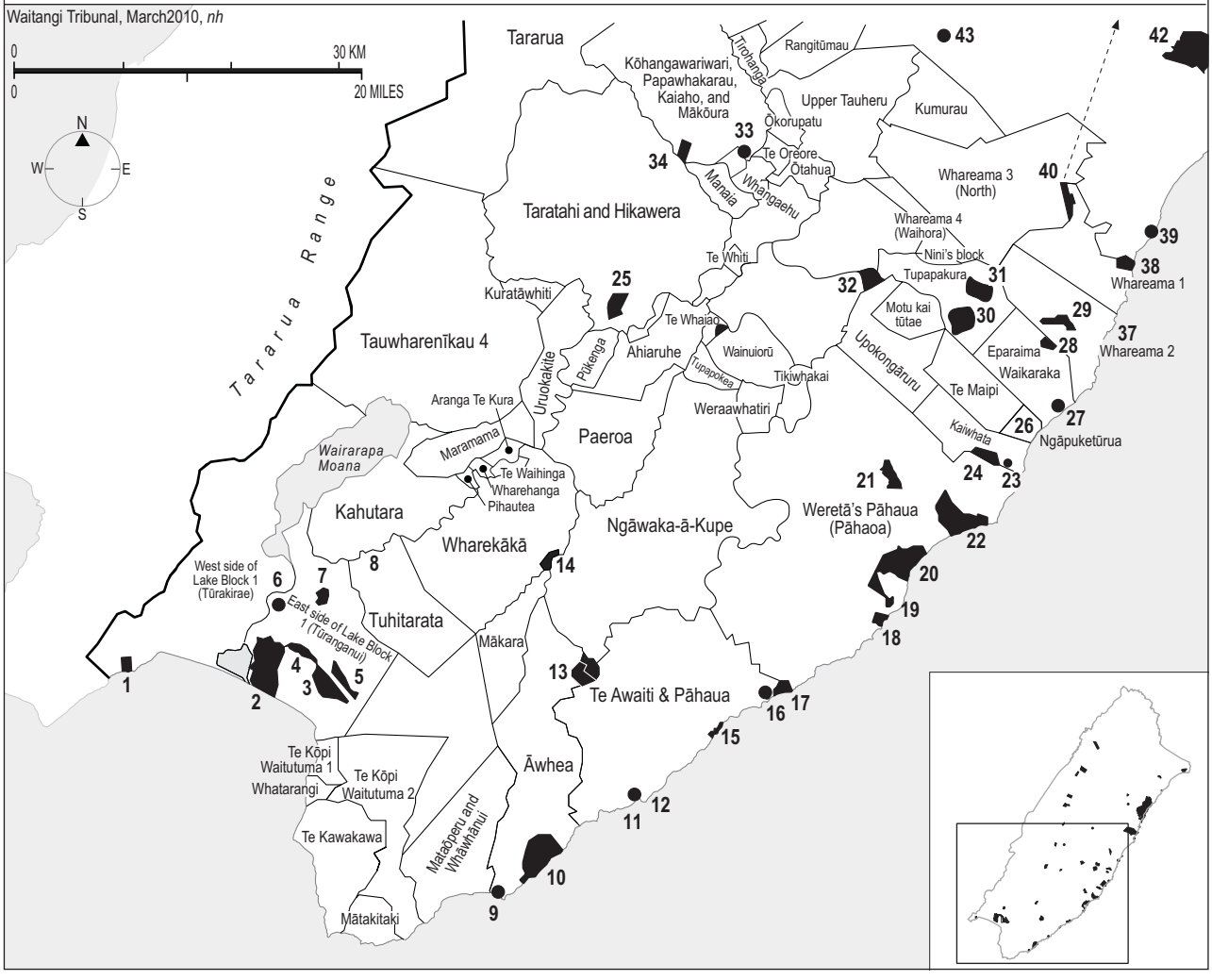
1 Hinakitaka
2 Tūranganui sec 65 (Rāniera te Iho's reserve)
3 Whakatomotomo
4 Tūranganui sec 66 (Whangaīwhakarere)
5 Pirinoa
6 Tauānui
7 Ōkōura
8 Waitapu sec 73
9 Ōpouawe
10 Ōroi
11 Huariki
12 Te Awaiti
13 Āwhea sec 73 (Whakapuni)
Āwhea sec 74 (Taimanuka Mangaroa)
14 Rauohaere (Hautotara)
15 Pūkaroro
16 Pt Pāhaua
17 Pāhaua
18 Te Wharaurangi
19 Hahaia
20 Waikēkeno
21 Paehuia
22 Te Unuunu
23 Kaiwhata
24 Tūtaehaohao (Hauhau)
25 Te Para
26 Ngāpuketūrua (reserve 774)
27 Manapiu
28 Eparamia sec 783
29 Motuwaireka
30 Whareama sec 394 (Puna kotuku or Piripi's Otupurupuru)
31 Whareama sec 395 (Te Aruhe o Pohatu)
32 Tupurupuru secs
33 Kaikokirikiri (Waipoua Opaki sec 55)
34 Manaia
37 Waipupū
38 Whareama sec 884
39 Waimīmiha
* 40 Mangapōkia
42 Whakataki
43 Ngātāhuna

* Shortfall of 42 acres made up in award of Aohanga blk 5, sec 6, inCastlepoint block



Approximate location of known southern reserves from pre-1865 Crown purchases (where sufficiently large enough to show)

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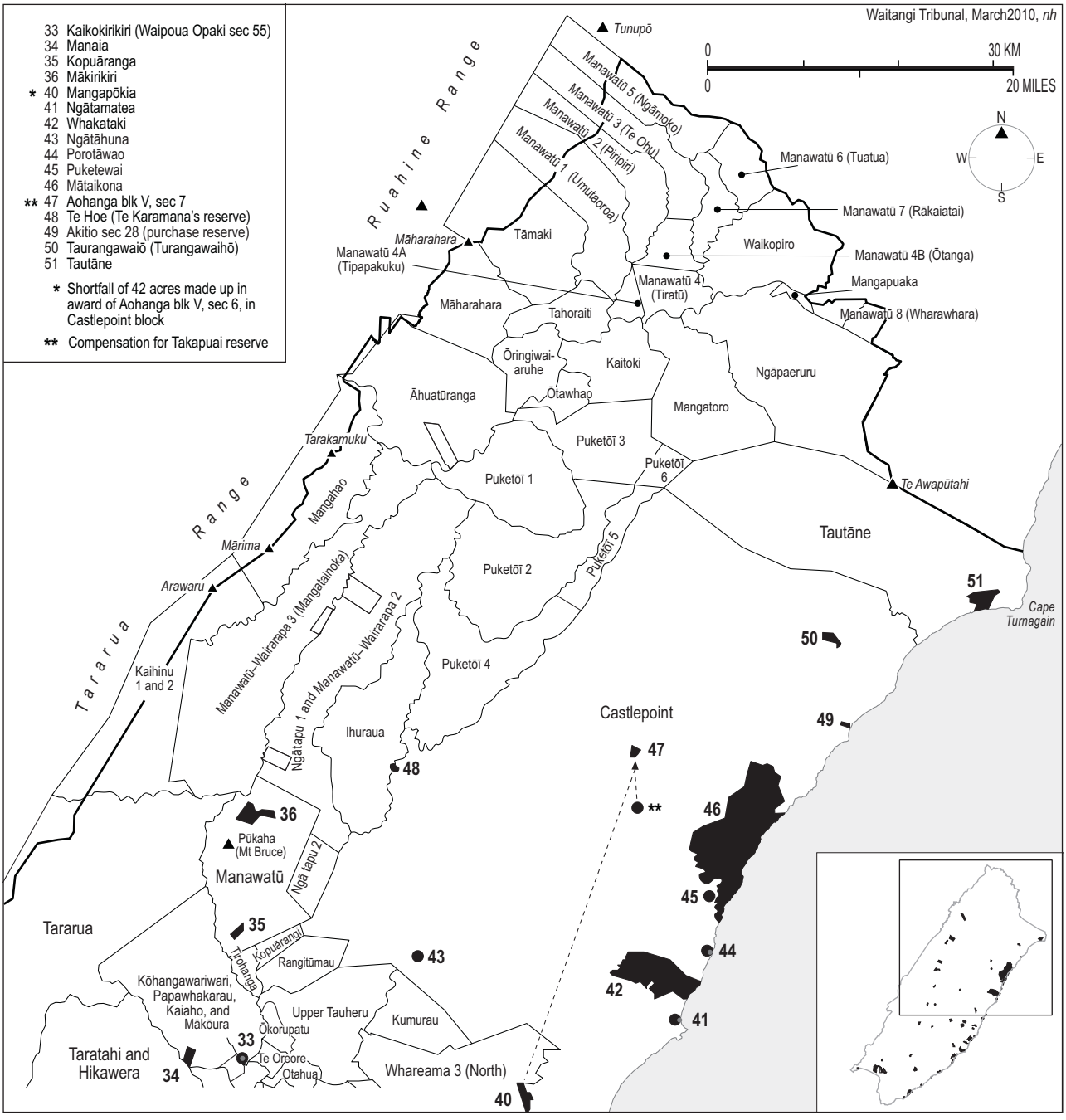

Approximate location of known northern reserves from pre-1865 Crown purchases (where sufficiently large enough to show)

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more land to purchase. As Governor Gore Browne said about the 1853–54 transactions:

> [There was a] distinct understanding that Māori should not in any time be called upon to alienate any lands so reserved, it being considered essential for their own maintenance and welfare to retain them.

The Crown failed both to provide reserves, and to ensure they were retained.

The claimants contend that McLean took it on himself to limit the definition of reserves so that provision was ultimately 'mean-spirited' and 'almost negligible'.[3] The land provided was routinely of poor quality.[4] The Crown put hugely more effort into extinguishing Māori title than into setting aside and protecting reserves. Many problems resulted from the Crown's failure to prioritise the survey of reserves and the issue of Crown grants for them, as promised. Surveying land for settlement was prioritised above marking out reserves. This constituted 'a fundamental breach of the Crown's protective function'.[5] In the claimants' view, this substantial and enduring breach was aggravated by the fact that the Crown knew of such problems very early on, yet failed to act promptly and effectively to address them.[6]

Counsel gave particular examples of how the Crown's poor policies and practices had adversely affected their clients' interests. For example, counsel for Ngāti Hinewaka said that the 1853–54 transactions alienated 75 percent of Ngāti Hinewaka's lands, and the quantity and quality of land remaining after that time was 'clearly deficient'.[7] He submitted that, by the beginning of the Native Land Court era in 1865, Ngāti Hinewaka had insufficient land for their immediate or future requirements.[8] The Crown's failure to provide legal access to reserved land constituted a breach of active protection.[9] Several reserves were inaccessible to the owners, and thus, much of this land was subsequently sold.[10] Other claimants advanced similar evidence and arguments.

3B.1.2 What the Crown says

The Crown concedes that in this inquiry district, Māori were landless at least by the turn of the twentieth century, and that the Crown therefore breached the principles of the Treaty. But it says that at the end of the initial period of Crown purchase under discussion in this part of our report, a 'reasonable buffer' of 40 percent of the land remained in Māori hands. The Crown does not distinguish between land that was reserved from purchases, and land that Māori simply did not sell in the first wave.[11] The primary intention of officials was that Māori should have sufficient means of support so that they would not be a burden on the state, rather than the preservation of their landed estate as such. Counsel pointed out that less than 20 percent of the workforce was actively involved in farming in the late nineteenth century, implying that the need for rural reserves had diminished.[12]

The Crown concedes that it should have delineated and protected the reserves agreed upon, and issued grants where they were promised. Where Māori suffered prejudice from these failures, the Crown agrees that the Treaty was breached. It conceded in its memorandum of 9 May 2005 that:

> to the extent that it failed adequately to delineate and protect reserves agreed upon in Wairarapa land purchases, or that it unreasonably delayed issuing grants where these were promised, Wairarapa ki Tararua Māori suffered prejudice and that these failures were in breach of the Treaty of Waitangi and its principles.[13]

The Crown does not, however, see the subsequent loss of reserves by Crown purchase as necessarily prejudicial, arguing that it depends on the purpose of the reserve; whether that purpose remained relevant at the time of alienation; the nature and extent of other landholdings; and the mandate of the vendors to enter into an agreement to sell.[14] The Crown argued, for example, that in the case of Taratahi and Tūrakirae, the problem was one of individuals

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selling without the consent of all right holders, rather than an absence of protections. It contended that:

In general, the area of land remaining to Māori does not suggest that the purchase of reserves raises questions about the adequacy of remaining lands. . . . there is insufficient evidence to support a general finding that the purchase of reserves was improper and prejudicial.[15]

3B.2 The Crown and Reserves in the Early Years

3B.2.1 Introduction

In the foundation years of the colony, Crown officials made a clear commitment to help Māori to weather the impact of an influx of settlers. All Māori land essential for their well-being would be protected, so that they could use their remaining resources fully and also have access to the benefits of settlement.

From the first, however, it was Crown practice to focus on confirming and protecting Māori ownership of sites already intensively used, rather than on retaining land suitable for leasing out or sheep farming. What Māori got to keep was fairly limited. McLean, for instance, worked hard to suppress Māori expectations, and land purchase officers bargained hard to keep Māori holdings down. McLean believed, as did many others, that the way forward for Māori was for them to hold discrete properties that they purchased back to hold under Crown title. If they retained extensive reserves, they would, in McLean's opinion, only be encouraged to continue in their traditional migratory ways.[16] This was the opinion McLean gave when Colenso expressed his fear that Māori would be left only with the hills.

Given this view, it is hardly surprising that reserves in our inquiry district, with a single exception, were not extensive tracts of territory that would allow 'all of the people' to continue customary practices if they wanted to. Nor, however, were they suitable (on the whole) for future commercial ventures. They centred on māra (cultivations), kāinga (villages), pā (fortified villages) and urupā (burial sites). Key coastal fishing sites were also reserved, where they did not interfere with settlement.[17] Thus, we see that reserves in this period were primarily intended for three purposes – to permit subsistence agriculture; to allow continued access to particularly valued resources; or to be discrete farms for rangatira (chiefs). Officials paid lip service to the idea of 'ample' reserves, but actually the word most frequently used in the Wairarapa deeds was 'small'.

As the colonial government became more dominant in New Zealand affairs, the belief strengthened that reserves were a temporary measure only. They would give Māori time and a 'better chance for the adoption of European habits of mind' before they settled down to poverty and the 'necessity for labour', as Richmond put it when discussing the later impact of Native Land legislation.[18] Increasingly, the prevailing view – expressed here by Chief Judge Fenton – was that Māori would 'progress the better the more he is exempt from protection or interference to which other citizens are not subject'.[19]

A basic commitment to the principle of active protection did survive as regards reserves, though. For instance, Bryce, an influential politician in the 1880s, said that the Government should not allow reserves to be sold unless there was at least a 'very good reason'.[20] Even as late as 1913 – by which time legal protection of reserves was largely gone – Māori parliamentarian Sir James Carroll reminded Parliament of its enduring obligation to protect reserved land:

> All Governments saw the wisdom – though the present Government fail to see any – of reserving Native Lands for their present and future maintenance. It was a cardinal policy, and, furthermore, it was an obligation cast upon all Governments, on an understanding with the Imperial authorities when the

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> Constitution was granted . . . that the Maori should be protected against the utter deprivation of his lands. The Imperial authorities had the administration of Native affairs . . . and would not hand them over until it was thoroughly recognized that every care would be taken of the Natives, and their affairs and their interests, by the Government of the country.[21]

3B.2.2 Reserves created in Wairarapa ki Tararua, 1853–65

In the late 1840s, when Governor Grey was in charge, the Crown made large-scale purchases with large-scale reserves. In our inquiry district, only the Castlepoint purchase conformed to this model, and the Mātaikona reserve of 17,770 acres was the only extensive tract specifically reserved for deed signatories.

(1) *Castlepoint reserves*

We have already talked about how McLean handled Castlepoint differently from other purchases in the district, and the Mātaikona reserve is an example of that difference. McLean's anxiety to get the Castlepoint purchase through and prevent the further spread of direct leasing in the district motivated him to agree to Māori retaining Mātaikona, even though he was concerned about the area being so large. Its size was less of an issue than it might have been elsewhere, because the land at Mātaikona was hilly and poor for grazing, and therefore less important for settlement purposes. Provided Europeans had adequate access to the coast elsewhere, acquisition of the block was not considered a priority, and this remained so well into the twentieth century. There were also other, smaller reserves from the Castlepoint block that were more in line with what McLean agreed to elsewhere.

McLean needed the Castlepoint purchase to instil the idea that settlement of the Wairarapa would be by way of Crown purchase rather than leasing. But once that purchase was complete, McLean did not feel the need to provide reserves on the same scale anywhere else. The policy environment was changing, and now reflected the influence of wastelands theory on official thinking. In the context of reserves, this led to an increased focus on the land Pākehā thought that Māori truly owned and valued. These were sites already in relatively intense occupation, which Māori would continue to live on and cultivate. Around this time, Tony Walzl notes the trend towards more but smaller reserves.

(2) *How many reserves in the pre-1865 period?*

We do not know exactly how many reserves were set aside out of Crown purchases in the pre-1865 period. Nor is it possible to calculate what proportion of the acreage purchased was set aside. According to later investigation by a royal commission in the 1880s, the Crown created around 90 reserves in the district.[22] This figure includes some reserves set aside from the Tāmaki-nui-ā-Rua/Seventy Mile Bush purchases in 1871, and some promised to particular rangatira.

Some promises of reserves were made orally; the reserves were supposed to be arranged on survey, and they were not recorded at the time of signing. Even deeds themselves were open-ended. Four stated that both the lands to be reserved and the price would be settled at some point in the future, when McLean returned to the area.[23] And most deed provisions for retention of land involved only vague descriptions, which meant that the areas concerned were not really ascertained – and therefore able to be protected – until survey. As we have seen, this often took a very long time, and in some cases only came after lands supposedly reserved for Māori had been on-sold to settlers.

Inadvertent on-selling mostly happened to reserves set aside during the six months of McLean's first wave of purchase activity, when he provided for reserves in 16 of the 56 deeds and receipt transactions he negotiated. This total of 56 deeds includes the nine homestead blocks purchased at this time. Land for Māori was less likely to be set aside on these blocks, because settlers – the former tenants of tangata whenua (people of the land ie local Māori) – were already using and occupying them.[24]

In 27 of the 56 deeds McLean negotiated, he made no

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reserves, but five of those deeds contained a five percent clause. In only eight cases did the deed provide for Māori to receive both reserves and koha; and only two deeds provided for reserves, eel fisheries, and the five percents. We shall see in our following discussion that McLean and his officers specified a number of areas to be retained for the Māori community to continue bird snaring, collecting firewood, and gathering resources such as rongoā (materials for traditional remedies). But few reserves were large enough for running stock, or for leasing out to others. Where the purpose of the reserve was apparently the future economic expansion of hapū interests, the size deemed appropriate was 1000 to 2000 acres. Even these kinds of provisions became less likely as Crown purchase officers filled in the patchwork of Wairarapa blocks and extended their activities into Tāmaki-nui-ā-Rua.

The first of two tables appended to this chapter sets out the 102 known reserves from pre-1865 Crown purchases that were actually set aside and formalised. It includes a number of reserves promised to particular rangatira, and promised reserves recorded not in McLean's original purchase deeds but in later deed receipts. The table also shows that several of the reserves for individual rangatira were not made official until the late nineteenth and early twentieth centuries. The second table appended shows the known 'purchase reserves'; that is, land that Māori purchased from the Crown. These number around 17.[25]

(3) *Reserves created in the first main purchases*

In the major purchases negotiated immediately after the komiti nui, McLean provided for reserves accommodating a spectrum of existing Māori uses that did not seriously interfere with settlement.

Tūrakirae, on the west side of the lake, was the first purchase where land reserves were recorded in the purchase deed. Here, McLean acceded to requests for four specific sites to be set aside: Patungamatangi (the boundaries were given briefly in the deed), Wairōngomai bush, an inland area bounded to the north east by Otauira, and Hinakitaka, for 'Ngati Tama residing there'. Eel fishing was also reserved if it was unaffected by drainage by Europeans, and the vendors were to receive the koha (gift) or five percents.

On the east side of the lake, at Tūranganui, Māori were to receive the koha and eight specified reserves, again centred on existing cultivations and kāinga:

- an area on the Tūranganui River (boundaries were described including Peretanginoa);
- Pirinoa – a 'small piece of timber land' (which included a kāinga although this was not stated);
- the burial site of Rangitāwhangi, Whakatomotomo, near the river (but taking in a larger area eventually surveyed at 1160 acres);
- another 'patch of timber land' – Ōkōura (also taking in a kāinga);
- Tauānui Pa – bounded in part by Peter Hume's fence and fenced Māori cultivations;
- Wahangengi – 'about 4 acres';
- Rāniera Te Iho's reserve (excluding the 80-acre ferry reserve); and
- Rīhara's reserve – 50 acres set aside for Rīhara Paku (also known as Rīhara Taku/Taka), who was a native teacher rather than a resident right holder.[26]

Māori also agreed to allow public roads to pass through these areas. Eel fishing, although not specifically mentioned, was understood to remain under the control of Māori (see below).

Neither of the next two general deeds for blocks contained reserve provisions, but the five percents were promised. Reserves were, however, set aside when McLean reached the coast. There, with the assistance of Te Hāpuku, he commenced negotiations with Te Weretā and other leading right holders of that part of the district. The Maungaroa deed, signed in 1845 when the Crown insisted upon Te Weretā's cession of land as punishment for his muru (retributive act of plunder) at Barton's station, had promised that cultivations would be excepted. However, they were never surveyed. Nor were they mentioned when McLean negotiated the Mataōperu deed to fix up the Crown's earlier arrangements, and to put its ownership of the area on a firmer footing. Now (as a result of McLean's

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Land in the Mātaikona reserve block, now Aohanga Station. Te Hika-ā-Pāpāuma claimants superimposed on it the names of sites of significance.

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Important coastal sites forming part of the Waikēkeno reserve. Originally 1665 acres, 344 acres remain in Māori hands today.

negotiations in August and September 1853) cultivations were again promised, described as located at Ōhiranga, but still undefined. A kāinga of 10 acres was also to be set aside at Ōpouawe, and an area of 1000 acres was reserved at Whāwhānui, which we discuss later. The Pāhaoa deeds that followed were also negotiated with Te Weretā and allied rangatira, and these reserved further specific sites:

- The piece of land on the east side of the Pāhaoa River that the deed described as having been shown by Hoera [Whakataha] to Te Hāpuku and Mr McLean. It was ultimately surveyed as 507 acres.
- The sites that Te Weretā indicated he wished to keep, which were to be 'regularly pointed out and surveyed that there may be no dispute about them'. These were later identified as Whāraurangi (220 acres), Hahaia (380 acres), Waikēkeno (1665 acres) and Te Unuunu (1775 acres).[27]
- A 'small piece called the Pa at Kaiwata', surveyed as seven acres.
- A 'small piece of the bush only at te Waipuna'.[28]

Bruce Stirling points out that by this stage (October 1853), the wording of the koha clause had been 'reduced' in

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the 'Part Pāhaoa and Wilson's Run' deed to a simple statement that, the '5 per cent on all sales of land, to be paid for this district the same as in Wairarapa'.[29]

(4) *Reducing Māori expectations*

After this, the Government gave steadily less consideration to the future needs of Māori. In October 1853, McLean instructed surveyor Captain William Mein Smith that reserves were a priority and that he was to give their survey his 'undivided attention . . . to prevent disputes, and to facilitate the present negotiations'.[30] He was to take 'two intelligent Natives' to point out what they required, but he was also to curb their expectations:

> I believe the natives will be demanding extravagant reserves at Opaki, Makoura, Koangawareware and the other plains within the valley. In such case you will be good enough to inform them that you are not prepared to agree to such reserves, and that, although they give information respecting them it is necessary to confer with me before acceding to any beyond what you may consider essential for their welfare.[31]

Mein Smith decided not to finalise what should be reserved until he had traversed the outer boundaries. He recorded that he discussed the matter with several Māori and that their expectations were 'somewhat extravagant'.[32] He then noted that they later consented to important changes, which Barry Rigby surmises really meant that they had agreed to McLean's limitation. Rigby says (and we agree) that this is an important series of events and 'a rare piece of negotiation evidence'. He concludes:

> The seminal features of the Manawatu-Wairarapa negotiations are that McLean delegated the main work to his surveyor, Smith, but that he insisted that Smith not agree to extensive reserves. Smith negotiated reserves with Te Ropiha, Wiremu Waka, and unidentified others. He then sketched, and did not survey, the boundaries of a very large purchase area. Finally, he reported a reduction in the reserves proposed without indicating any details of either the location or acreage of the reserves.[33]

McLean did not envisage Māori retaining extensive properties and a strong presence in the valley. However, he remained committed to their keeping their most valued resources, provided the areas were not extensive.

(5) *Reserves for continued access to customary resources*

There certainly were many instances where reserves were created because resources that Māori particularly valued were found there. It is difficult to infer any especially sustained policy about when, where, and for whom resources were reserved, though, as practice seems to have been variable. We can infer from the few resource reserves created that there were a great many harvesting places that were not reserved. This may not have been immediately obvious, though, if the settlers who took up occupation did not deny tangata whenua access.

Some deeds specifically identified stands of bush that were to be reserved from the transaction, along with places for the people 'residing there'. As we noted earlier, the Tūrakirae deed set aside 'Waiorongorai' [*sic*] bush and the Tūranganui, Pirinoa, and Ōkōura deeds similarly reserved a 'piece of timber land' or a 'patch of timber land'.[34] The deed for 'part of Pāhaua and Wilson's Run' also listed a 'small piece' of bush at Te Waipuna among its four reserves, while another listed a 'small piece' for a pā.[35] The first Tautāne deed signed in January 1854 also specifically mentioned 'part of a wood'.[36] The case of Kōhangawariwari (discussed further below) suggests that some stands of bush were reserved for Māori to snare birds in, but forested areas were also retained for firewood or milling. At Whareama South, though, Māori were explicitly required to share with settlers the firewood on lands reserved to them, which meant that they could no longer charge the Europeans for it. Sometimes, the designation of the land could be misleading. Both Pirinoa and Ōkōura were described as bush or timber land, but they were primarily kāinga situated near local resources.[37]

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In general, it was assumed that, while in the interim Māori would continue in their seasonal use of interior forested areas not yet sold, they would presently give up their customary lifestyle altogether.

Provision was also made for the retention of eel and fishing sites – although, where possible, McLean attempted to ensure that this did not interfere with European farming practices, drainage, and access to the lakes and coast. As we discuss later in more detail, Ngāti Hinewaka have identified 20 reserves adjacent to areas important for fishing and other food gathering.[38] The Crown acceded to these requests because only limited areas of land were involved. For example, the Castlepoint reserves included a 'little fishing place' at Waimīmiha and Puketewai, and this wording was typical.[39]

Fishing rights were also reserved at lakes Wairarapa and Ōnoke. Of the four deeds transacting the land surrounding the lakes, only the first – that for Tūrakirae or the west side – explicitly reserved land for fishing, but there was a common understanding between Māori and Crown that none of the lakeside purchases extinguished any Māori fishing rights.[40] The distinction was that on the west side, settlement would have priority over customary resource use. Eel fishing was reserved but only in 'such places as are or may not be drained by the Europeans'.[41] That statement was later interpreted to mean that Māori had sold below the flood line. At Tūranganui, on the east side, however, Māori deliberately retained the lakes right up to the floodline, together with Ōnoke spit, which was key to controlling the outflow from Wairarapa Moana, and the eel catch (this issue is explored fully in chapter 7).

A number of other deeds similarly reserved eel fishing sites, and/or land that provided access to them. Thus the deed for Hikawera and Taratahi block (signed in December 1854) provided for land 'as a site for houses for our eel-fishing expeditions: this piece is not to exceed 100 acres'; and the Whareama 2 deed specifically provided that 'eel fishing is reserved to ourselves'.[42] Only one of the homestead deeds (Morrison's) provided for ongoing resource use, carrying on the arrangements between Māori and their lessees by reserving to local Māori the fishing on the Ruamāhanga River.[43]

Often, the written deeds did not say why land was being reserved. Probably some of the sites reserved were to preserve access to customary resources, but the deeds did not say so. For example, the reserve made for Rāwiri Piharau (a relative of Te Mānihera) from Ōwhanga block was to allow him to stay near the lake and pā tuna (weirs for catching eel), although this was not recorded at the time.[44] The failure to record the purpose for the reserve explicitly, together with delay in survey, was very much to Piharau's disadvantage. Settlement soon encroached on the land that he lived on and cultivated beside the lake, and the reserve was overlooked. When he learned that it was gone, Piharau opted to continue in occupation without legal sanction. His complaints ultimately resulted in his being given land suited neither to customary use nor commercial venture.[45]

(6) *Reserves providing for Māori participation in the new economy*

If provision of reserves for ongoing customary usage was patchy, it was nevertheless accepted in principle that allowing Māori to have continued access to traditional resources was a good thing – at least where it did not interfere with settlement. The thinking seems to have been that this would give them breathing space until they were fully assimilated into European ways.

There was, however, less coherent thinking about what should be done to enable Wairarapa Māori to participate in the new economy. As noted already, McLean did not expect Māori to keep extensive interests in the valley; nor were they expected to participate in the towns that were planned. Bryan Gilling, who examined the quality and quantity of resources available to Māori in the district, argues that Government officers assumed Māori would continue to live in their own settlements, such as Pāpāwai and Te Ore Ore, rather than on the town sections of Featherston or Masterton. He found only one

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early example of Māori buying a town property: Ihāia Te Whakamairū, one of the most influential chiefs of the district and instrumental in opening up the Featherston lands for settlement.[46] Gilling suggests that 'he may well have got in because of his special circumstances'. Gilling also suggests that Māori may have preferred to live in their own kāinga, at least in the nineteenth century. Certainly, Māori were not denied access to the townships that were being built: it was more that no one thought about their owning commercial or rental properties.[47] In fact, we have located other cases where Māori purchased town properties in Masterton and Gladstone – see the second table appended.

There is no evidence from this period that the Crown thought in any sustained or consistent way about the effect on Māori of their astonishing land buy-up, or what Māori might need in order to prosper. Very occasionally, deeds referred to land in addition to that which hapū were then occupying, and this was usually in the context of cultivations. At Te Awaiti and part Pāhaoa, for example, the places to be reserved were Kēpa's settlement at Huariki, the 'landing place at Pukaroro', Rerewakairū as a 'cultivation', and Pāhaoa – the 'land occupied by us'. Future needs were anticipated by the promise that '500 acres shall be returned . . . if we require more land for cultivating'.[48] In the case of Kōhangawariwari, purchased in January 1854, land was 'set apart for the Bishop', and 1000 acres were reserved 'as a cultivation and as a possession' in the future.[49]

(7) *Reserves for rangatira*

From the first, many of the reserved areas were intended for particular rangatira. But there were ambiguities: did rangatira hold such reserves for their own use, and for their advancement and enrichment if they wished to sell? Or did they hold them on behalf of the hapū, for the future comfort and safety of the community? Officials specifically presented to rangatira the idea that a Crown-granted reserve was land secured to them as their own property, a recognition of their status, and also a reward for their agreement to sell – in other words, reserves were part and parcel of the benefits of entering into a Crown purchase arrangement. Since reserves were usually the lands most intensively lived upon, Crown officials were disposed to treat them as belonging to the senior men in occupation so that these Māori leaders would become small, prosperous farmers on those properties. The rest of the Māori population would become wage labourers, shearers, and domestic servants. This meant that a goodly portion of the Crown's provision out of a particular block might go to individual rangatira, with no legal recognition of the underlying rights of the community. Yet if those lands were ineffectively protected and were lost, the wider hapū was severely affected. Hapū could lose their tūrangawaewae (core habitation), and the opportunity for rangatira-led participation in development when small farming and more marginal lands became potentially productive.

As we noted in chapter 3A, promises of reserves and the Crown grants for them were a standard feature of Crown purchase negotiations. They were specifically conceived as 'sweeteners' for influential leaders. A prime example was the promise to Rāniera Te Iho of a Crown-granted reserve of 1400 acres situated to the south-east of Wairarapa Moana.[50] This boon for one of the Crown's leading supporters was eventually surveyed at 2840 acres, and McLean reported that it had produced 'a wonderfully good effect among the other young chiefs who are anxious to have all their titles on the same footing'.[51] In effect, this meant that Rāniera's 'reserve' comprised over half of the Crown's total land provision for the future of the Tūranganui owners.[52] Other examples include 500 acres to Hoera Whakataha at Āwhea and 525 acres to Nikorima Marutuna and Heremaia Tamaihotua, also at Āwhea.[53] In these examples, grants to rangatira constituted over a third of the Crown's total provision for tangata whenua out of its purchase.[54] There were also 21 acres for Karanama from the Ihuraua purchase and 1150 acres for Piripi Iharaira at Te Puna.[55] There was only one reserve set aside out of the Whareama interior block with the deed stating 'One reserve only has been made for ourselves being the place where we reside at Hikurangi.'[56]

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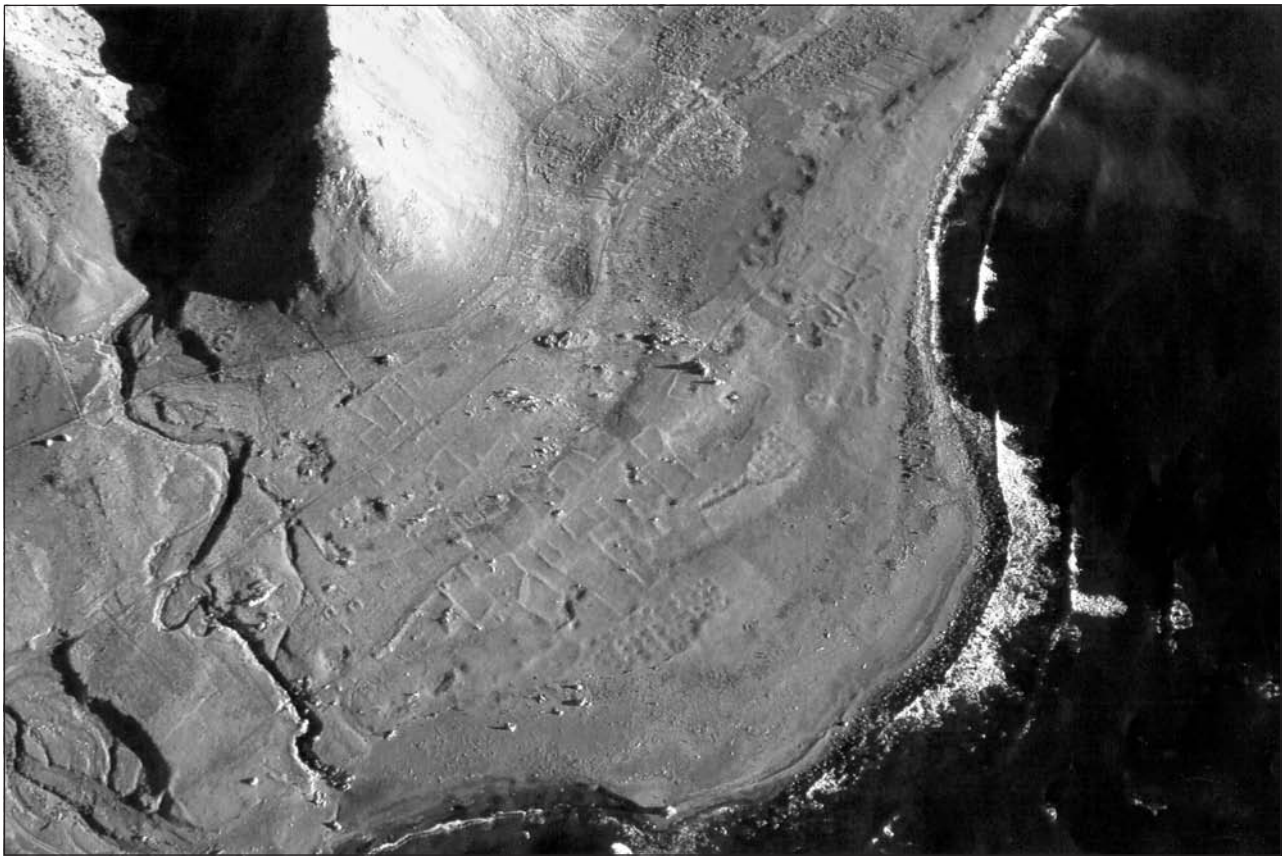

The site of the reserve described as 'the landing place at Pūkaroro'. The complex of archaeological features is clearly discernable and shows intensive occupation and cultivation. The reserve is located north of the Te Awaiti River and is now landlocked within Te Awaiti Station.

(8) ***Reserves probably not intended for rangatira***

In addition to those specifically promised to rangatira, sometimes reserves that were seemingly for the wider community nevertheless ended up in the hands of a few individuals.

An example was at Tūrakirae. According to subsequent collective memory, although reserves there were offered to their leaders, the 'majority of the people did not agree' and insisted that they be for everybody.[57] These reserves were mostly later sold without community consent. Te Whatahoro Jury criticised this when he gave evidence to the royal commission of inquiry into the Wairarapa lakes in 1891.

Even so, the Crown subsequently dealt with the Tūrakirae reserves as if they were the property of a few chiefs. One of the original vendors, Hēmi Te Miha, gave similar evidence to Jury's. He agreed that the reserves were for the 'whole of the people interested in the land', including himself. He had walked the boundaries of the first purchase, but in the case of the reserves, he was:

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Te Whatahoro Jury on Tūrakirae Reserves

Te Whatahoro Jury told the 1891 inquiry into the Wairarapa Lakes:

> I have heard the terms of the sale of the Turakirae Block from the old people. I know of the reserves that were promised to the Natives. When a block was under negotiation the Natives demanded £3,000, but the Commissioner declined to accede to this demand. He offered them a lower sum and certain advantages, such as hospitals, schools, &c., and pensions for the elder chiefs. Pounui te Matarua was one of the reserves, Waiorongomai was another, Owakau another; another was on the coast at Hinaketaka. The block was sold by three men only; the majority of the people did not agree. Hiko and others held aloof. The people who sold were: Hemi te Miha Ngairo and Raniera te Iho; the others were women. Mr McLean, on finding that the majority would not join in the sale, said that reserves would be made in the interests of all the people. These reserves were not made. Some of the 5 per cent was paid. A mill was also given and medical services were also supplied. The pensions that were promised were never paid. Hiko got a pension in after years, but that was through the sale of the lake, and Raniera te Iho's pension was through the sale of Turanganui.

> not aware that all the people consented . . . The lands were not sold in the district, but in Wellington. These people who sold could sell their own shares, but not those of others.

He denied that he and others had agreed to the Government's purchase. He acknowledged that a payment of £500 had been made, but the people 'did not know . . . that in giving the receipt . . . we consented to the sale of the reserves'.[58]

Te Miha also acknowledged that chiefs traditionally exercised authority over the land:

> The custom in olden times was for the chiefs to sell the land, and if the people did not object to the sale it was considered to be acquiescence on their part.

Of course, this was when transactions were conducted in open hui with full debate in the presence of all right holders. And Te Miha clarified under questioning that it was not customary for 'the chiefs of a small section to dispose of land belonging to others'. He told the commission:

> The persons who sold represented only a small section of the people. The money received for the Turakirae Block was distributed to all the people who were entitled, but the money received from the reserves was not distributed in that way. Besides Raniera and Tamihana – the persons who sold the reserves – there were a number of other influential persons who did not receive any share, viz, Matenga Kainoke, Hohaia te Rangi, Piripi te Maari, and a number of others; Mitai Poneke was another. My remembrance of the receipt was that it was a receipt for the payment of the balance, but not that it was a final disposal of all our claims in the block, excepting the 5-per-cent payment on the resales secured to us under the terms of the deed.[59]

In Rigby's view, the deed evidence generally supports Te Miha's and Jury's criticism of the reserve purchases. Tāmihana Hiko and Rāniera alone signed the Pōnui (or Patunga-ā-Matangi) reserve purchase deed. He speculates that the 'repurchase' may have been to placate Tāmihana, who was 'vexed' with Rāniera's conduct at the time of the original sale. The result, Jury testified before the Wairarapa lakes commission, was that Hiko had included all Rāniera's settlement in the next deed to be signed for Tūranganui.[60] As we noted earlier, Te Miha had every reason to believe that these subsequent payments were for the initial purchase, not for the lands reserved out of it. Of course, one followed very soon after the other, so it is not surprising that people were confused.

Something similar happened after the Mataōperu purchase. One of the two reserves – cultivations in the area

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from Witikaōpeka to Ranga, on to Ōhiranga, Herekurī, and Whāwhānui – was purchased from Karauria Hape in a deed signed in Wellington in 1862. This deed described the block as 'the piece of land which I withheld as a piece for myself'.[61] But Stirling points out that this was not how the reserve had been explained in the parent deed of 1853, where the area was explicitly referred to as being for the collective benefit of all the signatories.[62] In part, this later purchase was yet another attempt by the Crown to remedy problems of its own making – this time, the failure to survey at the time of the initial transaction. In the absence of survey, we do not know how big the reserve should have been, but Stirling argues that the second sale grew out of Karauria Hape's challenging Barton's occupation of the reserve area. Malcolm Fraser was there in 1861 to survey the many outstanding boundaries from the earlier land deeds, and he reported that he could not proceed because of the dispute. Superintendent William Fitzherbert sent McLean in to investigate. On finding that the reserve in the Ōhiranga-Whāwhānui area had been mistakenly included in the Crown's on-sale of land to Barton, his solution was to purchase it so as not to disturb the sale to a settler. McLean characterised this purchase as very desirable.[63]

The situation at Kōhangawariwari was of the same kind. There, the 1000 acres set aside 'as a cultivation and as a possession' was surveyed a decade later and various 'parcels' allotted to individuals: 300 acres at Kaikōkirikiri for Te Rōpiha; 300 for Te Retimana Inia and his party at Taumata o te Waihīrere; and 40 acres for Paul Stone (also known as Pāora/Parra Kōwhatu). According to Helen McCracken, Crown officers also reluctantly agreed to set aside 200 acres on the western side of the Waipoua near Tokauanuku when local Māori insisted that they had been promised a place for bird-snaring, although there is no mention of this in Mackay's later report.[64] Mackay does note, however, that of the 1000 acres originally promised, 640 acres had been laid off at Kōhangawariwari, while the remainder was set aside at Mākirikiri in the late 1860s.[65] However, it seems that 1000 acres at Mākirikiri were officially awarded to Māori in the 1890s. Another reserve of 1000 acres at nearby Ōpaki was also set aside as a 'homestead' for Wiremu Wāka in 1863.[66]

At McMaster's Run (Tuhitarata), the deed specified '100 acres . . . to Mihi o te Rangi being the place where Haimona Pita died' and 100 acres 'for ourselves'. Of the area 'for ourselves', 20 acres were eventually marked off for 'Retimona [*sic*] Te Ruaki'.[67]

(9) *Reserves to settle disputes*

In some instances, lands were 'reserved' to satisfy the rights of non-signatories and, in the words of McLean and his officers, 'prevent disputes'.[68] The case of the reserve for Wiremu Wāka (Ōpaki 6), just mentioned, seems to have been a case of eventually giving him land as a reserve really because he never agreed to sell. Wāka had made some '[unidentified] voluntary concessions' and notably did not sign the Manawatū deed.[69] Taratahi bush (see below) is another example of this practice.

(10) *Later Crown officers follow McLean's lead*

The officers who followed McLean continued much as he did, even though they began to note the adverse impact of Crown purchases on local Māori. If anything, the provision of reserves was seen to be merited in even fewer circumstances. Thus, Searancke, who purchased land between 1858 and 1861, made only what he acknowledged to be 'small reserves'. Tukuwahine was reserved for cultivation from the Whangaehu block.[70] One hundred acres were reserved for Ngātuere Tāwhirimātea Tāwhao from the 5500-acre Manaia block, and 100 acres was reserved for Maika Pūrakau in Te Kōpi.[71] Five individual reserves were set aside at Tūpurupuru for chiefs – 'all men of influence, extensive owners in the land alienated and active promoters of the sale'.[72] One, for Ngāiro, was 'assented to by the Natives generally' – though Ngāiro was a supporter of the Kīngitanga (the Māori king movement founded in the 1850s), and was absent at the time. Searancke made

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inquiries about Ngāiro which 'subsequently proved satisfactory': Ngāiro was 'not . . . so bad as many not so prominently known', and 'the issue of a Grant from the Crown' would have 'good effect generally'.[73] A 200-acre tribal reserve for 'us' seems to have been created at Te Whāio as an 'addendum' when Mākōura and others attended the survey some months after the initial deed had been signed.[74] As already mentioned, 'Piripi and others' got an individual grant at Te Puna, later surveyed at 1150 acres.[75]

In all, Searancke estimated that he had reserved some 1350 acres out of purchases amounting to 49,000 acres. This included 550 acres Grey promised to Wī Kīngi Te Hiakia and his 'little boy', but this was apparently not recorded at the time.[76] Only 400 more acres were to be set aside out of new purchases before the Crown gave up its pre-emptive right, introduced native land laws, and withdrew from the land market in favour of private purchasers. These were three personal reserves in Taheke, which McLean created in 1862 to quieten objections to Te Mānihera's earlier sale, and 100 acres of Te Whiti was to be returned to Hāmuera Pukaiahi.[77] That was it for new reserves.

In the early 1860s, however, the Crown did return just over 6300 acres of reserve land at Whakataki. This land was originally reserved from the Castlepoint purchase, but the Crown had bought it in 1855 (see discussion below). The Crown gave most of the land back, it seems, for the support and maintenance of the former owners and to fulfil 'old promises to Natives, dating back to 1853'.[78] This included about 52 acres reserved for Te Pōtangaroa in 1862.[79] This was pursuant to a promise that Grey made: Te Pōtangaroa would get 30 acres as a 'free gift' in recognition of 'his loyalty and the good services he continuously rendered to the Government of the colony'.[80]

In Tāmaki-nui-ā-Rua, the Crown purchased under the new Native Land Court system, and sometimes made reserves. They proved fairly limited though, as did the effectiveness of the protections provided under the native land laws and associated legislation. We deal with this in chapter 4, which is about the Native Land Court.

3B.2.3 Reserves lost, 1854–81

(1) *Ineffective protection*

As we have seen, the Crown's policy and practice as regards reserves had serious problems. Reserves were created erratically, their purpose was muddled, and their size varied (although they were mostly small and limited to land that Māori were using intensively). But worst of all, reserves were not well protected, meaning some were encroached upon by settlement almost immediately.

These many problems were met by a variety of Government responses. They ranged from settling Māori on alternative sites, to the Crown repurchasing lands from settlers to give effect to promises made to Māori. But often, problems were simply neglected. Delay was systemic. And to top it all off, the Crown began at once to purchase reserves both in the valley and the bush area. For instance, in December 1853 the Crown purchased three reserves set aside in the deed of September 1853 recording its Tūrakirae block purchase. Te Mānihera's reserve at Ōwhanga was purchased on the same day as the parent block (23 December 1853). The bush area called Taratahi, reserved from the Te Karamu purchase of 27 December 1854, was included in the Crown purchase deed for Hikawera and Taratahi the next day.

This practice suggests that the Crown agreed to reserves as a form of extra payment and as a means of facilitating the sale of the parent blocks, rather than out of genuine concern about Māori being able to sustain themselves afterwards. It also indicates that the Crown was unlikely to be genuinely interested in implementing a legal regime that would really ensure that reserves remained in Māori hands. Certainly, the set of protective rules brought in later under the native land laws (restricting long-term or permanent alienation) never really worked. Protections were sometimes omitted from the title of the Wairarapa ki Tararua reserves when they were brought through the Native Land Court for Crown grant. More significantly, as we discuss later, it was possible to get around restrictions from the very beginning, especially when the Government

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itself was the purchaser. Thus, although the term 'reserves' suggests land that was in a different category from other land – safe and separate for the most part – reserves did not function in that way in this inquiry district.

(2) *Crown purchase of reserves*

In chapter 3A, we described how the Crown began purchasing Wairarapa reserves in Wellington in November 1854, when a number of Wairarapa chiefs gathered there in anticipation of McLean's arrival. McLean began by buying a small portion of Waiariki reserve and also made down payments on a number of new blocks.[81] The following month, he travelled through the district making further payments and, in certain cases, giving additional moneys for areas originally reserved. For example, he purchased a piece of bush intended as a reserve for Ngātuere Tāwhirimātea at Taratahi.[82] On the same day, he paid Te Mānihera and Piraka Pō £40 for a bush area – Ritokau – originally reserved in the deed for 'Part Smith's Run' (also known as Te Whati) signed in January 1854.[83]

An example of how muddled the situation was with respect to reserves, and how unsatisfactory for Māori, was mentioned in chapter 3A. Here too, we revisit this incident, which involved Ngātuere. This is partly to demonstrate the muddle, and also because it shows how readily the Crown resorted to buying reserves as a means of resolving conflict, rather than sorting out the disagreement so that it could remain in Māori hands. McCracken relates how in early 1857, Ngātuere objected when a Mr Perry took possession of land Ngātuere thought had been reserved for him. Fox, the Commissioner of Crown Lands, asked the Colonial Secretary to look into the question. No reserve was marked on the deed filed, although the outer boundaries of the block had been surveyed. Thus Fox sought McLean's 'personal knowledge' of the matter.[84] McLean explained that ownership of the reserve had been disputed, and he had purchased it. In the knowledge that there were other claimants, he had kept moneys aside (£400) to settle with them at some point in the future.[85] Later that year, Ngātuere tore down a whare (building) being erected by road workers on lands he had never agreed to sell (Te Mānihera had sold in his absence). In early 1858, he accepted a payment of £200 that finally extinguished his rights in the Taratahi block. He was given rights in a reserve at Waiohine.[86]

We also recounted in the previous section how the Crown bought three of the Tūrakirae reserves within a few months of the original transaction.[87]

The Castlepoint reserves of Porotāwhao (500 acres) and Puketewai (unknown, but estimated to be 500 acres) soon followed, as did 50 acres from Mātaikona for a homestead to satisfy Sutherland's claim.

The Crown purchased Whakataki (also a Castlepoint reserve) from Retimana to satisfy Te Hāpuku's claims, but individuals within the resident hapū bought it back in 1858. They held it under a Crown grant that was issued in 1874, but 'antevested' or backdated at the earlier 1858 date.[88]

It appears that the Crown purchased Taurangawaiō for £200 in February 1855, although this was recorded only in a much later report (1882–83), after complaints about Wairarapa reserves being 'lost' led to a royal commission of inquiry into the general state of reserves in the province.[89]

This trend continued even as general Māori holdings in the district dwindled. In November 1859, Searancke acquired two reserves from the Whareama purchase – Hikurangi (500 acres) and Awatoitoi (30 acres) – 'to prevent further dispute'.[90] And then in 1863, the Government advanced moneys to Te Mānihera to settle his outstanding debts, for which a mortgage of two of his reserves (one of 1000 acres, and the other 12½ acres) provided the security.[91]

(3) *Examples of inadequate identification and protection of reserves*

In response to questions from the Crown, McCracken identified 10 cases where reserves were inadequately identified or protected. They were Tuhitarata, Tūranganui, the Te Ōroi reserve, the Whāwhānui reserve, Waitutu and Takapūai (at Castlepoint), Kaiwhata, Ōwhanga, Awaiti Part Pāhaua (Pūkaroro (Rerewhakaaitū) reserve), and the

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Whakatai reserve (at Whareama).[92] Here, we give only the examples of Te Ōroi, Whāwhānui, and Ōwhanga. We comment on the others later when we consider whether the 1882–83 royal commission provided an adequate remedy.

(a) *Te Ōroi:* In 1861, Searancke was instructed to look into the Te Ōroi reserve, which was promised as part of the Crown's purchase of lands occupied by Barton at Āwhea.

Te Ōroi was on prime coastal land between White Rock and Tora Homestead. Estimated at 1800 acres, it was described by Searancke as the best land in the block, and he wondered at so much having been reserved for 'about 30 Natives' (this would have equated to about 60 or 70 acres of good land each). The Government had already sold to Riddiford part of the area promised to Māori. This was 550 acres at Āwheanui where, according to Stirling, Riddiford seems to have taken over Barton's interests. Searancke tried to talk his way out of it, trying to persuade the locals that the land Riddiford had taken up was unsuitable for cultivation, but Māori demanded the full reserve as set out in the deed. To Searancke's chagrin, the land had to be purchased back and 2280 acres were surveyed off for the reserve, although it is not clear exactly when this happened.[93] The reserve was in existence at the time of the royal commission in 1882–83. It remained in Māori hands (probably leased) until the early 1890s, when it was sold (again) to Riddiford, except for two acres containing urupā. In 1888, the Native Land Court had entered restrictions against long-term or permanent alienation on the title, but these were removed to permit Riddiford's purchase.

(b) *Whāwhānui:* Like the reserve at Te Ōroi, part of the Whāwhānui reserve was mistakenly included in the on-sale to Barton.[94] McLean had created the reserve as part of the Mataōperu purchase in 1853. The Crown responded to Karauria Hape's complaints about the reserve having been purchased by sending McLean in to investigate. Rather than buying the land back for the Māori owners, as happened at Te Ōroi, McLean resolved the dispute by paying Hape in 1862. (We discuss this reserve at section 3B.2.2(8).) In this case, the reserve had not been surveyed. Pākehā owned the surrounding land, and Māori were not living there.[95]

McLean's solution to the problem (buying the land) was an unfortunate end to a raft of problems brought about by Crown failures. As we commented earlier, the deed stated explicitly that it was for the collective benefit of all the signatories.[96] But McLean paid only Hape, presumably because he was doing the complaining, and probably also because dealing with one person as if they owned all the rights was a great deal simpler. We see it as a clear Crown failure to honour its duty to protect the interests of all those who legitimately held them. Secondly, the loss of the land to inadvertent purchase was a direct consequence of the Crown's failure to survey. Nowhere is it apparent that either Hape or the local Māori community wanted anything but the reserve they were promised. At least Hape got some money, but the wider community ended up with nothing.

(c) *Ōwhanga:* This was a real saga, which began when the Crown acknowledged that Rāwiri Piharau had a legitimate claim to a reserve from land transacted in the Ōwhanga deed. He did not get it.

McCracken gives the details of the case.[97] The 100-acre reserve promised to Piharau at Motupiri was not surveyed at the time of the purchase, and in 1854 the Crown sold it to a settler who built a house upon it. Piharau agreed to select a reserve elsewhere. He chose a site at Ruamaire, but three years later, this suffered the same fate – this time with the full knowledge of Crown officials that the site was supposed to be reserved.

In 1857, William Fox had inquired about an undefined reserve situated on the Tauherenīkau River (the Ruamaire site that Piharau had selected), because a settler wished to purchase 150 acres there. McLean, to whom the matter was referred, warned that the sale should not proceed since the area was reserved for Piharau and should be surveyed as soon as possible.[98] The survey did not happen. The sale went ahead.

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Piharau again agreed to move, on two conditions: the size of his new reserve had to increase to 150 acres, and he wanted the settler who bought the Ruamaire site to pay him £30 compensation.

Piharau made his next selection, this time at Ōtorahanga (also known as Tirohanga), and began cultivating crops there.[99] Again, the Crown did not get the reserve surveyed, and at some point part of it was sold to two more settlers. Then Piharau was accused of cutting down timber on a neighbouring property belonging to a Mr Jackson.

In December 1858, Searancke wrote privately to McLean that the affair was causing considerable local trouble, but that Native Minister Richmond had made his (Searancke's) 'course clear'.[100] He should pay off Piharau if he could, but otherwise put him back on the Motupiri section (Piharau's original reserve) without considering the on-sale. Later that month, Searancke offered Piharau a portion of the ferry reserve, 'a capital and valuable section'.[101] Piharau flatly refused. Searancke saw the Government as having two courses of action: either remove Piharau by 'decided measures', or pay the Europeans compensation for the loss of the lands they had selected.[102] Fox wrote to Te Mānihera asking that he remove his relative from the property, while Piharau himself was summoned to appear before a resident magistrate. Te Mānihera advised his matua (senior relative) to ignore this demand, and told Fox that it was Searancke who should appear in court to answer any charge.[103]

In 1860, a large hui was convened at Pāpāwai. Piharau and his party proposed three alternatives: they could stay at Tirohanga (the reserve where Piharau was living); they could seek the return of Motupiri (Piharau's original reserve, which the Crown had sold to a settler); or they could accept 100 acres at Tauherenīkau with an additional payment of £400. The meeting broke up with no agreement when an angry exchange broke out between Te Mānihera and Searancke, the official denying that he had ever indicated that he would pay an extra £30 and calling the chief a liar.[104] Searancke blamed the 'Kingites' and wrote to McLean soon afterwards, asking him to settle the matter personally as Te Mānihera and the rūnanga (assembly) looked upon him as 'the person who had made the arrangements in the first place'.[105] Valentine-Smith, a local run holder, visited Te Mānihera to discuss his grievances. He found the chief angered both by Searancke's insult and by the Crown's failure to issue grants for Māori reserves, whereas Pākehā got the grants they needed. This effectively denied Māori the franchise, Te Mānihera complained, for voting rights depended on land ownership under a Crown-derived title. Valentine-Smith reported that any attempt to remove Piharau from Tirohanga would meet with a 'determined resistance'.[106]

Meanwhile, the ruction involving Piharau, Jackson (his neighbour at Tirohanga), and the disputed timber, remained unresolved. The settler had petitioned for possession of the land he had purchased. Searancke had allegedly given permission to Te Mānihera's people to stay at a small suburban lot in Featherston while he sorted out a solution to the problem of the Crown having sold part of the reserve they were living on. But the suburban lot in Featherston was the very land that Jackson had purchased specifically for its timber.

In 1860, the Petitions Committee looked at Jackson's petition and made several sensible recommendations, the first being that:

> a local investigation should be made without delay into the circumstances of the occupation by Natives of Europeans Lands in the Wairarapa, with a view to a final and speedy settlement both with reference to European and Native interest.

The committee also recommended that compensation should come out of the land fund, that to avoid similar problems in the future the native reserves should be surveyed 'without further delay', that communication between the two branches of land administration – purchase and sale – should be improved, and that clearly marked maps of reserves should be provided to ensure 'the safe disposal of the lands'.[107]

In the same year, Governor Gore Browne authorised

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the Native Minister, Frederick Weld, to make any arrangement he thought 'proper' to settle the land questions that had arisen in the Wairarapa between Māori and European, and:

> generally to take such steps as may seem fit in my [the Governor's] name to promote a good understanding with the natives, of that or other districts in the southern part of the colony.[108]

Weld met with Piharau, and according to Searancke (who was present), the chief agreed to vacate the 150-acre reserve at Tirohanga and his crops there for £300, plus one ton of flour and half a ton of sugar.[109] Weld now arranged for the hapless Piharau to go on to land at Pouawatea, but this was impossible as the site was continually flooded. Piharau, Te Mānihera and Komene Rāwiri sold the Pouawatea land four years later for £150, at a rate of £1 per acre.[110] Mackay later commented that the sale of Pouawatea left Piharau's claim 'unsettled'.[111] It was still an issue for local Māori in 1914, but a complaint from Te Whatahoro Jury and Te Ama Te Ohaiti about a missing reserve at Tirohanga was considered to have 'no foundation'. A copy of the deed was found in the Provincial Government's records, and the Crown's verdict at the time was:

> The Native had simply been occupying unused Crown lands, and when he tried to shift he removed to other unused Crown lands, and was again obliged to shift. He has been dead for many years, and the claim died with him.[112]

After all the man had gone through, this was a reductive view indeed.

(4) *Reserves purchased back from the Crown by their original owners*

Several reserves were acquired by the Crown and then purchased back by some of the original owners.

McLean considered that Māori would be helped to engage with settlement if they held their lands under this sort of individual title rather than as reserves held by hapū, and he seems to have proffered this option to a number of rangatira. It was a means of furthering the Crown's goal of confirming Māori ownership of actively occupied lands under an individualised and Crown-derived title.

Clearly, some rangatira were eager to adopt the new European ways and may have liked the prospect of holding at least some land as individuals rather than communally. Most certainly, there was interest in title that was ratified by the Crown. In some instances, Māori leaders followed the advice of McLean and bought back lands at considerably higher prices than they were paid for them, simply in order to have the benefits that came with a Crown-derived title. One benefit was being eligible to vote as (male) property owners. There was another incentive too (which, if Wairarapa Māori were familiar with the Piharau saga related above, must have been powerful): to protect Māori land from encroachment. Searancke noted in 1860 that:

> There appears a feeling that they will be deprived by the Europeans of such reserves as are not held either by grant from the Crown, or other documents emanating from the Governor himself.'[113]

There were several examples where the Crown promoted this 'buy it back and get a Crown grant' policy.

(a) *Akitio:* Here, the Crown offered assistance to prominent rangatira to recover and secure their key habitations – or a portion of them – under Crown grant. A reserve (Taurangawaiō) was promised on the north side of the Akitio River at the time of the Castlepoint purchase. The plan shows an area of 410 acres, later surveyed at 386 acres 3 roods 14 perches. The Crown purchased this reserve for £200 in 1855. But Hoera Rautū and 13 others bought back land on the south bank at the river mouth where the urupā was, and the Crown contributed a little over half the purchase price. This area was now called 'section 28 Akitio block', and in 1860 Searancke endorsed the plan showing its location. Almost two decades later, in 1877, a Crown grant was finally issued to Hoera Rautū and others for an area of 105 acres, and backdated to 1858.

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(b) *Whakataki:* A similar situation at nearby Whakataki, also part of the Castlepoint purchase, ultimately became a lot more complicated.

At Whakataki too, the Crown bought the reserve in 1855, subject to a right of re-purchase for a two-year period – as McLean explained it, a kind of pre-emptive right 'over such lands as they might require for their own use'. In the meantime, the area would be withheld from public auction. In 1858, Wiremu Paraone, Hōri Karaka, Pane Taroro and a handful of others took up the option, although it is unclear whether they exercised it by paying 10 shillings per acre for land initially sold at sevenpence per acre, or by giving up their rights elsewhere in exchange for a Crown grant for this piece.[114] But the Crown grant did not ensue, and in 1860 the Crown sold some of the area involved. A number of other commitments made by different Crown officials complicated the situation.

According to Pēhimana Kaha, who wrote several letters to McLean and Featherston in the years 1860 to 1862, McLean had agreed that he could take up land at Whakataki in exchange for Waipapa, or for moneys received from its sale. This claim seems not to have been supported initially, but Grey, Featherston, and G S Cooper did acknowledge other promises that were ultimately satisfied by allocations of land in this area. In 1862, Grey had promised Te Pōtangaroa a gift of 30 acres for his loyalty. Then, two years later, Cooper (who was in the district sorting out disputes and undertaking more purchasing on behalf of the province), reported to McLean that he would:

> have to go to Castle Point about the Wakataki mischief, which is getting pressing. I wish you would kindly write to me as fully as you can on that subject so that I may if possible get it finally settled this journey. Stewart & another surveyor are on the spot now. I think you said something about the gen Govt having agreed to give them back the reserve.[115]

Cooper did not record anything about his visit, but Hōri Karaka was later able to produce a document that Cooper signed on 19 December 1864, agreeing to the return of land as a reserve for his people. It seems that this had been approved by Featherston.[116]

None of these arrangements were given legal effect at the time. A petition sent in 1867 regarding a number of grievances, including the Crown's failure to follow through on its promise of grants 'for those lands which were returned to us', produced no satisfaction. The Native Affairs Committee did not identify Whakataki as an area of concern.[117] Māori then tried to get their titles confirmed through the Native Land Court in 1868, but without success (although supported by the evidence of Cooper) since the area was no longer native land. Another attempt in 1872 also failed.[118]

Ultimately – 10 years after Cooper's negotiations – the Government brought in legislation confirming grants to particular individuals and hapū in the Whakataki Grants Act 1874. First, however, since the Crown had already sold a portion of the land (a desirable site straddling the Whakataki River), Native Reserves Commissioner Heaphy had to settle the boundary of the land that Māori wanted to have granted back to them. A further payment of £149 was made to the original owners and a rectangular block of 85 acres was excised for confirmation of grant to the settler involved.[119] The Government could now proceed with its legislation. In introducing the Bill for its second reading, McLean explained the various arrangements that the Government had cobbled together and why it was obliged to return the land. He told the House that:

> The Natives originally withheld the land from sale, and afterwards offered it to the Government. The Native title was extinguished, but the Natives had a pre-emptive right for a certain number of years [two] to re-purchase over it such lands as they might require for their own use.[120]

Grey had promised 30 acres to Te Pōtangaroa (who died while waiting for his 'gift'), and Cooper and Featherston had agreed that the:

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> remainder of the reserve should be set aside entirely for the Natives, their titles individualised, and unrestricted Crown Grants given for certain portions, and the greater part made inalienable except by lease for twenty-one years.

The legislation was thus intended 'to carry out old promises to Natives, dating back to 1853, and the object of the Bill was to fulfil those promises'.[121] According to the preamble to the Act, issue of Crown grant to 'several of the owners' who had purchased back portions of the block was 'just and proper'. The 'reserve' for Te Pōtangaroa was a 'free gift' for 'his loyalty and the good services he continuously rendered to the Government of the colony', while part of the original reserve was to be given back for the 'support and maintenance' of the original owners. 'And', stated the Act, 'it is expedient to give effect to such promise'. We surmise from this wording that the original owners of Whakataki were in danger of having insufficient lands for their support.

The Act divided the block into seven portions, named all the grantees, and stated the date from which it vested (see table).

Block	Area (acres)	Number of grantees	Date of vesting
Whakataki 1	105	1	23 March 1858
Whakataki 2	52	2	23 March 1858
Whakataki 3	52	3*	24 March 1862
Whakataki 4	21	5	23 March 1858
Whakataki 5	43	1	23 March 1858
Whakataki 6	52	2	23 March 1858
Whakataki 10	6298	20	24 March 1862

* Te Pōtangaroa's successors

Whakataki blocks created by the Whakataki Grants Act 1874

Only the owners of Whakataki 4 and 5 were not included in the hapū list for Whakataki 10. Pēhimana Kaha was not a grantee in any of them, and we do not know how his claim was settled. Only Whakataki 3, 'in favour of certain persons as a free gift from the Government', and Whakataki 10, the subject of Cooper's 1864 promise, were now regarded as reserved, with the requisite restrictions against permanent alienation entered on their titles. Later, acreages were adjusted downwards, disadvantageously for Māori. Whakataki 5 was surveyed at 38 acres, and Whakataki 2 at two perches less than stated. However, Whakataki 3 was significantly larger than the 30 acres promised, comprising 52 acres one rood.

Finally, in 1881, almost 30 years after McLean and Grey toured the region speaking of the Crown's bright vision for their future, Te Pōtangaroa's successors, Wiremu Paraone, Hōri Karaka, and a community of some 20 people received their Crown grants for 6620 acres (including 6350 acres 'gifted' back). Whakataki 1 was already gone: Paraone (Te Pōtangaroa's successor) mortgaged it way back in 1869, and the following year sold it for £75 to the Nathans, who were Wellington merchants.[122] Whakataki 6 was sold in 1882, Whakataki 5 in 1896. The other unrestricted blocks were leased, and remained in Māori title into the twentieth century, although intermittent public works takings and sales were to follow. A dispute ensued over the ownership of Whakataki 4, in a partition hearing of 1905. It was alleged that not all the grantees held equal customary right, nor made equal contribution to the purchase back from the Crown.[123] An award of half an acre to the successors of Hōri Karaka resulted, while a flurry of sales to the lessee took place in the B portion (20 acres) during the war years; it was all gone by October 1918.[124]

Of the two blocks still seen as proper reserves, with restrictions placed in their titles, the one belonging to Te Pōtangaroa's successors was leased and retained into the twenty-first century. In 2004, 52 acres

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(Whakataki 3B1–3B4) were recorded as Māori land. The larger Whakataki 10 block was leased from 1874, and partitioned in 1895 after a lengthy hearing about the nature of customary rights held in the area, and the arrangements Cooper made to give the 'permanent occupants' a place to cultivate and live.[125] The resulting blocks were Whakataki 10A, of 150 acres in eight grantees and successors, who held rights by tuku (traditional land gifting), and 10B, of 6148 acres, awarded to 24 owners who held rights by descent.[126] In 1899, an appeal was lodged against the 'disproportionate' division as though it were 'ancestral land in place of being a block handed back to the Natives by the Provincial Government'.[127] The time for an appeal had lapsed, however, and the application was denied.

The Whakataki 10 blocks were leased, further partitioned and sold off bit by bit over the ensuing years once the restriction system was legislatively dismantled in 1909. By 1930, 29 percent of the block remained in Māori hands.[128] By 2004, just under 4.5 acres (the balance of Whakataki 10B1) was recorded as Māori land.

(c) *Other instances:* There were other examples where the original owners purchased back 'reserves' at higher prices. At Aranga Te Kura, Matiaha Rangitākaiwaho bought 200 acres at 10 shillings per acre in 1860, and there were instances also such as Tūpurupuru, where Māori bought back land that did not form part of a reserve. Te Matanga, 'a chief who resided in the neighbourhood of Mr McMasters,' paid £20 for 40 acres of land 'which he had in cultivation, in bush, between Mr McMaster's and Gillies' station'. It is possible that Crown officers considered this a reserve since it was under cultivation, and cultivations were always eligible for reserve status.[129]

These instances of the Crown helping Māori to regain their lands under a Crown title were exceptions, however. They demonstrated that the Crown could intervene to assist when it had the will to do so. But even in these examples, years more waiting followed for those who purchased back their reserves in expectation of a Crown grant. This was an important grievance for Māori, and the Crown has acknowledged it as such.[130] It hindered their political, social, and economic empowerment.

3B.3 Pre-1865 Reserves under the Native Land Court System

The Native Land Court is the subject of chapter 4. There, we analyse the treatment of reserves in the era of the court. However, in order to deal comprehensively with reserves in this chapter, we must traverse some of the same material here.

3B.3.1 Rangatira seek proof of title

Wairarapa rangatira brought their reserves into the Native Land Court system as soon as they were able to, seeking from the court proof of their ownership. The examples narrated in the previous section show exactly why this was urgently required.

Proof of title was of concern to Māori throughout the country. Attendees at the Kohimārama Conference in 1860 expressed dissatisfaction that they had not received their promised Crown grants. In the newspaper *Te Karere Māori*, Rāniera Te Iho-o-Te-Rangi said of reserves that 'these lands are not yet settled so that each man may have his own'.[131] The newspaper quoted Karaitiana Te Kōrou and Wiremu Wāka to the same effect:

> the portion of land set apart by the Governor for each individual is not clear, inasmuch as he has not received any document to confirm his title.[132]

Ngātuere also welcomed any move to resolve the confusion over reserves.[133]

When the Native Land Court began operating in the Wairarapa, the areas promised to rangatira and other reserves out of the Crown's earlier purchases were amongst the first blocks brought through it. Some reserves were

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granted to the individual rangatira making the application, with no protections placed in the title. As a consequence, they were fully open to the direct settler market. But when such lands were lost to the individual, they were also lost to the hapū.

Elsewhere, titles were issued to fewer than 10 grantees under the 10-owner rule then in operation. Although the court put on the titles restrictions against alienation, these were rarely effective, and sales generally ensued.

3B.3.2 Restrictions on alienation under native land legislation

The Native Lands Act 1866 was supposed to protect reserves from Crown purchases that were brought through the Native Land Court for issue of a Crown grant. Whenever a Crown grant was sought for a reserve, the court was required to place restrictions on long-term or permanent alienation.

The colonial legislators who enacted restrictions on alienation of reserves did not intend them to be in place forever. The regime was to be disestablished once Māori acquired 'perfect self-reliance'.[134]

Neither was the system of protection absolute. The Governor in Council (on the advice of the Native Minister) could assent to restrictions being lifted in specific transactions but could not consent to a blanket removal.[135] And it was always open to owners to have restrictions removed. Later, the Crown enacted legislation that made it easier for restrictions to be lifted when the purchaser was the Government. We explore all of this in chapter 4, and also the role of the office of trust commissioner, which was supposed to ensure that Māori retained enough land for their sustenance.

Whether the statutory protection of reserves would succeed depended on how effectively the restrictions system was administered. Either the legislation, or the judges and trust commissioners, had to implement the right conceptual framework for good decision-making about when owners should be allowed to alienate reserve land. This did not happen. The focus of decisions was on whether the would-be seller or sellers retained enough land for their subsistence. Judges used a simple formula to ask whether the sellers retained a certain number of acres per person; the intention behind this was to prevent landlessness. We talk more later in the report about how such tests were applied; suffice to say here that there was never an intention to make more sophisticated inquiry into the sellers' circumstances. No effort was made to ensure that sufficient land was retained to permit Māori to engage with the agrarian economy on equal terms with Pākehā, or to give them a capital base from which to make investments in other fields of endeavour. There was not even a blanket rule that ensured that all habitations and sites of significance were retained, although this had been an important element in the reserves being made in the first place.

3B.3.3 Reserves lost

In their evidence, Bruce Stirling, Tony Walzl, and Philip Cleaver all noted many instances where protections either did not have a chance to operate, or where they subsequently failed. Reserves sometimes passed from Māori hands when the Native Land Court failed to order restrictions as required by the Act, or the restriction was not subsequently entered on the Crown grant.[136] These lands simply did not make it into the Crown's system of protection. But alienations took place even when the original intention to reserve had been correctly recorded. No sooner did titles issue and the court order restrictions than owners made applications for their removal – either to make their informal leasing arrangements legal, or often to enable a sale to settle debts or rationalise holdings and raise capital. Within 20 years, the whole restrictions system was effectively dismantled (by the Native Land Acts of 1909 and 1913).

Here, we give only three examples of this process of attrition. In the first appended table, we set out the state of the pre-1865 Crown purchase reserves by 1900.

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(1) *Tūranganui: the loss of Rāniera Te Iho's and other reserves*

The Tūranganui reserves (in contrast to those created at Tuhitarata) seemed to be still intact by the time the Native Land Court came into operation in the district, but this is deceptive. The major reserve set aside was that for Rāniera which, at 2840 acres, was the only sizeable property created by the Crown out of the eight reserves. Only Whakatomotomo at 1160 acres came anywhere near it in size; the others were all well under 500 acres each.

Rāniera applied for the Crown grant of his reserve in 1861. It comprised 2840 acres, which made it the largest in the district, if not the country.[137] McLean, to whom the application was referred, agreed that he was entitled to the land, and that he and others who were awaiting grants should be assured that they would be issued without delay.[138] Rāniera got his two years later and in all his subsequent transactions, the property was his to deal with as he thought fit.

In October 1867, Rāniera formalised a lease to Russell. Stirling suggests that the rent Rāniera charged Russell (from May 1863) demonstrates that the land was now worth £1 per acre, whereas the parent block was sold less than 10 years earlier for two pence an acre – a 120-fold increase.[139]

Then in 1870, Rāniera mortgaged the block to Russell (the lessee) for £800, but later in the year sold him 812 acres to clear the debt. In 1882, Rāniera again entered into a mortgage with Russell, this time borrowing £2000 on the security of 1926 acres. But on the very same day, Rāniera sold the land to Russell for £4815, presumably to clear other debts he owed to his lessee. Stirling notes that within a few years, Russell was able to raise a mortgage of £13,000 on this land at eight percent interest.

While 102 acres remained in Rāniera's name, the rules of succession on intestacy meant that when he died in 1884, the block was split up between his successors.

By this stage, almost half of Whakatomotomo (515 acres out of the original 1160 acres reserved at this site) had also been sold to Russell (in 1870). This was despite the restrictions against sale that had been entered in the title when this area was brought through the Native Land Court and awarded to seven owners in 1868. Hēmi Te Miha later explained that the land had to be sold in order to discharge his debts and to pay for the survey of the block, fencing, three pairs of bullocks, and a plough. There is no record of any inquiry into the removal of restrictions, and it was not until the remaining part of the reserve was brought through the court for partition in the 1890s that owner complaint surfaced about the sale. In this case, Stirling argues – and we agree – 'supposed protection . . . seems to have been illusory'.[140]

Ōkōura (Kohunui) – a reserved kāinga of just over 300 acres – was also encumbered by debt to another settler, Donald Sinclair, which Stirling argues was likely to have been in part, at least, for its survey. It seems the intention was to formalise a leasing arrangement with Sinclair, and though restrictions were put in place when it was awarded to seven owners in 1870, and the block was retained, it was also immediately charged with £92 for outstanding costs.[141]

So by the 1880s, with the sale of most of Rāniera's reserve and almost half of Whakatomotomo to satisfy Hēmi Te Miha's and other debts, Ngāti Hinewaka's interests at Tūranganui were greatly reduced. Title still had not issued to the other reserves at Whangaīwhakarere and the other small sites retained at the time of the original transaction.

Then when titles were belatedly formalised after the royal commission in 1882–83, Pirinoa (Tūranganui section 67) went through the Native Land Court with no restrictions on alienation entered on the title.

The remaining land at Whakatomotomo was partitioned into six separate blocks, which were surveyed at the cost of £71 16s 6d, and restrictions were on the titles. By 1898, two of these blocks (totalling 200 acres) had been approved for sale to pay off debts – leaving 345 acres in Māori title.[142]

According to Stirling, the 81-acre kāinga reserved at Tauānui (Tūranganui section 68) was abandoned by the 1870s, and leased on an informal basis to the run holder

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whose property surrounded it. This arrangement was formalised when title was awarded (with restrictions) in the 1880s.[143]

At Whangaīwhakarere (Tūranganui section 66), the owners retained 400 acres (awarded in 1884 with restrictions), which comprised their urupā, a village for their own residence, a farm, timber, and rentals. In 1899, they tried unsuccessfully to use it as security for a loan.[144]

(2) *Ngātāhuna*

Ngātāhuna, one of the Castlepoint reserves, was sold as soon as it was brought through the Native Land Court. According to Cleaver, the block was divided in two on survey – Ngātāhuna 1 comprised 1485 acres, and Ngātāhuna 2 comprised 67 acres. They went through the Native Land Court in 1869 on the application of five individuals who stated that they belonged to the Hāmua hapū (Rangitāne). Their application went through unopposed and title was awarded in January 1870.

(a) *Ngātāhuna 1:* The court treated the Ngātāhuna 1 block as if it had never been reserved. Atareti Mātini (Tapatū), one of the original applicants, named 10 owners. The court awarded it to those 10, with an unrestricted title.

In early 1871, the survey debt of £19 was paid off, and 485 acres of the block were sold to Wairarapa's resident magistrate, Herbert Wardell, for £140 (5s 9d per acre). Fourteen individuals signed the deed, including five who had not been named in court because the 10-owner rule applied at the time and restricted the number of names on a title to 10. At the same time, they leased the balance of the block (1000 acres) to Wardell for 21 years, and gave him the option to purchase for £250. These arrangements were not scrutinised by any Crown official, since a trust commissioner was not appointed for the Wellington district until 1873.

In July 1872, Wardell mortgaged his lease to provide security for a loan of £1000 from James Prendergast. In the following year, Wardell purchased the freehold outright for the sum of £200. By this time, Charles Heaphy had been appointed Trust Commissioner, and he endorsed the deed. Heaphy recorded in his minute book that Atareti Mātini and two of the other owners had acknowledged the receipt of £200 in cash, but also mistakenly described the area involved as 485 acres (not 1485). Later in the year, Wardell conveyed the whole of Ngātāhuna 1 to Prendergast, discharging his debt.[145]

(b) *Ngātāhuna 2:* The smaller Ngātāhuna 2 block of 67 acres went through the Native Land Court at the same time as Ngātāhuna 1, and was also awarded to 10 owners. Only two of them (Atareti Mātini and Te Meihana) were named in the title for Ngātāhuna 1.

Ngātāhuna 2 had homes and cultivations on it.[146] The court declared it a 'native reserve', and restrictions against permanent alienation were entered in the certificate of title as required by the Native Lands Act 1866. Queries about lifting the restrictions began in the late 1870s and, in 1880, Ihāia Te Whakamairū wrote to the under-secretary of the Native Department, stating:

> All the grantees in the Ngatahuna No 2 block situate at Taueru near Masterton agree to the restrictions being removed from it, because so small a piece of land is of no benefit to ten of us, it only contains sixty-seven acres and lies entirely within the property of a European.
>
> Therefore I forward to the Government the consent of all the Grantees to the restrictions being removed.[147]

A query to the Native Land Court revealed that the Crown grant had never been issued because the survey debt of £7 was still outstanding. Six weeks later, the owners sent the Native Department a letter asking for the restrictions to be lifted; they also sent a proposed conveyance and a cheque for the £7. When asked to comment, the department's man on the spot, E S Maunsell, recommended that the sale go ahead. The land was well out of Masterton, and the consideration of £167 10s was 'ample'. He remarked:

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> The imposition of restrictions against the sale was done, if I recollect, at request of claimants before the Court. Natives in past years did not understand the meaning of restrictions on lands, there are other similar cases in the Wairarapa. When asked by the Court if they desired such restriction being placed, they would answer in the affirmative thinking as they tell me, that it meant whether the land was to be sold then and there.[148]

Stirling gave evidence that Maunsell typically approved requests to lift restrictions, provided that the £3 15s fee was paid.[149]

Approval secured, 11 of the owners (as at 1881) signed the deed for the stated amount. A second deed was signed six months later by Ihipera Patuwai, who agreed to part with her interest for the sum of £17. A year later, in December 1882, Trust Commissioner Alexander Mackay endorsed both deeds, having established that they had been appropriately interpreted and witnessed. He had also received the usual statutory declarations from Patuwai and a signatory of the first deed that nothing illegal had occurred in the transaction.[150] In this scrambling way, the original grantees had sold all 1552 'reserved' acres in the space of 20 years.

(3) *Whareama reserves*

Walzl describes a similar process for Ngāi Tūmapuhia-ā-Rangi with regard to their interests at Whareama. The Crown purchased Hikurangi for £100 in 1859.[151]

The largest block that now remained, Motuwaireka (630 acres), was brought through the Native Land Court in 1869, awarded to 10 owners, and restrictions were entered on the title. In 1882, an application to have these removed so that the land could be sold resulted in a lease being improved instead, and in 1900 the land was still in Māori ownership.

Title to other Crown purchase reserves at Whareama did not issue until 1887–88, when the usual restrictions were duly recorded. Walzl notes that within three years, most of the Mangapōkia reserve seems to have been sold, and two years after that, an application for the restrictions to be lifted from the title of Mangapiu (175 acres) was also successful and the block was sold. Title to Whareama 884 (509 acres) was also determined and restrictions entered on the title in 1888. Hera Te Ata and others applied for the restrictions to be lifted in 1894. The court supported the application since the owners had land elsewhere that was 'sufficient for their maintenance and occupation'; however, it would appear that the Governor in Council rejected the application, because the restrictions remained in place and Māori kept the block until the twentieth century. The only other Whareama block held for so long was Waipupū (66 acres).[152]

3B.4 The Royal Commission of 1882–83

3B.4.1 How a commission of inquiry into Wairarapa reserves came about

Charles Heaphy was appointed in 1878 to conduct a royal commission of inquiry into the McCleverty awards, which were part of the reserve arrangements made at Port Nicholson (Wellington). Heaphy's punctilious ways contrasted with McLean's broad-brush approach. His detailed investigations reveal a thorough and efficient administrator, who put great store by field work. Something of a renaissance man, he used his artistic and surveying skills to good effect: in preparing his interim report, for example, it seems he made plans of each reserve under investigation. As native reserve commissioner, however, his concern was less the overall well-being of Māori than ensuring that deeds complied with the law and that their terms were fulfilled. This emphasis led to some mistakes being corrected, but others were perpetuated. The attrition of sites reserved for Māori continued.

When he visited the Wairarapa in 1879, a number of Māori complained to him about 'lost' reserves. He

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discounted one such complaint, concerning a reserve at Castlepoint, as having no substance. However, in the case of Te Awaiti, he saw that while the deed specified a reserve for a cultivation that was to extend from the landing at Pūkaroro all the way inland to Rerewhakaaitū, only one portion (Pūkaroro) had been set aside. Heaphy speculated whether the land for cultivation had been purchased by the Crown, had been consolidated at Pūkaroro, or simply had been overlooked. He recommended that the matter be resolved before all the land was taken up for settlement and the 'difficulty of adjusting such a matter . . . increased'.[153]

As a result, in September 1879, Heaphy was directed to widen his investigations. He was to meet with Wairarapa Māori who asserted grievances with the Crown, and report on them. Another year lapsed, however, before the commission reached the district. Heaphy was in the Wairarapa in February 1881 to settle the koha/5 percent account (discussed in chapter 3D), and he stayed on to convene the royal commission.

3B.4.2 The royal commission begins its work

In May of 1881, Heaphy held meetings in Masterton over a two- to three-week period. He produced an interim report, but as he resigned his commission soon after owing to his declining health, the report was never completed.[154]

His successor as commissioner of native reserves for the province was Alexander Mackay. It fell to him to produce a more complete accounting. There is no detailed record of how Mackay came to his conclusions, how far he was influenced by Heaphy, nor to what extent he negotiated on the spot. It seems he pursued his own inquiries if he thought there was an unresolved problem.[155]

(1) *Mackay's report*

The way Mackay's draft report of June 1882 dealt with the Wairarapa–Castlepoint area was essentially to give an inventory of reserves made from Crown purchases since 1853. Mackay listed some 92 reserves as having been promised. He included reserves at Seventy Mile Bush, but excluded several instances where reserves for individual rangatira were noted within a deed and the court issued title without restrictions. Nor did he investigate the reserves at Forty Mile Bush. In a third of the cases listed, Mackay noted that Crown grants had been issued to named individuals and 'others', but did not document their subsequent history. He identified two cases where the original owners had purchased their reserves to obtain a Crown grant. Fourteen reserves had been sold. Eight reserves (or portions of them) were missing, or possibly had been set aside elsewhere, and three reserves 'set aside' for fishing purposes remained undefined and unprotected. Some 27,000 acres remained in Māori hands.[156] The table over summarises the alienations (excluding leases) that Mackay identified.

(2) *Adjustments made to resolve disputes*

Mackay's report also indicated that a number of adjustments had been made and 'disputes' resolved (these were generally instances where the Government had mistakenly sold to settlers). In addition to reserves at Ōwhanga, Whareama 2 South, and Mataōperu (in the table over), we may include the lands at Te Para supposedly reserved from the Hikawera and Taratahi transactions. According to Mackay, in 1869 a 660-acre block was granted under native land legislation to Hoani Rangitākaiwaho and four others, as 'compensation in settlement of a dispute'.[157] The restrictions that had been supposed to apply had not been noted in the title and several portions were sold by 1877.[158]

We should also record that in two instances (at Maungaraki and Ōtahuao) Mackay noted that lands had been reserved even though they had not been mentioned in the deed.[159] In a handful of other cases (Mangapiu at Waikaraka, and Hikawera) the acreage of the land to be retained by the rangatira concerned was greater than what was promised in the deeds.[160] There was also Rāniera's reserve at Tūranganui (although Mackay did not report on it): it was surveyed at 2840 acres, which was twice as much as originally promised.

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Block	Reserve	Results
Awaiti and part Pāhaoa	Landing place at Pūkaroro, proceeding inland to Rerewhakaaitū – as a cultivation	106 acres reserved at Pūkaroro. The boundaries do not extend inland to Rerewhakaaitū as provided, nor is there any reason why the intention was not carried out.
Barton's Run (Mataōperu)	Cultivation at Witikaōpeka–Ōhiranga	Sold to the Government on 27 February 1862.
Castlepoint	Waitutu	Cannot be found – it does not appear to have been set apart.
	Takapūai	No reserve set aside. It was said to be on banks of the Mātaikona River, but all the land there has been sold.
	Porotāwhao	Sold to the Government in January 1855.
	Whakataki	Sold to the Government and afterwards granted to 'certain natives' under the Whakataki Grants Act 1874.
	Taurangawaiō	Sold to the Government for £200 in February 1855. (Mackay failed to note that a portion was purchased back by the original owners and title was issued in 1877.)
	A small fishing reserve at 'Waimiha'	The reserve at Waimīmiha is situated on section 318, near the mouth of the Whareama River. In the return of native reserves published in AJHR, 1862, E-10, a reserve at Oaea is shown, but it does not appear to have been defined on the ground. Judging from an old triangulation, the portion appears to be on the east bank of the Whareama opposite section 54. The land has been sold. The acreage of the reserve at Takapūai is also set down in the same return as 94 acres.
	A small fishing reserve at Puketewai	The fishing reserve at Puketewai was sold to the Government in January 1855.
Kaiwhata	Kākati	The reserve is missing but may have been included in Tūtaehauhau (which was also set aside under deed and surveyed at 388 acres).
Lake (west side)	Putanga-ā-Matangi	Sold to the Government in December 1853.
	Bush at Waiōrongomai	Sold to the Government in December 1853.
	Ōwhanga	Sold to the Government in December 1853.

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McMasters Run (part of)	100 acres for Miha as place where Haimona Pita died	Section 73 at Waitapu containing 120 acres was reserved; 80 acres of the original quantity is apparently missing.
	100 acres for general purposes of which 20 acres are for Retimana Te Ruaki	
Ōwhanga	Reservation for Rāwiri Piharau at Motupiri	The land reserved was sold inadvertently to a Mr Vennell by the commissioner of Crown lands, in consequence of which Rāwiri Piharau took forcible possession of land at Tirohanga on the west side of the lake beyond Featherston. Other land – namely, 100 acres adjacent to section 5 Tauherenīkau – was offered to Rāwiri, but he refused it. In final settlement of the dispute, 150 acres was purchased for Rāwiri at Pouawatea, but he never occupied the land because of its wet character. The Government finally sold it to a Mr Meredith, leaving Rāwiri's claim unsettled.
Seventy Mile Bush	530 acres (Puapuatapoto)	Sold to the Government in November 1873.
	500 acres – Ngātapu 2	Sold to the Government in November 1872.
	500 acres – Ngātapu 1	Sold to the Government in June 1879.
Smith's Run	Nil	No reservation was attached to the deed, but a piece of bush land known by the name of Ritokau appears to have been excepted and consequently sold to the Government in November 1872.
Tararua	1000 acres at Mangatarerea	1000 acres was sold to the Government.
Whareama 2 South	Cultivations at Mangapiu	The land appears to have been absorbed in the parcel of 175 acres set apart in the Waikaraka block.
	Small piece at Waipupū, Whatakai, and Te Ruru	A reserve of 64 acres was made at Waipupū and in April 1875 Māori were given £150 compensation for the portion known as Whatakai sold to Mr Meredith. A reserve at Waireka containing 630 acres has been set apart and granted under section 17 of the Native Land Act 1867.
Whareama (part of)	Hikurangi	Sold to the Government in 1859.

Lost or sold reserves, as noted in Mackay's 'General Report', 1882–83

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Mataōperu Reserves: The Barton's Run Saga Continues

The names of three Government agents resonate through the history of land deals at Barton's Run: Thomas Forsaith, Donald McLean, and Charles Heaphy. The historical record of the district – an incomplete paper chase that includes legal documents, letters, memoranda, and diary entries – traces the actions of these men and how they affected people's lives. Some, like Richard Barton, benefited. Others, like Ngāti Hinewaka, were not so fortunate. They lost land, and then, as each official entered the scene, were excluded further from ownership and use of the land that remained in their possession.

In the early years of its colonisation schemes, the Crown made commitments to 'ample reserves' and the protection of Māori in all sites crucial to their welfare.

Maungaroa deed's reserve provisions not fulfilled

Forsaith's Maungaroa deed of 1845 specifically set aside 'our cultivations and the ones we are using now' – which may have included a significant amount of arable land and coastal cultivations. Here the written record falls short: we do not know what Ngāti Hinewaka asked for, only what the deed said. Never surveyed nor defined, the reserves of the Maungaroa deed remained just that: promises.

The imprecision of these arrangements immediately caused problems. Several rangatira entered into lease arrangements with settlers for sites within the area they had been obliged to give up. Barton complained that Māori were occupying 'his' land. The New Munster Executive Council was soon commenting (March 1850) that 'the said tract of land was ceded to the Government in 1845, with the exception of native cultivation'. It went on to recommend that the New Zealand Company, under whose auspices the Maungaroa block briefly fell, should see to it that the boundaries were sorted out. Nothing was done, though, until 1853, when McLean embarked upon his 'tidy-up' Mataōperu purchase.

Mataōperu deed's reserve provisions ineffective

The Mataōperu deed made note of two reserves: 'a cultivation for us' at Ōhiranga, and 'about ten acres to be reserved as a

3B.5 What Did the Crown Do Next?

The reports that Heaphy and Mackay wrote after they had investigated reserves in the Wairarapa gave the government of the day an opportunity to assess and address problems that remained unsolved.

In our inquiry, the Crown asked historian Helen McCracken to identify 'cases that it [the Crown] had failed to address in any fashion', or where there was no resolution agreed – such as further payment, adjustment of boundary, or substitution of site. McCracken replied that problems remained outstanding in the following instances: Tuhitarata (recorded in Mackay's report under the heading of McMaster's Homestead), Te Ōroi, Waitutu and Takapūai (Castlepoint), Kaiwhata, and Pūkaroro. Mackay's notes suggest that Piharau's reserve at Ōwhanga also remained an issue. Waimīmiha, a reserve from the Castlepoint purchase, may be added to this list too.

What was done about the problems Mackay identified? Did anything change in terms of the Crown's general policy, or its practical commitments?

3B.5.1 The Native Reserves' Titles Grant Empowering Act 1886

The Native Reserves' Titles Grant Empowering Act 1886 was one of the Crown's responses to the investigations of reserves in the Wairarapa and elsewhere.

Under the Native Reserves Act 1882, reserves previously

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village or resting place for us at Opouawe'. These descriptions, like those in the earlier deed, proved inadequate. Nor was there reference in the second deed to the reserves in the earlier deed, which should already have been set aside but were not.

After concluding the Mataōperu deed, the Crown sold the Whāwhānui block to Barton at auction, although as usual its reserves had yet to be surveyed. But when Barton started using the cultivation area, Māori protested. 'Karauria Rihia Hape wishes the reserves settled,' read a memorandum from surveyor Malcolm Fraser to McLean in 1861. Crown Lands Commissioner William Fitzherbert sent McLean to investigate. To Fitzherbert's relief, McLean reported that Barton's purchase had certainly included the Ōhiranga cultivation, so there was no need to 'disturb any of the . . . sale made to Mr Barton'.

McLean's 'solution' good for whom?

Instead, on 27 February 1862, McLean purchased the cultivation by deed for £80. The relatively high price indicates how keen the Crown was to smooth over its previous dealings in Whāwhānui.

But McLean's solution raises questions. First there is the propriety of confirming Barton in the ownership of an area of cultivations. Didn't Māori need to keep cultivation areas, so that they could provide for themselves? Is that not why they were reserved in the first place? Then there is the question of who owned the cultivation area under the deed. The Mataōperu deed explicitly described the reserve at Ōhiranga as being for the collective advantage of all, and McLean negotiated that deed. And yet, only a few years later, there he was paying Karauria Hape as though all the rights were Hape's. Hape is recorded as having described the reserve as 'the piece of land which I withheld as a place for myself', but McLean must have known that this was not so.

It is difficult to avoid the conclusion that he was prepared to be complicit in an untruth for the sake of ridding the Crown of yet another niggling problem.

The suspicion that the arrangement was underhand is reinforced by the parties (Hape and McLean) executing the deal in distant Wellington, far both from the Ōhiranga cultivation and from the other signatories to the parent deed, whose rights the Government ignored.

McLean was later to write that, as the reserve was inland and bounded by freehold settler land, its acquisition had

continues over

administered under the Native Reserves Acts 1856 and 1873 were now vested in the Public Trustee. In Wairarapa, however, reserves were never brought under this regime; instead, title to reserves remaining in Māori hands had to be awarded under the Native Reserves' Titles Grant Empowering Act 1886. Ballance, introducing this Bill to the House, said:

> Investigation has been made into the various awards and claims under various Royal Commissions, and the names of those entitled have been ascertained; and all that remains to be done, in those cases, is to issue the grants according to the decisions of the Royal Commissions.[161]

In answer to objections from the opposition (Bryce) to the wording of the preamble and the power it seemed to give to the Native Minister, Ballance defended the measure: 'considering that it is a great number of years since the first of those awards . . . it is time we took steps to complete the matter'.[162]

In the case of Wairarapa lands, the Act stated that certain lands had been 'reserved at various times for Native purposes in the Wairarapa District on the cession of Native Territory to the Crown' and that commissions had been issued 'for the purpose of ascertaining the names of the persons who [were] beneficially entitled'. It was considered expedient that 'the issue of instruments of title to such persons should be authorised', so the Governor was

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been 'very desirable'. The reserve was, he claimed, of no use to Māori.

Charles Heaphy does nothing to improve matters

When considering the Maungaroa deed and its promises, Heaphy noted:

> It now appeared the land Te Weretā had a right to cede – Maungaroa proper – was a very small block, with no cultivations in it; the reserves stipulated for with Mr Forsaith lay really in the land he had no right to cede.

Cultivations had certainly existed within the Maungaroa boundaries. If nothing else, the two reserves set aside in the Mataōperu deed confirm this. It is unclear why Heaphy expressed the view he did, but he effectively obliterated Māori claims to the reserves of 1845.

The Ōpouawe reserve

There were two reserves named in the 1853 deed, and as we have seen, McLean bought Ōhiranga. That left only the kāinga at Ōpouawe, an area of 10-odd acres. Information about it is sparse. Correspondence dated 1863 refers to Barton trespassing on land of Hape's, and this may have been the Ōpouawe land. Further Māori protest was noted in 1872.

Ōpouawe next appears in the record in 1881 on the long list of Māori grievances that Heaphy investigated. He sketched the kāinga, and referred to an area of 9 acres 3 roods 11 perches.

When the Crown finally granted the Ōpouawe reserve, it was not to Ngāti Hinewaka but to a single individual, Hiria Karauria. Awarded by Mackay in 1884, the reserve appears to have been informally used ever since by the Bartons, whose farm borders the coastal block.

Thus, the last remaining reserve in the Mataōperu block, intended for the benefit of many, became privately owned. In the space of 40-odd years, tangata whenua had become virtually landless. The problems of reserves in Wairarapa endure to this day. Haami Te Whaiti of Ngāti Hinewaka is a descendent of Te Weretā. He says: 'They are token reservations. In practical terms we are not able to get access to the land, we are not able to use the land, and we are not able to prevent trespassers from trespassing on the land.' Written in 2004, these words might well have been penned in 1882.

empowered to execute warrants for the issuing of certificates of title and to impose such restrictions on the title as he deemed advisable.[163]

Thus, after three decades of waiting, Wairarapa Māori could finally get title to the lands that were still theirs, after the waves of Crown purchase and the dwindling-away of reserves that we have described.

But it was too late for some reserves – even for those that apparently survived the years of Crown purchasing. Instead, they had been long encumbered to settlers, who were already in occupation. Grants had been backdated to legalise ownership by settlers, not Māori. In other cases, restrictions were short-lived and were lifted to allow grantees to sell the 'reserve' – sometimes to allow the owner to invest the proceeds in property elsewhere, but often to settle debts to lessees or storekeepers. In some instances, such as Waimīmiha, nothing was done to confirm Māori possession until a series of petitions and letters prompted action in the early twentieth century. In half a dozen cases, it would seem that reserves simply remained lost or pieces missing.[164] To the extent that the Crown made good on its reserve undertakings, the emphasis was on honouring the terms of sale, not on divining the condition of Māori and what they needed – except for bare maintenance. We discuss how the Government established what that bare minimum required in chapter 5.

3B.5.2 The reserves Mackay identified as having unresolved problems

In 1882, Mackay identified the following blocks as having unresolved problems: Pūkaroro, Rerewhakaaitū, and

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Waipuna (reserved from Te Awaiti and Part Pāhaoa); Waitapu (from McMaster's Homestead); Mangapōkia (from Whareama 1); Waitutu, Takapūai, and Waimīmiha (from Castlepoint); Kākati (from Kaiwhata); Ōwhanga; and Te Ōroi (from Āwhea). Of these, we have information on the following:

(1) *Ōwhanga*

As already discussed, after being shifted several times, Piharau and his relatives were left with an undesirable, flood-prone site that they did not want and soon sold. They were then forced to 'squat' on Crown lands. Mackay was concerned that problems might still remain, but took no further action. Later, long after Piharau's death, Māori queried what had happened to Piharau's reserve but the Crown was not prepared to pursue the matter any further.

(2) *Pūkaroro, Rerewhakaaitū, and Waipuna*

Titles were awarded in 1887 to the few reserves that Mackay recognised from the Te Awaiti and Part Pāhaoa deed: only 106 acres out of the 100,000 acres that the Crown purchased. Stirling points out that this fell well short of what was initially promised under the deed – 47 acres surveyed but not granted at Huariki; 500 acres of cultivation land; the Pāhaoa pā and kāinga; and 1000 acres extending from Pūkaroro up the Rerewhakaaitū River valley. However, 1000 acres were allocated elsewhere (Paehuia) to fulfil the promise of the reserve at Rerewhakaaitū. This 'made some amends' but, Stirling told us, apart from the narrow river valley, the Paehuia block comprised rough hill country and was 'far from suitable as a replacement for the Rerewhakaaitū cultivations'. (Ultimately, most of this land went into State forest; today, much of it lies within the Ngāumu Forest.)[165] Another 156 acres were set aside in the same location to satisfy the promise of a reserve at Waipuna.[166]

In 1888, T H Piripi sought to succeed to Parera Hirini's interests in Rerewhakaaitū, but it seems that his claim was not heard. It could not succeed in any case, since the Crown had long since sold Rerewhakaaitū, and for Paehuia, its substitute, no title was issued for this block until 1905. Mackay gave the Government the names of 33 individuals so that a Crown grant could be prepared in 1888; it was finally issued under the Reserves, Endowments and Crown and Native Lands Exchange, Sale, Disposal, and Enabling Act 1898.[167] By that stage, there were 35 owners. When the title was issued in 1905, restrictions on alienation were entered on it, but these were abolished under the 1909 Native Lands Act.

(3) *Kākati – part of the Kaiwhata reserve*

Kaiwhata was set aside from the Part Pāhaoa and Wilson's purchase. Mackay incorrectly identified the reserve as part of the purchase of the Kaiwhata block, and his assessment that the reserve may have been included in lands set aside at Tūtaehauhau seems to have been no more than wishful thinking. Investigation of title did not take place until 1905, when it was found that there were 89 owners in a seven-acre block.[168]

(4) *Takapūai*

Mackay found that this Castlepoint reserve had never been surveyed, and all the land where it was supposed to have been located – on the south bank of the Mātaikona River, near its mouth – had been taken up by settlers in the meantime. Karaitiana Te Whakaroto gave Mackay a list of 34 names, and in the 1890s, several people applied for succession orders. Their efforts were in vain because (as at Rerewhakaaitū) no reserve and no title actually existed.

Later in the decade, however, the Native Land Court changed its position and, in 1898, allowed people whose names were on the list of owners Mackay drew up in 1882–83 to succeed. But they found they were succeeding to a putative reserve only; on the ground, there was nothing for them to succeed to.

Finally, in 1909–10, the long-promised Takapūai reserve came to fruition in the form of a block of land on the Waihoki River (the reserve was originally sited on the Mātaikona River). It comprised 192 acres – sections 6 and 7 of block v, Aohanga district. However, only section 7 (150

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acres) was actually in exchange for the Takapūai reserve (as to section 6, see below).

The land was vested in the Ikaroa Land Board in trust for the 'use and support of such aboriginal natives as shall be determined by the Native Land Court'. On 25 August 1909, in accordance with section 321 of the Native Lands Act 1908, this area was permanently reserved from sale.[169] In 1910, title was issued in the names of those on Mackay's list, or their successors.

(5) *Mangapōkia*

The balance of the 192 acres on the Whareama River was section 6, block V, Aohanga district. These 42 acres were set aside to make up a shortfall in the Mangapōkia reserve created out of the Whareama purchase. (It adjoined section 7, which was awarded in compensation for the loss of Takapūai reserve: see section 3B.5.2(4).) In 1910, the court ordered a certificate of title in the names of the 105 owners who had interests in the adjoining Mangapōkia block.[170]

From 1912 onwards, the owners leased out both blocks. In 1991, the Māori Land Court declared its status as freehold Māori land.[171]

(6) *Waimīmiha*

As was the case with the Takapūai and Mangapōkia reserves, the owners of the tiny Waimīmiha reserve had to wait until the early twentieth century to get title.

Mackay's report had revealed that the 'little fishing place for the Maoris at Waimīmiha', a reserve from the Castlepoint transaction, had never been surveyed.[172] He believed the intended reserve was located in what had become section 318 of block VIII, Rewa survey district. Nothing further was done until, in 1901, Taiāwhio Te Tau and 51 others petitioned for the return of the reserve. They pointed to their earlier complaints, and claimed that some several thousand acres were involved. For Māori, this was a long-standing grievance – a demonstration of their impotence within the courts, in Parliament, and in their direct dealings with the Government.[173]

Over the next five years, Te Tau and others wrote letters attempting to get officials and the Native Affairs Minister of the time (Carroll) to interpret the deed and its obligations generously. According to the petitioners, much more than a camping site was involved; the whole of the coastal land between the Whareama and Ōtahame Rivers ought to have been reserved to them (an estimated 17,000 acres). The under-secretary of the Native Department did not accept that the claim had any pedigree, saying that it was 'the first intimation that the natives claim any ownership in the block in question.'[174]

Nonetheless, the Native Affairs Committee recommended that the Government consider the petition further. This happened in 1903, after which the chief surveyor agreed that a reserve ought to have been set aside, but the petitioners were only entitled to section 318, located at the mouth of the Waimīmiha (and ultimately surveyed at half an acre). This is consistent with what Mackay recorded when he looked into reserves in 1882–1883. The under-secretary commented on the Surveyor-General's conclusion: 'Up to the present the only evidence I have seen is the bare assumption of persons who were not born at the time of the purchase.'[175]

In 1905, Te Tau tried, without success, to persuade Carroll that the statement in the deed – that a small place was to be reserved – did not reflect their own understanding that they would receive 10 percent of the block in reserves. They were willing to give up their full claim if a coastal strip of between 800 and 984 acres were set aside for them. Tangata whenua had always understood this coastal strip to be set aside for them, Te Tau told Carroll, and rights accompanying the small area proposed by the Government were inadequate:

> one person up to 20 go, so that there may be paddlers for the canoe and to procure food, therefore we cannot agree that that is the size of the reserve at Waimimiha, our grand-parents and parents knew quite well that this piece was their's . . . we too knew that that piece

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The site of the Waimīmiha reserve – at only half an acre, possibly one of the smallest reserves ever created. It was the owners' understanding that the reserve would be much larger.

> was ours, we would not urge it if we had no right to the land.[176]

Another petition in 1907 gave more details about the Māori understanding of the reserve, which had not found their way into the deed. The reserve was to set aside the 'fish working' places in the lake, the fern root and cabbage tree grounds ashore on the mainland, and the 'main permanent kainga [settlements] of our ancestors'.[177] Another Government inquiry only elicited the now-entrenched Government view that a reserve had been promised, but only a small area. The Native Affairs Committee subsequently referred the matter to the Government for 'favourable consideration', with a recommendation that the area be surveyed and Māori put in possession.[178] Te Tau clearly thought that his hapū had won their case, and put in an application for survey which included an area long gone into settler hands. The under-secretary of the Native Department returned the application, saying that the reserve was confined to lot 318, and it was useless to

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seek more. Further letters produced no better result than a departmental request to Lands and Survey that the reserve be surveyed in accordance with the recommendation of the Native Affairs Committee.[179]

This resulted in the survey of two roods four perches in 1907.

(7) *Te Ōroi*

Te Ōroi, reserved in the Āwhea deed, was another of the reserves identified in 1882–83 as having unresolved problems. For its subsequent history, we rely on Stirling's report on Ngāti Hinewaka lands. He comments:

> Ultimately, it took Ngati Hinewaka longer to obtain title to the [Te] Oroi reserve than the period for which they managed to retain ownership . . . to this, the largest of the east coast reserves south of Flat Point.[180]

The Native Land Court investigated relative interests in the block in 1888 and heard how, decades earlier, McLean and a komiti (committee) arranged for the reserve to be set aside. The court ordered reserves of 1000 acres for 21 members of Ngāti Hinewaka, and 1280 acres for 23 members of Ngāti Rangaranga. Title was formally granted under the Native Reserves' Titles Grant Empowering Act 1886.

Ngāti Rangaranga's 1280 acres were already leased out. They were divided into five blocks later in 1888. Ngāti Hinewaka's 1000 acres were subdivided into 10 blocks in 1890.

Although there were restrictions against long-term alienation on the titles, as early as 1893 some owners applied for their removal so as to allow a sale to Riddiford (the major lessee). Stirling characterises the court's inquiry as to whether to approve this step as 'very limited'. A basic check of whether the grantees owned other land revealed other holdings in very small undivided shares in Ōkōura block, or shares in lands such as Mātakitaki 1, already leased and heavily mortgaged. Other inquiries confirmed only that the owners had received the purchase payment,

Two Roods Four Perches: The Waimīmiha Petition

In the late nineteenth century, Taiāwhio Te Tau led a campaign to have land north of the Whareama River returned to his hapū, claiming that it had never been sold. According to their petition addressed to Seddon in August 1901:

> This is a Petition of ours, for our land situated in the Whareama Block . . . that this was never sold to the Government but was set apart when the sale of Otuhaumi to Waimataa was carried through.
>
> Nepia Pohuhu during his time brought forward this case for us, together with the Maori members of Parliament of which Karaitiana was one who worked hard, but we got no satisfaction, tho we never gave up hope.
>
> After this Hera Te Ata and Tikawenga Te Tau took up the case on our behalf with the help of Henare Tomoana then in the House of Representatives did all they could but the Petition was left to stand over.
>
> In the year 1886 . . . Hera Te Ata with others put the case into a Solicitors hands (Brassey) to put through the Supreme Court, to whom also we paid the sum of Five hundred Pounds (£500) for the said case, as he did not move to anything and after inquiries were made, we finally, after proof of robbing us of our money, had his solicitors license cancelled by the Wellington Law Society.
>
> We can truly say that this Block of land was never sold to the Queen, but as before mentioned was set aside at the time of the sale of Otahaumi and Waimataa, for a home for us. We therefore pray to you and your Government to favour it with your consideration.

The Native Affairs Committee referred the matter to the Native Department, which responded that the block was part of the Castlepoint purchase of 1853 and had never been

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and then the Government approved the application for removal of restrictions. Other parcels were purchased in small transactions from 1894 to 1896, leaving only 29 acres comprising the interests of minors. By 1906, all that was left were two urupā of one acre each.[181]

3B.5.3 Conclusion: provision of reserves and redress generally ineffective

After three decades of waiting, Wairarapa Māori were finally awarded title to most of the lands that remained from the first waves of Crown purchase.

In our view, however, an inquiry such as that conducted by Mackay was unlikely to provide an adequate remedy for the various failures in policy that had taken place: the concentration on sites in active occupation without sufficient provision for long-term needs; the awards to individuals at the expense of an adequate provision for the community as a whole; the various losses through Crown purchases or failures of court-imposed restrictions. Mackay did not question the purchase of reserves, and regarded those blocks as legitimately sold. Even where purchases were the subject of disputes, or where the sale really constituted coercion of owners to accept a fait accompli, there was no question of those transactions being overturned as a result of his inquiry. Nor did Heaphy or Mackay consider looking behind the award of title of reserves to individual grantees by the Native Land Court.

Protections belatedly entered on titles of these last remaining 'reserves' usually came under immediate challenge. The reasons for Māori to give them up were various, but often they were too small to develop, or had problems to do with access or land quality. Also, their owners were under financial pressure, and there was no countervailing enthusiasm by policy makers to take meaningful action to help Māori keep their land.

The tables appended to this chapter set out the extant data on the fate of the original Crown purchase reserves.

questioned before. The committee then reported that it had had insufficient time to fully consider the petition, and recommended that it be referred back to the Government for further consideration.

In response, Hapeta Whakamairū wrote to James Carroll (then Native Minister) stating that 'with regard to the reserves we have a right to apply to the Government to give them back to us'.

Correspondence with Carroll and Apirana Ngata followed, and the matter was referred to the Justice Department (then responsible for Native Affairs).

The chief surveyor subsequently reported that 'no particulars in support of the claim are apparently to be found'. The only reserve was a 'fishing place' known as Waimīmiha located at the mouth of the Waimimi Stream. This was a 'small piece', the boundaries of which 'have not yet been defined'. The Crown grant for section 318, Whareama, he reported, had 'been held over for many years pending the fixing of the boundaries of this reserve', but this was 'the only portion to which the Natives have any just claim'.

This is consistent with Mackay's notes when he investigated the 'lost' reserves in 1882 and 1883, but not with the understandings of the descendants of the signatories to the Castlepoint deed. In their view, 'the whole of that seashore is for fishing' and it was for that purpose that their tīpuna had reserved the land.

Carroll responded that they were entitled only to a 'small area'. After another three years of correspondence and petition, this was indeed what they received. Title issued in 1907 to two roods four perches: at only 2024 square metres, this was surely one of the smallest reserves ever made. One of our Tribunal members referred to this as a metaphor for Māori dispossession and penury.

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3B.6 Tribunal Analysis and Findings

With regard to the reserves made and promised during the Crown's pre-1865 purchases in Wairarapa ki Tararua, did the Crown's actions and omissions breach the principles of the Treaty? Embedded in this central question are several others, which we noted at the beginning of this chapter and now respond to in turn:

- How adequate was the provision of reserves in Crown purchases pre-1865? What sorts of lands were reserved and for what purposes?
- How well were those reserves protected? Did the different purposes of reserves carry different responsibilities for the Crown? Did those responsibilities change over time as Māori circumstances changed?
- How well did the Crown respond to Māori complaints about failures of survey and other problems they were encountering with reserves?

3B.6.1 The adequacy of reserves and the sorts of lands reserved

Here, we answer the following questions: How adequate was the provision of reserves in Crown purchases pre-1865? What sorts of lands were reserved and for what purposes?

(1) *The undertakings that underpinned the Crown's purchases*

From early on, officials knew that Māori lacked the knowledge, technology, and experience in European culture and thinking to engage successfully in the western economy. Not grasping the implications of what they were doing in this new construct called British law, Māori might well alienate the whole of their tribal estate if left to deal with Europeans on their own. Indeed, it was the Empire's sobering experience with indigenous peoples in other colonies that provided the impetus to do things differently in New Zealand – hence, the Treaty of Waitangi.

The assurance to Māori that they would retain adequate land for their future welfare, and in the fullness of time would be in a position to reap the benefits of British settlement, was fundamental to the relationship between Crown and Māori in these early years. It was articulated clearly and often by a plethora of senior officials, even before the foundation of the colony, and certainly in the course of negotiations with Māori.

This discourse began in the Crown-assisted negotiations with the New Zealand Company. Māori were then assured that 'ample reserves' would be put aside from purchases; and McLean and Grey took up the litany. Māori would receive benefits in the form of education, improvements in health, and the increased value of their remaining lands which would be protected forever. In our view, these were the undertakings that underpinned the agreement of tangata whenua to engage in wholesale disposal of their land to the Crown. We do not think that any of the changing circumstances, economic or political, disencumbered the Crown of its responsibility to try to follow through on what its officials promised. What we need to ask is whether it did try, whether its efforts were sufficiently genuine and sustained, and how far it succeeded.

(2) *The adequacy of the Crown's reserve policy and its implementation*

Previous Tribunals have generally taken the approach that, had the Crown's policy on reserves been properly implemented, no breach of the Treaty would have occurred – or, at the least, the prejudice to Māori would have been much reduced. In our view, however, the Crown's reserve policy was flawed from the start – contradictory, vacillating, and so limited in nature that, even if fully implemented, the Crown's performance as a Treaty partner might well have been found wanting.

A crucial weakness was that the Crown's policy focus was almost exclusively on Māori retaining the land they were then intensively occupying, not on providing for a

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variety of uses in the long term. Then, the Crown failed to fully effect even the limited objective of protecting Māori in their existing habitations.

(3) *How much land did Māori need?*

Circulating in the early colonial period in New Zealand were many opinions about what needed to be done to secure the long-term welfare of Māori.

At their most expansive, Crown officials contemplated that Māori would keep a range of lands and resources: forested lands in which they could snare birds, hunt, gather firewood and practise rongoā; narrow strips of coastland and river valleys for shifting their cultivations; and their important fishing spots, both freshwater and coastal. Such thinkers accepted that if reserving sufficient lands to ensure the continuation of traditional practices proved impossible in the face of settlement, Māori should be actively assisted by the Government to make up for that loss. They also thought it important to ensure Māori retained land near, or in, new settlements. Sometimes, they considered the quality and quantity of land they would need.

However, after 1846, such opinions lost ground to 'wastelands' theory. Although Earl Grey's wastelands instruction was short-lived, Governor Grey's 'nearly allied principle' was its close relation, and was quickly taken up. This promoted the idea that all Māori land not in intensive use was surplus to requirements and could be sold cheaply to the Crown.[182] Reserves policy therefore became focused on protecting the limited areas that Māori were seen as actually owning and valuing: kāinga, pā, cultivations, particular stands of bush, or eel and fishing sites – with perhaps some additional acres for future commercial needs.

We are not persuaded by the Crown's contention that Governor Grey's policy emulated the intent of Normanby's instruction and was, in effect, the land fund under another name. Inherent in Normanby's approach was the need for Māori to retain enough land both to use it in the future, and to sell it to take advantage of rising land values. For this to be possible, the reserves policy had to comprehend a generous provision. Governor Grey had in mind something altogether more limited. Responding to Earl Grey in 1846, he asserted that reserves should comprise occupied and cultivated land 'adequate . . . for the future wants of the natives', and the Crown should register these areas 'as the only admitted claims of the natives in that district'.[183] Admitting claims only to land in actual occupation really meant treating those areas as if they were all that Māori had ever owned. This was tantamount to adopting the wastelands policy, all the while pretending that something fundamentally different was going on.

McLean was on exactly the same wavelength when he told the Colonial Secretary in 1854 that reserves were:

> blocks of land excepted by the natives, for their own use and subsistence, within the tracts of land they have ceded to the Crown for colonization, and in general that there has been a distinct understanding that they should not at any time be called upon to alienate any lands so reserved, it being considered essential for their own maintenance and welfare to retain them. Those lands are in general cultivated and occupied by the natives, and in most instances the reserves are sufficiently extensive to provide for their present and future wants.[184]

'Future wants' were largely predicated on subsistence agriculture.

Thus, it is just as possible to interpret official instructions about reserves in terms of *confining* Māori in the retention of their occupied lands only, as it is to interpret them in terms of *protecting* Māori in the retention of their lands. When larger areas were reserved, it was regarded primarily as an interim measure until Māori settled into their role as small agriculturalists and wage labourers.

Clearly, the early official concern that Māori might be injured if the whole of the valley was to transfer out of their hands was short-lived. Far more enduring was the

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imperative to buy as much land as possible, as cheaply as possible. So intent was the Crown upon this mission, it paid little regard to its duty to ensure that adequate land of good quality was left in the possession of Ngāti Kahungunu and Rangitāne. Doing so would have ensured that, as Lord Normanby contemplated, tangata whenua were protected in the immediate term, and ultimately, able to enjoy the added value accruing from British settlement. For the Crown to have protected Māori occupied lands for their short-term requirements only (and that very inadequately) did not meet that duty.

We do not think that settlement would have been stopped or impeded if the Crown had fulfilled its Treaty duty. There were relatively few Māori in the Wairarapa. Providing reserves that met their reasonable demands for both present and future needs would still have freed up hundreds of thousands of acres for settlers. At the time of the Crown purchases, it was expected that the future of the district would lie in sheep farming. It was plain that there was no intention that Māori would have a reasonable stake in this industry if their reserves were limited (as they mostly were) to kāinga and māra. Even dairy farming, it was soon demonstrated, would require more than the 50 acres per person that became the measure applied under the Native Land Act 1873 (until further reduced to 25 acres in 1893 on the basis that Māori were no longer so dependent on land ownership for their economic welfare). As the Muriwhenua Tribunal has commented, and as cited by claimant counsel:

> There could be no hope that Māori would share in a new agrarian economy if there were no plans that Māori should retain an essential land-base. Few things would have provided as much for equity and future Māori participation in the economy as a fair share of the land.[185]

(4) *Enough land to continue as lessors?*

In Wairarapa, Māori would surely have expected to lease out to settlers those lands they held under Crown grant, as they had done with their customary lands before the Native Land Purchase Ordinance passed into law. There are indications that, early on, the Crown expected this too.

Dr Loveridge recounts how, faced by settlers pressing for permission to lease legally from Māori in 1849, Grey again spoke of 'ample reserves for the Natives' which they would be 'at liberty' to lease to Europeans. The reserves would be set aside when the Crown purchased 'large tracts of land' for sums paid in instalments. Grey anticipated that most of the graziers' requirements would be met by 'throwing open these districts to the European stockholders in the ordinary manner' – that is, by enabling them to purchase from the Crown.[186] In 1850, Grey again directed that the commissioner of Crown lands be instructed that:

> sufficient reserves are made for the present and future needs of the Natives, for which they will receive conditional titles authorising them to lease [for up to 21 years] such portions of the land as the Government may not think necessary for their present wants.

Grey commented:

> It is always here understood that the Natives in addition to any right they may at present have over reserved lands gain the additional privilege of leasing them . . . until an alteration on their own part from their present system of holding lands . . . to a tenure by single individuals . . . gives them more complete titles.[187]

But Grey's comments about Māori leasing in the future, once they had sold to the Crown and got land back under Crown grant, were all to do with closing down the practice of settlers leasing customary land from Māori directly. When he spoke about Māori leasing 'such portions' of reserved lands 'as the Government may not think necessary for their present wants', he did not really turn his mind to how Māori would manage to live on, grow on, and harvest resources from the same land. Nor did he consider how Māori leasing land would be reconciled with the Crown's right of pre-emption. Was there to be a waiver, perhaps? In fact, the idea lapsed.[188]

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When it came down to it, there was no appetite for setting up Māori as landlords. Grey's major object – and McLean's too – was to get rangatira onto their own farms under individual tenure. Leasing would be a temporary option only, dependent on whether the needs of settlers were being met by Crown purchases. The general view was that Māori landlordism was undesirable, and a matter of last resort if the demands of settlement and the supply of Crown lands got out of balance.[189]

(5) *What should the Crown have done?*

Under the Treaty, and in the light of Normanby's instructions and the arrangements Grey outlined at the komiti nui as the basis for Crown purchase of land in the Wairarapa, Māori were entitled to retain:

- adequate land for a range of future uses – not just for immediate needs, but for the long-term as well;
- all eel weirs, and inland and coastal fisheries in well-protected reserves – or, if necessary, generous substitution; and
- plentiful good quality land in appropriate locations, enabling mahinga kai and also full Māori engagement in both agricultural and pastoral farming, and other business pursuits too if they chose.

Instead, the vision for Wairarapa Māori remained limited, and implementation even more so. The only really extensive block of land that the Crown reserved to them from purchase deeds – Mātaikona at Castlepoint – was available because of the special circumstances of the first Wairarapa purchase, and because the Crown did not want it for settlement. Fisheries, or access to them, were largely reserved in recognition of their very great importance to the people of this district, and because (with the important exception of the Tūranganui deed) they did not interfere immediately with settler interests. (Although Māori seemed to retain power and land under the Tūranganui deed, chapter 7 shows how subsequent machinations defeated them.) Elsewhere, reserves were at most a few thousand acres. This level of provision was not calculated to assist Māori to engage fully with the colonial economy as agriculturalists, pastoralists, landlords, or business owners. McLean's instructions were telling – that Māori demands for reserves were 'extravagant' and should be curbed. Similarly, Searancke saw no need for Māori to keep much more land than they were already cultivating. These views, not Normanby's, characterised the Crown's practice.

(6) *Finding*

In failing to reserve adequate land for Māori, the Crown breached its duty actively to protect their interests. Māori were prejudiced in that the Crown's meagre provisions effectively precluded their engaging with the settler economy except as wage labourers and subsistence farmers.

3B.6.2 Protection for reserves and Crown responsibilities

Here, we answer the following questions: How well were those reserves protected? Did the different purposes of reserves carry different responsibilities for the Crown? Did those responsibilities change over time as Māori circumstances changed?

(1) *Failure to survey rendered protection impossible*

Crown officials often acknowledged the importance of properly identifying reserves so that Māori possession of them was secure. But the Crown was unwilling to wait until a surveyor was available to define boundaries before concluding purchases, and surveying for settlers was prioritised ahead of defining reserve boundaries. Not knowing exactly where reserves were, neither Māori nor the Crown could protect them. The many examples given in this report bear testament to that situation.

(2) *The Crown's purchase of reserves inappropriate*

Immediately after setting land aside as reserves for Māori, the Crown began purchasing them. The Crown argued that purchase of reserves was not in itself problematic, because consequences might not be negative, depending on the original purpose of the reservation and whether it remained

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relevant. We are not persuaded, and do not consider it necessary to go into this kind of detailed analysis of individual cases. In a land-based economy like New Zealand in the nineteenth century, Māori needed land if they were to foot it in the new settler dispensation. Quite simply, too little land was reserved. Under these circumstances, for the Crown to buy up such reserves as it had seen fit to make – sometimes immediately after making them – was simply opportunistic. It militated against the likelihood that Māori would ever be able to engage in the new economy, and was therefore by definition inappropriate behaviour for the Crown. Not only was the Crown's duty one of active protection in any case, but its own practice of ignoring the underlying collective title in favour of awarding reserves to individual rangatira so that they would agree to sales, greatly contributed to the subsequent dispossession of hapū and a growing problem of landlessness.

(3) *The Crown's purchase of reserves to resolve conflicts*

The Crown's ready resort to buying reserves as a means of sidestepping disputes about who owned land, and in what proportions, was particularly blameworthy. The disputes were very often the result of the Crown's own poor purchase practice, failing to ascertain properly where rights lay before purchasing. Using the disputes that inevitably arose as yet another reason for buying more land – even where the land had supposedly been reserved to Māori – has the unfortunate appearance of the Crown profiting from its own misdeeds. This was the Crown winning in every direction – contriving to purchase yet more land, and at the same time seeming to be helping tangata whenua by resolving their conflicts.

In these situations, it was incumbent on the Crown to resolve the underlying problems with the purchase, which were of its own making, and to ensure that all those entitled were recognised. Simply buying the land was not at all an appropriate response. The Crown's conduct was especially egregious when it settled a dispute by buying the reserve from an individual (which was simpler) rather than from the true owners, who comprised a larger group.

(4) *Removing restrictions against alienation from the title of reserves*

The enactment of measures allowing restrictions against permanent alienation to be entered on the title of reserves provided the only legal recognition of these lands as reserves from Crown purchases. However, the expense of survey fell to Māori, and by the time lands were brought through the Native Land Court, many owners were already in debt; on occasion, they had already sold their land. Sometimes, the bulk of what remained were pā and urupā, with other poorer-quality lots. The value of reserves to their owners had in other cases been diminished by their having become landlocked by farmers' encircling property. These situations motivated owners to sell, and as we discuss in more detail later in this report (chapter 6), restrictions on alienation were of limited long-term effect. There was a degree of scrutiny of proposed alienations and their potential impact, but it was variable, and decisions not to allow reserves to be purchased could later be reversed. Only very rarely were applications to remove restrictions on alienation ultimately refused – and indeed, the system was largely dismantled in 1909 and 1913.

The Crown defended the vagaries of the system put in place to give legal protection to reserves by saying that such protection was only intended to be temporary. We understand that a long-term system for protecting reserves might not have been necessary once Māori were equipped to deal with colonial life on an equal footing. But the Crown failed to demonstrate when this occurred. Nor did it reconcile the promise of reserves as a permanent possession at the time of purchase with later Crown thinking that reserves would not be required forever. This kind of fundamental shift in conception should not have been a unilateral decision by the Crown. The Crown was in a position to predict that continuing purchase of Māori land would render them landless – an outcome Māori would never have agreed to had it been brought to their attention. But the Crown did not confront the issue until the beginning of the twentieth century with the Stout–Ngata commission (discussed in chapter 6) and took none of the

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necessary steps to put a halt to land sales even of reserve land. Instead of working to ensure that legal protection of reserves was effective and enduring as Māori landholdings diminished, the Crown walked away from the problem altogether.

(5) *Finding*

We find that the Crown breached the principles of the Treaty by failing to ensure that Māori were protected in the ownership of their reserves by:

- vaguely defining reserves and failing to survey them, rendering them incapable of precise identification and therefore protection;
- purchasing reserves from the Tūrakirae, Hikurangi, and Ngātapu purchases and others, especially where such purchases were from a limited number of vendors;
- purchasing reserves as a purported means of resolving disputes, when it had caused the disputes by poor purchase practice, and other solutions were not explored; and
- purchasing reserves from individuals, when the true ownership lay with a larger group, and the Crown knew that to be the case.

The Crown breached the principle of active protection in all these cases, but in the latter two, it also breached its duty to act towards Māori with the utmost good faith.

Māori were prejudiced because the Crown's breaches helped propel them towards landlessness.

3B.6.3 The Crown's response to Māori complaints about survey failures and other reserve problems

Here, we answer the following question: How well did the Crown respond to Māori complaints about failures of survey and other problems they were encountering with reserves?

To its credit, the Crown did eventually make an effort to investigate complaints that reserves had not been set aside as promised or had been incorrectly purchased. While Heaphy and Mackay made some progress in sorting out those kinds of problems, situations where Māori no longer had the reserve because the Crown had purchased it were a different kettle of fish entirely. No remedy for those cases was ever on the table.

Still, there was a chance of a remedy in other cases, and compromises were arrived at that went some way towards fulfilling Crown promises at Rerewhakaaitū and Waipuna; and at Takapūai and Mangapōkia. At Waimīmiha, there was hope that Carroll and the Liberal Government would be sympathetic to a generous interpretation of what had been promised, but only a camping site was set aside. In all these instances, 20 years elapsed between Mackay's negotiations and final award of the blocks concerned.

McCracken comments that 'very rarely was land returned to Māori', and:

> it is always difficult to work out whether a monetary payment to resolve a dispute was adequate, because without detailed knowledge of the quality and extent of the land in question it is difficult to appreciate relative value.[190]

She adds that other costs should also be taken into consideration: the inconvenience of pursuing redress, loss of economic opportunity, and the ill-will between Māori and settlers that was often engendered. We agree. Instead of being assisted to engage with the colonial economy by gaining early possession of defined blocks with a Crown-granted and protected title, Māori were involved in a protracted process of negotiations with a succession of Crown officials and, on too many occasions, were obliged to accept second or third best. The Crown concedes that this was prejudicial to the claimants, and its concession is appropriate.

3B.6.4 Finding

We thus find the Crown's efforts to redress longstanding problems were too long delayed and too limited to mitigate the Treaty breaches detailed above.

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Notes

1. Document I1(a) (Ngā Hapū Karanga closing submissions), pp 14–15
2. Document I1(c) (Ngā Hapū Karanga closing submissions), p 30
3. Document I8 (Rangitāne closing submissions), p 60
4. Document I5 (Ngāti Hinewaka closing submissions), pp 20–22
5. Document I1(a) (Ngā Hapū Karanga closing submissions), pp 49–50
6. Ibid, p 51
7. Document I5 (Ngāti Hinewaka closing submissions), pp 19–20
8. Ibid, p 19
9. Ibid, pp 22–23
10. Ibid, pp 22–23
11. Document I17(i) (Crown closing submissions), pp 2–4; doc I17(d) (Crown closing submissions), p 3
12. Document I17(i) (Crown closing submissions), pp 2–4; doc I17(d) (Crown closing submissions), p 3
13. Document I17(j) (Crown memorandum), p 2
14. Document I17(i) (Crown closing submissions), pp 5–6
15. Ibid
16. Waitangi Tribunal, *Te Whanganui-a-Orotu Report* (Wellington: Brooker's Ltd, 1995), p 40
17. The rights retained at Wairarapa Moana are an exception. See chapter 7.
18. Richmond to Burslem, 15 January 1867, AJLC, 1867, p 41 (doc A107 (Hayes), appendix, pp 31–32)
19. Fenton to Richmond, 11 July 1867, AJHR, 1867, A-10, p 5 (doc A107 (Hayes), appendix, p 33)
20. Lewis to Brabant, 9 December 1882, 82/619, DOSLI 4/25 (doc A107 (Hayes), appendix, p 61)
21. Sir James Carroll, 28 November 1913, NZPD, 1913, vol 167, p 428 (Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 430
22. Document A46 (McCracken), p 290
23. Those deeds for the Āwhea, Manawatū, Ōpaki, and Tūpāpakurua blocks: doc A33 (Rigby), pp 142–144.
24. 'Fishing rights' were reserved for Māori in the purchase of the Morrison Homestead, however.
25. There are likely to have been other 'purchase reserves' particularly of the Masterton town sections but the title evidence available to us was not sufficient to ascertain whether these were purchased from the Crown, and before 1865. These were Masterton town section 28, lots 20 and 23 of section 79, section 87, section 110, lots 103 and 104 of Masterton small farm block section 56, and lots 142 and 153 of Manaia section 43. The same is the case for the Martinborough town sections 1, 2, 8, 9, 18, 94 to 113, 551, and 552. We also received evidence on two Gladstone town sections that Māori purchased from Pākehā in the 1870s: Tūpurupuru section 19 (also known as Waipoapoa) and Tūpurupuru section 89 were purchased from runholder Angus McMaster. This appears the same for the Taratahi Plain block sections 50, 214, 288, and 344. The evidence on record is from the trust commissioner records when these blocks were brought before the commissioners in the late nineteenth century to get alienations or successions confirmed. These records are in documents A26(1) to A26(293) (Gawith and Hartley document bank). These blocks had 'European' or 'general' land status.
26. Document A44 (Walzl), p 376
27. Document A46 (McCracken), pp 303–304
28. Document A100 (Turton's Deeds), deed 97
29. Document A59 (Stirling), p 95
30. McLean to Mein Smith, 20 October 1853, AJHR, 1861, C-1, p 263 (doc A33 (Rigby), p 23)
31. Ibid (p 397)
32. Mein Smith to McLean, 10 November 1853, Featherston papers, MS 3440, ATL (doc A33 (Rigby), p 23)
33. Document A33 (Rigby), p 24
34. Ibid, pp 114–115
35. Ibid, p 122
36. Document E50 (Tautāne deed)
37. Document A59 (Stirling), p 343
38. Document A71 (Leach), p 3
39. Document A100 (Turton's Deeds), deed 85
40. Mackay, 'Claims of Natives to Wairarapa Lakes and Adjacent Lands', AJHR, 1891, G-4, pp 2, 7
41. Document A100 (Turton's Deeds), deed 88; doc A33 (Rigby), p 114
42. Document A33 (Rigby), p 123
43. Ibid, p 119
44. Document A46 (McCracken), pp 149–151
45. Ibid, pp 151–157
46. The town property in question was probably Masterton section 32, of 40 acres granted to Ihāia Whakamairū under the Crown Grants Act 1862.
47. Document A118 (Gilling), p 125
48. Document A33 (Rigby), p 136
49. Ibid, p 141
50. This reserve became Tūranganui section 65.
51. McLean to Grey, 22 September 1853, MS-papers-0032–0004, object #1016412, ATL; doc A48 (Stirling), p 126
52. Document A59 (Stirling), p 373
53. Later known as sections 73 and 74 of the Āwhea block respectively.
54. Document A59 (Stirling), pp 82–85
55. Document A100 (Turton's Deeds), deed 165. The 21 acres were known as 'Te Hoe': see doc A43 (Walzl), p 68.
56. Document A100 (Turton's Deeds), deed 106. This reserve was also known as Whareama section 394.
57. Document I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 51
58. Hēmi Te Miha, evidence, 'Claims of Natives to Wairarapa Lakes and Adjacent Lands', 24 April 1891, AJHR, 1891, G-4, pp 21–23
59. Ibid
60. Document A33 (Rigby), pp 52–54

61. This was the Whāwhānui block of 1000 acres, see doc A100 (Turton's Deeds), deed 172.
62. Document A59 (Stirling), p 71
63. McLean report, 10 March 1862, AJHR, 1862, C-1, p 359 (doc A59 (Stirling), p 74)
64. Featherston to Ngāiro, Mikaera, Āperahama Te Ao 'and the other native who wrote to Cooper', 4 November 1864, MA-MLP-W1, ArchivesNZ (doc A46 (McCracken), p 216)
65. Document A46 (McCracken), pp 297–298
66. The area was later known as Ōpaki 6.
67. Document A33 (Rigby), p 128. These two reserves became 'Waitapu Section 73'.
68. Ibid, p 23
69. Ibid, p 23
70. Document A46 (McCracken), pp 116–118. It is unclear if this reserve was made official.
71. Later known as Manaia section 72 (and also 'Te Pukohiwi') and Tūpurupuru section 24 respectively: see doc A46 (McCracken), pp 121, 124, 171.
72. The five reserves became Tūpurupuru sections 20, 21, 22, 88, and 130N.
73. Searancke to McLean, 28 November 1861, AJHR, 1861, C-1, pp 298–299 (doc A46 (McCracken), p 178).
74. Document A100 (Turton's Deeds), deed 156. An addendum dated 12 February 1859 was added to the original deed: see MA-MLP 6/2, folio 122, ArchivesNZ (doc A46 (McCracken), pp 126, 171). This appears to be Tupapokia or Tapapokia, awarded to Māori in 1887 under the Native Reserves' Titles Grant Empowering Act 1886.
75. Document A46 (McCracken), pp 173, 297
76. Searancke to McLean, 26 February 1859, AJHR, 1861, C-1, pp 272–273 (doc A46 (McCracken), p 128)
77. These were Tūranganui sections 70, 71, and 72, for Wiremu Tāmihana Hiko, Wiremu Tutere, and Hiko Tamaihikoia respectively. They were granted in 1863 under the Crown Grants Act 1862. Taueru section 2 was granted to Hāmuera Pakaiahi under the same Act in 1864. What happened to these reserves is unclear.
78. Donald McLean, 7 August 1874, NZPD, 1874, vol 16, p 483 (doc A6 (Cleaver), pp 67–68). The Castlepoint purchase was in June 1853.
79. This land later became Whakataki 3.
80. Document A6 (Cleaver), p 68
81. Document A46 (McCracken), p 36
82. This land was in the block that became Te Karamu, also known as Kaimatarau or Parenuiokuaka.
83. Document A46 (McCracken), pp 42, 53
84. Fox to Stafford, 22 February 1857, IA 14/6, ArchivesNZ (doc A46 (McCracken), p 91)
85. McLean reply, 30 March 1857, IA 14/6, ArchivesNZ (doc A46 (McCracken), p 91)
86. Document A46 (McCracken), p 93
87. Document A33 (Rigby), p 54
88. Document A46 (McCracken), pp 54–55; doc A6 (Cleaver), pp 68–69
89. Document A46 (McCracken), pp 58, 294
90. Searancke to Weld, 5 January 1861, LE 1/1861/229, ArchivesNZ (doc A46 (McCracken), p 130). Awatoitoi was recorded as a reserve from the Whareama North 3 block.
91. Featherston to Domett, 19 January 1863, WP 6/4, ArchivesNZ (doc A46 (McCracken), p 207)
92. Document A46(c) (McCracken), pp 2–3
93. Document A59 (Stirling), pp 83–84; doc A46 (McCracken), p 292
94. Document A59 (Stirling), p 72
95. Document A46 (McCracken), p 195
96. Document A59 (Stirling), p 71
97. Document A46 (McCracken) pp 149–157
98. McLean reply, 30 March 1857, IA 14/6, ArchivesNZ (doc A46 (McCracken), p 150)
99. Valentine-Smith to McLean, 18 July 1860, MS-papers-0032–0580, object #1005321, ATL; doc A46 (McCracken), p 150
100. Searancke to McLean, 1 December 1858, MS-1298, ATL (doc A46 (McCracken), p 151)
101. Searancke to McLean, 25 December 1858, MS-0032–0566, object #1008702, ATL; doc A46 (McCracken), p 151
102. Searancke to McLean, 6 February 1859, MS-0032–0565, object #1009351, ATL; doc A46 (McCracken), p 151
103. Valentine-Smith to Gore Browne, 13 July 1860 (Guy H Scholefield, ed, *The Richmond–Atkinson Papers*, 2 vols (Wellington: Government Printer, 1960), vol 1, p 612)
104. Ibid
105. Searancke to McLean, 28 January 1860, MS-1298, ATL (doc A46 (McCracken), p 152)
106. Valentine-Smith to Gore Browne, 13 July 1860 (Scholefield, *The Richmond–Atkinson Papers*, vol 1, p 612)
107. Petitions Committee response, LE 1860/6, LE 1/1860/9, ArchivesNZ (doc A46 (McCracken), pp 153–155)
108. Gore Browne to Weld, 5 November 1860, MA 1/1860/167, ArchivesNZ (doc A46 (McCracken), p 155)
109. Searancke to McLean, 24 November 1860, MS-papers-0032–0565, object #1003683, ATL; doc A46 (McCracken), p 155
110. Document A100 (Turton's Deeds), deed 179; doc A46 (McCracken), p 156
111. Mackay, report, not dated, MA-MT 6/22, ArchivesNZ (doc A46 (McCracken), p 157)
112. 'Whatahoro', MA 1 1914/1942, ArchivesNZ (doc A46 (McCracken), p 157).
113. Searancke to McLean, 21 February 1860, AJHR, 1861, C-1, pp 288–289 (doc A46 (McCracken), p 134)
114. Document A6 (Cleaver), pp 67–68
115. Cooper to McLean, 28 July 1864, MS-papers-0032–0228, object #1006802, ATL; doc A46 (McCracken), p 218

116. Document A46 (McCracken), p 218
117. 'Petition of Natives of the Wairarapa', 7 August 1867, AJHR, 1867, G-1, p 11 (doc A46 (McCracken), pp 223–226)
118. Document A46 (McCracken), pp 228–229
119. Document A6 (Cleaver), pp 69–70
120. Donald McLean, 7 August 1874, NZPD, 1874, vol 16, p 483 (doc A6 (Cleaver), p 67)
121. Ibid, (p 68)
122. Document A6 (Cleaver), p 71
123. Ibid, pp 79–81
124. Ibid, pp 81–84
125. Ibid, p 90
126. Ibid
127. Ibid, p 91
128. Ibid, p 99
129. Document A46 (McCracken), pp 61, 292; doc A4 (Goldsmith), p 77
130. Document I17(j) (Crown memorandum), p 2
131. Rāniera Te Iho o Te Rangi to Governor, 14 July 1860, *Te Karere Maori*, 30 November 1860, vol 7, no 18, p 43
132. Karaitiana Te Kōrou and Wiremu Wāka to Governor, not dated, *Te Karere Maori*, 30 November 1860, vol 7, no 18, p 45
133. Wiremu Pohotu and Ngātuere Tāwhirimātea to Governor, 16 July 1860, *Te Karere Maori*, 30 November 1860, vol 7, no 18, p 40
134. Document H4 (Hayes), p 7
135. Native Lands Act 1866, s 5; doc A107 (Hayes), p 59
136. Document A49 (Stirling), pp 195, 198–201
137. 'Grants of Land or Other Endowments Made for the Benefit of the Native Race', AJHR, 1865, E-7, p 1
138. McLean to Wardell, 18 November 1861, MA-MT 1/1B, ArchivesNZ (doc A59 (Stirling), p 374)
139. Document A59 (Stirling), p 374. The parent block Tūranganui was purchased by the Crown in September 1853.
140. Ibid, p 390
141. Ibid, pp 396–397
142. Ibid, p 392
143. Ibid, p 388
144. Ibid, pp 379–380
145. Document A6 (Cleaver), pp 53–55
146. Ibid, p 52
147. Whakamairū to under-secretary, 26 April 1880, NO 80/1496, MA 13/22, ArchivesNZ (doc A6 (Cleaver), p 55)
148. Maunsell to Lewis, not dated, NO 80/2345, MA13/22, ArchivesNZ (doc A6 (Cleaver), p 56)
149. Document A49 (Stirling), pp 175–207
150. Document A6 (Cleaver), p 57
151. Document A43 (Walzl), p 68
152. Ibid, pp 60–69
153. Heaphy, memorandum, 20 June 1879, MA-MT 6 6/22, ArchivesNZ (doc A46 (McCracken), p 288)
154. Document A46 (McCracken), pp 287–288
155. Document A6 (Cleaver), pp 60–61
156. Document A46 (McCracken), p 290
157. Ibid, pp 295–296
158. Document A59 (Stirling), pp 175–176
159. The 178-acre Maungaraki reserve was Katotāne which was surveyed in 1873 the same year as the final Maungaraki deed transaction. Title to the reserve was not made official until December 1891 after a Native Land Court title investigation in July. The reserve was sold in August 1892. See doc A100 (Turton's Deeds), deed 194; Maori land Wellington district plan 2978; Wairarapa Maori Land Court minute book 17, pp 356–357; and certificate of title 61/234 (Land Information New Zealand Deeds Registry, Wellington).
160. Document A46 (McCracken), pp 291–310
161. John Ballance, 27 May 1886, NZPD, 1886, vol 54, p 140
162. Ibid
163. Native Reserves' Titles Grant Empowering Act 1886, preamble, s 2
164. Document A46(c) (McCracken), pp 8–14
165. Document A59 (Stirling), pp 117–118, 125
166. Ibid, p 124. The 150 acres is lot 3, part section 274, block 8, Wainuiorū survey district.
167. Ibid, pp 126–127, 128
168. Document A43 (Walzl), p 52; consolidating order, 23 January 1962, Kaiwhata reserve papers, Wellington minute book 42/397–8, Māori Land Court file, ArchivesNZ
169. Document A6 (Cleaver), pp 61–62
170. Ibid, p 63
171. Ibid, pp 62–65
172. Document A100 (Turton's Deeds), deed 85
173. Petition of Taiāwhio Te Tau and others, 5 August 1901, 694/1901, MA 1 5/13/257, ArchivesNZ (doc A6 (Cleaver), pp 152–153
174. Under-secretary, Native Department, to chairman, Native Affairs Committee, 12 September 1901, MA 15/13/257, ArchivesNZ (doc A6 (Cleaver), p 154)
175. Under-secretary, Native Department, to Surveyor-General, 9 September 1903, MA 1 5/13/257, ArchivesNZ (doc A6 (Cleaver), p 156)
176. Te Tau and others to Carroll, 9 October 1905, MA 1 5/13/257, ArchivesNZ (doc A6 (Cleaver), p 157)
177. Petition of Taiāwhio Te Tau and others to Ward, 7 August 1907, 544/1907, MA 1 5/13/257, ArchivesNZ (doc A6 (Cleaver), p 158)
178. Report on petition 544/1907, 25 September 1907, MA 1 5/13/257, ArchivesNZ (doc A6 (Cleaver), p 158)
179. Under-secretary, Native Department, to under-secretary, Department of Lands and Survey, 22 May 1908, MA 1 5/13/257, ArchivesNZ (doc A6 (Cleaver), pp 158–159); under-secretary, Native Department to Te Tau, 4 May 1908, MA 1 5/13/257, ArchivesNZ (doc A6 (Cleaver), pp 158–159)
180. Document A59 (Stirling), p 85
181. Ibid, pp 87–89
182. Grey to Earl Grey, 15 May 1848, BPP, vol 6, cmd 1120, pp 22–26
183. Ibid; doc A81 (Loveridge), pp 315–319, 374

184. McLean to Colonial Secretary, 29 July 1854 (H Hanson Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand* (Wellington: Government Printer, 1883), no 41, p 22); see also doc I1(a) (Ngā Hapū Karanga closing submissions), pp 48–49
185. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 327; doc I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 138
186. Grey, 25 August 1849, 'Reply to Report of General Legislative Council on the Leasing of Maori Land', *New Zealander*, 28 August 1849 (doc A81 (Loveridge), p 407)
187. Grey to Colonial Secretary, 15 February 1851, 1/1851/509, ArchivesNZ (Alan Ward, *National Overview*, 3 vols (Wellington: GP Publications, 1997), vol 2, p 141)
188. Alan Ward, *National Overview*, vol 2, p 141
189. Document A81 (Loveridge), p 375
190. Document A46(c) (McCracken), p 5

Sidebars

Page 233: 'Te Whatahoro Jury on Tūrakirae Reserves'. Source: Mackay, 'Claims of Natives to Wairarapa Lakes and Adjacent Lands', AJHR 1891, G-4, p 20.
Page 256: 'Two Roods Four Perches: The Waimīmiha Petition'. Sources: doc A6 (Cleaver), pp 152–157; doc A32 (Marr), p 93.

Tables

Page 249: 'Lost or sold reserves, as noted in Mackay's 'General Report', 1882–83'. Source: Alexander Mackay, 'General Report on the Wairarapa Reserves', MA-MT 6/22, ArchivesNZ (doc A46 (McCracken), pp 292–310).

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CROWN PURCHASING: PRE-1865 RESERVES

The following tables list the known land reserves directly linked to pre-1865 Crown purchases and pre-1865 Crown purchase land that was purchased back from the Crown by Māori. References to Turton are to *Provinces of Taranaki, Wellington, and Hawke's Bay*, volume 2 of Henry Hanson Turton, comp, *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols (Wellington: Government Printer, 1878).

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No	Land reserves directly linked to pre-1865 Crown purchases	Area (a, r, p)	Date	Acreage by 1900	Comment
Maungaroa East Coast, 22 March 1845, TD 84; Mataōperu block (aka Barton's Run, Whāwhānui), 25 October 1853, TD 96; Whāwhānui (aka Ōhiranga) reserve 27 February 1862, TD 172					
1	Whāwhānui (aka Ōhiranga) or Whitikaupeka (aka Witikaōpeka)	1000a	1862	0	Crown purchased in 1862.
2	Ōpouawe	9a 3r 11p	1887	9.25a	Native Reserves' Titles Grant Empowering Act 1886 award. All remains at 2004.
Castlepoint, 22 June 1853, TD 85; Whakataki reserve (Puketōī), 9 January 1855, TD 133					
3	Mātaikona	17,770a	1869	17,720a	Native Land Act award; 17,690a at 2004.
4	Whakataki reserves 3 and 10	6350a	1862	6350a	Whakataki Grants Act 1874 grants backdated to 24 March 1862. Residue of Whakataki 3 and 10 circa 56a at 2004.
5	Ngātamatea (aka Waihiharori)	5a	1867	5a	Native Land Act award; circa 1r 21p at 2004.
6	Waimīmiha (section 318, block VIII, Rewa SD)	2r 4p	1907	0.5a	Native Land Act award. Not surveyed till 1908. All remains at 2004.
7	Ngātāhuna	1552a	1870	0	Native Land Act award. All sold by 1881. In AJHR, 1862, E-10, as 118a.
8	Porotāwhao (aka Porokauau)	500a		0	Sold to Crown in 1855. In AJHR, 1862, E-10, as 390a.
9	Puketewai	c500a		0	Sold to Crown in 1855.
	Waitutu	0		n/a	Not set aside.
	Takapūai (aka Takupou)	94a	1862	n/a	In AJHR, 1862, E-10, as 94a for 'Hore Papere' but not set aside. 150a at Waihoki, Aohanga block V section 7, awarded as compensation in 1909.
10	Aohanga block V section 7	150a	1910	150a	Native Land Act award. Used to compensate for failure to set aside land at Takapūai. Located on the Waihoki. All remains at 2004.
11	Taurangawaiō (aka Akitio Turangawaiho native reserve)	386a 3r 14p	1855	0	Sold to Crown in 1855. In AJHR, 1862, E-10, as circa 400a.

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12	Marainanga (aka Aohanga block XV section 130)	200a	1884	200a	Not in deed. Native Reserves' Titles Grant Empowering Act 1886 award, CT 1887. Backdated to 25 March 1884. Owners Hoera Rautū, Wiremu Rautū, and 98 others. Sold in 1912.
	Oaea	20a?	1855?	n/a	Not in deed. Not set aside but in AJHR, 1862, E-10, as 20a. Mackay (1884) estimated its location on the east bank: 'opposite Section 54 Whareama – no reserve made, land sold.'
	Mata o te Waho	5a	1855	Unknown	Not in deed. In AJHR 1862 E-10, for 'Ngatikahungunu' – fate unclear.
Tūrakirae (aka West Side of Lake, block 1), 1 September 1853, TD 88					
13	Patunga-ā-Matangi (aka Part Tūrakirae block 1 West Side of Lake –Tāmihana's reserve – near Lake Pōnui)	Unknown		0	Sold to Crown on 14 December 1853, TD 109. Koha included as part of price.
14	Waiōrongomai bush	Unknown		0	Sold to Crown on 22 December 1853, TD 114.
15	Ōāhanga	Unknown		0	Sold to Crown on 23 December 1853, TD 115.
16	Ngāti Tama residence and cultivations at Hinakitaka (aka Mukamuka)	200a	1900	200a	Native Land Act award.
Tūranganui (aka East Side of Lake), 6 September 1853, Crown purchase deeds for Wellington, deeds 219-B, 582					
17	Tūranganui section 65	2840a	1863	102a	Crown Grants Act 1862 grant. For Rāniera Te Iho o Te Rangi; circa 57a remains at 2004.
18	Whangaīwhakarere (Tūranganui section 66)	400a	1887	400a	Native Reserves' Titles Grant Empowering Act 1886 award; circa 196a remains as at 2004.
	Wakangenge	4		0	Likely included in Whangaīwhakarere (section 66) above.
19	Pirinoa Rahoruru (Tūranganui section 67)	464a	1887	464a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 485a. Area reduced by 1902 survey: circa 450a at 2004.
20	Tauānui (Tūranganui section 68)	80a	1868	80a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 30a for 'Hume's Station'; circa 3r 38p remains at 2004.
21	Ōkōura (Tūranganui section 69) (aka Te Kohunui)	310a	1869	310a	Native Land Act award; circa 163a remains at 2004.

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No	Land reserves directly linked to pre-1865 Crown purchases	Area (a, r, p)	Date	Acreage by 1900	Comment
Tūranganui (aka East Side of Lake)—continued					
22	Whakatomotomo	1160a	1868	645a	Native Land Act award; circa 146a remains at 2004.
23	Section 108 Kuhangawariwari (Kōhangawariwari) (aka Manaia section 108 or Masterton section 108)	50a	1863	0	Crown Grants Act 1862 grant. Surveyed acreage was 56.2a. Land at Kōhangawariwari (next to Ihāia Te Whakamairū's land) to compensate for failure to set aside reserve for Rīhara Taka. All sold by 1888.
Part Pāhaua (aka Pāhaoa) and Wilson's Run (aka Te Weretā's Pāhaua), 29 October 1853, TD 97					
24	Pāhaoa (aka Pāhaua) [coastal]	507a	1884	406a	Native Reserves' Titles Grant Empowering Act 1886 award backdated to 25 March 1884. In AJHR, 1862, E-10, at 510a. Possibly circa 134a remains at 2004.
25	Te Whāraurangi (aka Wharauroa)	220a	1884	220a	Native Reserves' Titles Grant Empowering Act 1886 award backdated to 25 March 1884. In AJHR, 1862, E-10, as 220a. Sold to the Riddifords in the 1960s.
26	Hahaia (aka Hahaeu or Kokokaiata)	380a	1884	0	Native Reserves' Titles Grant Empowering Act 1886 award backdated to 25 March 1884. In AJHR, 1862, E-10, as 375a.
27	Waikēkeno (aka Waikikeno)	1660a	1884	1660a	Native Reserves' Titles Grant Empowering Act 1886 award backdated to 25 March 1884. In AJHR, 1862, E-10, as 1660a: circa 344a remains at 2004.
28	Te Unuunu (aka Te Umuumu or Umumu)	1914a	1891	1914a	Native Reserves' Titles Grant Empowering Act 1886 award backdated to 25 March 1884. In AJHR, 1862, E-10, as 1775a: circa 954a remains at 2004.
29	Kaiwhata native reserve (old pa near Kaiwhata River) (aka Kaiwata)	7a	1905	7a	Native Land Act award. No acreage till 1905 survey. All remains at 2004.
	Waipuna (small bush)	Undefined		n/a	Not set aside. Other land on same block – lot 3, part section 274, block 8, Wainuiorū SD; awarded to compensate for failure to reserve Waipuna. See 30.
30	Lot 3, part section 274, block 8, Wainuiorū SD	156a 2r	1905	156.5a	Native Land Act award. Awarded to compensate for failure to reserve Waipuna. All sold by 1913.

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31	Ko Ngaipu (aka Koangahipu)	151a	1891	151a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 130a. Not in deed. All sold by 1913.
Whareama 2, (South) (Renata Te Ao), 1 November 1853, TD 98					
32	Waipupū	66a	1884	66a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 64a for 'Ngatikahungunu'. All sold by 1968.
	Watakai (aka Whatakai)	c63a?	1875	0	Included in error in 2860a (lot 42, Whareama) Crown grant to Meredith, circa 1861. Owners paid £150 in compensation in deed of 25 April 1875, TD 197.
	Te Ruru	Unknown		Unknown	
	100a at Mangapiu				Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 175a for 'Ngatikahungunu'. Appears same as 'Mangapiu' reserve in adjoining Waikaraka block (see 70).
33	Motuwaireka (aka Waireka)	630a	1869	630a	Native Land Act award. In AJHR, 1862, E-10, as 630a for 'Ngatikahungunu'. All sold by 1913.
Whareama 3 (North), 2 December 1853, TD 100					
34	Awatoitoi (aka Awatoetoe)	c30a (1859)		0	Not in deed. Sold to Crown on 1 November 1859, TD 162. See 52.
Part of Whareama (no 1), 9 December 1853, TD 101					
35	Whareama section 884	509a	1888	509a	Native Land Act award. In AJHR, 1862, E-10, as 508a for 'Ngatikahungunu'. All sold by 1920.
36	Mangapōkia	458a	1887	8a	Native Land Act award. In AJHR, 1862, E-10, as 500a for 'Ngatikahungunu'. Shortfall of 42a made up by grant of Aohanga block V section 6 situated in Castlepoint block. All sold by 1920.
37	Aohanga block V section 6	42a	1910	42a	Native Land Act award. Used to compensate for shortfall of 42 acres for the Mangapōkia reserve. Located north of Mangapōkia in Castlepoint block. All remains at 2004.

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No	Land reserves directly linked to pre-1865 Crown purchases	Area (a, r, p)	Date	Acreage by 1900	Comment
Manawatū, 10 December 1853, TD 102					
38	Ōpaki no 6 (homestead for Wiremu Wāka)	1000a	1863	1004a	Crown Grants Act 1862 grant. Individual grant to Wiremu Wāka.
39	Mākirikiri (aka Makiriri?)	1006a	1895	1000a	Native Reserves' Titles Grant Empowering Act 1886 award. Circa 987a remains at 2004.
40	Kopuāranga block IX section 59 (aka part Otawhake/Otawhaki reserve)	259a	1862?	0	Native Land Act award. To be set aside for 'the Hāmua tribe'. In AJHR, 1862, E-10, as 200a for Wiremu Wāka, Hamūera Horopapera and others. Sold in 1873.
41	Kopuāranga block IX section 60 (aka part Otawhake/Otawhaki reserve)	216a	1895	198a	Native Land Act award. In AJHR, 1862, E-10, at 200a for Wiremu Wāka, Hamūera Horopapera and others. Exchanged for section 47 Waipoua. See 43. Circa 7.5a remains at 2004.
	Otupere	Undefined		Unknown	Not in deed. 150a of reserved Crown lands provided to Hamūera Te Nohumutu as Otupere and Hikawaia reserves not initially laid out at time of deed.
42	Hikawaia	Undefined		Unknown	Not in deed. 150a of reserved Crown lands provided to Hamūera Te Nohumutu as Otupere and Hikawaia reserves not initially laid out at time of deed.
Kuhangawariwari (aka Kōhangawariwari), 11 January 1854, TD 125					
43	Section 47, Waipoua Mikomiko block XII, Mikimiki SD (near Tokaunuku) for pigeon snares	273a		Unknown	Crown grant of 1877 to Wiremu Kingī (Tamawhiti) and Āperahama backdated to 1 July 1862. 200 acres was exchanged for Kopuāranga block IX section 60. See 41.
44	Kaikōkirikiri (aka Waipawa, or Waipoua?) section 55/Ōpaki section 55	307a	1887	0	Crown Grants Act 1862 grant. For Te Rōpiha and others. In AJHR, 1862, E-10, under 'Manawatū block' as 300a for 'Ropiha and others'. Remains Māori land at 2004 but unclear if in Māori ownership.
45	Taumata o te Waihīrere (aka section 107 Waingawa/Manaia 107/Tikohanga section 107/Kōhangawariwari section 107)	316a	1889	218a	Native Reserves' Titles Grant Empowering Act 1886 award. For Te Retimana Inia and others.

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46	Kōhangawariwari section 39 (Ruataniwha) (Kuhangawariwari)	40a	1894	40a	Crown Grants Act 1862 grant from 20 January 1863 to Paul Stone (aka Parra Kowhatu/Pāora Pohatu) Sold by 1966–67. Appears not surveyed till sold.
	Kōhangawariwari section 108/ Manaia section 108	50a	1863		Crown Grants Act 1862 grant. For Rihara Paku/Taku/Taka. See 23.
47	Kōhangawariwari section 109	50a	1863		Crown Grants Act 1862 grant. For Kīngi Ngātuere.
Kuhangawariwari and Ōpaki, 27 May 1858, TD 145					
48	Ngāumutawa reserve	291a	1866	1a	Native Land Act award. In AJHR, 1862, E-10, as 300a at 'Waingawa R' for Te Retimana, Inia and others. Ngāumutawa Crown grant 1868. All sold by 1900 except 1a urupā reserve.
Tuhitarata Part McMaster's Run, 12 December 1853, TD 105					
49	'Ruamāhanga, Land on'	Undefined		0	Sold to Crown on 15 December 1853, TD 113.
	100a for Miha o te Rangi (where Hamiona Pita died)	100a	1853	n/a	1867 petition for Crown grant. Likely part Waitapu section 73 below.
	100a for Ngāti Kahungunu, 20a of which for Retimana	100a	1853	n/a	1867 petition for Crown grant. Likely part Waitapu section 73 below, but 80a unaccounted for.
	Rakaiwhakairi reserve	120a	1870	Unknown	Surveyed block brought before the Native Land Court in 1870 by Ruihi and Hui Te Miha. Said the reserve was meant for their deceased father Miha o Re Rangi. The court could not adjudicate as not Māori land. See 'Waitapu part section 73' below.
50	Waitapu part section 73	100a	1889	100a	Native Reserves' Titles Grant Empowering Act 1886 award to Ruihi and Hui Te Miha backdated to 25 March 1884. Sold in 1915.
51	Waitapu part section 73	20a	1884	20a	Native Reserves' Titles Grant Empowering Act 1886 award to Te Retimona te Ruaki backdated to 12 December 1853. Mackay noted surveyed reserve only contained 120a but that it should be 200a. Sold in 1915.
	Pukio	410	1881	79a	A Native Land Act block described as being 'left out of the sale of the Tuhitarata block' at Te Hiko's direction. Not counted as a pre-1865 reserve.

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No	Land reserves directly linked to pre-1865 Crown purchases	Area (a, r, p)	Date	Acreage by 1900	Comment
Part Whareama, 12 December 1853, TD 106					
52	Hikurangi	c500a	1859	0	Sold to Crown on 1 November 1859, TD 162. See 34.
Ōwhanga (aka Ōwahanga), including Wāka and Mānihera's lands already ceded at Kuratāwhiti, 23 December 1853, TD 115					
	Motupiri for Rāwiri Piharau	100a	1853	n/a	Not set aside but Pouawatea provided instead (see below).
53	Pouawatea (aka Te Awa o te Atua)	150a	1853?	0	In AJHR, 1862, E-10, as 150a for 'Rāwiri Piharau'. Sold to Crown on 26 April 1864, TD 179.
54	Ōwhanga (aka Te Mānihera's reserve)	1000a	1853	0	Sold same day as first purchase, TD 116.
	Mangatawari	28a 1r 16p	1870	0	Native Land Act block. Not in deed but described by Hori Taha as being left out of the Crown purchase of 23 December 1853 though the Crown claimed it as part of its purchase. Not counted as a pre-1865 reserve.
East of Kaiwhata, 27 December 1853, TD 117 and Kaiwhata, 11 January 1855, TD 117 enclosure					
55	Ahirara, section 764 (Ahirapa) (aka Tāwhirimātea)	45a	1887	45a	Not in original deed but recorded in deed 'enclosure' of January 1855. Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 41a 3r for 'Ngatikahungunu'. All sold in 1969.
56	Waipuna, section 765, block 8, Wainuiorū SD	64a	1887	60a	Not in original deed but recorded in deed 'enclosure' of January 1855. Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 64a 2r for 'Ngatikahungunu'. All sold in 1969.
	Kākati	Undefined			Not in original deed but recorded in deed 'enclosure' of January 1855. Not set aside. Mackay (1884) said that it may have been included in Tūtaehauhau.
57	Tūtaehauhau (aka Tūtaehaohao, section 766)	394a	1887	252a	Not in original deed but recorded in deed 'enclosure' of January 1855. Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 388a for 'Ngatikahungunu'. Most sold by 1970.

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58	Ngāpuketūrua (aka reserve 774)	1970a	1869	1970a	Not in original deed but recorded in deed 'enclosure' of January 1855. Native Land Act award. In AJHR, 1862, E-10, as 2000a for 'Ngatikahungunu; circa 552a at 2004.
Tautāne, 3 January 1854 and 11 March 1858, HWB TD 4					
	Wainui	1000a	1862	n/a	Appears to be treated as same reserve for Tautāne of 1867 below.
	Kohaekura	Undefined			
	Tautāne	52a	1862	n/a	Appears to have been included in Tautāne below.
59	Tautāne	1052a	1867	1111a	Native Land Act award. All sold by 1934.
Te Awaiti and Part of Pāhaua, 3 January 1854, TD 118					
60	Huariki	13a	1887	13a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 20a. All remains at 2004.
61	Pūkaroro (aka Pukeroro)	106a	1887	106a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 70a. All remains at 2004.
	Rerewhakaaitū (aka Rerewakaitu – cultivation)	200a?	1862?	n/a	In AJHR, 1862, E-10, as 200a. Not set aside and sold but other land awarded instead; see Paehuia below.
62	Paehuia sections 1 and 2 of block XII, Wainuiorū SD	1000a	1905	1002.5a	Native Land Act award. Acreage amended after survey of 1904. All sold by 1973 including part to Crown for Ngāumu State Forest.
	Pāhaoa Pā	Undefined			Unclear if set aside.
	500a if more land is required for cultivation				Unclear if set aside.
Wharekākā, 4 January 1854, TD 119					
63	Wharekākā section 8, parts 12, 14	1389a	1864	0	Crown Grants Act 1862 grant. Includes 1000a for Te Mānihera at 'Waihora'. All sold in 1873.
64	Wharekākā section 28N Rauohaere or Hautotara	300a	1887	294a	Not in deed. Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 330a for 'Te Kepa' and others. Granted to Keepa Te Ora Ora.
65	Wharekākā part section 12	255a	1864	0	Not in deed. Crown Grants Act 1862 grant. For Mānihera Te Rangitākaiwaho.

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No	Land reserves directly linked to pre-1865 Crown purchases	Area (a, r, p)	Date	Acreage by 1900	Comment
66	Wharekākā section 63 (aka Ōtāraia) (Ruamāhanga River)	10.5a	1863	0	Not in deed. Crown Grants Act 1862 grant. For Mānihera Te Rangitākaiwaho.
Whati Part Capt Smith's Run (and bush), 9 January 1854, TD 122					
67	Ritokau (bush)	40a	1854	0	Not in deed 122 but recorded in deed receipt appended to TD 122. Sold to Crown 28 December 1854.
Pohaturiki. Captain Smith's Run part, 11 January 1854, TDs 123 and 124					
	Huangārua section 88N	348a	1868	0	Not in deeds. Native Land Act award for fenced land not included in Crown purchase of part of Captain Mein Smith's run on 11 January 1854. All sold in 1871. Not counted as a pre-1865 reserve.
Āwhea Ōpouawe, 18 January 1854, TD 126					
68	Te Ōroi	2280a	1888	29a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, at 2280a. Circa 2a remains at 2004.
69	Āwhea section 73 Whakapuni (block 6, Waipawa)	496a	1867	496a	Native Land Act award. In AJHR, 1862, E-10, as 500a. Granted to Hoera Whakataha. All sold by 1909.
70	Āwhea section 74 Waipawa SD (block 6, Waipawa) (aka Taimanuka Mangaroa)	611a	1867	0	Native Land Act award. In AJHR, 1862, E-10, as 500a. Granted to Nikorima Te Marutuna and Heremaia Tamaihotua.
71	Te Awaiti (7) (aka Awaite)	40a	1887	40a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 8a. circa 27.5a remains at 2004.
Waiariki Part Reserve (Wī Te Rewai's share), 24 November 1854, DR 27					
					Location of reserve and parent block unknown.

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Waikaraka, 9 December 1854, DR 33, and 2 November 1859 TD 163					
72	Mangapiu (section 786)	175a	1887	0	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 'Whareama no 2' at 175a for 'Ngatikahungunu'. Appears to be the same reserve as for Whareama 2.
73	Eparaima (section 783 Kaiwhata SD)	706a	1887	456a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as c695a for 'Ngatikahungunu'.
Te Karamu, 27 December 1854, TD 131					
74	Piece of bush called Taratahi (December 1854)	?		0	Bush to be set aside for Ngātuere. Sold to Crown in Hikawera and Taratahi purchase December 1854. Could be 'Hikawera reserve'. See 77.
Hikawera and Taratahi, 28 December 1854, TD 132 and 24 March 1858, TD 143					
	Te Para (fishing spot)	100a	1854	n/a	A fishing spot 'near Para and Waitangi' for Ngāti Kahungunu. Not set aside but see Te Para below.
75	Te Para	660a	1869	0	Native Land Act award. Appears to include 'Te Para', above, in its 660 acres. All sold by 1877.
76	Taratahi section 131 (part Waiohine ferry reserve)	122a	1881	0	In AJHR, 1862, E-10, as 416a (includes section 185 below) for Ngāti Kahungunu. Crown grant 1881 backdated to 24 March 1858.
77	Taratahi section 185 (part Waiohine ferry reserve)	134a	1881	0	In AJHR, 1862, E-10, as 416a (includes section 131 above) for Ngāti Kahungunu. Crown grant 1881 backdated to 24 March 1858.
78	Taratahi section 391 (part Waiohine ferry reserve)	371a	1881	266a	Crown grant 1881 backdated to 24 March 1858 (date of second purchase deed); circa 124a remains as at 2004.
79	Hikawera reserve; later no 3	52a 3r 24p	1878	4a	Native Land Act award. Was to be reserved for Ngātuere Tāwhao as a fishing reserve in deed of 28 December 1854 but sold in error. Ngātuere told the Native Land Court in 1877 that Crown purchase officer Wardell bought back the land for him for £60. At 1969, 2a 3r 06p remained and was made European land.

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No	Land reserves directly linked to pre-1865 Crown purchases	Area (a, r, p)	Date	Acreage by 1900	Comment
Maungaraki (Puhara Hawai Kirangi's), 14 February 1855, DR 38 and Maungaraki (Puhara and Tamai Te Heke's), 4 February 1859, TD 159					
80	Piece to eastward of Maungaraki-Tangohia (aka Tangahoe/Mataikairangi) section 608 (block VII, Otahoua SD)	57a	1889	57a	In AJHR, 1862, E-10, as 50a. Native Land Act award.
Wharehanga, 9 January 1856, Crown purchase deeds for Wellington, deed 614					
81	Wharehanga A1 pā reserve	1a	1886	1a	Native Land Act award. Not in deed. Purchase deed lost until 1882. Crown confirmed disputed 1856 purchase in the Native Land Court in 1883. Reserve noted on deposited plan only; circa 1.32a remains at 2004.
82	Wharehanga A2 (urupā reserve)	1a	1886	1a	Native Land Act award. Not in deed. Purchase deed lost until 1882. Crown confirmed disputed 1856 purchase in the Native Land Court in 1883. Reserve noted on deposited plan only; circa 0.2a remains at 2004.
Whangaehu, 24 March 1858, TD 142 and Whangaehu 11 April 1864, TD 177					
	Tukuwahine (to be retained as a cultivation)	Unclear		Unclear	Unclear if reserve made. The later deed of 1864 contained no provision for a reserve.
Manaia, 28 June 1858, TD 150					
83	Manaia section 72 (aka Te Pukohiwi)	100a	1863	0	Crown Grants Act 1862 grant. For Ngātuere Tāwhao.
Te Kōpi (Part Maungaraki), 8 October 1858, TD 153					
84	Tūpurupuru section 24	116a	1864	Unknown	Crown Grants Act 1862 grant. Originally for Maika Pūrakau.

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Tūpurupuru, 28 January 1859 TD 155					
85	Tūpurupuru section 20 or Whaririki (aka Whakariki or Wharauke)	100a	1863	0	Crown Grants Act 1862 grant. Originally for 'Te Kaninamu'. Sold by 1886.
86	Tūpurupuru section 21	100a	1863	Unknown	Crown Grants Act 1862 grant. For Ngāiro Takatakapūtea.
87	Tūpurupuru section 22	461a	1863	Unknown	Crown Grants Act 1862 grant. For Wiremu Kīngi Tūtepākihirangi.
88	Tūpurupuru section 130N (aka Waipapa)	422a	1869	422a	Native Land Act award. In AJHR, 1862, E-10, as 397a for Te Wairua and others. Sold by 1910.
89	Tūpurupuru section 88	50a	1863	0	Crown Grants Act 1862 grant. For Heneri Kīngi Tūtepākihirangi.
Whaiao (Maungaraki), 31 January 1859, TD 156					
90	Tūpurupuru section 90 (aka Taupapanui)	106a	1864	100a	Crown Grants Act 1862 grant to Anaru Tohukairangi and Wiremu Katene in trust for Hiria te Riti Purakau, Pane Te Haurangi and Reweti Maiko from 29 May 1864. Circa 50a remains at 2004.
91	Tūpurupuru section 91	108a	1863	0	Crown Grants Act 1862 grant. For Wiremu Kīngi Tūtepākihirangi.
92	Tupapokia (XIV Tiffen) (aka Tapapokia)	200a	1887?	0	Later addition to deed. Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 200a for Ngāti Kahungunu. Sold in 1887.
Ihuraua (Forty Mile Bush) 12 October 1859, TD 161					
93	Te Hoe aka Te Karamana's reserve	25a	1887	25a	Native Reserves' Titles Grant Empowering Act 1886 award. In AJHR, 1862, E-10, as 21a. All sold by 1915.
94	Te Mōroa block XII Mangaone SD (aka Ihuraua reserve)	205a	1873	5a	Not in deed. For land not sold in the Ihuraua Crown purchase of 1859. Huru Te Hiaro and five others awarded CT under Native Land Act in May 1873 in lieu of a Crown grant. A 5a urupā reserve remains.

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No	Land reserves directly linked to pre-1865 Crown purchases	Area (a, r, p)	Date	Acreage by 1900	Comment
Tūpāpakurua and Kōrakonui (aka Moore's run), 31 January 1860, TD 165					
95	Whareama section 394 (aka Puna Kotukutuku or Piripi native reserve or Tūpurupuru section 394)	1150a	1865	1150a	Crown Grants Act 1862 grant. In AJHR, 1862, E-10, as 650a. Granted to Piripi Iharaira and Rewai Tamati. Sold by 1910.
96	Whareama section 395 (aka Te Aruhe-o-Pōhatu or Harawira's reserve)	728a	1887	728a	Native Reserves' Titles Grant Empowering Act 1886 award. All sold by 1967.
Ōtahuao, 27 March 1860, TD 166					
97	Taueru section 3 (aka Ōtahuao/Tangotango/Tangaha/Tangohana)	100a	1863	100a	Crown Grants Act 1862 grant. In AJHR, 1862, E-10, as 'Purapura'. Crown grant for Tamiti Te Kokiri/Kokori.
Mākara, 17 January 1862, TD 169					
98	Mākara (aka Ramapuka)	100a	1887	0	Native Reserves' Titles Grant Empowering Act 1886 award.
Taheke (aka Te Kumenga, Tuhitarata), 21 January 1862, DR 65					
99	Tūranganui section 70	100a	1863	Unknown	Crown Grants Act 1862 grant for Wiremu Tāmihana Hiko.
100	Tūranganui section 71	100a	1863	Unknown	Crown Grants Act 1862 grant for Wiremu Tutere. Fate unclear though in 1866, Tutere asked if the Crown would buy this land and award him land at Wharekākā because his section was waterlogged.
101	Tūranganui section 72	100a	1863	Unknown	Crown Grants Act 1862 grant for Hiko Tamaihikoia.
Te Whiti (Additional), 12 February 1862, TD 171					
102	Taueru section 2	147a	1864	Unknown	Crown Grants Act 1862 grant for Hamūera Pakaiahi (aka Hamiora Pukaiahi). Deed said 100a at Tōtara Kotipu and Motungarara.

Table of known land reserves directly linked to pre-1865 Crown purchases; acreages at 1900 and 2004 where known

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Key

No: Number of known reserves made officially.

Date: Date of Crown grant or Native Land Court title award or earliest other official record of title award.

Abbreviations

a	acre
aka	also known as
AJHR	***Appendix to the Journals of the House of Representatives***
c	circa
CT	certificate of title (of land)
DR	Turton's deed receipt for the province of Wellington
HWB TD	Turton's deeds for the province of Hawke's Bay
Mackay	Alexander Mackay, 'General Report on the Wairarapa Reserves' (doc A46 (McCracken), pp 292–310)
n/a	not applicable
p	perch
r	rood
SD	survey district
TD	Turton's deeds reference number for the province of Wellington
WGN	Crown purchase deeds for the province of Wellington

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No	Block (date of deed)	Area (a, r, p)	Date	Acreage by 1900	Comment
Castlepoint, 22 June 1853, TD 85					
1	Akitio section 28	105a	1877	105a	Crown grant of 1877 backdated to 25 February 1858. Circa 96 acres remain as at 2004. Located on the south side of the Akitio River, at the river mouth. Purchased by Hoera Rautū and 13 others. The Government contributed more than half the purchase price.
2	Whakataki 1	105a	1874	0	Whakataki Grants Act 1874 grant backdated to 23 March 1858. Sold to Jacob Joseph and Joseph Nathan in 1870.
3	Whakataki 2	52a	1874	52a	Whakataki Grants Act 1874 grant backdated to 23 March 1858. Circa 35 acres remain at 2004.
4	Whakataki 4	21a	1874	21a	Whakataki Grants Act 1874 grant backdated to 23 March 1858. Circa 0.5 acres remain at 2004.
5	Whakataki 5	38a	1874	0	Whakataki Grants Act 1874 grant backdated to 23 March 1858. Sold to Alexander McHutcheon by 1897.
6	Whakataki 6 (also known as Takapourihia)	52a 2r	1874	0	Whakataki Grants Act 1874 grant backdated to 23 March 1858. Sold to Hugh Bellissm by 1883.
Aranga Te Kura, 18 January 1856, TD 140					
7	Purchase reserve of 200a for Matiaha Mōkai for a permanent cultivation	200a?	1866	Unknown	Matiaha paid for the land in 1866 but no grant issued as unsurveyed. Matiaha petitioned the Crown about his reserve in 1867 and the native committee recommended that a survey be completed so a Crown grant could be issued. However, the record of the grant was not filed in evidence.
Wharekākā, 4 January 1854, TD 119					
8	Wharekākā section 11	252a	1864	Unknown	Crown Grant 1862 Act grant for Mānihera Te Rangitākaiwaho.
9	Wharekākā section 61	19a	1884	0	Crown grant to Te Mātenga Kainoke under the Wellington Land Regulations in 1884. Backdated to 9 July 1860.

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10	Wharekākā section 62 (also known as Tauherepurakau/Tawhare Pūrakau)	47a	1885	0	Crown grant of 1885 to Te Mātenga Kainoke under the Special Powers and Contracts Act 1884 backdated to 21 June 1855. Sold to Arthur Martin in 1893.
Kuhangawariwari (also known as Kōhangawariwari), 11 January 1854, TD 125, and Kuhangawariwari and Ōpaki, 27 May 1858 TD 145					
11	Kōhangawariwari section 106	45a	1863	Unknown	Purchase reserve by Ihara Whakamairū.
12	Ōpaki sections 21, 26 and 1/55–94	436a 2r	Unknown	191.64	Likely purchase reserves by Māori from Crown but extant records unclear.
13	Ōpaki section 34 (also known as Paerau)	210a	1855	0	Purchase reserve by Māori from Crown in 1855.
Gladstone town sections					
14	Tūpurupuru section 11	41a or 32p	1860	Unknown	Crown grant to Maika Pūrakau of 1881. Backdated to 2 March 1860. Most sold by 1903.
15	Tūpurupuru section 56	71a 3r 14p	1860	Unknown	Crown grant of 1883 to Kohea Tahana backdated to 2 March 1860. Forty acres sold to Buchanan 15 March 1883 and 22.5 acres declared general land in 1986.
16	Tūpurupuru section 87	47a or 27p	1862	Unknown	Crown grant of 1883 to Te Wenerei backdated to 4 December 1862. Nineteen acres sold to Buchanan in 1883.
Masterton town sections					
17	Section 32	40a	1859	0	Crown Grants 1862 Act award backdated to 3 August 1859. Purchase reserve for Ihāia Te Whakamairū. Sold to Walter Perry by 1877.

Table of Crown land purchased back by Māori from the pre-1865 Crown purchases; acreages at 1900 and 2004 where known

Key

No: Number of known reserves made officially.

Date: Date of Crown grant or Native Land Court title award or earliest other official record of title award.

Abbreviations

a	acre
aka	also known as
p	perch
r	rood
TD	Turton's deeds reference number for the province of Wellington

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CHAPTER 3c

CROWN PURCHASING: THE BENEFITS OF SETTLEMENT IN TERMS OF EDUCATION AND HEALTH

3c.1 Introduction

Although no record remains of exactly what Governor Grey told the Tūranganui komiti nui in August 1853, we have established from contemporary reports (Grey's own and those of others) that the benefits he offered in return for land sales to the Crown were both specific and general, material and intangible. As well as conferring concrete advantages in the form of reserves and koha, Grey later recalled describing 'a good many things' connected with settlement that would come the way of Wairarapa Māori once they had cemented their relationship with the Crown through land sales. Prime among them were 'schools for your children, and doctors to nurse you when you were sick'.[1]

The provision of education and health services for Māori was thus integral to the picture of the mutually beneficial Crown-Māori relationship that Grey unveiled at the komiti nui, and which it subsequently fell to the Crown to try to implement. As counsel for Ngāi Tūmapuhia-ā-Rangi submitted:

> The Crown was obliged to provide health and education to Wairarapa Maori. That obligation flowed from the promises it had made Maori during the McLean transactions and from the rights of citizenship guaranteed by the Treaty itself.[2]

In this chapter, we look at how the Crown's commitments in the areas of education and health played out in practice. We survey the education and health services available in Wairarapa ki Tararua from the 1840s onwards, and the extent to which they met Māori needs. Did the reality match the expectations established at the komiti nui? By the standards of the time, were Māori any worse off than other residents of Wairarapa ki Tararua? And because we argue that the Crown had an enduring obligation to deliver on its early commitments to Māori – those commitments did not simply evaporate once memories of the komiti nui had faded and Grey had left New Zealand – we look at the long-term record of education and health provision for Māori in Wairarapa ki Tararua. What were its consequences for Māori into the twentieth century and beyond?

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3c.2 Education

3c.2.1 The questions we ask about education

This section examines the Government's provision of education to Wairarapa ki Tāmaki-nui-ā-Rua Māori from the 1840s. Unusually, the scope of our discussion extends up until the 1990s, reflecting the nature of the evidence we heard. Many claimants gave us detailed accounts of their own personal experiences in a twentieth-century school system, which they perceived as run by Pākehā for a Pākehā world.

Many of the issues they highlighted derived from events dating back to the beginning of the Crown's relationship with their people: the Government's promises of schools in return for land (some specifically gifted for that purpose, namely at Pāpāwai and Kaikōkirikiri, and some sold in part for 'benefits'), and the failure to provide specialised schools for a number of communities. Other evidence raised more general questions about the Crown's provision of education to Māori: the quality of what was on offer, the availability of post-primary educational opportunities, and the attitude towards te reo Māori and tikanga (traditional rules and practices) in Wairarapa ki Tararua schools.

Thus, our analysis focuses on both specific and general matters. The key themes running through it are:

- What were the Government's promises to Māori with regards to educational provision, and were they fulfilled?
- What educational aspirations did Māori express and how did the Government respond?
- What educational provisions did the Crown set in place for Māori in the Wairarapa ki Tararua district? Was that provision adequate? Could it have done more?
- What were the issues surrounding te reo Māori and the use of English as the medium for education? How did the Crown handle them?
- Were the standards of Pākehā and Māori education comparable within the Wairarapa ki Tararua district?
- Did the Crown act in good faith with reference to the lands gifted to the church for schools at Pāpāwai and Kaikōkirikiri?

3c.2.2 What the claimants say

Overall, the claimants argue that the Crown failed to provide them with access to education equal to that enjoyed by Pākehā communities, and there was certainly no recognition of a Crown obligation to fashion education for Māori to equip them to participate in the new colonial arrangements.

Claimants emphasised that the Crown's general promises of schools and education – a standard feature in its negotiations, as well as specifically mentioned in the koha/five percent clause[3] – were instrumental in inducing Māori to sell land to the Crown in the first place. Counsel for the Rangitāne claimants submitted that 'the only reasonable interpretation' of the koha clause was that 'Rangitāne and other Wairarapa Māori were promised free education'. Yet the Crown failed to fulfil this promise, delivering education that was 'patchy' at best and 'hardly what could be termed free', since it had meant lower prices for their land and had otherwise entailed gifts of land for schools which were never delivered.[4] Making similar arguments, counsel for Ngā Hapū Karanga added that the requirement for Māori to gift land for school sites ran counter to the promises made by Governor Grey to local Māori in 1853, and was a clear violation of Treaty principles.[5]

The claimants maintain that the absence of suitable education for Wairarapa ki Tāmaki-nui-ā-Rua Māori[6] is demonstrated by poor Māori academic performance that, over time, has adversely affected their capacity to engage with the economy on equal terms.

Apart from the short-lived church school at Pāpāwai and the general public schools, no specific educational provisions were made for Māori until the 1880s when two native schools (at Te Oreore and Pāpāwai) were opened.[7]

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Buildings, facilities, resources, and teachers were all inadequate. We also heard similar submissions from Ngāi Tūmapuhia-ā-Rangi about Ōkautete School, which opened later.[8]

Most damningly, the claimants say that the level of schooling provided to Māori pupils was not equal to that provided to other children, with Pākehā schools in the district receiving better funding.[9] We also heard of dissatisfaction with the curriculum offered at the native schools,[10] which local Māori considered equipped their children more to work as domestic servants than to enter into the economy on an equal footing with Pākehā.

The claimants were particularly concerned about the Crown's refusal to intervene over the Church of England's response to the gift of lands at Pāpāwai and Kaikōkirikiri as an endowment for schools. The church's failure to fulfil the terms of the gift was widely recognised and condemned: it was the subject of sustained protest by Wairarapa ki Tāmaki-nui-ā-Rua Māori, the findings of official inquiries and the promises of Government Ministers.[11] Yet, nothing much was done until it was arguably too late and the opportunity for Māori to participate on equal terms was lost. Counsel for several claimants argued that because the Crown had supported the gifting of these lands to the church, it thus had to bear responsibility for the church's failure to use the gift for its intended purpose. As counsel for Rangitāne put it, 'there can be no doubting the influence of Governor Grey' in assisting Bishop Selwyn to persuade Māori to gift land at Pāpāwai and Kaikōkirikiri for schools.[12] Claimants also spoke of the school trust legislation passed in the 1940s, saying it failed to address their grievances adequately, and should have been restricted to benefit the descendants of the original owners – not 'all races'. Rangitāne claimants alleged a special failure on the part of the Crown in their case, saying that the repeated wording of the Papawai and Kaikokirikiri Trust Act 1943 gave preferential treatment to children of Ngāti Kahungunu, and failed to provide similarly for children of Rangitāne (who had been among the major donors).[13]

Another concern for claimants was the exclusion of te reo Māori from schools during the early to mid-twentieth century. Counsel for Ngāi Tūmapuhia ā Rangi and Ngā Hapū Karanga linked this exclusion to the loss of culture and language within their hapū/iwi.[14]

3c.2.3 What the Crown says

The Crown provided no specific evidence about educational provision in the Wairarapa ki Tararua district, although it did address the issue in final submissions.

It acknowledged that claimants were entitled to expect a reasonable degree of educational provision by governments, but made no clear concession of a Treaty breach. In a brief synopsis of education in the district prior to the 1880s, the Crown emphasised that it had taken an active role in Māori education – providing financial subsidies to mission schools, administering and funding the native schools system from 1867 to 1969, and funding the public school system, which provided free education to all children from five to 15 years. Crown counsel argued that the curricula of the native schools system and the Education Board school system were comparable, and allowed Māori equal opportunities for educational achievement. It acknowledged that native schools emphasised English language instruction, and actively discouraged the use of te reo Māori, but argued that these policies had the support of Māori leaders of the time.[15]

With reference to the gifted lands, the Crown agreed that Grey and Bishop Selwyn persuaded local Māori to gift land at Pāpāwai and Kaikōkirikiri to the Church of England for schools. It acknowledged that Wairarapa ki Tāmaki-nui-ā-Rua Māori had protested to the Government about the church's failure either to establish schools on the gifted land, or to return the land to the original donors. Moreover, it agreed that, as a result of several official inquiries between

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1896 and 1941, the Crown would have been fully aware that the church had not complied with the terms of the gifting. Finally, the Crown accepted that being:

> involved through the issue of the Crown grant to the Anglican Church, the Crown had obligations of good faith towards Māori to see that any representations that the Crown had made were met.[16]

It is not clear, however, whether the Crown considers itself to have met that obligation.[17]

In regards to Ōkautete School, the Crown admitted that supplies, resources, and support to the school were sometimes lacking, and this negatively affected the school's operations. The Crown also acknowledged that health officials and school inspectors frequently commented on the substandard school facilities, but argues that it was impossible to know whether this was discriminatory. Similarly the Crown does not address directly the appropriateness of the native schools curriculum, saying only that Māori leaders supported the use of the English language in native schools.[18]

3C.2.4 Educational provision for Wairarapa ki Tāmaki-nui-ā-Rua Māori in the nineteenth century

(1) *Native schools*

The Government provided no educational facilities directly for Māori communities in Wairarapa ki Tararua until 1882.

Ngā Kupu Rangatira mō te Whakaakoranga (Chiefly Remarks on Education)

In 1876, Te Whatahoro Jury was referring to *Te Wananga*, the bilingual periodical of the Repudiation movement, when he wrote:

> E whakamoemiti ana au ki enei taonga e rua, ki te Kura raua ko te Wananga, katahi ano tatau nga iwi Maori o te Motu nei ka tupono ki nga tino taonga o te iwi nei o te Pakeha. Ahakoa he Hipi, he Kau, he Hoiho, he Tima rere moana nei, he Mira kani rakau nei, he moni ranei. E kore rawa e rite ki aua taonga e rua, kua kia ake nei e au te pai, no te mea ki taku titiro, na Te Kura nga mea katoa i te Rangi, i te takiwa o te Ao, i te Whenua, i raro ranei o nga rire o nga moana . . . Waihoki he kupu tenei naku kia tatou ki nga iwi ano o tenei Motu o Aotea, kia kaha rawa koutou nga iwi hapu, me nga Rangatira katoa ki te hapai i enei taonga e rua, i tenei Motu katoa, whakapua te uaua ki te rapu i nga hua o tenei taonga o te Kura raua ko Wananga. Kaua e mangere ki enei taonga e rua o tatou, ko te putaki tenei o tenei kupu o to tatou putea whakairo e ki nei, ma te whakarongo, me te ako, e whiwhi ai te tama a te tangata ki te Karauna honore, ma te ngoikore ano hoki, me te ngakau puhoi, e taki te tangata ki te ara o nga wairua.
>
> Heoi, e hoa ma, mei pau o tatou whenua i te Motu nei, mo te Kura me te Perehi. Tenei e kore rawa tatou e kia he iwi mate i tenei ra. Heoi ra ia kia kaha ki te hapa i te rakau o te matauranga ki te kino, ki te pai, ara ki te Kura raua ko te Wananga, heoi enei kupu.

> I give thanks to these two bequests, to the Kura and the Wananga. We the Maori people are only just coming to terms with the things of the European. Be it sheep, cows, horses, an ocean steamer perhaps, a sawmill, or money perhaps. They will never equal those two mentioned because in my view, from the Kura comes all things in the heavens, in the environment of the world, in the land, or beneath perhaps the depths of the ocean . . . Furthermore, this is a word of mine for us the tribes of this island, of Aotea[roa], be strong the tribes and subtribes and all the chiefs, to uplift these two heirlooms of the whole island. Exhaust the strength to seek out the fruits of these treasures of the Kura and the Wananga. Do not be lazy for these two heirlooms of ours. This is the origin of the word of the proverb which says, by listening and learning the child of a person achieves grand honour. And by laziness and a dull heart, a person heads for the paths of the spirits.

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Ngā Kupu Rangatira mō te Whakaakoranga (Chiefly Remarks on Education)

When Te Whatahoro Jury gave evidence to the royal commission of inquiry into school trusts with land gifted by Māori on 24 July 1905 at Masterton, what he said was recorded as follows:

> Te Whatahoro Jury recalled that Grey had told them that the land was reserved for the purpose of educating the Maori and teaching them technical and industrial and other education. He told us it was for the purpose of teaching the children to make mills and farm the land and to make improvements, such as fencing, and so on, and it was settled at the time that the Bishop (Selwyn) was to take charge of and administer these lands. Sir George Grey also told us that in this way the two people might grow up as one, and be taught civilisation. From that day to this Kaikokirikiri has remained as it was and no school has been erected there.

Bishop George Augustus Selwyn, circa 1869. Te Whatahoro remembered that Bishop Selwyn was to 'take charge of and administer' the Kaikōkirikiri land given for schools.

That year, the first native school opened at Pāpāwai, followed by others at Te Oreore (1886) and Tūranganui (1901). In total, between 1867 and 1942, the Education Department acceded to requests for schools in six communities – Pāpāwai, Te Oreore, Tūranganui, Aohanga, Tahoraiti, and Ōkautete. Mātaikona, Hurunui-o-Rangi, and Pōrangahau were refused, despite strong community support.[19]

These native schools were part of a national system of village primary schools, established under the Native Schools Act 1867 to advance the assimilation of Māori. Subsidised by the Government and administered by the Department of Native Affairs, the schools were to educate 'children of the aboriginal native race and of half-castes being orphans or being the children of indigent persons'.[20] The legislation required local Māori initiative, and anticipated that a certain level of community financial input would be needed then and in the future. Communities had to gift at least one acre of land for the school site, plus contribute some of the building costs and teacher's salary. If the majority of local inhabitants declared at a public meeting that they were willing to make that contribution and elected a committee to report to the Government, the Colonial Treasurer could then grant half the building and maintenance costs, and three-quarters of the teacher's salary. The rest – the land, half the building and maintenance costs, a quarter of the teacher's salary, and the price of school supplies – Māori themselves were to supply.[21]

Some form of individual contribution was also required, reflecting the prevailing philosophy of self-help and the belief that Māori would be more interested in education if they were required to pay for it. As Under-Secretary of Native Affairs Hugh Carleton put it, Māori 'were like other

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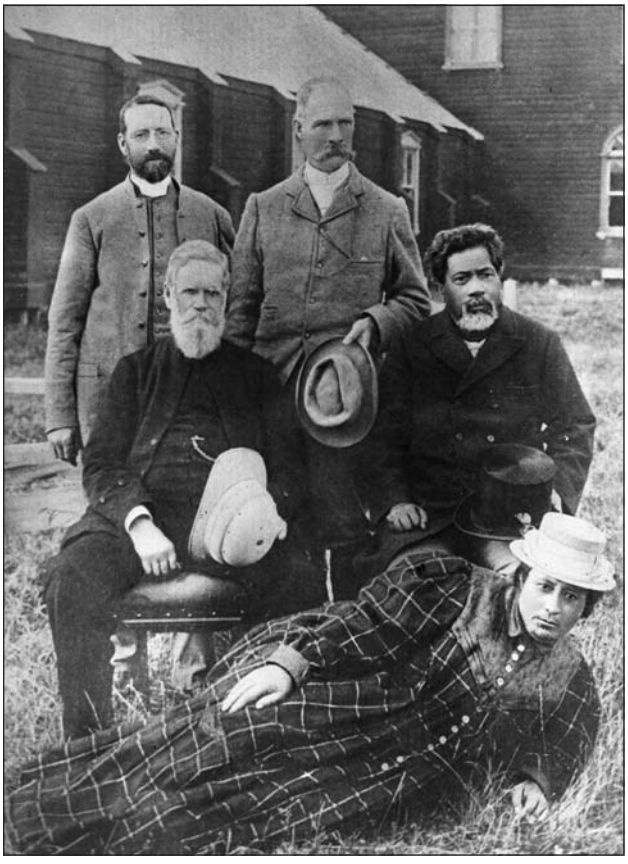
Ngā Kupu Rangatira mō te Whakaakoranga (Chiefly Remarks on Education)

This is what Wī Mahupuku is recorded as having said in 1882 upon the opening of an informal school at Pāpāwai:

> He wanted his people to go to one school and learn one common language – English – to be acquainted with all trades such as blacksmiths, carpenters, &c. Very shortly the lands of the Maori would pass away from them and they must learn how to get a living when they lost their estates. This was why he had done what he had for this school at Papawai, but he desired that the Bishop should endow this school with that land [gifted in 1853].



Arete Mahupuku (reclining), her husband, Tamahau Mahupuku (seated right), Canon Samuel Williams (seated left), and two others in front of the large two-storied meeting house that stood at Pāpāwai

men; they held cheap what cost them nothing, but what they paid for they valued'.[22] The Government soon recognised, however, that the contribution clause of the 1867 Act was deterring Māori in some districts from requesting the establishment of a school. As a result, the Act was amended in November 1871 to allow Māori communities unable to contribute sufficient funds to 'grant land in lieu thereof' to facilitate the opening of a school in their district.[23]

After the Native Schools Act was passed, Wairarapa ki Tāmaki-nui-ā-Rua Māori repeatedly requested native schools. But, for the first 20 years, they were refused. The Government typically deflected criticism of its failure to provide the region with native schools by drawing attention to the Church of England's failure to establish schools on the gifted lands at Pāpāwai and a 190-acre block at Kaikōkirikiri (apart from the short-lived St Thomas's College, discussed later in this chapter).

In the absence of any readily-accessed school facility, the official perception was that local Māori did not care about education. For example, Native Agent Maunsell complained to the Native Minister in 1880 that local Māori children simply ran 'about in a wild condition', while their parents were 'entirely indifferent to their state or education'.[24] The evidence does not support that assertion, however.

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To the contrary: Rangitāne and Ngāti Kahungunu leaders went to great lengths to get the Government (or church) to establish schools within their respective kāinga.[25]

They also had definite views on how best that education could be delivered. Te Mānihera, for instance, at the opening of an informal school at Pāpāwai in 1882, was reported as saying that local Māori were 'desirous to take advantage' of European-style education. Similarly, Wī Mahupuku emphasised the importance of acquiring new skills – including the English language, metalwork, and carpentry – so that Māori could survive economically 'when they lost their estates'.[26]

Another reason Education Department officials persistently ignored requests for native schools in the late nineteenth and early twentieth century was because Māori communities no longer predominated in Wairarapa ki Tararua. James Pope was the first Organising Inspector of Native Schools (he was appointed in 1880), and effectively the first director of the entire native schools system.[27] He was against establishing more native schools in the district because local Māori should be assimilated as rapidly as possible. In 1903, Pope wrote in response to Hurunui-o-Rangi Māori requests for a native school:

> in effect . . . they ask for a mere 'shanty' school-house in which some book learning could perhaps be imparted, but which could only be a very poor civilising centre at the best; it would certainly do but little in the way of training Maori children to lead the better-class European life. Besides, although a Native School is a most powerful agency for good in really Maori districts, in half-Europeanised districts the work is much more difficult, and of very much less utility and effectiveness.[28]

Another education official, Hutton, maintained that European-style education was 'the surest way of breaking [Māori of] their old communal habits', and warned that if this failed 'Maori [would] never prosper', and they would never 'materially help their Pākehā brother to advance New Zealand'.[29] As we discuss further below, this view meant that most Māori children who managed to attend school in Wairarapa ki Tararua attended Education Board primary schools, not native schools.

The native schools that the Government did agree to subsidise struggled in terms of funding, school rolls, and staffing. Of the six in our inquiry district, all but one (Ōkautete, discussed later) closed or was transferred to the control of the local Education Board within their first 10 years of operation. The reasons were several. Historian Bruce Stirling describes how communities such as Pāpāwai found it difficult to keep up attendance in the face of multiple demands and debilitating setbacks – Native Land Court hearings, the shearing season, a semi-subsistence lifestyle, and the effects of chronic illness.[30] Some residents

Ngā Kupu Rangatira mō te Whakaakoranga (Chiefly Remarks on Education)

In 1898, on the occasion of Premier Seddon's visit to Pāpāwai, Hāmuera Tamahau Mahupuku responded to Seddon's comments on the subject of education by saying:

> The proposal that our children should be taught skilled work has my entire support. This has been a fond wish of mine for some considerable time. That the Government may see their way, in their wisdom, to establish schools of this order where the Natives might be more properly educated, and by means of which channels might be opened to them, is my fervent wish. This would be apart from the education which some of our children receive, and by which they become trained as lawyers, and are taught to write hieroglyphics. I want that kind of education which you have just spoken about. I want the Native youths so trained that they will earn their bread by the sweat of their brow and by the labour of their hands.

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Pākehā Views on Educating Māori

When Grey spoke to Ngāti Kahungunu at Waiohiki in 1877, he harked back to 1853, when he had addressed Māori gathered at the komiti nui, to persuade them of the benefits of agreeing to Crown purchase of their land. He recalled, 'I told you of a good many things . . . that you would get schools for your children, and doctors to nurse you when you were sick.' In 1878, he visited Pāpāwai. He was surprised to learn that as yet there was no school there. He said:

> E hoa ma, e nui ana taku aroha kia koutou, nui rawa atu te ngakau aroha i roto i a au kia koutou, taku kupu atu kia koutou, e kite ana ahau, e nui ana te tamariki ia koutou, e mea ana ahau, me tu he kura mo nga tamariki, kaua rawa hei roa, me tu tonu ia Maehe, i tetahi atu marama ranei, kia wawe ai ahau te kite i nga hua o taua kura, no te mea kua kua-ma-tuatia [kaumātuatia] ahau . . . kia kaha ki te ako i nga tamariki ki te kura.
>
> Friends, I have much compassion for you, I really feel for you. This is what I say upon seeing your many children, I say a school must be built for them. And it shouldn't take long either, it must be built in March, or perhaps the month after, so that I will soon see the results of that school, for I am getting old . . . apply yourselves to getting the children educated at the school.

In 1862, commenting on Māori education in a report to Parliament, Inspector of Schools Henry Taylor wrote:

> I do not advocate for the natives under present circumstances a refined education or high mental culture; it would be inconsistent if we take account of the position they are likely to hold for many years to come in the social scale, and inappropriate if we remember that they are better calculated by nature to get their living by manual rather than mental labour.

Inspector Taylor relied on schools to effect profound cultural change in Māori children:

> In carrying out the work of civilisation . . . among the aboriginal Native race, through the medium of school, some impediments to progress could be gradually overcome by a diligent course of training . . . and the first and most serious of all is that state of communism in which all kinds of property are held amongst them. Their present social condition bears testimony to the ill effects of such a system.

Commenting in 1871, Colonel Theodore Minet Haultain (a professional soldier who entered politics before heading the 1871 commission of inquiry into the working of the Native Land Acts) thought that education could enable Māori to take their place in the upper echelons of the new society:

> If we are to save the Maori of the next generation, he must be educated and enabled to take his place as a citizen of the Colony. And are not the means of commencing this now within reach? Reserves may be made both in money and in land for the special purpose of education, and the subject is engaging the earnest attention of some of the people themselves. Many of the Natives of India go to England to be educated, and return to their own country to be physicians, ministers of religion, and advocates; and it is now the policy of their Government to employ all that are qualified, in the public departments. . . . the North American Indian and the Australian may be incapable of melioration; but are not the Maoris as intelligent and as capable of high education as any nation in the world?

Speaking to the Kotahitanga Assembly at Pāpāwai in 1898, Seddon cautioned against having colleges produce too many Māori lawyers. Rather:

> I say that the Native race requires the cultivation of their mechanical powers, with which they are particularly well endowed. We ought to have Maori engineers, Maori carpenters, Maori blacksmiths – in fact, every trade in the colony ought to have young men of the Native race engaging in it.

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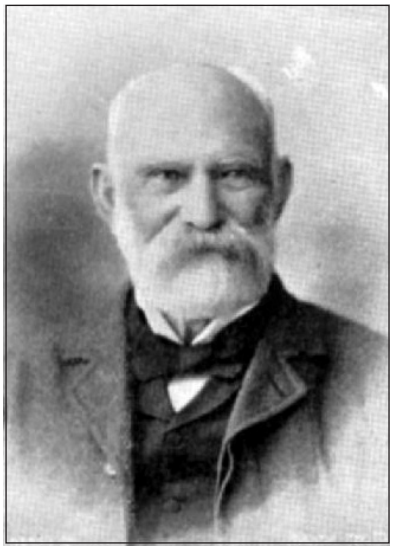

Colonel Theodore Minet Haultain (1817–1902). Haultain was an admirer of the Māori race and expected education to be their vehicle to taking up important roles in the life of 'the Colony'.

James Henry Pope, inspector of native schools from 1880. He retired in 1903 as the chief inspector of native schools.

also considered that board schools would result in better outcomes for Māori, as they were living in a region where Europeans now completely outnumbered Māori.

(2) *The board schools*

Apart from the usually brief periods when native schools were operating, Māori pupils wanting a primary education attended Education Board schools. Primary education was compulsory for Pākehā children from 1877 under the Education Act, which set up a system of State-funded primary schools managed by regional educational boards to replace the old provincial system. For Māori children, attending primary school remained voluntary for another 17 years, until 1894.[31]

In the *Hauraki Report*, the Tribunal found that the provision of board schools, rather than native schools, was not necessarily prejudicial to Māori.[32] We agree. The Government went part-way towards fulfilling its obligation to Māori simply by establishing schools in an area, whether they were board schools or native schools. This does not mean we condone the assimilationist agenda behind the Government's rejection of pleas for native schools. But we acknowledge that what Māori wanted mainly, at least up to the 1930s, was an 'English' education. The many requests for native schools were made because that need was not being met by any facility accessible to Māori communities, rather than because its curriculum was preferred.

Māori pupils encountered discrimination at the board schools. In 1881, Native Agent Maunsell reported that: 'During the past year Maori children attending public schools have been prohibited from attendance through their filthy condition, and antipathy of European parents to the contact of their children with Maoris.'[33] This discrimination was clearly a factor in Māori wanting their own local schools. Government officials were aware of this from early on. Inspector Pope observed on a visit to Wairarapa ki Tararua in 1903 that Māori children in the Hurunui-o-Rangi area were being 'harassed' on their way to and from

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the local board schools (Parkvale and Gladstone), so that 'native parents are unwilling to send their children' to the board schools. On balance (he looked at a number of factors), Pope considered that there was insufficient 'reason for the department's intervention'.[34]

(3) *Two systems, two levels of quality?*

Although native schools and board schools were both centrally-administered 'State' schools, in effect, they represented two different schooling systems. The development of two systems had significant implications for Māori in terms of funding, governance, curriculum, and general quality.[35]

The Education Board system that catered for Pākehā communities did not require them to contribute land or money for the establishment and upkeep of schools. Instead, the Government (working through decentralised regional education boards) took the initiative, establishing and maintaining schools as required by the number of children in any particular area. In contrast, Māori had to lodge formal requests for a native school to be opened, and then gift land and other resources for that purpose.[36]

In 1879, the administration of native schools was transferred from the Department of Native Affairs to the newly created Department of Education, bringing the two State primary school systems under the same administrative umbrella. But differences remained. The department continued to operate each system discretely, with separate administrative structures, funding arrangements, curricula, and teaching requirements.

Officials of the Education Department ran native schools from Wellington. Although each native school had its own school committee, comprising elected community members, they had virtually no administrative power, nor any role in decision-making.

Board schools, on the other hand, were run locally, and regional education boards delegated many administrative responsibilities to the elected school committees. For instance, they were responsible for the school's finances, and played a role in the appointment of teaching staff.[37]

Both historians Bryan Gilling and Stirling suggest that board schools within the Wairarapa ki Tararua district were typically better resourced and funded than the district's native schools.[38] Stirling discusses the Government's under-resourcing of Ōkautete Native School. He also drew to our attention the technical institute at Masterton. This was a facility for the settler population, which the Government established and supported. Māori asked for a similar institution to be funded for them from the five percents, but it did not happen.[39]

The operation of two systems reflected the different educational goals and standards deemed appropriate for the two different races, though there was overlap in school rolls (some Pākehā children attended native schools, especially in the more remote rural areas, and some Māori pupils went to board schools, although we were told they were often made to feel unwelcome). During the first 70 years, the native school system provided primary education only. Only from 1880 were scholarships offered so that the 'most proficient Māori children' could have two years of secondary schooling at one of the church-run boarding schools for Māori, with the intention of creating a 'Europeanised' elite.[40] And, as we explore further in the following section, the curricula that were developed for the two kinds of primary schools were also very different.

(4) *The native schools curriculum*

The Waitangi Tribunal's *Wananga Capital Establishment Report* (Wai 718) gives an historical overview of Māori education in New Zealand. In that Tribunal's view, from the 1880s to the 1960s, the Department of Education sought to limit the curriculum of Māori schools (both native schools and church-run boarding schools) to agricultural and domestic subjects. Subjects such as history, grammar, and elementary science were omitted, while greater emphasis was placed on vocational training and English language instruction.[41] This philosophy of limitation, the Tribunal concluded, was 'designed to restrict Maori to working-class employment'.[42]

We agree that one of the most significant issues

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throughout this period concerned the schooling of Māori children in the English language. The official view was that this was an essential part of civilising and assimilating Māori. Hugh Carleton, Under-Secretary of Native Affairs and a former Auckland school inspector, declared that Māori could never be civilised through the 'imperfect' medium of the Māori language, and that 'civilization could only be . . . carried out by means of a perfect language' – namely, English. Similarly, Thomas Ball, who represented Mongonui in the Auckland Provincial Government and apparently 'sowed the seeds' of the Education Bill of that time,[43] expressed the hope that Māori education would improve the 'communication between the two races' and ensure 'peace and . . . social order' in the colony.[44] Overall, Māori leaders of the time seemed to share this view, greeting the English-language component of the Native Schools Act with enthusiasm.[45] Early on, most mission schools used te reo Māori as the medium of instruction, and many Māori parents complained about the lack of adequate English language tuition. Māori made it clear to missionaries and Government officials that they wanted the schools to teach their children English 'to ensure they would not be disadvantaged' in their dealings with Pākehā.[46]

After Pope took office as Organising Inspector of Native Schools in 1880, one of his first actions was to formulate the Native Schools Code. It laid the foundation for the system's operation for the next 50 years, setting out requirements for establishing schools, for the appointment and conduct of teachers, and for the curriculum. It also emphasised the 'civilising' role that teachers were expected to play in Māori communities. Pope's curriculum required English instruction. However, it also permitted the use of Māori language, at least for the younger children.

The code was revised several times over the next 50 years, each time bringing the curriculum closer to that of the board schools. However, it seems that the similarity may have been apparent rather than real, as in practice native schools maintained an emphasis on vocational training – agriculture and woodwork for boys, and cooking, needlework, and home crafts for girls. Certainly, this was the case by 1928.[47] This emphasis arose from officials' views about Māori aptitude. For instance, William Bird (who replaced Pope as Inspector of Native Schools in 1904) considered Māori were racially unsuited to academic tasks. In his annual report for 1906, he stated that:

> natural genius of the Maori in the direction of manual skill and his natural interest in the concrete would appear to furnish the readiest key to the development of his intelligence.[48]

Bird commented that 'the whole idea of Māori education' was 'to fit them for life amongst Māori', not Pākehā.[49] In 1931, Director of Education T B Strong declared that the native schools curriculum should be specifically designed to prepare 'the [Māori] lad to become a good farmer and the [Māori] girl to become a good farmer's wife'.[50] This aspiration may have been even more misguided in this inquiry district than elsewhere, because by this time tangata whenua here had too little land to play a significant role as farmers.

3c.2.5 Government provision of education for Wairarapa ki Tāmaki-nui-ā-Rua Māori in the early 1900s

(1) *Rural development and Māori education*

Throughout the first half of the twentieth century, Māori education policies were shaped by the conviction that Māori would (and should) remain a predominately rural people. This view was expressed in official reports, journals, and newspapers, and was supported by many officials, teachers, and academics. School inspector D G Ball reported in 1933 that:

> Agriculture is assuming a position of major importance in the curriculum of Native schools not only for its own intrinsic value, but also for the opportunity it affords to draw school and community more closely together.[51]

Wairarapa ki Tāmaki-nui-ā-Rua Māori leaders long argued for their people to receive instruction in 'Pākehā

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trades' as well as agricultural training. As we have observed, the acquisition of trade skills in this district was especially important, as Māori owned too little land to develop or farm. This was the condition of most iwi, and, by the late 1930s, Apirana Ngata saw the need for a new direction in education. Ngata warned Parliament and the Minister of Education that his department would need to shift its focus from agriculture to include trade and tertiary training so that Māori could compete on the same terms as Pākehā.[52] But Education Department officials remained wedded to agricultural training for Māori. Inspector Ball reported that native school teachers were linking their teaching programmes with local Māori land development schemes.[53] Enthusiasm for Māori to be trained in agriculture did not extend to their pursuing advanced (tertiary) study. For example, Professor Harry Kirk (former native school inspector and professor of biology at Victoria University College) argued that Māori pupils did not require the level of expertise in farming provided to Pākehā pupils at Lincoln College (now Lincoln University) because Māori lived in 'entirely different conditions' from Pākehā.[54]

(2) *Post-1940 developments in the native school system*

After decades of Māori requests and complaints, in 1941, the Department of Education finally agreed to extend the native schools system to include secondary schooling. Although no native district high school ever operated in Wairarapa ki Tararua, it is worth noting that the curriculum initially shared the almost exclusive focus on vocational training of its primary counterpart. For instance, pupils at the native high schools were offered no School Certificate or University Entrance courses. Once again, Māori complained about the limited curriculum, and said that native high school pupils were receiving an education inferior to those attending secondary schools run by the Education Board and by churches. In response, the Education Department changed its policy in 1945, and School Certificate courses were offered at all native district high schools.[55]

Two years later, 'native' schools officially became 'Māori' schools. Education Department officials continued to emphasise the importance of Māori pupils receiving vocational training. For example, Senior Inspector T A Fletcher reported that, while the Education Department had 'done much to increase the opportunities for practical handcrafts, particularly woodwork' in the hope that Māori boys would 'enter the skilled trades', far '[t]oo many Maori boys [still] leave school for a listless life, with the inevitable drift to delinquency'. He recommended the appointment of vocational guidance officers to oversee individual vocational training and employment.[56] At the same time, though, he discussed opportunities for Māori pupils to undertake post-primary education, mentioning three university scholarships awarded (medicine, law, and architecture), and noting growing numbers of Māori entering teacher training colleges (82 between 1940 and 1945), and also the nursing profession (24).[57]

Between 1955 and 1966, a series of committees inquired into New Zealand education and concluded that the Māori schools system was no longer required. They recommended that all Māori schools be transferred to the control of the various education boards. The committees agreed that education was one of the main areas of Māori disadvantage, and argued that Māori educational under-achievement was at least partially due to the Māori schools system. In 1955, the Education Department established the Committee on Maori Education, which held a series of meetings with representative Māori leaders. Some favoured ending the Māori schools system, while others demanded it continue and expand.[58] However, the ideology of universal provision now prevailed and the committee recommended that:

- the long-term policy of the Government should be the introduction of a single uniform system of State primary schools; and
- all Māori schools should be gradually transferred to the control of the education boards, following community consultation and agreement.[59]

In 1967, the Government agreed to these recommendations. In February 1969, the Māori schools system

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was formally disestablished, and the remaining 105 Māori schools were transferred to board control.[60]

The end of the Māori schools system, which was based on the philosophy of separation, was supposed to usher in a new era of Māori education based on integration. Notwithstanding this change in attitude and policy, the number of Māori receiving secondary and tertiary qualifications has remained low nationally. In 1998, Te Puni Kōkiri reported that despite increases in Māori participation in all sectors of education since the mid-1980s, considerable 'disparities persist between Māori and non-Māori for most indicators of educational status.'[61] These disparities also emerge in the evidence we heard from claimants about their educational experiences in recent years, to which we turn later in this chapter.

(3) *Ōkautete Native School, 1906–62*

(a) *Introduction:* The history of Ōkautete Native School, Stirling argues, was 'something of a barometer for the fortunes of those Ngāi Tūmupuhia-ā-Rangi living on their remaining coastal lands.'[62] Like the native schools established at Pāpāwai and Te Oreore in the late nineteenth century, Ōkautete School experienced high levels of absenteeism due to ill-health, Native Land Court hearings, and seasonal work: often, entire whānau were needed to help at shearing and harvesting time. Yet, compared with some other native schools in the district, Ōkautete was relatively successful. It operated from 1906 until 2001, transferring to the control of the local Education Board in 1962. Moreover, the local community was actively engaged in the school and benefited from its operations; for example, two women of the Paku whānau who attended Ōkautete School went on to tertiary training and eventually returned to the school as teachers during the 1930s and 1950s.[63] Stirling argues that several factors were responsible for these successes. First, the Māori population of Ōkautete was relatively stable and few Pākehā lived within the school area. Secondly it was in a relatively isolated location away from major townships. This made the school an important community focus. And, thirdly, it lasted long enough to benefit from the first wave of Māori teachers who trained at teacher training colleges under the Māori quota system introduced in 1940.[64]

Yet for all these positives, counsel for Ngāi Tūmapuhia-ā-Rangi told us that the Crown failed to:

> provide adequate supplies, resources or support for the efficient and sound running of the School, nor for the health and well-being of the students.[65]

For its part, the Crown argued that without 'a base for comparison with the Board schools', it is not possible to determine whether the Crown's policy was discriminatory on the strength of what happened at Ōkautete Native School.[66]

As the only native school operating in our inquiry district up to the point where such schools became part of the general school system in 1962, Ōkautete School warrants closer scrutiny. What can it tell us about the Crown's provision of education services to Wairarapa Māori, and about the experience of Māori within the education system of the twentieth century?

(b) *Early history of the school:* In 1902, Ōkautete Māori began lobbying for a native school to be established in their kāinga (home, village, settlement). On 29 January, Piripi Waaka and nine others wrote a formal request, in both Māori and English, to Native Minister Carroll, encouraging him to:

> be as a lamp shining for your Maori people leading them to follow those wise provisions of the law through which our children may acquire the great knowledge of the Pakeha.[67]

Ten Ōkautete residents offered to contribute a one-and-a-half-acre section for a school site, and listed 23 school-age children in their kāinga.[68] A month later, the Secretary of Education (Hogben) replied, enclosing a copy of the 1897 Native Schools Code and advising Ōkautete Māori that the Education Department required a minimum donation of three acres for a native school site.[69] This was more

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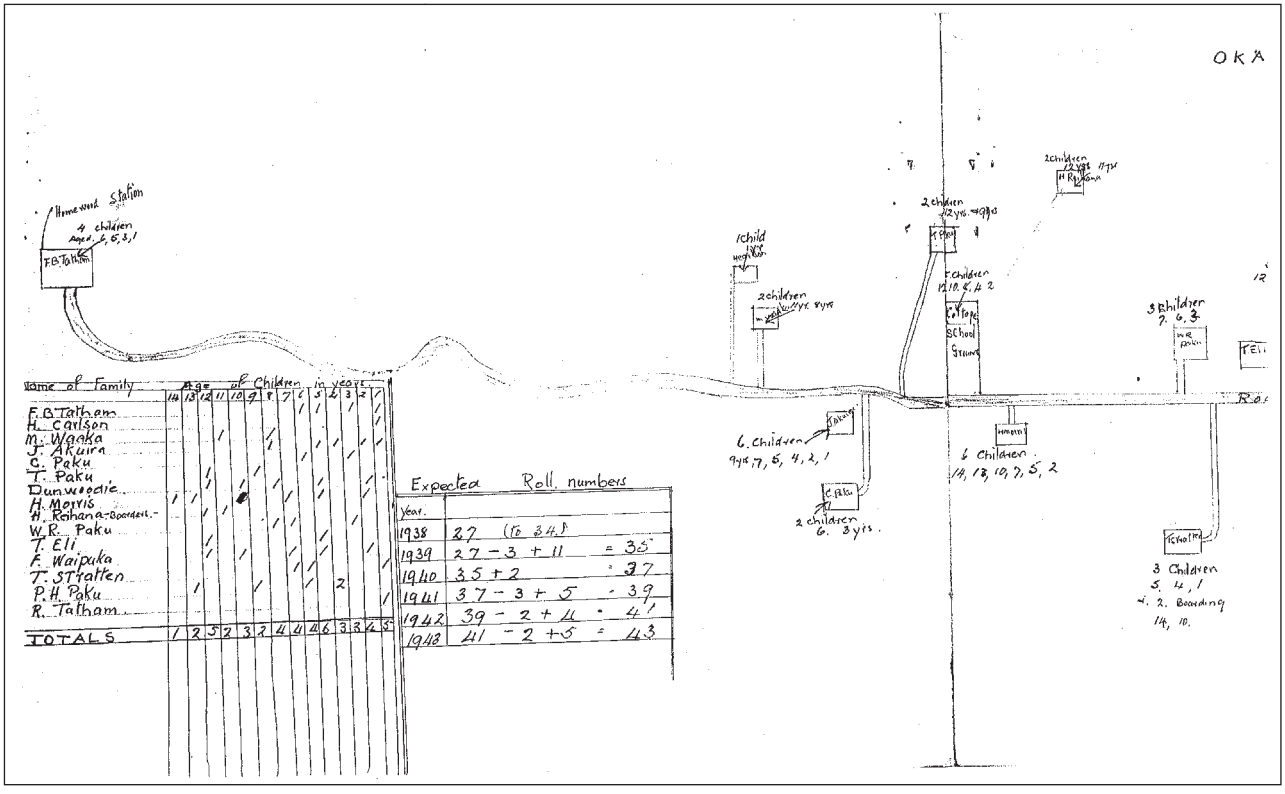

Ōkautete Native School and surrounding households. This quirkish map, with accompanying demographic information about the families whose children comprised the attendees at Ōkautete Native School, seems to have been prepared by a teacher at the school in 1938. She used the information about families and their offspring to predict that by 1943 the roll would number 43 children. She noted that all the families' residences were 'within a mile & a quarter radius' of the school. Fifteen families supplied pupils to the school, most Māori but some Pākehā.

than the minimum one acre set by the Native Schools Act Amendment Act 1871, although the Act also allowed for additional land to be provided in lieu of the otherwise mandatory monetary contributions.[70] Hogben's motives are unclear: did he intend that the extra land would relieve the Ōkautete community of a financial burden in the future, or did he consider the original one-acre plot unsuitable for the agriculture training required at all native schools?

The Government eventually agreed to accept a slightly reduced area of land (just over two acres) in 1903. Ōkautete Māori landowners, including Piripi Waaka, gifted the section (part of part 6, Ngāpuketūrua native reserve) to the Government for the specific purpose of a native school. It was treated as an acquisition under the Public Works Act 1894, and a notice to this effect appeared in the *New Zealand Gazette* on 24 April 1903 (although the notice did acknowledge the land was a gift).[71] Evidently this was standard practice when land was gifted to the Crown for the establishment of native schools throughout the period.[72]

Soon after, the Education Department called for tenders for the construction of the school building. But as all the tenders received were considered 'too high to

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justify the acceptance of any of them', construction did not proceed immediately.[73] In May 1904, a Pākehā settler wrote to the department to protest about the delay and reported that local Māori were at a 'great inconvenience' because the nearest school was 'some nine or ten miles off'.[74] Three months later, Taiāwhio Te Tau wrote to the Minister of Lands on behalf of Ōkautete Māori, inquiring about the delay in building the school. He reported that the community urgently needed a school, and hoped to develop a Māori township at Ōkautete.[75] A local Member of Parliament, A W Hogg, also wrote to the Minister of Education, saying that Ōkautete Māori were 'bitterly complaining about the delay' in establishing the school.[76]

Research by Bruce Stirling, Judith Simon, and John Barrington shows that, throughout the country, such requests for native schools frequently encountered bureaucratic holdups that could last many years. Likewise, poor management by department officials in Wellington led to long delays affecting building and maintenance, teaching appointments, and other important matters. These problems affected Māori communities and schools everywhere. The Government's requirement that Māori first gift land for a school site frequently contributed to bureaucratic delays, as it took time to select sites and arrange title transfer. In addition to whānau and hapū consent being required before land could be gifted, the Government also needed to consent to the selected school site. Officials often complained about the quality and amount of land Māori communities were offering.[77]

The school at Ōkautete finally opened in August 1906. Initially known as Kaihoata (Flat Point) or Kaiwhata Native School (after some nearby settlements), the school was later renamed Ōkautete Native School after a school inspector suggested that it was more appropriately named after the kāinga in which it was situated. A school committee was established, comprising Monte Anaru (chairman), Rei Paku, Waipuka Kīngi, Piripi Waaka, Tioi Waaka, and F Ford.[78] In October 1906, Inspector Bird visited the school for the first time and noted that there were 16 pupils (12 Māori and four Pākehā); school attendance was close to 100.[79] Throughout its existence, both Māori and Pākehā children attended Ōkautete School, although the majority of pupils were Māori.

The school committee worked hard to improve the school, and school inspectors regularly praised their efforts. The local community strongly supported the committee. Five men regularly worked around the school doing repairs, general maintenance, and construction. For example, in the school's first two decades, community members constructed a shelter shed in the playground, ploughed the grounds, cleared mānuka, trimmed trees, and supplied firewood. The school committee reported to the Education Department that:

> we have done all this work towards the welfare of this school, which we only think that you will be very pleased to hear or see . . . how prosperous the school and children are at present.[80]

While the community funded the majority of the improvements and worked voluntarily around the grounds, the committee did seek financial assistance from the department to purchase wood for the shed's floor (£5), grass seed for the grounds (£1 10s), and more furniture for the classroom.[81]

Despite these efforts to maintain standards at the school, visiting medical officers repeatedly noted that its interior was inadequate and overcrowded. In 1925, a school medical officer reported that some children had to use benzene cans as desks owing to the lack of furniture. The school was, he found, 'most disagreeable' from a public health perspective, with the overcrowded and poorly ventilated classroom aggravating pre-existing respiratory conditions (particularly tuberculosis), and helping spread disease.[82] Socio-economic factors – poor health, nutrition, sanitation, housing, and under-employment – both directly and indirectly contributed towards low individual and community educational attainment. Teachers at Ōkautete School regularly connected their pupils' ill-health with poor performance and absences.[83] For example, Mr Nepia (a teacher at Ōkautete School in 1942 and 1943), reported

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that many of his pupils were absent for extended periods because of ill-health. One sick boy, he noted, was sent out of the district to live with his father because 'there was no one here to care for him.'[84] Children's attendance and participation at school was affected by family ill-health as well as by their own.[85]

Ōkautete School also encountered many administrative problems. In 1914, it was forced to close for four months after the Education Department failed to appoint a new teacher to fill the vacancy. Piripi Waaka, a member of the school committee, wrote to the department to urge it to make an appointment; otherwise, many families would move to other areas to ensure their children received an education. Finally a suitable teacher was secured and the school reopened.[86] Two years later, the school closed for three months when the teacher left without giving notice. The school committee requested that the Education Department appoint a married man to the school, instead of a 'lady teacher'. However the department argued that the school salary was 'really only large enough to maintain a lady teacher', and no suitably qualified married man would accept such a position.[87]

The school closures and frequent changes in teaching staff caused considerable disruption to children's education. School inspectors noted this, and considered 'all the children [we]re consequently somewhat backward in the essential subjects.'[88] In 1916, the school was reportedly in a 'somewhat depressed condition', although a year later Inspector Bird observed a slight improvement.[89]

(c) *Pupil experience at Ōkautete:* It is difficult to gauge the quality of education at Ōkautete School, but the testimonies of claimants give an indication of how the Māori community perceived the school and its educational standards.

Patricia Arohanui Bolstad described her mother's reluctance to send her and her brother there: 'I think my mum thought the schools in town were better than Ōkautete or that they could provide my brother and I with more resources.'[90] Thus Patricia and her family moved into

Patricia Bolstad giving evidence about Ōkautete Native School at the Tribunal's hearing at the school in June 2004

Masterton so they could attend a board school (Masterton West School). Patricia considered it likely that the board teachers 'thought that the teaching at Homewood [Ōkautete] was inferior to theirs', and thus placed Patricia's brother in the grade below.[91]

In accordance with the 1880 native schools code, Ōkautete Native School emphasised English language instruction; te reo Māori was not allowed.[92] Ryshell Griggs recounted how her grandmother, Huia Akuira, who attended the school during the 1920s, was caned or strapped by teachers for speaking Māori at school.[93] Thus, Griggs recalled:

> Nan thought, to protect her children from receiving the same treatment, my mum and her brothers and sisters were never taught Te Reo Maori or the protocols of their culture. Grandad Hauauru Akuira Te Rangi, wouldn't let them attend any tangi or hui. He thought it was better for mum and her brothers and sisters to conform to the Pakeha world.[94]

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From the time of William Bird's appointment as inspector in 1904 until the mid-twentieth century, native schools rigorously enforced the 'no Māori' policy. Bird himself was a fluent speaker of Māori and a qualified interpreter, but he opposed any use at all of the Māori language in schools, and gradually introduced policies that banned it. Like a number of educationalists during this period, he emphasised the 'direct method' of English language instruction, based on the idea that total immersion was the most effective means of teaching a second language.

By the early twentieth century, this was the dominant method of language instruction throughout the western world. Although it was not specifically aimed at suppressing te reo, that was its result.[95] Native school teachers were urged to ensure their pupils spoke only English, both in the classroom and playground. An official Native Schools pamphlet published in 1917 instructed native school teachers:

> Do not speak to your pupils in Maori and do not permit them to speak in Maori to you or to one another if you can help it. The less they hear of Maori the better it will be for their English. Do not, however well you may speak the language, give orders in Maori, or attempt explanations.[96]

By the 1930s, the Education Department's 'no Māori' policy was widely regarded as flawed. However, it was maintained until the 1950s,[97] when the department 'adopted a more tolerant attitude towards teachers who decided to include some Māori language into their school programmes'. However, the Education Department's primary concern remained the teaching of English, and this continued until the 1980s.[98]

Former pupils vividly recalled receiving corporal punishments (strapping or caning) for speaking Māori at school. They also remembered pervasive discrimination. Ryshell Griggs, who attended Ōkautete in the 1960s (both before and after it transferred to the board school system), recalled that her first teacher, Harry Lyllie, 'was one of the few teachers I had in all my schooling years

Owen Tinirau Akuira giving evidence to the Tribunal at Ōkautete School in June 2004. He recalled Ngata visiting the school in the 1930s.

Sir Apirana Ngata visits Ōkautete School

Some former pupils recalled that their time at Ōkautete School taught them to value education. Owen Tinirau Akuira recounted Sir Apirana Ngata visiting the school in the 1930s:

> It stuck in my mind . . . I remember him telling us we'd have to be extra good in the world of English speaking people . . . Years later as a parent his message was still with me. He meant that if I wanted my kids to get ahead, they'd have to go out and get the best education they could.

Ngata thought the main job of native schools like Ōkautete was to teach Māori children the ways of the Pākehā. In 1930, he advised the Minister of Education that it was unnecessary to teach Māori in schools because te reo Māori was the language of the home, and Māori parents sent their children to school to 'learn English and the ways of the English'. However, by the end of the decade, his views had begun to change. He started to campaign for the introduction of Māori language courses in native schools so that te reo would be preserved in its traditional form.

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who didn't pump into me that I was a dumb and stupid Maori child'. She recalled that most teachers at Ōkautete treated her and the other Māori pupils with disdain. She stated:

> It was not hard to sense teachers' dislike of the colour of the skin. The treatment that the Pākehā [pupils] received was clearly different from that which I received . . . The seed of being a dumb Maori had been planted [by the teachers] and yes, the seed sprouted and grew. And that's what I accepted of who I was.[99]

In 1985, Education Department officials told the Waitangi Tribunal inquiring into the te reo Māori claim that, before 1930, there was no official policy requiring teachers to use corporal punishment to enforce the English-only policy. However, based on the testimonies of former pupils and other evidence, the Tribunal rejected the contention that corporally punishing children for speaking Māori was just a practice; it was in fact part of the department's official policy during the first quarter of the twentieth century.[100] The policy of prohibiting te reo Māori also operated at board schools; however, according to Smith and researcher Linda Tuhiwai Simon, it was less vigorously enforced because officials felt it less necessary at predominantly Pākehā schools.[101]

Many Māori parents wanted their children taught English and other skills to ensure they could participate in the Pākehā world. Yet it is clear from what claimants told us that the policy prohibiting the speaking of te reo Māori, and the punishments handed out to Māori children who did so, contributed to the loss of te reo over several generations and negatively affected the iwi.[102] Previous Tribunals have concluded that the Government, via its education policies, failed in its Treaty obligation to preserve and foster the Māori language.[103] These findings apply in the Wairarapa ki Tararua district, where a number of kaumātua spoke of the adverse effects of language loss on them personally, on the ability of hapū to pass culture and language to uri (offspring), and to te tino rangatiratanga (the full chiefly authority guaranteed in article 2 of the Treaty).

Loss of Te Reo Māori in the District

The testimony of Matai Broughton, who attended Pongaroa school, summed up the general feelings of claimants about the loss of te reo Māori within whānau, hapū and iwi. He spoke with much sadness about his inability to speak te reo:

> I am now a kaumaatua. I find it embarrassing when I am at a hui or on a marae because I am not a fluent speaker. It would be a useful tool for me now and I regret not having the opportunity to learn it when I was younger.

Others, like Tiki McGregor, spoke about their attempts to learn te reo as adults. McGregor stated:

> It is really upsetting to me that I didn't have te reo as a child, which should have been my birthright. Instead, I have had to learn the hard way, as an adult. I'm currently having lessons . . . However, I do feel that I've missed out on 50 years of my language.

(d) *Closure of the school:* From the late 1950s, the Education Department began a lengthy campaign to transfer Ōkautete Māori School to the control of the Wellington Education Board. The move was partly designed to reduce the department's expenditure on administering Māori schools, and also reflected the emerging emphasis on integrating Māori education in mainstream education.[104] However, the Ōkautete school committee remained opposed to the move; in 1958, the school inspector reported that 'the parents generally, desire the school to remain a Maori school'.[105]

But this did not align with Government policy and, in 1962, the Commission of Education recommended that every Māori school should be transferred to board control within the decade. That same year, department officials

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Ōkautete School. The school, which is located on the Wairarapa coast not far from Riversdale, was once one of the few native schools in the district. It closed in 2001 because of declining pupil numbers.

called a public meeting at Ōkautete. Only four committee members and 11 parents attended. Officials outlined the benefits of transferring to Education Board control and commented that Ōkautete School had 'nothing to lose'. The parents expressed the hope that the board would replace the prefabricated classroom, which had been in use for more than a decade. Finally, committee members and parents voted to support the transfer of control, although their support was not formally required.[106]

The Wellington Education Board assumed control of Ōkautete school on 1 February 1963, and the school continued operating for another 38 years. It was officially closed in April 2001 because of declining pupil numbers. The following year, the Minister of Education appointed Opus Consultants, a property management company, to manage disposal of school buildings.[107] We address the public works dimension of the Ōkautete School story in chapter 8.

(e) *Conclusion:* The Ōkautete School story needed to be told in this inquiry because the school profoundly affected the lives of generations of Ngāi Tūmupuhia-ā-Rangi living in that remote community. The claimants' evidence led us to think that, at various times, certain teachers made outstanding contributions and played vital roles in the life of the community. Too often though, the teachers, the department, and the curriculum worked together to deliver education, and an experience of school, that was simply substandard.

However, the experience at Ōkautete is necessarily fragmentary as an example of native schools in our district because there were so few. It is distinctive because it lasted so much longer than most, but it does not lead us toward a conclusion that having more native schools in the district would necessarily have been better. They were underfunded, and focused on educating Māori for manual rather than skilled or professional work. Specialised schooling for Māori children, for whom (to begin with at least) English was at best a second language, could of course have made an outstanding contribution to Māori development. Sadly, though, there is no indication anywhere that native schools – delivered by Education Department officials in accordance with blinkered Government policy – were what was called for, either in conception or practice.

(4) *Secondary schools*

During the early twentieth century, district high schools were established in the major townships of Masterton, Dannevirke, and Greytown. Māori living in or near these places were able to attend, and many did. Janice Wenn, for instance, attended secondary schools in Greytown (Greytown District High School) and later in Masterton (Wairarapa College) in the 1940s. Janice recalls that she found Wairarapa College 'a shock' because of its size and larger proportion of Pākehā pupils. She recalls, 'I managed to survive and adapt but had to cope with comments like being "native". I played sport and that seemed to reduce the barriers.'[108] Janice trained as a nurse at the New Plymouth Hospital School and later returned to work as a public health nurse in Wairarapa.[109]

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Janice Wenn giving evidence at Pāpāwai at the Tribunal's hearing in May and June 2004. She told the Tribunal about the problems she encountered as a Māori girl attending schools in Wairarapa in the 1940s.

The availability of secondary schooling in Wairarapa ki Tararua during the early twentieth century reflected national patterns. Secondary education was typically available only to those who lived in or near towns. Rural children, of any ethnic group, could usually attend only if their parents could afford for them to board. Access to secondary schooling improved under the first Labour Government, which built 'district high schools' attached to larger primary schools throughout the country, and provided buses to bring pupils from remote areas to attend them.[110]

We cannot determine from the evidence before us whether the Government provided the same school transport for Pākehā and Māori pupils in Wairarapa ki Tararua. What is clear, however, is that in comparison to their Pākehā counterparts, rural Māori wanting to attend secondary school were generally at a disadvantage because of low family incomes.

The limited availability of secondary schooling for rural Wairarapa ki Tāmaki-nui-ā-Rua Māori was indeed a recurring theme of claimants' testimonies. For example, the absence of a secondary school in the Ōkautete area meant that few pupils were able to proceed to secondary education. Owen Tinirau Akuira, a former pupil of Ōkautete School, remembers making the difficult decision to move to Masterton for the sake of his children's education:

> In some ways I regretted leaving the coast because it was where I'd grown up and where our whānau had lived for generations, but I couldn't see my kids getting ahead secondary school-wise.[111]

Others recounted similar experiences.[112] Mary Grant Nunn, for example, described how her family, who lived at Maungaraki, could not afford to send her to board at Wairarapa College. She stayed home to care for her 11 younger siblings instead. She recalled that a:

> lack of work and financial difficulties faced by our whānau meant that most of us were not educated properly, as it was just too expensive. We had to go away for schooling as there wasn't schooling close enough to where we lived.[113]

Mary told us that having no secondary schooling badly affected her life, and those of her whole whānau.

Although Māori were entitled to attend the district's church boarding schools, only a small number did so. Those who did recalled the positive impact these schools had on their personal development. For example, Patricia Bolstad recalled that during her time at Queen Victoria Māori Girls' School in Auckland in the 1950s:

> I was able to be proud of being Maori . . . I loved kapa haka, I loved doing the poi and when I came back home in my holidays I was sort of a star doing concerts and showing off with the things I had learned.[114]

Children needed to win scholarships to attend these schools because of the school and boarding fees. Even so, additional financial costs prevented some from

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Denis Paku, of Ngāi Tūmupuhia-ā-Rangi, giving evidence to the Tribunal at Ōkautete School in June 2004. He emphasised the difficulties that Māori in remote communities faced in attending secondary school.

taking up the opportunity. Denis Paku described how he couldn't attend Te Aute College, despite a scholarship, because his family could not afford the extra costs for stationery and uniforms. Denis recalled that his family 'knew that it was a prestigious thing to go to Te Aute'; education was 'a thing that we wanted to have but we couldn't because of finances.'[115]

In the 1940s, Education Department officials acknowledged that few Wairarapa Māori were receiving secondary education, and financial constraints were throwing more and more Māori into the general (board) education system. In 1948, the department reported that of the 24 Wairarapa Māori leaving school that year, only 29.1 per cent had any secondary education and none had any above the fourth form (Year 10) level. This was a low level of Māori secondary school attainment compared with other parts of the country, with most districts recording percentages in the high 30s and 40s. For example, 57 per cent of Māori school leavers in Taranaki had some secondary education, 66.4 per cent in Napier–Southern Hawke's Bay, and 85.7 per cent in Wellington–Hutt. Although some Māori children from the Wairarapa were sent to Māori church schools in other districts, the number was never large and did not explain the low percentage of Māori attending local high schools. Indeed, the Education Department official who compiled the 1948 report commented that the lack of Māori achievement above fourth form was a local Wairarapa problem that did 'not apply to any other North Island district'. The official suggested that:

> a campaign [was] needed among the Maori people of the Wairarapa to impress upon them the desirability of giving their children a higher standard of education.[116]

However, it seems that Māori were well aware of this. According to Gilling, the history of Māori campaigns for educational opportunities in Wairarapa ki Tararua district clearly indicates that Māori knew of the 'desirability of giving their children a higher standard of education' – and, indeed, the necessity for it in the modern era.[117]

Access to Education

Along with financial constraints, communication and transportation difficulties also severely impacted on the ability of Māori families to access schooling. As Denis Paku recounted:

> We lived in a house in the middle of a paddock far away from any township and we never owned a car . . . We didn't have a phone either so it was not a case of ringing up the school and asking about the scholarship or talking through things with the school. We either took it or we left it.

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3C.2.6 Māori education in this district in the late twentieth century

The Tribunal observed in its *Wananga Capital Establishment Report* that it is 'not difficult to argue that the seeds of Maori underachievement in the modern education system were sown by some of the past education policies.'[118] This section explores those connections.

For the last two decades, Māori underachievement within the mainstream system has been a source of continuing concern for Māori educationalists, the Ministry of Education, and the Government. It has also been the subject of various Waitangi Tribunal inquiries.

In 1986, the Tribunal's inquiry into the te reo Māori claim found that 'too many Maori children are not reaching an acceptable standard of education' and the Māori language was not adequately protected. The Tribunal concluded:

> The promises in the Treaty of Waitangi of equality in education as in all other human rights are undeniable. Judged by the system's own standards Maori children are not being successfully taught, and for this reason alone, quite apart from a duty to protect the Maori language, the education system is being operated in breach of the Treaty.[119]

Later Tribunals have concurred with this finding. In 1999, the Tribunal's *Wananga Capital Establishment Report* noted that a 'general sense of hopelessness' continued to prevail among young Māori who were 'being left to fall through the cracks in our education system and made to fend for themselves, often ending up in prison.'[120]

This Tribunal heard evidence from young Wairarapa Māori who expressed similar views: the public education system had not served them well.[121]

Former Dannevirke High School pupil Ngakawe Noti Pene told the Tribunal that, in spite of many achievements during her time at high school – she was a school prefect, house captain, and kaiwhakahaere wahine kapa haka (the female leader of the kapa haka group), she still felt that most teachers did not have high expectations of her and her fellow Māori pupils.[122] She expressed the opinion that:

> Schools take away our pride in the class room, the only time we are allowed to feel proud and that we can achieve is on the sports field or on stage doing kapa haka, and then once you leave school that doesn't matter anymore.

She suggested a possible remedy:

> The best thing that schools could do to help and encourage the Maori kids would be to get more Maori teachers in the High School. We've only got two Maori teachers up there . . . That's not many. We don't see any role models for us[123]

Since the 1980s, Māori communities throughout the country have developed institutions for the delivery of education in te reo Māori, most notably kōhanga reo (preschools), kura kaupapa Māori (primary schools), whare kura (secondary schools), and wānanga (tertiary institutions), to help revitalise te reo Māori and mātauranga Māori (traditional Māori knowledge), and to address the under-achievement of many Māori in mainstream education.

Marama Kahu Fox related her depressing experience in the early 1990s when she was involved in trying to establish a kōhanga reo in Carterton. The opposition of the Pākehā community, and the lack of support from the council, are set out in chapter 12B. Fox noted that the kura, like Ngā Waka Kōhanga Reo, initially received limited Government funds until 'they [could] "prove" themselves as an educational institution'. Few resources meant that kura staff were often untrained and underpaid. Fox argued that 'By acting in this way, the government [did] not promote Kura Kaupapa Maori as a viable and valued medium of education.'[124]

Today, there are two kura kaupapa operating in the Wairarapa ki Tararua district, one in Masterton (Te Kura Kaupapa Māori o Wairarapa), the other in Dannevirke (Te Kura Kaupapa Māori o Tāmaki-nui-ā-Rua, established

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in 1994). Both schools provide full immersion education in te reo Māori for five to 18 year olds (Years 1–13). As at July 2008, a total of 82 pupils attended the kura in Masterton and 75 attended its counterpart in Dannevirke. The number of pupils attending these kura is small,[125] but the kura provide a valuable alternative. Significantly, they are the only schools in Wairarapa ki Tararua providing Māori language instruction at a primary school level, and the only schools offering bilingual or full immersion education in te reo Māori. While many Wairarapa ki Tararua primary schools offer some instruction in a foreign language, as required by the national curriculum, none apart from the two kura kaupapa teaches te reo Māori.

Overall, the number of Māori in Wairarapa ki Tararua who leave secondary school with sufficient qualifications to attend tertiary institutions is below the national average for Māori children. Demographers Janet Sceats, Tahu Kukutai, and Ian Pool suggest that local issues may underlie the declining educational achievement of both Māori and non-Māori in the district.[126] We would like to understand better what those issues might be, but they do not explain further. Information provided to this inquiry is insufficient to form the basis of speculation about possible causes.

3c.2.7 The Crown, the church, and the gifted lands at Pāpāwai and Kaikōkirikiri

Even before mission schools were established in their region, some Wairarapa ki Tāmaki-nui-ā-Rua Māori – including Te Mānihera and Hāmuera Tamahau Mahupuku – attended mission schools in other regions.[127] By 1845, it seems there was a mission school at Mātaikona; however, no information about the school could be found, and it appears to have opened only briefly.[128]

Meanwhile, in 1847, the colony's first comprehensive education measure was introduced: the Education Ordinance Act. It provided for the Government to give a financial subsidy to all mission schools. The Act was principally aimed at educating and assimilating Māori children, to which end mission schools were to provide English language instruction, industrial training, and religious education.[129] Two years later, the Colonial Office also gave permission for free grants of either Crown or Māori land to religious bodies for educational purposes.[130]

These two measures provided the backdrop for Grey's meeting with Wairarapa ki Tāmaki-nui-ā-Rua Māori in March 1853. Accompanied by Bishop Selwyn, who was en route to Heretaunga, he sought to persuade local Māori leaders to gift land to the Church of England as an endowment for schools.[131] According to Stirling, such gifts partially relieved the Government of responsibility for Māori education at a time when Grey was losing control of the Māori affairs funds to the new settler-controlled assembly (established in 1852).

Māori agreed to gift two blocks of land – a 400-acre block at Pāpāwai and a 190-acre block at Kaikōkirikiri – to the Church of England for educational purposes.[132] The hapū making the gift were identified by Te Whatahoro Jury and Toi Tāmati, some 50 years later, as Ngāti Tūhakeke, Ngāti Pakuahi, Ngāti Te Hina, Ngāti Tamahau, Ngāti Te Hika-ō-Pāpāuma, Ngāi Tūmapuhia, Ngāti Ahuru, Ngāti Maruinga, Ngati Kāingaatu, Ngāti Waituku, Ngāti Mātangiuru, Ngāti Hāmua, and Ngāti Horahanga.[133]

The terms of the gift were not recorded at the time, but afterwards complaints continued for almost 100 years. It is not hard to infer a high level of dissatisfaction on the part of the donors: they expected schools to be built on both sites. They also expected that the funds generated from the gift would be used for the benefit of their own children, equipping them with literacy and other skills necessary for participation in the colonial economy. According to the evidence of Te Whatahoro Jury before a 1905 royal commission of inquiry into school trusts endowed with gifted lands, the Pāpāwai and Kaikōkirikiri sites were:

> reserved for the purpose of educating the Maoris [*sic*] and teaching them technical and industrial and other education. He told us it was for the purpose of teaching the children to make mills and farm the land and to make improvements, such as fencing . . . Sir G Grey

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also told us that in this way the two people might grow up as one, and be taught civilisation.[134]

Writing of the gifted land, Stirling says that Wairarapa ki Tāmaki-nui-ā-Rua Māori never intended to 'give land away forever with no strings attached', but rather sought to establish ongoing ties with the church for specific social objectives.[135]

However, the requirement that the gifted land be used as an endowment for the education of local children was not expressed in the grants the Government issued to the church several months after Grey's and Selwyn's visit. Instead, the titles simply stated that the Government granted the land to the church. It was to be held in trust 'for the education of children of our subjects of all races, and of children of other poor and destitute persons being inhabitants of islands in the Pacific Ocean'.[136] The Waitangi Tribunal's Orakei report observed that Māori intentions when gifting land were frequently undermined in such documents, where the 'particular . . . bec[a]me the general'.[137] In this case, the generalised titles ensured that the church was under no legal obligation to build a school on the site, nor to use trust funds (accumulated from rental of the gifted lands) specifically to educate Wairarapa Māori. Church officials consistently pointed this out when locals complained about the church's failure to fulfil the promises made in 1853.[138]

(1) *St Thomas's College (1860–65)*

The Church of England did not even attempt to establish a school either at Pāpāwai or Kaikōkirikiri until the Government allocated additional funding to mission schools through the Native Schools Act 1858.[139] This Act made available an annual sum of £7000 for a period of seven years, limiting it to schools that were connected to 'some Religious Body' that both educated and boarded Māori pupils, and offered industrial training and 'Instruction in the English language'.[140]

In 1860 the Government agreed to provide an initial grant of £260 to build a mission school (St Thomas's College) at Pāpāwai,[141] and to pay the school a subsidy of £10 per pupil per annum.[142] In fact, however, the subsidy was initially deducted from the koha/five percents fund – and without the knowledge or agreement of the owners of the koha blocks, let alone the iwi as a whole. Almost a year after the Government advanced the money to the church, McLean belatedly acknowledged that the consent of the beneficial owners was required, and asked resident magistrate Herbert Wardell to 'be good enough to ascertain from the natives whether they will fully concur in the appropriation of . . . the sum'.[143] Wardell reported back in 1863 that local Māori did not accept that the school's establishment costs 'should be deducted from their own funds'.[144] The Department of Native Affairs agreed to source the grant from other Government accounts, and no further deductions were made from the koha fund for that purpose. Māori continued to contribute in their own way, however; in addition to their gifted land, they also supplied the church with timber, five cows, and a horse, and raised £100 for the establishment of St Thomas's College.[145] The church put £275 15s towards school costs – money it derived from rentals on the gifted lands at Pāpāwai and Kaikōkirikiri.[146]

In December 1860, St Thomas's College was officially opened as a boarding school for Māori boys. But right from the start, it was plagued by administrative and funding difficulties.[147] Reverend William Ronaldson declared the institution seriously under-funded within days of its opening, complaining that the Government subsidy barely covered the cost of feeding and clothing the pupils.[148] Moreover, the school was without a teacher for some time. Yet in March 1862, school inspectors reported that the 14 boys 'appeared to be healthy and happy' and were making progress with 'reading simple lessons in the English language, and in writing'. They also received industrial training, although church officials later recalled that 'the boys objected to the industrial work'. The inspectors did note that the boarding facilities were seriously overcrowded, and new ones were needed.[149]

The College operated for only four years before the church shut it down in January 1865.[150] The reasons for

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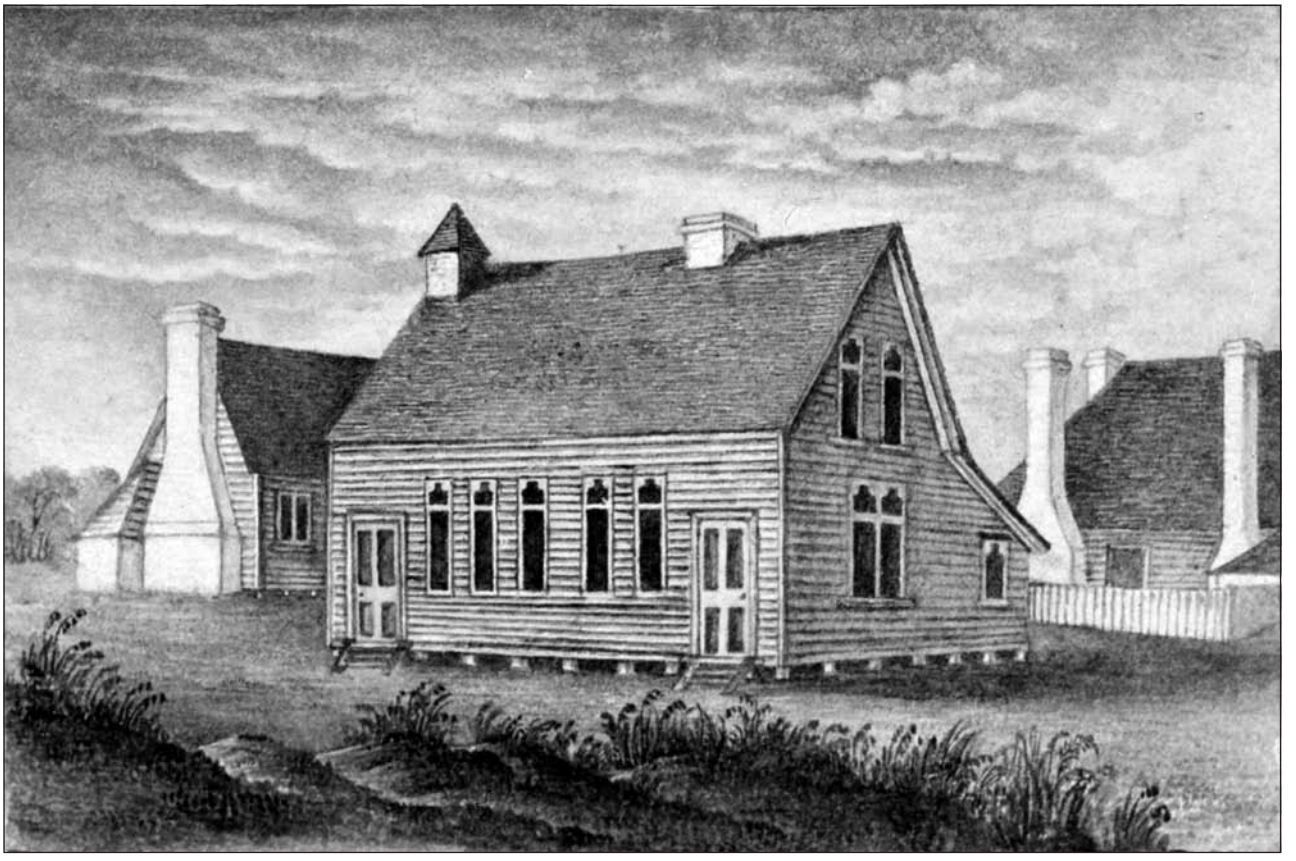

St Thomas's College, circa 1860. St Thomas's, a school for Māori boys, opened at Pāpāwai in December 1860 and closed in January 1865.

its closure are not captured consistently in the historical record. When later asked to explain 'how Mr Ronaldson's school at Papawai fell through', Te Whatahoro Jury recalled that 'The clergyman in charge became alarmed at the Hauhau movement and abandoned the place and crossed over to the Wairau.' Similarly, Archdeacon Fancourt reported that an 'outbreak of Hauhau-ism' forced the church to close the school.[151] However, Wardell declared the closure to be the result of the 'apathy and indifference' of Māori parents.[152] For their part, Pāpāwai residents Hoani Mānihera Rangitakaiwaho, Tamahau Mahupuku, Rukarei Kīngi, and Matini Te Ore attributed the closure to the removal of the school's teacher, with whom the community was dissatisfied. They recounted in 1882 that 'we, not liking the bad way the master treated our children, wrote to the Bishop who removed him and the school has never been opened since.'[153] Officials (both Government and church) often cited Māori complaints about particular teachers as evidence of their lack of interest in education and to justify the closing of Māori schools. Yet, as we see it, Māori objections to particular individuals did not mean they were rejecting education. Indeed, Wairarapa ki Tāmaki-nui-ā-Rua Māori campaigned to have the college re-opened, or – if the church was unwilling to establish

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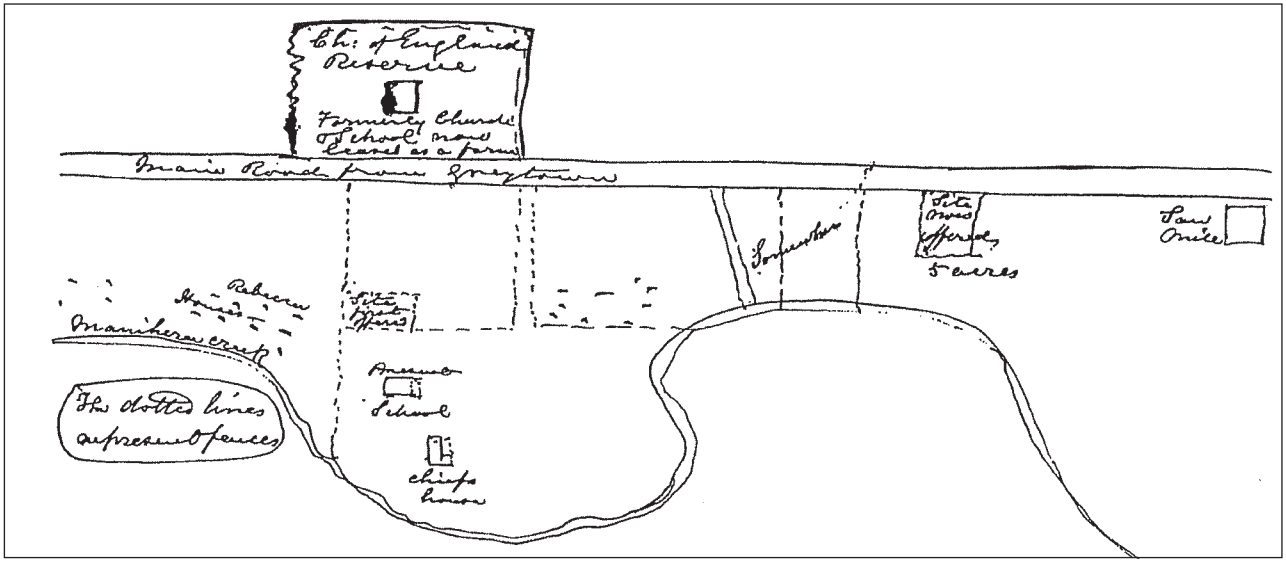
a school at Pāpāwai – for the gifted land to be returned. However, the church rejected both options, and Pāpāwai remained without a school for several decades.

(2) *Pāpāwai and Kaikōkirikiri School Trust land*

In 1878, Grey (then Premier) returned to Pāpāwai and was surprised to learn there was no school. Twenty-five years after his initial promise, Grey again assured local Māori that a school would be established within months.[154] Pāpāwai Māori eagerly awaited its opening. But again, nothing happened, despite their petitioning the Government in 1882.[155] In the interim, the local community established a makeshift school in a whare and hired a teacher. The Education Department agreed to provide a small financial grant (£5 per month) to partially cover the salary, but the Pāpāwai community funded the majority of the school's running costs.[156] Finally, in 1886, after years of complaint and community contribution of money and labour, the Government opened the Pāpāwai Native School on a site obtained from the church out of the gifted land.[157] This remained in operation until 1905.[158]

But a Government native school did not address the grievance over the church trust and the failure to honour what had been originally envisaged: a boarding school for all the children of Wairarapa (this vision had been given only brief and partial effect by the opening of St Thomas's College). By this stage, too, local Māori were expressing dissatisfaction about being excluded from the management of institutions directly concerning, or benefiting from, their lands. Before the Native Land Laws Commission in 1891, Te Whatahoro protested that not only had nothing come out of the trust but the management of it was entirely outside their control:

> Now, as to the whole of the revenue derived from these two endowments, down to the present time we are in perfect ignorance how it has been disposed of, because there has never been any statement of accounts. Even the schoolhouse at Papawai was put up by the Government, not by the Bishop. We now make application that there may be a boarding-school established on that land at Papawai, so that the children of



Proposed plan for the siting of Pāpāwai School, circa 1884. The school was eventually established as a native school in 1886.

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> the district and outside places can attend it. We also wish the Bishop's control over that property to be cancelled and that the control of these endowments may be vested in the Native Committee of the district, together with some officer whom the Government may choose to appoint for the purpose.[159]

In 1896, 124 local Māori, led by Hāmuera Karaitiana, once again petitioned the Government for the return of the lands. A Native Affairs select committee inquiring into their petition considered their grievance had merit and recommended the Government introduce legislation:

> for the purpose of setting aside the Crown grants issued in favour of the Lord Bishop of New Zealand, and of declaring the land 'papatupu' or Native land, and restoring the same to the Native donors, or their successors, along with all the rents accrued thereon.[160]

Despite this recommendation, and a similar report about gifted lands at Porirua, the Government took no action to introduce appropriate legislation, or to seek other ways to return the lands to their dissatisfied donors.[161]

This failure continued despite high-level assurances made directly to Ngāti Kahungunu and Rangitāne. During negotiations to address Māori aspirations for self-government and questions about the ownership of Lake Wairarapa and Lake Ōnoke (see ch 7), the Crown promised that it would intervene. When Premier Seddon visited Pāpāwai in May 1898, he criticised the church for its failure to use the gifted lands for educational purposes, and specifically undertook to introduce legislation to ensure schools were opened at Pāpāwai and Kaikōkirikiri.[162] He expanded on his remarks at a further hui later that month, assuring Māori:

> Your ancestors who have been called away . . . knew that as a race you were capable of the highest development . . . Did they not give large tracts of land on condition that the proceeds were to be devoted to religious, general, technical, and industrial education of the Native race? . . . [It] is a lasting discredit to those who in years past were [e]ntrusted with such lands that practically nothing has been done in the direction of giving to the Native race what those who gave the land intended should be given. . . . As the law has said that the land cannot go back to the descendants of those who gave it, and as the trustees of those lands say they cannot give effect to what was intended by the donors, then I say it is time the State, in the interests of both races, should step in and endeavour to give effect to the desires of you forefathers. . . . I am looking forward to the time when on a future visit to you I shall be called upon to open, not many yards from this building, a technical school to be maintained out of the proceeds of the land which was donated for a specific purpose.[163]

Seddon also criticised plans to use the Wairarapa lands to fund scholarships to out-of-district schools, commenting that it 'would defeat the object' of the gift. In language echoing that of Grey almost 50 years earlier, Seddon queried 'What would you think of a European who would tender you no food after a long and tedious journey?' In his view, the Europeans who held the reserves had a house with a well-stocked table and many clothes but, he continued, the:

> food on the table is the land that your ancestors donated, and the raiment represents the money in the bank, the proceeds of that land. The house . . . is the technical school which your youths desire to enter, so that they may partake of the good things which you forefathers intended you to have.[164]

Notwithstanding this, his promise, like those of Grey, remained unfulfilled for many years – apparently because the Government was reluctant to be seen to fly in the face of a major court ruling supporting the church's position.

In 1899, the church responded to the select committee's findings and Seddon's strong criticism by proposing an agricultural college for Māori at Clareville (Hikurangi). However, the plan encountered resistance from the

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Government because the church wanted to draw on the Porirua trusts to fund the college. A costly round of litigation between the church and the Crown ensued. The initial court case (*Solicitor-General v Bishop of Wellington*) ended up in the Court of Appeal, which found in the Crown's favour. The trust had not been fulfilled, so the land and funds would revert to the Crown because it had issued the grant to the land. Nevertheless, implicit in the judgment was the expectation that the Crown would revest the land in its original owners:

> A church obtains a gift of land from a semi-savage tribe on the understanding that the church will within a reasonable time, out of other funds, establish a college on or near the land for the education of the youth of the tribe. Fifty years pass, and the church has not established a college. A plain man would say that in such circumstances the church should hand back the land to the tribe.[165]

The church appealed the case and the Privy Council reversed the Court of Appeal's decision and 'accused the Court of Appeal of being subservient to the Executive'.[166] The Privy Council found that:

> there had been an express gift of land and money for charitable purposes; that such a gift is not invalidated by the fact that the particular application directed cannot immediately take effect, or will not of necessity take effect within any definite limit of time, and may never take effect at all; and that the doctrine of cy-prèes was applicable.[167]

In another court case, *Hohepa Wi Neera v Bishop of Wellington*, the church's right to make changes to the Porirua trust was challenged. Wi Neera argued that the Crown grant was invalid and native title remained unextinguished; however, the Court of Appeal declared that the very existence of the Crown grant nullified such a claim.[168]

The legal action seems to have discouraged the Government from introducing specific legislation to deal with the trust lands. Another 40 years passed before this happened.

(3) *Hikurangi College (1903–32)*

As the court cases took their course, Archdeacon Fancourt called a hui at Clareville in 1903 to discuss establishing a small boarding school there for boys. The proposal received some support from northern Wairarapa ki Tāmaki-nui-ā-Rua Māori who attended the hui. However, Pāpāwai and Kaikōkirikiri Māori strongly opposed it, saying that they wanted a school for their children within the local community – not for them to be sent away to board.[169]

After the Privy Council upheld the church's right to manage the endowment lands and income as it saw fit, the church moved quickly to forestall the possibility of Government intervention. Hikurangi College for Māori boys was established in 1903. Located on 150 acres owned by the church, the new college was required to pay £70 rental per annum, paid out of income from the gifted lands. The funding shortfall (between the income derived from the gifted lands and the school's running costs) was covered by another charitable fund.[170]

In 1905, only 12 pupils attended the college, where they received free board and education. The 1905 royal commission of inquiry into school trusts on gifted lands noted that the school's operating costs (£55 per pupil per annum) were twice those of Te Aute College (which averaged £25 per pupil), and the Pāpāwai and Kaikōkirikiri School Trust land met all the school's costs. Although its operating costs were high, the commission remained optimistic that Hikurangi College would succeed. It noted that 'a Maori committee has been formed with a Maori chairman in connection with this school, which should tend to render it popular'.[171] In fact, the school was the subject of criticism from local Māori, including members of Ngāti Moe and Ngāti Hāmua descended from the original donors. Hapeta Whakamairū, for example, complained to the 1905 commission that the college was of little use to Wairarapa ki Tāmaki-nui-ā-Rua Māori because it was not located on the gifted lands and only catered for Māori boys, not girls. Whakamairū also argued that the majority of local Māori were either Catholic or Mormon and refused to send their children to an Anglican school. He suggested that 'Religion

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as taught by the Church does not teach the Maoris [*sic*] anything that will benefit their bodies', and instead argued for more technical training.[172]

In the late 1920s, the school trust began to charge pupils £10 a year for boarding and tuition fees. This prompted protest from Ngāi Tūhakeke (hapū of Hāmua).[173] They petitioned Parliament in 1927, criticising not only this decision but also the location of the college (some nine miles from Kaikōkirikiri). Most of all, they criticised the failure of the trustees to consult with them.[174] The church defended itself, saying that the change of policy had been necessitated by the 'high cost of living', that the college was situated between the two gifted blocks of land, and that the accounts could always be requested. Stirling suggests that the Native Affairs Committee was 'clearly sympathetic to the plight' of Wairarapa ki Tāmaki-Nui-ā-Rua Māori. But since the trust – although established under legislation – was a church-run entity, the committee only recommended that the Government 'suggest' to the trustees they 'consider in a special way the education of the children of those associated with the trust lands'.[175] According to Stirling, 'It does not appear that this far from helpful "suggestion" was taken up by the Government, let alone heeded by the church.'[176]

In 1932, a fire gutted Hikurangi College. Despite Māori requests, the church would not rebuild, citing lack of funds. Thus, the Pāpāwai and Kaikōkirikiri School Trusts lands 'once again fell into the church's peculiarly secular administrative limbo'.[177] Overall, Stirling concludes, based on the limited historical records available, Hikurangi College 'enjoyed very limited success' due to high administrative costs, low pupil numbers, and limited Māori support. In retrospect, though, local Māori were to see it as a better option than what was on offer in the years that followed.

(4) *1905 royal commission of inquiry into Māori school trusts*

When the Government held a royal commission of inquiry into school trusts on gifted Māori land in 1905, the commission's terms of reference included only Kaikōkirikiri in this district, even though the trustees for the Pāpāwai endowment were the same and the monies were held in the same account.[178] We do not know why. During the inquiry, however, Archdeacon Fancourt contended that neither block should be examined since the Government had granted the lands to the church after first purchasing them from local Māori. He stated further:

> I do not acknowledge that it was the duty of the trustees to educate the children. It was a general trust – not a local trust. They are all general trusts. It is the work of the Government to see to the education of the children. What we aim at is to give religious education . . . My contention is that it was never intended for the general education of the Maoris of the locality.[179]

This was strongly contradicted by Māori testimony. Hapeta Whakamairū, son of Ihāia Whakamairū and grandson of Retimona Te Korōu, one of the original donors, recalled that at the time of the tuku whenua (the yielding up of land):

> The whole of the people . . . consented to give it [the land] so that their children should be educated, and the gift was approved by Sir George Grey and Bishop Selwyn. They promised they would erect a school – that is, a college; and that they would also erect a church, and also a mill for the maintenance of the children and their parents. From that day to this – a period of fifty years – not one of those promises has been given effect to.[180]

Local Māori wanted one of two possible outcomes from the inquiry: either the Government should force the trustees to honour the original terms of the gift, or the land should be returned.[181] Te Whatahoro Jury presented a range of options about how best to use the gifted lands and the accumulated rentals. He acknowledged the 'great drawback' of the existing native school at Pāpāwai was that children from other areas could not attend because there was nowhere for them to live. He suggested that the

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Hikurangi College, 1904. Probably the college's entire complement of students at that stage are pictured, although the roll later grew.

accumulated rental funds from all similar school trusts within the Ngāti Kahungunu rohe (tribal territory) be 'amalgamated into one fund to establish one good school at . . . Te Aute where children could be taught general, technical, and industrial education'. Te Whatahoro pointed out that past educational policies had clearly failed for 'after fifty years of education none of our children are engaged in any European trades'.[182] Others, including Hapeta Whakamairū and Toi Tāmati, also called for industrial and technical training 'so that they may be equipped for the future'.[183]

The report of the 1905 commission firmly supported Māori grievances. It concluded that the church had promised them boarding schools on the gifted land, which day students could also attend. Also promised was a standard of English language instruction equal to that available in

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Hikurangi College, 1910. By this time, the college had been extended at each end.

board secondary schools, as well as technical and agricultural training. It was the prospect of such a school that had prompted Māori to give the land in the first place. The church had conspicuously failed to fulfil its 'direct or implied' undertakings, leaving the descendants of the original donors 'much aggrieved'.[184] The commission rejected the church's argument that the income derived from the gifted lands was insufficient to fund a boarding school, saying that in the early years of similar school trusts, the Government had been prepared to offer financial assistance (although more recently this had been confined to the cost of providing for State pupils). Anyway, the commission concluded that it 'does not appear to us that it was contemplated at its origin that the trust estate was to be the sole source from which funds for the establishment of the college should be derived'.[185] While it considered that

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the establishment of Hikurangi College two years earlier had fulfilled the trust's obligations, the commission noted that Māori based at Masterton were dissatisfied that the Kaikōkirikiri funds (as well as those for Pāpāwai) were being absorbed by the Clareville school. The commission supported Māori wishes for a girls' school to be opened 'in the future'. As to Te Whatahoro's request for Māori involvement in the Trust's management, the Synod should appoint 'a Native . . . preferably . . . a member of the Ngatihamua or Ngatimoe Hapus of Ngatikahungunu' to the Trust's board in the spirit of the original promise.[186]

But the findings of the 1905 commission of inquiry into the gifted lands brought no significant changes in the church's provision of Māori education in the district. Nor did it prompt the Government to address the issue. Of course, few Wairarapa ki Tāmaki-nui-ā-Rua Māori ever attended Hikurangi College. For the vast majority, a boarding school education remained out of reach – despite their communities' repeated requests for this opportunity to be made available.[187]

(5) *Legislative developments, 1937–43*

As we noted earlier, the adverse finding of the Privy Council seems to have discouraged the Government from introducing specific legislation regarding the Papawai and Kaikokirikiri Trust Board in the early twentieth century. It was not until the 1930s that the necessary political will materialised to change the law affecting the Board's operations.

In 1937, Wairarapa ki Tāmaki-Nui-ā-Rua Māori again sought to discuss the status of the gifted lands at Pāpāwai and Kaikōkirikiri, inviting the Bishop of Wellington to meet with them at Pāpāwai and Te Oreore. At the hui, the Bishop proposed using the accumulated rental funds, which totalled £5000, to enlarge the church school at Ōtaki. Attendees declined this proposal, asking for Hikurangi College to be rebuilt instead.[188] Then, after this hui, the church changed tack. It wanted to sell the gifted lands and use the interest on the funds for scholarships enabling Māori children to attend the church boarding schools Te Aute and Hukarere, both located in the Hawke's Bay.

Māori were fervently opposed, but nevertheless the church attempted to change the legislation that governed the trust's operations so that the lands could be sold for this purpose. In 1940, two private Bills – the Papawai and Kaikokirikiri Trusts Board Empowering Bill and the Porirua Trust Board Empowering Bill – went before the Legislative Council, where they met substantial Māori opposition, and failed.[189]

In 1941, Māori from various regions petitioned both the church and the Government for new legislation to govern the trust's operations.[190] One from Wairarapa contained the resolutions arising from a hui at Te Oreore earlier in the year. These stated that the gifted lands were:

> intended to assist the education of Maori children within the Wairarapa district and were not intended to pay for the erection and general maintenance of these colleges.[191]

While they wanted the colleges supported by the grants to be for children of all races, they also wanted them to be in Wairarapa – and they did not accept that the schooling provided by the State thus far had fulfilled the terms of the trust. They strongly opposed selling any of the lands named in the grants without the permission of the donor tribes, and they called for 'two representatives of the Ngati Kahungunu tribe' to be included on the trust board for the Wairarapa district.[192]

This and similar petitions came to the Joint Committee on Church Trust Lands, also known as the Ōtaki-Porirua and Papawai–Kaikokirikiri Trust Committee. Its members included Sir Apirana Ngata, Tahupōtiki Ratāna, Tapihana Paraire Paikea, Eruera Tirikātene, James Thorn, Henry Rex Mason, L G Lowry, and James O'Brien, who served as chairperson.[193] Counter-petitions supported the concept of scholarships, and the committee convened hui in the Wairarapa and Manawatū regions to hear evidence from iwi, church, and Government representatives.[194] William Bird, former organising inspector of the native schools,

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strongly supported the church's scholarship scheme.[195] In his view, Te Aute and Hukarere colleges had 'made the greatest contribution towards Maori progress than any other schools' and provided useful 'character training'. Moreover he insisted that any additional funds provided to Te Aute and Hukarere, through scholarships or the like, would produce 'beneficial results for the native race' – more so than by 'any other means of spending money that [he was] aware of'.[196] Bird clearly favoured a particular type of education for Māori and stated that he did 'not know any Maori of distinction who [had] come out of a European college. The distinction has always come from the pure Maori secondary educational schools.'[197] Many Wairarapa ki Tāmāki-nui-ā-Rua Māori, however, continued to express the desire for their children to attend local secondary schools so that they could remain with their whānau.[198]

The committee issued its report in March 1943 and recommended that Māori and the church reach a compromise, with greater Māori involvement in trust administration.[199] The committee acknowledged that the church had not administered the trusts according to the original terms of the gift, but found that this failure was 'not due to any fault' on its part. It concluded that, as the trust funds were insufficient to re-establish and maintain Hikurangi College, the trust should instead endeavour to provide educational training to local Māori by granting both scholarships to select Māori pupils to attend the denominational colleges, and financial and accommodation grants for local Māori secondary schools pupils. The commission also recommended a number of administrative changes, most notably the establishment of new trust boards. The Papawai and Kaikokirikiri Trust Board was to be comprised of four church appointees, three Māori members (appointed by Ngāti Kahungunu) and one member appointed by the Minister of Education. The commission also sought to restrict the powers of these boards, denying them authority to sell gifted land. Their powers would focus on granting funds to educational institutions with the consent of local iwi.[200]

According to historian Tipene Chrisp, local Māori remained adamant that the trust funds should be reserved solely for the education of Ngāti Kahungunu and Rangitāne.[201] However, the Papawai and Kaikokirikiri Trust Act 1943 followed the committee's recommendations. Two-thirds of the net income was to be applied to scholarships for church colleges, and the remaining one-third provided assistance to pupils attending local secondary schools (for accommodation, books, clothing, and scholarships). The legislation stipulated that scholarships were available to the 'children of British subjects of all races, and for children of other persons being inhabitants of the islands in the Pacific Ocean'. However, preference was to be given first to children of Ngāti Kahungunu in the southern Wairarapa, secondly to Māori residing on the East Coast of the North Island, and failing that, to Māori of 'any part of New Zealand'.[202]

The Bill was passed on 26 August 1943 without debate, immediately after a similar Bill (the Otaki-Porirua Trusts Act). Several Māori MPs expressed concern about the 'unseemly haste' of getting the two Acts passed through Parliament and the lack of consultation with Māori.[203] The new legislation did not meet Māori demands for equal Māori and Pākehā representation on the board, and an amendment Bill was introduced in 1946 to achieve this: the board had to include an additional Māori board member, appointed by the church. This meant there was now potential for a Māori majority on the board: three Māori members were appointed by Ngāti Kahungunu, the five members appointed by the church had to include one Māori, and one other member was to be appointed by the Minister of Education.[204]

Under the guidance of the new board, the Papawai and Kaikokirikiri Trust set about providing scholarships and financial assistance to pupils to attend church colleges and local secondary schools. However, Stirling argues that, in practice, the trust favoured the church boarding colleges (Te Aute and Hukarere) over the local secondary schools. Moreover, the lack of suitable accommodation at Wairarapa College meant that many rural Māori

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could not attend the district high school. Stirling quotes a letter from a Pākehā member of the Masterton Rotary Club to the Under-Secretary of Māori Affairs in 1951 complaining about the failure to support local schools. The Rotarian requested that the Minister try to 'convince the Papawai and Kaikokirikiri Trust Board that a proper use of their funds would be to have a Maori hostel attached to Wairarapa College'.[205] The Rotarian maintained that the college provided Māori with a good education, and noted that its three Māori pupils were all achieving well.[206] The trust continued to assign its funds chiefly to Te Aute.

On the one hand, the 1943 Act and the 1946 amendment failed to fully satisfy demands that benefits being generated by gifted lands go only to the donors and their descendants; on the other hand, the legislation failed to explicitly recognise all those who had been involved in the original gifting. By specifically naming Ngāti Kahungunu in the scholarship criteria, Rangitāne involvement went unacknowledged. According to Chrisp, Rangitāne people were told they were ineligible for scholarships when they applied to Papawai and Kaikokirikiri Trust Board. While some Rangitāne were able to gain scholarships through their affiliations with Ngāti Kahungunu, their identity as Rangitāne remained unacknowledged by the legislation.[207] Also, the constitution of the Papawai and Kaikokirikiri Trust Board was dominated by Ngāti Kahungunu.

In spite of criticism of the scholarship system, it should be acknowledged that the Papawai and Kaikokirikiri Trust Board did provide Wairarapa ki Tāmaki-nui-ā-Rua Māori children with the opportunity to attend secondary schools. For instance, Matai Broughton recalled that his children's secondary education was mainly funded by Māori educational scholarships, including those of the Papawai and Kaikokirikiri Trust Board.[208]

3c.2.8 Summary

Education, Gilling correctly identifies, was an essential 'non-land resource' that needed to be established and developed in the Wairarapa ki Tararua district to offset and overcome what, by the late nineteenth century, was the very extensive loss of Māori land.[209] In the present day, the ability to access education remains a key determinant of the economic and social capabilities of Wairarapa ki Tāmaki-nui-ā-Rua Māori.

In the late nineteenth and early twentieth centuries, the Education Department regularly rejected Māori requests for native schools in the Wairarapa ki Tararua district. Similarly, native school committees' requests for increased funding and improved facilities were generally refused, and native schools were encouraged to transfer to Education Board control as quickly as possible. Departmental decisions within the Wairarapa ki Tararua district reflected wider Government education policies, which focused on the assimilation of Māori children as quickly as possible.

As we have heard, generations of Māori pupils faced discrimination in ordinary State schools. Likewise, in the more recent past, Māori educational facilities (most notably kōhanga reo) have encountered public and often outright racist opposition to their commencing operation. We address the role of local councils in this kind of situation in chapter 12B. But it seems to us that the Education Department could also have taken a more active role in promoting the value of Māori educational initiatives – kōhanga reo (pre-schools), kura kaupapa (primary schools), and wānanga (tertiary institutions) – to all sections of the Wairarapa ki Tararua community.

Overall, Government and education officials were inactive in the area of Māori education in the Wairarapa ki Tararua district throughout the late nineteenth and early twentieth century. With a relatively small and scattered population, Wairarapa ki Tāmaki-nui-ā-Rua Māori were often portrayed as having been successfully 'Europeanised'. Accordingly, Government officials repeatedly argued that local Māori did not require any special educational facilities. What they meant was that the region did not require native schools, but nor were there attempts to address more general shortcomings in education and educational facilities in other ways. Thus, Wairarapa ki Tāmaki-nui-ā-Rua

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Māori had to attend board schools that were often inaccessible and inhospitable. There was a prevailing view that Māori were not suited to academic endeavours, but neither were genuine attempts made to provide trade training or other technical skills. Te Whatahoro Jury's comment to the commission of inquiry in 1906 – that not a single Māori in the Wairarapa had by then taken up a European trade[210] – was damning indeed. The only valid denial of Māori requests for good schooling would have been on the basis that the existing schools were meeting their needs. All too plainly, they were not.

3c.2.9 Tribunal comments and analysis

(1) *Promises*

When the Crown embarked upon its colonisation project in Wairarapa ki Tāmaki-nui-ā-Rua, it spoke from the outset about the necessity to educate Māori in the skills and knowledge of the incoming culture. Grey, McLean, and other Crown officials held out a vision of the future in which Māori would be schooled in the ways of the Europeans so they could participate fully in a shared future. General literacy was essential for Māori to assume full citizenship (so that they could vote and participate in government), but special instruction in agricultural and industrial skills was also required to equip them to compete economically.

We do not know precisely how attractive the education aspect of the Crown's promises was to Māori of this district, but it is not disputed that promises were made. Moreover, Māori did agree to let the settlers come, and to make their land available to them. It can be inferred that education was an important part of the mix of undertakings that, collectively, persuaded Māori that they should say 'yes'.

There is no doubt that the Crown failed to follow through on its commitments. A crucial 30 years elapsed before there was any meaningful effort to provide schools for the Māori community in the Wairarapa. This was an opportunity lost for these people. Selling their land early in the colonisation process might well have given them the advantage of becoming skilled and knowledgeable in the new dispensation before other Māori communities, making them the nineteenth-century equivalent of early adopters of computer technology in the twentieth century. They could have acquired an edge. But 30 years was far too long. By the time schools were in the offing, the small Māori population was swamped by Pākehā incomers; officials thought there were too few Māori in most parts of the district to merit special consideration. They did not need native schools; the board schools would suffice. We heard of a number of instances where requests for native schools were rejected for this reason.

It is important to acknowledge that Māori children were never excluded from the developing State school system. But their needs were not met in either system – the native schools or the board schools.

(2) *Native schools in the district*

We have seen how, in the native schools, a less academic programme was considered suitable. Some native schools were established in Wairarapa ki Tāmaki-nui-ā-Rua, where Māori communities made the proper request, were deemed large enough, and there was a suitable site. If those schools had focused on providing good, sound, basic education and vocational training for Māori, and had made a good job of that, it may have set young Māori up to succeed in the skilled job market. Of course, nowadays we see such a limited view of Māori academic aptitude as misguided and ignorant. But in fact it seems that native schools provided neither an entrée into academic pursuits nor vocational skills. They were merely the poor cousin in every respect – inadequately funded, understaffed (their teachers were paid less), and beset with attendance problems because of ill-health and the requirements of seasonal work and resource use. Native school committees had a lesser role than committees of board schools, but direct financial contributions were still required. At the same time, whether in native or board schools, Māori were expressly denied tuition in their own language.

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Thus it seems to us that native schools were not much of an asset, and having few in the district was probably not in itself a disadvantage. But the key question must then be whether board schools provided a better option.

It is arguably to New Zealand's credit that Māori and Pākehā children could attend either board or native schools – all were public schools, available to everybody.[211] But it would be wrong to feel smug about this. In fact, the evidence before us is that there were no schools that provided what Māori children needed.

(3) *Board schools*

Māori children were probably not really welcome at board schools in this inquiry district – or indeed elsewhere. Throughout the country, Pākehā-controlled Education Boards, school committees, and parent-teacher associations regularly expressed opposition to Māori children attending board schools. In 1914, the Education Department reported an 'intensification of . . . racial antipathy and prejudice exhibited towards the Maori in many parts of the North Island, and in even some parts of the South'. The department noted that, as a result, some Pākehā school authorities were going so far as to prevent Māori children attending local board schools.[212] Similarly in the following year, the department stated that the:

> transfer of [native] schools is becoming more difficult year by year owing to the increase of racial prejudice, [with] European parents exhibiting strong objections to Maori children attending public [board] schools in common with their own.[213]

In our inquiry district, we heard evidence of this occurring from the 1870s onwards.

The Wananga Tribunal accepted the evidence of Simon, on whose historical account we also rely, that Māori children were usually at a disadvantage at board schools (in comparison with Pākehā pupils at board schools, and both Māori and Pākehā pupils at native schools). She attributed this to several factors,[214] which we paraphrase in the light of the evidence we heard:

- there were no special programmes to teach Māori children English as a second language;
- most board teachers had a low opinion of the academic potential of Māori children, and this affected their expectations of them compared with other children; and
- Pākehā teachers, pupils, and parents were racially prejudiced against Māori, which made their school experience anything from uncomfortable and unrewarding to painful and damaging.

Wairarapa ki Tāmaki-nui-ā-Rua claimants' recollections of their own twentieth-century schooling suggest that these factors applied in our inquiry district.

Though Education Department policy and the attitudes of its staff were part of the problem, we cannot hold the Government directly responsible for the prejudices of its citizens. However, it is accountable for some of the causes of that prejudice, and for not trying harder to ensure that Māori had a real opportunity in the board school system. That responsibility was all the greater where board schools were all that was available to Māori children.

(4) *Conceptual failure*

Various options might have been pursued to ensure that the Māori children of Wairarapa ki Tararua received a better education than they did – whether in church, board, or native schools. Options were suggested by rangatira such as Mahupuku, whose call for special training in Pākehā trades was ignored; and Te Whatahoro, whose proposal that Māori co-manage schools funded by the gift of their lands was implemented 50 years later. In the mid-1930s, Ngata advocated greater use of te reo for Māori pupils, a plan eventually given State support in the 1980s.

Looking back now, it seems that those in charge in the nineteenth and twentieth centuries were astonishingly lacking in insight as to what would really help Māori to become educated in the Pākehā sense. Why did they not realise that teaching Māori first in their own language would make learning to read and understanding numerical concepts much easier? Of course there was the 'civilising'

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function of English to be considered, but could that not have come in later, and gradually? We listened to Māori accounts of childhood encounters with Pākehā educators in the twentieth century, and the stern strictures against use of te reo Māori in any school context. We wonder how people presumably interested in children's welfare (why else become a teacher?) could imagine that taking such a punitive approach would ever work – and why they would want to behave in that way anyway.

The whole te reo dimension is difficult. We see the central problem as one of conceptual failure. People – both Pākehā and Māori – seem to have thought that a choice was required between English and Māori, and educational policy proceeded on that basis. We think this arose primarily from ignorance about the process of language acquisition. English was valued above Māori. In the settler community this was part of their sense of cultural superiority; for many Māori in the cultural context, English was the language of the new and improved – thought we found no evidence of Māori favouring the suppression of te reo. But undervaluing Māori was not the central problem: the real culprit was the idea that a choice had to be made between English and Māori. That children could easily have become, and remained, entirely competent in both languages without forgoing any educational advancement in either was apparently just not understood. This seems odd, because there were many examples of people successfully and positively fluent in both English and Māori – rangatira like Tamahau Mahupuku, who engaged eloquently in English, but also promoted newspapers in Māori, are obvious examples. But perhaps it was expected that this was a transitory phase, or that fluent bilingualism was the province of only a few. Neither the settlers nor Māori came from cultures where multi-lingualism was at all common. Was it implicit in the colonial deal that everybody would eventually speak English and not Māori? It seems there was too little appreciation of – and too little concern for – the consequences for Māori culture and society of not speaking their language. For many decades, emphasis was always on how much Māori people had to gain from speaking English, rather than on how much they had to lose from not speaking Māori. At the same time, both Māori and Pākehā may have assumed that Māori would continue to speak their language at home, despite its active suppression at school and its abandonment in any public setting. As it turned out, this assumption – if it was made – was wrong.

Sanctioning only English-medium education had many negative consequences, but it is difficult to see it in terms of Treaty breach because it was the result of genuinely mistaken thinking. The settlers' sense of cultural superiority certainly played a part, but we think educationalists and Māori alike genuinely believed that English-medium education was the best way forward for Māori children. This was such a thorough-going belief that the possibility of delivering education to Māori children in te reo Māori was really not entertained until the end of the twentieth century, when the Māori language was palpably dying out.

(5) *Logistical difficulty*

As well as conceptual failure, there was also logistical difficulty. Supplying educational services to Māori in this inquiry district was not easy. By the late nineteenth century, the region's Māori population was not large, and was spread across often remote settlements of quite insignificant size. These difficulties contributed to the early closures of those native school facilities that were attempted in the late nineteenth and early twentieth centuries. We in no way discount the evidence we heard from some of the older witnesses about the hardships caused by the inferior provision of education and other services to outlying communities. But, given the difficulties of extending Government services to remote places, we cannot say that services to Māori living in such places in Wairarapa ki Tararua were substantially inferior to those for others living in similarly inaccessible parts of the region.

(6) *Inadequate provision to larger Māori communities*

There was, however, clearly inadequate provision for sizeable Māori communities in places such as Pāpāwai,

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Te Oreore, and Tūranganui. Māori there had to improvise and pay for education themselves. In our view, maintenance of vibrant, sustainable Māori communities – most notably at Pāpāwai – was certainly inhibited by the State's failure to provide appropriate educational facilities. The Crown failed to pass legislation to make the Church of England fulfil the terms of the trust it had arranged with the assistance of Grey himself. The Crown was inexcusably tardy in responding to requests by Māori to set up native schools, and then it failed to resource the school adequately. That Pāpāwai developed into a centre of learning and political activism, combining English and Māori knowledge systems, is a remarkable achievement in this environment. The Government could have fostered it by providing complementary education for Māori children there. But it did not provide even the basics, although when both Grey and Seddon visited (at different times), they said that it would.

Stirling points out that the Crown was more willing to invest in the Pākehā community than in the Māori one. He contrasts the long and largely unsuccessful campaign waged by Māori to get any special assistance for education, with the establishment of the Wairarapa technical school in Masterton in 1886. Established under the Manual and Technical Instruction Act, it was initially financed by the Masterton Trust Lands Trust, a fund established by the small farms association that had founded Masterton and Greytown townships. It received substantial Government assistance later in the century, and in 1907 was expanded to create the Seddon Memorial Technical School.[215]

The outcome for Māori was quite different when they similarly tried to endow schools with land and set up institutions for themselves. Māori were right to stress the need for a boarding school to enable the education of children from scattered communities that officials considered too small and too isolated to justify special expenditure. But the difficulties of running the school, with teacher shortages, the need to charge fees, and insistence on financial procedures being followed, were ultimately defeating.

(7) *The Crown's responsibility for the gifted lands*

The Crown was not itself a trustee of the trust created in respect of the lands at Pāpāwai and Kaikōkirikiri, and this enabled it to characterise the matter as between tangata whenua and the Anglican Church. However, this took no account of Grey's direct involvement, when he persuaded Māori to gift land for the school in the first place, and empowered the trust. Now, the Crown concedes that this involvement meant it had an obligation of good faith to see that the terms of the trust were met.

Clearly, the Crown failed in that obligation.

It failed to ensure that the trust expressed in specific terms that the original gift of land was predicated on the expectation of schools being set up on all the sites gifted to offer special training to children from the donors' rohe. Its subsequent financial support for the school trust was inadequate, even though its funding responsibility was enshrined in statute. We see this as part of the Crown's generally deficient response to its obligation to fund education in those district communities that were Māori-dominated. In fact, the very existence of the trust in the district seemed to lead to a Crown attitude that its obligations to cater for Māori education needs there were fewer. This was palpably not so, especially as in fact the church was also deficient in meeting its obligations, and the brief flames that burnt – St Thomas's and Hikurangi Colleges – soon went out.

As a result of several hui and official inquiries between 1891 and 1905, the Crown was all too aware that the church had not complied with the terms of the gift and that Māori had received no benefit. Options for addressing this problem did exist. Te Whatahoro suggested Māori themselves be empowered to take over the trust, and the Native Affairs Committee recommended that the Government legislate to set aside the grant and return the land to the original owners. Seddon promised that legislation of an undefined character would be introduced to address this specific grievance, as well as that of educational provision in general. But nothing was done. It would seem that the adverse Privy Council decision, and the church's opening

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of Hikurangi College at Clareville, forestalled more active intervention until the 1940s.

Once Hikurangi College opened, the Crown seemed to think the problems with the trust were fixed. Clearly they were not. The school always struggled, and had mixed support from the Māori communities that had donated the trust land. The opinion remained that benefits from the lands gifted should go directly to the communities that gifted them. Schools for their children should be built on the land gifted for their children but not exclude others, and they should have a role in running them. In fact, it was not until the 1940s that the Government passed legislation to put the donors in a position where they could comprise a majority on the trust board. The funds earned on the lands vested in the trust board – Pāpāwai, Kaikōkirikiri, and the site at Hikurangi – were to be used for scholarships.

This decision did not satisfy everybody; the desire for a school on site remained. But it seems to us this was a reasonable compromise, given the difficulties of maintaining a boarding school in this location.

However, the question of entitlement to benefit from the scholarships remains an issue. Rangitāne claimants filed a specific claim regarding the operation of the trust, and have requested that the Papawai and Kaikokirikiri Trusts Act 1943 be amended to allow Rangitāne children access to education scholarships on the same basis as Ngāti Kahungunu children. It is clear to us, reading Māori correspondence between the 1850s and the 1940s, that the gift was intended for the education and benefit of all the Māori children of the Wairarapa district.[216] There is no indication that the benefits were meant to be limited to those whose primary tribal affiliation was to Ngāti Kahungunu. Further, it should be remembered that the Kaikōkirikiri land was gifted by members of Ngāti Hāmua, a hapū of Rangitāne.[217] Ngāti Hāmua's Rangitāne affiliation was not well understood outside Māori circles. For instance, the 1905 royal commission recommended that Ngāti Hāmua should be represented on the trust board, but described them as Ngāti Kahungunu rather than as Rangitāne. The confusion went wider than this. In June 1941, a representative komiti at Te Oreore supported the suggestion that 'Ngāti Kahungunu' should be represented on the Papawai and Kaikokirikiri Trust Board.[218] A short time later, the legislation was drafted, giving preference for trust monies to be used for 'boys and girls of the Ngatikahungunu Tribe residing in the Wairarapa district south of a straight line passing through Akitio and Pahiatua'.[219] We think this misunderstanding arose from the misapprehension at the time that all tangata whenua in Wairarapa identified as Ngāti Kahungunu. Plainly, however, Rangitāne children in the Wairarapa today should also be eligible for scholarships on the same basis as Ngāti Kahungunu children. In our view, the Act should be amended accordingly.

(8) *Conclusion*

As time went by, nothing much changed for Māori in terms of what education was made available. Leaving aside the special problem of isolated communities, the smallness of the Māori population, and the complications deriving from the church's involvement, did the Crown provide the services that Wairarapa ki Tāmaki-nui-ā-Rua Māori might reasonably have expected as a result of Treaty obligations and undertakings made?

(a) *Promises breached:* As soon as the Crown undertook its purchases in Wairarapa and opened up the district to settlement, it should have applied itself to providing the promised schools. The delay of 30 years was entirely out of keeping with what tangata whenua were led to expect, and the Crown must take responsibility for that considerable failure. Establishing settlements and ancillary services does not happen overnight, but the Crown knew that, and made the promises anyway. It was an absolute obligation on the Crown to set about educating Māori straightaway. Education was critical to Māori deriving what they needed from the colonial bargain, and failure in this area played, we think, a major role in why it went wrong for Māori.

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The position in our district is that native schools were not provided as the solution to Māori education, except in a few places and usually not for long. They were, anyway, an inadequate solution. So were the board schools, for the reasons delineated. Both fell woefully short of what Māori needed to advance in the modern world. Rather, the unsuitability of both kinds of school for Māori neither prevented nor reduced disparities in the socio-economic position of Māori and non-Māori, but instead exacerbated them.

We find that, given the promises made at the time, these failings breached the Crown's duties of good faith and active protection.

Can we also say that it was a breach of article 3 rights of equal access? We can answer this question with less certainty, because the evidence is less clear when it comes to comparing funding and quality. Fewer children went to native schools in this district than in many other places, but in those schools the low aspirations for Māori children enshrined in less academic curricula and lower qualification standards indicate that Māori children were not treated as equal.

(b) *Te reo Māori:* As regards te reo Māori, the Crown's responsibility for language and culture loss is a complex matter – especially in a district where settlers so quickly outnumbered Māori. In that situation, language and culture were always going to be under threat, and of course the extraordinary speed of the changes, and the loss of land, exacerbated the situation. Not many people saw retention of te reo Māori as an educational priority until the last 30 years. The policy of delivering instruction in English enjoyed very considerable support from both Māori and Pākehā during most of the period under review, for reasons we have discussed. The policy was wrong, and supporting it was wrong, but that is a view we reach with the benefit of hindsight. The Crown, though, shifted its position only slowly once opinion about the need to include te reo Māori in Māori children's education began to change. These voices were growing in number and intensity from the mid-twentieth century, but Government support of Māori-medium education came only in the 1980s. It would have been much less difficult to introduce Māori-medium education in New Zealand schools if the process had started earlier, when there were many more fluent speakers, and those people were younger. They would have been able to teach and to create teaching materials for much longer.

We acknowledge the efforts of more recent leaders to set up kohanga reo and kura kaupapa in the district, in the face of considerable local Pākehā opposition. We also note the lack of te reo instruction in any of the district's other primary schools. We encourage the Crown to maintain and extend its current efforts to support national language and cultural initiatives, and commend those organisations who are working to preserve te reo and other cultural taonga in the district. We recommend that the Crown, in partnership with the iwi of Wairarapa ki Tararua, continually reviews the degree of support necessary for te reo to be preserved and promoted in this region.

(c) *Pāpāwai and Kaikōkirikiri gifted lands:* The Crown failed to intervene to protect Wairarapa Māori from the wrongful implementation of their gift of land for schools. By the time the Government passed the necessary legislation in the 1940s, needs had changed, and the establishment of Māori schools on the land gifted for that purpose was no longer viable.

We find that the Crown breached the principle of active protection when it failed to step in early in the life of the trust to ensure the Anglican Church handled the gift and the resulting trust properly. It failed also – and its failure is especially critical in those first 30 years when the children of Wairarapa Māori lacked a suitable school – to help establish the schools that both church and Crown promised.

We recommend now that the Crown enters into discussions with the beneficiaries of the trust about implementing the original intention that the children of all Wairarapa tangata whenua are entitled to benefit.

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3c.3 Health

3c.3.1 Introduction

The roots of the Crown's obligation to provide health benefits to Māori as part of the colonisation deal are implicit in the Treaty itself. But like so much else in this district, health benefits were among the specific undertakings Grey made to Wairarapa Māori at the komiti nui at Tūranganui in 1853. Then, McLean and other purchase officers also invoked health and well-being as future benefits Māori would enjoy if they agreed to sell their lands to the Crown. We recall, too, how a year later, Superintendent Featherston told a gathering of Wairarapa rangatira and Government officials in Wellington that Grey's promises laid the foundation for a relationship in which the Crown would 'promote by every means in their power their future welfare, happiness and prosperity'.[220] And if there were any lingering doubts about the Crown's commitment to Māori health, the koha/five percent clauses in the early purchase deeds provided that five percent of the on-sale price would be spent on, among other things, 'the establishment of hospitals and doctors for us'.[221]

This section explores what became of these promises. What kind of health services did the Crown provide for Māori throughout the nineteenth century and into the twentieth? Was it appropriate for certain services to be funded out of the five percents? How did the services available to Māori compare with those available to Pākehā over the same period – in quality, funding, and level of access? What impact did they make (or fail to make) on the state of Māori health in the district? What is the health status of Wairarapa Māori now, and to what extent is it a legacy of the past?

Our discussion draws on the study of Stirling, researcher Monica Irvine, and Gilling, who explored health issues in the district by examining the records of health and school officials, plus a number of academic histories. These studies conclude that there were major disparities between the health status of Māori and Pākehā. They point to high mortality rates and high incidence of diseases such as

Ngā Kōrero mō te Ora: Matai Broughton

Matai Hāmuera Joseph Broughton told us of family hardship at Aohanga station and Pongaroa, and the poor health that afflicted them. One of Matai's brothers died when only five days old, another at the age of four from pneumonia, and a third from spinal meningitis. Then, in the 1950s, his father contracted rheumatic fever while working in the shearing sheds and Matai himself went down with tuberculosis at the age of 15.

Matai was a scholarship student at Horowhenua College, but after 10 months in hospital he had fallen behind at school and in his weakened state needed easy work. But he took the job that was available – pressing bales of wool with a shearing gang. 'Actually,' said Matai, 'one of the hardest jobs you could do.'

Ngā Kōrero mō te Ora: Takare Leach

Takare Hineari Leach brought a personal dimension to the bare statistics of Māori infant mortality in the early decades of the century. Her mother, Takare Te Nahu Rātapu (née Haeata), born in 1919, was one of only four children of a family of 12 who survived beyond their childhood years. Takare told us how her mother subsequently contracted TB in her spine, was sent to hospital for 18 months, and lost much of her hearing as the disease began to affect her central nervous system. Her aunt, Hineari, who had looked after the family during this period, succumbed to TB while she was at training college. Takare then moved on to her own generation, describing for us their impoverished circumstances when her father died leaving six children between the age of four months and 12 years. By this stage, there was a rudimentary social security system and the whānau survived on welfare.

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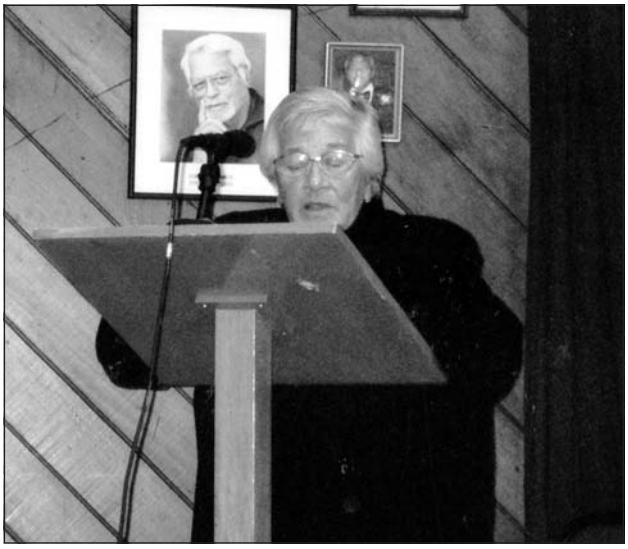

Colleen Pringle, who worked at the Social Welfare Department, giving evidence for the claimants at Pāpāwai Marae in June 2004

Ngā Kōrero mō te Ora: Colleen Pringle

Colleen Pringle brought a different perspective to the same tale of hardship, lack of opportunity, and poor health – and a social security system that only went so far in addressing Māori needs.

Colleen recalled checking through the 'dead file' room when working at the Department of Social Welfare and finding only two files for Māori who had received old-age benefits. At first she assumed the Māori files must have been held elsewhere and then realised they were missing because so few had lived beyond the age of 60.

> 'It demonstrated that the odds really were against Maori,' she testified. 'While this position has improved to some extent far better results could be achieved . . . Access to health services remains an issue for Maori and indeed the wider community. In my opinion there have been no improvements in this area.'

tuberculosis and typhoid – indicators of over-crowding and poor living standards, water supply, and sanitation.

But, like the preceding section on education, our discussion also reflects the personal experiences recounted by claimants. Their stories give the statistics a human face and show that, within recent memory, Wairarapa Māori were living in straitened economic circumstances and afflicted by poor health and disease. Once again, this serves as a reminder that, to Wairarapa Māori, what the Crown said and did at Tūranganui and afterwards cannot be confined to historical obscurity: undertakings were made and obligations acknowledged that, for the claimants at least, remain very much alive to this day.

3C.3.2 What the claimants say

The claimants emphasise that the Crown had obligations to actively protect the health of Wairarapa ki Tararua Māori by reason of both the Treaty and the commitments made by its purchasing agents. In this, their submissions reflect the findings of the Tribunal's Napier Hospital inquiry, which characterised the Crown's duty to protect Māori health against the adverse effects of settlement as overriding considerations of equity.

The claimants told us that the evidence shows the Crown failed in this Treaty duty in Wairarapa ki Tararua, and also failed to follow through on its early promises made to Māori during purchase negotiations. The effects of these failings have been far-reaching and long-lasting. As counsel for Ngā Hapū Karanga argued:

> The failure of the alliance, compact or new understanding that Maori believed would be established and maintained at Turanganui, the cumulative loss of land through Crown purchases, the Native Land Court and twentieth century alienations, rapidly resulted in the complete social, political and economic marginalisation of Wairarapa ki Tararua Maori. The failure of the Crown to even attempt to mitigate this loss and [*sic*] compounded that loss is confirmed

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in the evidence of Mr Stirling and Dr Gilling. The points that should be highlighted in this inquiry district are the effects which persist today, demonstrated through the wide range of issues raised by the claimants relating to negative health, employment, resource issues and loss of culture.[222]

The claimants say the statistics reflect the Crown's actions and omissions on Māori health. Throughout the nineteenth and much of the twentieth century, Māori suffered from significantly higher rates of communicable diseases and mortality than Pākehā. While the gaps have narrowed over the past 50 years, Māori still have lower life expectancy and higher rates of disease and mortality than Pākehā.

The claimants argue that such poor health outcomes were inextricably linked to Māori landlessness and poverty. Moreover, counsel for Ngāti Kahungunu told us that Crown officials – at least by the twentieth century – recognised that link. Officials were aware of the difficulties faced by Māori in accessing medical assistance, and that health services were limited, under-funded, and beyond the means of many Māori.[223] Yet the Crown did not respond with appropriate protective or remedial health policies.

Counsel for Rangitāne cited these failings in the area of health:

- the provision of only one doctor for the whole of the district, to whom Rangitāne, based in more outlying areas, had less access;
- the failure to maintain that service;
- the failure to open a hospital in Wairarapa until 1875 and, in Tāmaki-nui-ā-Rua, until the early twentieth century; and
- the failure to respond (except negatively) to the many pleas from Māori for an extension of the medical service provided.

3c.3.3 What the Crown says

As with education, the Crown offered no evidence on health and healthcare, but did address the question in final submissions. It acknowledged that it had made a clear commitment during purchase negotiations to provide health services, and that it was 'justifiable for Māori to expect a reasonable degree of government activity in the areas of education and medical treatment since these were so often mentioned'.[224]

The Crown also agreed that there was 'disparity' for Māori on a number of social indicators. However, counsel urged the Tribunal to consider the 'context of the time and the resources and knowledge available . . . during the periods under review'.[225]

It also emphasised that the Government had taken steps to address Māori health issues, even though this was an isolated rural community where both settlers and Māori were 'likely to have had limited access to medical services'.[226] These steps included:

- setting up the native medical officer system at a time when no similar subsidised system was made available to Pākehā;
- building hospitals at a number of locations in the inquiry district after 1875, and moving to set aside a special room for Māori at Masterton hospital in the early 1880s.[227] The Crown noted that this was at a time when hospitals were limited in their ability to provide effective treatment as 'many diseases that people suffered from . . . had no cure'.[228]

On the other hand, the Crown acknowledged that the deduction of half the expenses for the services of a native medical officer from the five percents in Heaphy's 1880 disbursement of the fund does 'raise . . . problems given that earlier discussion . . . does not appear to have occurred', and Māori objected to the Crown using the five percents in this way.[229]

3c.3.4 The Crown identifies the problems, 1840–1900

We have seen how a commitment to health and well-being was a key bargaining chip in the Crown's early negotiations with Wairarapa Māori. It also seems likely that Māori had real expectations for better health through their

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relationship with the Crown, and especially better access to western medical knowledge, given the failure of traditional (and then missionary) responses to the illnesses that had so severely depleted their population over the previous 40 years. As time passed and the Crown's health measures also proved inadequate, Māori wanted to have a say in what health services were provided to them and how.

(1) *Population decline, 1769–1901*

The arrival of Europeans had a catastrophic impact on Māori health and mortality. According to the most authoritative demographic research (undertaken by Ian Pool), the general Māori population fell from 100,000 in 1769 to 70,000–90,000 by 1840, largely as a result of introduced diseases.[230] That decrease occurred despite dietary improvements as new food sources became available. The impact deepened in the 1820s and 1830s, as ships began to visit more frequently, and intensified again as settlement began in earnest. Many new infectious diseases became entrenched, especially in the towns. From there, they spread through Māori communities that had limited immunity. Tohunga were powerless against the new epidemics or tokotoko rangi (influenza, measles, whooping cough, and tuberculosis) which they considered to be mate atua (sickness beyond human control). As the *Napier Hospital and Health Services Report* observed, in the 1840s and 1850s – well before the full impact of land alienation hit home – Māori had already lost 'social and political control over the major causes of their ill-health'.[231]

The decline in their numbers was to continue until the 1890s. Then, for reasons discussed later in the chapter, it halted and the population began to recover.

The Wairarapa region conformed to this general picture, although the sources do not allow us to measure precisely the impact of European arrival on local Māori health and morbidity. Census data relating to iwi and hapū, especially in these early years, was extremely limited, and data for particular locations was erratic because Māori populations were usually mobile. However, the information we do have suggests that the region's Māori population was declining even before there was extensive contact between the two races. The first official attempt to count the local Māori population was made by Native Secretary Kemp over a five-month period in 1849. He estimated that 780 people were living in 16 main settlements; almost half were based in three main pā in the central valley (Ōtarāia, Kaupekahina, and Kaikōkirikiri). The 1857 census put the population at 740, and Colenso's observations reinforce these figures. On his intermittent visits to the region, he noted the many deaths that had occurred in his absence. In 1850, he recorded the names of 56 Wairarapa Māori who had died over the previous year, estimating this to comprise one-thirteenth of the local population. In 1851, there had been 39 deaths south of Rangiwhakaoma, which Colenso thought equalled one-sixteenth of the local population. In the year after that, another 47 died.[232]

Stirling cites the calculations of other visitors and officials in late 1850s and 1860s. In 1856, Reverend Ronaldson came up with a count of only 500 to 600, although he did not visit a number of the more remote communities and subsequently revised his figure upward to 700. Stirling points out that even this higher figure seems to be an under-estimate, given that the official census in 1857 recorded the population at 740.[233] Wardell's official census in 1874 recorded 742 people. As many as 68 of them were born outside the district, masking to some extent the local decline.[234]

While the Māori population of Wairarapa remained static at best, the number of immigrant Pākehā rose rapidly. In 1856, Māori were still the majority, but within two years, Pākehā numbers had risen to 1000 and, by 1864, that figure had doubled to 2000. By 1873, Wardell reported that settlers outnumbered Māori six to one. Native Agent Maunsell estimated that the ratio had increased to 14 to one by 1880.[235]

Although the census provided more consistent population figures after 1874, it is still difficult to describe with certainty what was happening to Ngāti Kahungunu and Rangitāne. Hapū affiliations were not reliably recorded

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and significant numbers of Māori who came from outside the district were included in the count. Also, the boundaries of the census district changed; the inclusion of Rangitāne at Ngāawapūrua and nearby Hawera kāinga for the first time in the 1880s, for example, distorted the overall figures for the district. Stirling speculates that in fact the population fell even lower than was indicated in the official census figures. These hovered around the 700 mark until the turn of the century; in 1901, 837 Māori were recorded – about the same as 50 years earlier. Even so, this figure included 89 Māori who were of neither Ngāti Kahungunu nor Rangitāne descent, as well as 'mixed race' individuals described in the census as 'living as members of a Maori tribe'.[236] Significantly, however, the dangerous level of infant mortality recorded in the 1870s and 1880s had begun to recover. The very low ratio of adult women producing children in those years (100:100) had climbed to 118:100 by 1901.[237]

(2) *The Crown's duty to minimise the health consequences of colonisation*

Similar calamitous population decline was experienced by other colonised peoples, and was anticipated by the British Government in New Zealand too. Policy-makers expressed widespread anxiety that indigenous peoples would die out because of colonisation; the influential 1837 report of the select committee on aborigines, for example, lamented the depopulation of 'uncivilised nations' resulting from the introduction of 'European vices and diseases'.[238] Busby's dispatch of that same year similarly predicted that death from disease, along with other causes such as warfare, would soon wipe out the Māori population – including that of mission stations.[239] Two years later, Lord Normanby, Secretary of State for the Colonies, postulated that the influx of settlers following the New Zealand Company expedition would, 'unless protected and restrained by necessary laws and institutions', result in 'calamity to a numerous and inoffensive people'.[240]

Protecting Māori from the adverse effects of unsupervised and unregulated settlement, including worsening health, was thus a principal concern of the Crown at the time the Treaty was signed. In the Napier Hospital inquiry, the Tribunal said this provided an important context to the promises of protection contained in article 2, and it accepted the claimants' argument that the 'Treaty of Waitangi was concerned with much more than the protection of physical resources; human protection was also intended'.[241] The main dangers were perceived to arise from lawlessness and immorality, but the impact of introduced diseases and the effects on Māori health were also identified as risks associated with settlement. Therefore, the Tribunal found that the Crown had a responsibility to attempt to remedy that problem (and other known dangers associated with colonisation) – even if its causes were not fully understood.[242]

It was another matter for the Crown to translate this responsibility into concrete health policy. It was constrained not only by the limits of nineteenth-century Western medicine – and we agree that these are critical to assessing the Crown's responsibility for ill-health – but also by the limitations of its own colonial policy.

In his famous instructions, Normanby laid down the general aim of promoting the civilisation of Māori – by which he meant their social, intellectual, and religious advancement. But he offered no advice on how exactly this was to be done. A number of more specific proposals followed, along with a basic commitment to devoting part of the monies generated by the Crown's on-sale of cheaply acquired lands to Māori purposes, including health.

(3) *'Economy in public expenditure' limits health initiatives*

Normanby's successor as Secretary of State for the Colonies, Lord Russell, directed that 'economy in public expenditure' was to be Hobson's first concern and that he should prioritise the 'more immediately pressing' objectives. But he said 'the public health and safety must, for example, precede every other care'. One of Russell's six major policy aims for the protection of Māori was the 'avoidance of every practice towards them tending to the destruction of the health or the diminution of their numbers', and he

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warned against the dangers of attempting to assimilate Māori too rapidly:

> I must also commend to your attention, and that of the protectors acting under you, a due regard to those laws which medical skill and experience may have established regarding the effect of sudden changes in dress, diet, and modes of living, on the health and longevity of men brought up from infancy in the habits of savage, or at least of uncivilized, existence. To the neglect of these rules, or to the hasty and inconsiderate formation of them, is, perhaps, to be attributed much of that rapid mortality which has attended all such tribes when taken under the care of European guides, even though animated by the most lively solicitude for their welfare.[243]

In January 1841, Russell directed that 15 to 20 of the land fund be allocated to the Protectorate Department to defray operational costs and:

> all other charges which, on the recommendation of the protector, the governor and executive council may have authorised for promoting the health, civilisation, education, and spiritual care of the natives.

The Secretary of State for the Colonies repeated this wording when he defined the trustees' mandate for the endowment that would be created.[244] Earl Grey subsequently assigned the land fund to assist immigration, and purposes as prescribed 'from time to time by instruction'.[245] However, Governor Grey later argued that Russell's 1841 instruction setting aside an endowment for 'health, civilisation, education and spiritual care' was still in effect.

However, the expectation that the colony would be financially self-reliant hampered early protective strategies. Successive secretaries of state bound Māori welfare provisions to the success (or otherwise) of the land fund. Little was done to implement 'civilising' or welfare policy because little land was on-sold and the coffers were therefore empty. In the early 1840s, the colonial treasury was virtually bankrupt, while the costs of the protectorate consumed what little funds were generated. The *Napier Hospital and Health Services Report* points out that, in 1842 – the same year trustees were appointed to oversee the land fund endowment – the Government was turning down most hospital proposals because there were 'no efficient means . . . for administering medical aid to the Natives until sufficient funds are procurable'.[246] Three years later, Bishop Selwyn, as one of the trustees, complained that early expectations that schools, hospitals, and hostelries would be financed out of the fund had been dashed: nothing was yet done.[247] A rudimentary system of subsidised healthcare was, however, established in the mid-1840s, largely through the appointment of native medical officers. These officers – usually colonial surgeons based in the towns – were subsidised out of the endowment fund to provide medical treatment to Māori living in nearby kāinga.

The arrival of Governor Grey meant a more active welfare policy was pursued alongside that of land purchase. This involved more than simply using the profits from reselling land to fund health and welfare services: medical benefits were central to Grey's efforts to demonstrate to Māori the advantages of settlement. Arguing that not a single hospital, school, or institution had been created by the Protectorate Department, he abolished it. Grey then proceeded to build public hospitals in Auckland, Wellington, New Plymouth, and Wanganui. Again, he justified this step to Earl Grey on the grounds that Māori would be the main beneficiaries and that providing hospitals based on the 'European system' would be a 'means of assisting in the civilisation of the inhabitants of this country'.[248] He also established a district administrative system for the native medical officers, with responsibility for the expenditure devolving (at least in theory) to the resident magistrates. In practice, however, the Colonial Secretary continued to make many of the decisions.[249]

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Then, in 1850, Grey attempted to place healthcare for Māori on a sounder footing by introducing civil list payments for native purposes. This was defeated after opposition by the settlers. Under the Constitution Act 1852, however, a fixed amount of £7000 was earmarked for Māori purposes in the civil list budget, which remained under the control of the Governor. This sum was intended to cover the costs of medical care, pensions, and rations for the indigent.[250] The koha/five percents endowment was also introduced at this time (see ch 3D).

(4) *How much was spent?*

Grey's initiatives of 1845 to 1853 – one providing public access, the other, a specialised service – set the direction of colonial Māori health policy for the next 50 years. But far from being improved on, special services were starved of funds well into the twentieth century, and regularly fell victim to cost-cutting and inter-departmental buck-passing. The civil list budget remained unchanged for almost a century, and, from 1866 onwards, was transferred to reduce the 'permanent charges' on expenditure for native purposes under the Native Purposes Appropriation Act passed four years earlier. In general, throughout the nineteenth century, the colonial legislature was reluctant to devote much money to this purpose, except in times of crisis.

In his book, medical researcher Dr Derek Dow points out that it is not easy to calculate the actual level of expenditure on Māori health in the following decades because the presentation of Government's annual accounts 'changed with bewildering frequency and items sometimes migrated from one category to another'. Matters were further complicated by the creation of a separate set of accounts for expenditure under the Native Purposes Appropriation Act 1862. Dow's breakdown of the 1860s figures is as follows:

- 1861 and 1862: £2137 largely for hospital expenses with a modest amount for medical attendance;
- 1862 and 1863: £3192 on 'medical attendance on Natives', out of the almost £25,000 for native purposes;
- 1864 and 1865: no figures available for health expenditure – £32,000 for native purposes;
- 1867 and 1868: £1419 on hospitals and medicines – another £2344 on doctor subsidies;
- 1868 and 1869: £802 on doctor subsidies, out of £6581;
- 1869 and 1870: £968, out of £5311.

Only one set of figures gives any indication of what was being spent regionally – £300 for medical attendance in Hawke's Bay, compared with £687 in Wellington, £1160 in Auckland, and as little as £25 for Nelson and Marlborough in 1867 and 1868. The best that can be said of these amounts is that expenditure was erratic, possibly as a result of the upheavals of war.[251]

The land wars ushered in a period of unprecedented settler ill-will towards Māori. Total expenditure on native affairs was reduced, and spending devoted to health remained static. Native ministers were keen to ensure their expenditure on native purposes (including, of course, the cost of the salaries of Native Department officials) did not exceed the £7000 from the civil list allocated 25 years earlier. Dow points out that in most years until the 1890s, the sum spent on medical officers was less than £1000. In the 1870s, the Government began to apply funds from the 'tenths' and also the five percents to the costs of medical attendance. After responsibility for Māori matters transferred to the Justice Department in 1893, a greater proportion of the £7000 was to be devoted to health purposes, and annual expenditure on medical attendance never fell below £1500. As the century turned, Māori health was given greater priority, and from 1905 onwards the budget allocations increased to an annual minimum of £3000.[252]

As for public hospitals, these were funded by a mixture of Government subsidies, local rates, voluntary contributions, and patient payments. But the first hospital came relatively late to the Wairarapa and at a time when Māori were increasingly marginalised (1875). Perceived as non-contributing because, on the whole, they did not pay rates – and for reasons of racial prejudice – Māori were

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unwelcome in the general hospital system. We return to this issue later in the chapter.

3C.3.5 Provision of medical services in Wairarapa, 1853–1935

In order to assess the Crown's provision of health services in this period, we have identified the five main categories of activity that it funded:

- native medical officers 1853 to 1914;
- native schools and distribution of medicines 1880 to 1910;
- public hospitals 1875 to 1910;
- Maori councils and the Public Health Act 1900 to 1935; and
- district health nurses 1911 to 1935.

We now examine each of these in turn.

(1) *Native medical officers, 1853–1914*

From the 1850s, provision of medical benefits to Māori continued to be talked about in official circles, and various schemes were proposed, but no developments ensued. Some Māori became better able to access those developed for the general population, but for most of the nineteenth century, 'active protection' in terms of Māori health boiled down to the provision of native medical officers.

In 1854, the year after Grey's negotiations at Tūranganui, William Fitzherbert, Wellington's Provincial Secretary, proposed dividing the country into medical districts. In each, a resident doctor would be appointed to provide services to Māori, and would receive a part-time salary.[253] But it was not until the end of the decade that a number of doctors became native medical officers. When Grey returned to New Zealand in 1860, he continued to promote health as part of the Government's civilising mission. His 1861 'Plan of Native Government' proposed that:

> The Native portions of the Northern Island . . . be divided into, say twenty Districts, each under a Civil Commissioner, with a Clerk and Interpreter, and a Medical man as district surgeon attached to his District.

The number of native medical officers increased from eight to 17 in 1864, and to 29 in 1866. Dow has estimated that, in 1866, approximately 20 per cent of the colony's doctors were receiving subsidies to care for Māori.[254] However, these numbers give no indication of what service was actually delivered, which populations could use it, nor whether it met their needs. Māori in Wairarapa occasionally complained, as others did elsewhere, which indicates that the service provided was not always adequate – although, as we discuss below, Māori did not reject it altogether. In fact, some argued for its expansion.[255]

Dow comments that the workloads of the medical officers 'varied enormously, as did salaries, though there seems to have been little correlation between the two'.[256] That variation was not just between districts but also within them. Only Māori living within easy reach of townships (15 miles) or those prepared to make their own journey into town from further afield could be reasonably assured of 'free' medical treatment. In the case of Wairarapa ki Tararua, this meant Māori communities in the lower valley and near the main townships – initially Greytown and Featherston, and later Masterton – received a measure of subsidised care, while those in outlying districts generally missed out, except for occasional attention when there were outbreaks of communicable diseases. The service was also vulnerable to retrenchment policies. As State funding of health for Māori became more closely tied to assessments of indigence, Wairarapa ki Tāmaki-nui-ā-Rua Māori tended to miss out because they were seen by the Native Department (and subsequently, the Health Department) as comparatively 'well-off'. Their low population also militated against their receiving special attention.

By the late 1860s, Native Minister Andrew Russell, believing that many Māori could pay their own bills, 'objected to the system of pauperizing the Natives by giving them so much gratuitously' and dismissed several medical officers.[257] In the following decade, McLean restored the

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network, and about 24 medical officers were appointed throughout the country, but this number increased little over the next 20 years. Records indicate that there were never more than 30 subsidised doctors before the mid-1890s. The coverage remained very uneven; there was a disproportionate number in the South Island because, there, the Crown used the Nelson native reserve (or tenths) fund to pay for the service.[258]

(a) *Native medical officers in the Wairarapa:* In the Wairarapa, there was a native medical officer early on. Dr Henry Thomas Spratt was appointed in May 1859 – six years after Grey's big talk at Tūranganui.[259] Spratt seems to have quickly reduced his rounds, basing himself at Greytown and rarely visiting coastal kāinga or more remote areas. The quarterly reports show that the great majority of his patients came from Pāpāwai or Waiohine.[260] (A Dr John

A group of Māori outside the whare puni at Te Ore Ore near Masterton in the 1870s. The circumstances of these Māori do not seem to qualify them for the Native Department's assessment as being comparatively well off. We consider that State funding for health services should have been available for Wairarapa Māori.

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Smith attended Māori patients on the east coast from 1862, but his subsidy was terminated in 1866.[261]) Dow assessed the effectiveness of the service based on Spratt's quarterly report for the three months from July to September 1877, and concludes that 'more than three-quarters of patients were visited in their own homes, which involved the doctor in return journeys of between four and 35 miles'. He estimates that Spratt saw 137 patients or 1.5 per day. Compared with Alexander Leslie in Taupō, who saw between 400 and 500 in three months, this seemed a light load.[262]

In 1881, a smallpox vaccination was offered to Māori in the Wairarapa, but the response was 'lukewarm', with only 330 people coming forward out of a population of between 700 and 800. Spratt reported that he had had 'great difficulty in inducing them to meet or come to him for the purpose' – quite possibly a reflection of how generally difficult it was for remotely located communities to access centralised services.[263] Returns for 1877 to 1883 show that Spratt treated mainly respiratory ailments.[264] Illness, particularly chronic conditions such as tuberculosis, was widespread, but there seemed to be few major outbreaks of disease.

(b) *Opinion about the native medical officer service divided:* The opinions of Wairarapa Māori about the native medical officer service were divided. Clearly some were disappointed, or continued to practise their own medical remedies. Some were made to feel importunate when they asked for the doctor's assistance. But many utilised the services available and others demanded their expansion. In general, Māori seem to have preferred – and certainly could more easily access – the medical officers' services over those provided at the public hospitals.

Stirling gave evidence about two petitions signed in 1869. One was from 153 Māori calling for Spratt's removal; the other was from 74 Māori calling for his retention.[265] A third petition filed shortly afterwards referred to Spratt's 'unsatisfactory treatment of those requiring medical aid', and again asked the Government to discontinue his services.[266] In 1873, at the hui Heaphy called to distribute the five percents, Te Mānihera 'condemned in strong language' any deduction from the fund for medical attendance, schools, or mills.[267] Heaphy subsequently reported that Māori had objected to any liability for the doctor's salary: he was seen as 'no good'. Heaphy attributed this to complaints by Karaitiana of Masterton, who blamed Spratt's lack of skill for a poorly-set and shortened leg.[268] But an alternative version was that Karaitiana removed the splint too early, which made his complaint less plausible.[269]

In the 1880s, the question again arose: should Māori have to pay a portion of Dr Spratt's salary, and if so, who should pay and how much? When the Government moved to distribute what was left of the five percents in 1880 and 1881, Under-Secretary Lewis advised Native Minister Bryce that he thought the portion of Spratt's salary that had been paid since the last division (in 1873) should be stopped from the sum available. This, he anticipated, would leave 'comparatively a small amount for distribution'.[270] Bryce approved the disbursement of the fund on these terms – and when Heaphy questioned whether the full salary was to be deducted, he confirmed that this was the case: it was to be deducted 'full, since last payment'. Ultimately, however, and for unexplained reasons, Lewis instructed Heaphy that the koha/five percents fund should be liable for half the costs. He also advised that it was not to apply to Māori who were outside Spratt's medical circuit.[271] Heaphy reported back that he did not think the principle a 'sound one'. Practically all Spratt's Māori patients lived 'at Greytown or very near it', whereas all the lands generating the five percents within Spratt's circuit had already been sold. There was not enough left to pay for even a quarter of the cost of his attendance. On the other hand, a large extent of unsold land remained in the upper valley and coast, from which 'considerable sums' might still accrue. However, these blocks were outside Spratt's circuit, or so distant that Māori had to seek other assistance.[272] Faced with this problem, Heaphy decided to charge half of the percents owing on the lower valley and a third of those on the upper, for the costs of the salary.[273] In his view, Māori

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had 'tacitly agreed' to Spratt's appointment, since the communities based at Pāpāwai and the lower valley had used his services. But Heaphy admitted he could not 'learn of any concurrence of the natives' that a portion of the cost was to be a charge against the koha/five percents fund. 'Certainly,' he reported, 'the natives of the upper valley and the coast blocks protested against it when I paid them . . . the balances.'[274]

Erihapeti Whakamairū, one of the earlier petitioners asking for Spratt's removal, repeated her complaint when the funds generated on her hapū's lands were charged for medical attendance. Being charged for a service that did not extend to communities outside the immediate vicinity of Greytown was one cause of her dissatisfaction with the five percents, together with the failure to build hospitals, schools, churches, or flour mills.[275]

Heaphy's report on Erihapeti's petition was filed without comment. Māori had to accept the charge if they wanted the fund to be disbursed, but reached no decision on how the costs would be divided in the future. Eventually, Spratt's employment was allowed to lapse after Maunsell (who was also Spratt's son-in-law) failed to get the Native Committee to agree to any arrangement for paying Spratt. Māori were also still complaining that they did not get adequate attendance from him. Spratt was not replaced for the next two decades. Any extra assistance for Māori came through the native schools (discussed below), unless there was an outbreak of serious communicable disease, when the Government paid the long-standing local practitioner, Dr Bey of Greytown, to attend affected kāinga.[276] Otherwise, those who needed medical attendance had to pay for it themselves.

When the Doctor's Bill Means Debt

By the 1880s, Government-funded health services to Wairarapa Māori had largely ceased. With a cost of between £6 and £10 per visit to the doctor, many Māori struggled to find the money to pay for their medical attention. Occasionally, Māori had to resort to their land assets to settle their bills. This could involve selling, leasing, mortgaging, or seeking advance rent payments on their land.

In 1900, Arawhita Manuera found herself unable to pay her medical bills so she sold her valuable Akura No 15 and Akura No 3c (part) blocks to Elizabeth Wagland for £250. In 1902 Hoani Enoka tried unsuccessfully to mortgage his property to pay for medical care and costs arising from attending numerous tangi. Later that year, the situation worsened when one of Hoani's children fell ill. In February 1903, to pay for the care and to buy food for his family, Hoani secured a mortgage of £150 at an interest rate of 10 per cent.

The case of Hoani's whanaunga (kinsman) Ematini Enoka demonstrates what could be involved in obtaining medical care. Very ill, but lacking the funds to pay for urgent medical attention, Ematini sought five years' advance rent on property he had leased out. To achieve this, he engaged the services of one Mr Hutton, the local Māori land agent and interpreter. Hutton charged £3 3s for translating the rent agreement and travelling to Pāpāwai for signature by Ematini and a justice of the peace.

With costs like these, it is to be hoped that the doctor's attentions were efficacious!

(c) *Would Wairarapa Māori have to pay for their medical care?:* Wairarapa Māori complained that charges of £6 and £10 in doctor's fees were well beyond their means, and Stirling brought to our attention a number of cases in which Māori had to sell land to cover medical expenses.[277] Increasingly, the Government confined its funding of health services to 'indigent natives', a term frequently used at the time to describe Māori who were aged, poor, infirm, crippled, and without relatives to support them. For reasons that are now difficult to discern, Wairarapa Māori were not seen as falling into this category.[278] They were neither numerous enough, nor poor enough, to merit special attention; that they were entitled to it, by reason of the deeds they had signed, was not a notion to which any

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official referred. Māori, though, clearly recalled the undertakings at the komiti nui and in the deeds that followed immediately afterwards, and they continued to request medical assistance on that basis.

Denying Government-funded medical care to Wairarapa Māori was at odds with the relationship that the then Liberal administration of 1891 to 1912 wanted to forge with moderate Māori leaders, and Seddon's and Carroll's efforts to bring it about.

At Pāpāwai, there were numerous petitions and important discussions with Seddon himself. At a national level, too, there seemed reason for Māori to hope for better access to basic medical care, and also for a greater role in providing health services to their own communities. But Seddon was prepared to go only so far. The Crown's apparent agreement that medical services for Māori needed to be improved, through expanded infrastructure and greater participation of Māori themselves in their delivery, was soon reversed.

(d) *Māori petition for medical services:* During this period, Wairarapa Māori sent numerous petitions and requests to the Government for more and better medical services.

In 1895, Paratene Matenga and 230 others petitioned for the appointment of a doctor in accordance 'with the promise made by the Government and its Land Purchase Commissioners in the years 1853–1854 when they were purchasing the Wairarapa lands'.[279] Greytown Stipendiary Magistrate Hutchison was asked to report on the petition. He suggested that doctors should be appointed and cottage hospitals created 'for natives only', but nothing was done.[280]

In May 1898, Premier Seddon made a verbal undertaking to provide medical services to Māori.[281] Stirling notes that Seddon had ensured a doctor was available to assist ill Māori during the hui at Pāpāwai, where he had also informed his listeners, 'I think a reasonable amount should be spent every year to try and preserve the lives of the natives, by giving them the aid of skilful doctors.'[282] However, the perception remained that Wairarapa's case was not urgent.

Captain Hoani Tunuiarangi wrote directly to Premier Seddon shortly afterwards, asking for Dr Bey to be permanently appointed as a doctor for Māori. This request was refused on the advice of the Under-Secretary of the Justice Department that 'the Wairarapa natives are fairly well off, and can afford to pay for medical attendance'.[283] Tunuiarangi made another request in July 1898, also without success.

In June 1899, at Pahiatua, Nireaha Tāmaki met with the Premier and asked for a doctor to be appointed for Dannevirke and Pōrangahau, presumably because local general practitioner Dr Gault had difficulty travelling such long distances to see patients in relatively inaccessible places.[284] The matter was referred to Native Land Court Judge Butler; he reported that while local Māori could pay for medical services, they continued to prefer traditional methods. In light of this response, Justice Under-Secretary Waldegrave recommended that no medical officer should be appointed to attend patients in the area.[285]

In June 1899, Nireaha Tāmaki and 185 others wrote to Seddon asking that he 'authorise the attendance of a Doctor for our district to protect us from the numerous ailments of the world'.[286]

In September 1899, a petition was sent to Seddon asking for a medical officer to be appointed to Norsewood as 'Maori doctors had been abolished'.[287]

Another petition was filed in May 1900 by Captain Tunuiarangi asking for the appointment of a permanent subsidised doctor.[288] The only response to this petition was the one-off visit of a doctor to Kohunui to treat Māori residing there.

The service to Wairarapa was then briefly expanded, as Seddon gave limited effect to his undertakings at Pāpāwai. In August 1899, Dr John Ross was given a subsidy of £25 to attend the Māori population of the Takapau district. According to Irvine, Ross was directed 'to only visit the Natives in cases of their inability to attend his residence'.[289] The following month, Ross stated that he would not visit

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Dr Māui Wiremu Pōmare alongside a raupō whare in 1911. Pōmare was health officer to Māori.

'Natives at any place other than Takapau'; he complained that his potential patients were 'always moving around' and calling him to out-of-the-way places.[290] This stance was fully approved by the department.[291] The Māori perception, however, was that Ross had offered better service before receiving the Government subsidy.[292]

Seddon also instructed the Justice Department Under-Secretary to offer local general practitioners Gault and Palmer £25 per annum to work as subsidised doctors.[293] Palmer does not appear to have taken up the offer, but Gault did.[294] When Gault left in 1901 he was replaced by Dr H T Dawson who reported there were about 100 Maori in the area, spread between Hāmua, Tūtaekara, and Ngā Awapūrua.[295] Two years later, at Dawson's instigation, the

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subsidy was increased to £50 so that he could attend these communities.[296] Then in 1909 his services were cut to save costs. Although Dawson maintained that Māori in the district only had money to pay for doctors or medicine at shearing time, Chief Health Officer Mason disagreed. He told the Minister of Public Health:

> This I think is one district which hardly needs a Medical Attendant for indigent natives. The Natives are few and they are fairly well off. I recommend that Dr Dawson's services be dispensed with.[297]

In July 1908, Rimene and 103 others of Ngāti Hāmua sent a petition to Dr Māui Pōmare, who was health officer to the Māori. Pōmare recommended to Dr Mason that a medical attendant be appointed, stating, 'I believe in the terms of the Deed of sale of the Wairarapa Maori lands to the Government, provisions were made for the free attendance of the natives of that district.' He further recommended that an appointment be made for the Lake Māori.[298] Dr Mason forwarded the minute to the Minister of Public Health, adding:

> as to the question of right in virtue of the covenant entered into at the time the lands were bought, I have always advised the natives to make representations to the proper quarter. We can only help indigent natives.

The Minister's response was unequivocal: 'We must not undertake any responsibility arising out of the sale of land.'[299]

Commitment to 'indigent natives' remained. Dr Cowie of Masterton was appointed in 1908 and was paid £25 to subsidise his attendance on indigent Māori, but only 'within two miles' of his surgery.[300] He too lost his subsidy in 1911 as part of cost-saving measures.[301] Presumably, the official belief remained that Wairarapa Māori could afford to pay for medical attendance themselves and needed no special assistance. Dr Dawson's subsidy of £50 was restored in 1920 after he wrote to the Government pointing out that he had continued to treat local Māori, frequently without reimbursement.[302] However, after two years, the subsidy was cancelled; the record gives no explanation.[303]

In 1910, Mihi Reita, Tangi Matutaera, and 17 others based at Whakataki petitioned Carroll to have medicines supplied through the local public school, as it was too difficult for them to travel to Masterton.[304] There appears to have been no official response, apart from 'stand over' written on the petition. Another local request that year was denied on the grounds that medicines could be provided only to native schools (this was a board school – although one where Māori outnumbered Pākehā on the roll), and because, in Carroll's view, local Māori could 'hardly be called indigent'.[305]

(2) *Native schools and the distribution of medicines*

In the 1880s, the teachers at the local native schools stepped into the vacuum created by the removal of the doctor's subsidy, and became recipients of some minimal State assistance. This arrangement continued into the twentieth century.

As noted earlier, Pope became the first inspector of the native school system in 1880. He initiated the school-based medical service, and wrote the manual *Health for Maori*, which was published in Māori in 1884. Providing practical advice on personal and community health measures, the manual was widely disseminated to Māori communities. Teachers also dispensed medicines and health advice, not only to their pupils but to the whole community – a basic but valuable service. According to historian Raeburn Lange, teachers 'succeeded for many years in making [medicines] available to many areas that would not otherwise have had them'.[306] Often, too, it was the native school teachers who were called when epidemics struck a Māori community. According to Lange, they provided 'the most comprehensive Maori health work before 1900'.[307]

Stirling points out, however, that it was the lack of other Government support (ie, subsidised doctors) that made the native school teachers' medical role so vital.[308] The teachers tended to be closely involved with the local Māori community through their pupils, and – as in the case of

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Ōkautete – they lived in the same remote communities where town-based doctors seldom came.

In this district, though, native schools were few, so health assistance provided through this channel was extremely limited. After Wairarapa's first shortlived school for Māori pupils, St Thomas's College (1860 to 1864), there were no more until the two native schools opened in 1882. Te Oreore school closed by 1889, while Pāpāwai lasted until 1905; there was also the tiny Tūranganui School from 1899 to 1914, and the longer-lived Ōkautete School (1906 to 1962).

Despite the patchy operation of native schools in the region, their reports provide the most complete and reliable picture of the health of Wairarapa Māori from 1883 onwards. They suggest that ill-health was a significant cause of school absences, and report a number of epidemics: for example, an outbreak of typhoid at Pāpāwai in 1889, and influenza in 1892 and 1904. Similar illnesses were recorded at Te Oreore.[309] The records at Ōkautete (the only native school remaining in the district after 1914) indicate that high levels of tuberculosis and general ill-health continued into the twentieth century, and contributed to poor academic performance.[310] In the absence of any health professional, there was 'rarely a week' when the local teacher had 'not some patient to attend to'.[311]

Medical supplies were, however, limited and had to cover the wider whānau as well as the school-children. Pleas for Government assistance were often refused because they fell outside the rules, or the matter was not seen to be pressing. For example, in 1889, when the teacher at Pāpāwai School requested funds to purchase disinfectant during an outbreak of typhoid at Gladstone, the Education Department refused on the grounds that:

> the supply of medicines for Native Schools is entirely in the hands of the Native Department. This Department will not grant medicines unless in cases of considerable urgency.[312]

And, in February 1910, a request from the Ōkautete teacher for further ointment and cough mixture was similarly refused: it was 'found impossible to supply anything but stock medicines, except where there is urgent or absolute necessity'.[313]

That was the total of special provision for Wairarapa Māori in the nineteenth century. To what extent, then, were Māori able to benefit from general public health provision as citizens of New Zealand?

(3) *Public hospitals*

The Tribunal acknowledged in the Napier Hospital inquiry that Grey's support for building public hospitals was 'in some respects in advance of prevailing policy in Britain'.[314] But it was of little immediate benefit to Wairarapa Māori. Stirling points out that Wellington Hospital was too distant to be likely to be of any real value to them; there is no record of it treating any Wairarapa Māori as patients in the early years of its operation.[315]

Public hospitals were intended to provide for the destitute, as in Britain, but also specifically for Māori. Grey argued that this was important to convince Māori of the benefits of western knowledge and European institutions. Staffed by men qualified by 'education, manners and position in society to gain the regard and esteem' of Māori and to 'fully provide for the medical wants of the important districts in which they are situated', hospitals would 'produce very beneficial effects on the native race'.[316]

The relationship between Māori, hospitals, and the Crown became more complex after provincial government came in under the 1852 Constitution Act. What was the provincial government's responsibility for funding the care of Māori patients? The rapid increase in the European population from the 1860s had ended the earlier relative equality of treatment and, according to Dow 'changed the ethos and function of New Zealand's hospital system'.[317] Central government resumed control of hospitals from 1877 until 1885, when the Hospitals and Charitable Institutions Act created a national system of administration under local hospital boards.[318] All hospitals were funded by a mixture of Government subsidies, local rates, voluntary contributions, and patient payments. Māori had a role in this – even if only as citizens whose

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Greytown Hospital, the first hospital in Wairarapa, which opened in 1875 in an eight-bed cottage originally set aside as a fever hospital

care the Government was subsidising – but were often seen as ineligible for hospital care. This was because customary land was not liable for rates, while the issue of title in multiple owners made rates notoriously difficult to collect. Increasingly, public hospitals were the province of the Pākehā settler community. Although no hospital had written rules barring Māori, the practical effect was that they were shut out of most of them.[319]

In the 1860s and early 1870s, almost all the new public hospitals (18 out of 19) were built for the gold fields. The first Wairarapa hospital opened at Greytown only in 1875 (it occupied the eight-bed cottage that had originally been set aside as a fever hospital) and was largely funded locally.[320] According to Stirling, this made it 'unlikely that Maori would have been encouraged to use the facility' since they would not have been able to contribute to revenue.[321] Information about the extent to which Māori did use this particular facility, and public hospitals generally, is patchy at best. From 1882 onwards, when the Inspector-General of Hospitals began visiting and reporting on each hospital annually, few hospitals reported more than a handful of Māori patients in any year – less than five per cent, if the returns are to be believed.[322] In 1882, the Inspector-General reported that there was only one Māori patient using the Greytown facility.[323] The following year, the *Wairarapa Standard* also reported only one Māori patient occupying the room set aside for Māori at the Masterton Hospital, built in 1879.[324]

Māori attitudes, it would seem, had changed along with the ethos of the public hospital. According to the Napier Hospital report, Māori now seemed reluctant to use European hospitals, which were based 'upon the European system' and completely ignored cultural values and principles.[325] A growing social divide, the result of Māori poverty as well as ongoing cultural differences and prejudices, underscored that reluctance. Māori patients were unwelcome. In Lange's view, that – combined with the expectation that they should have subscribed, or paid fees – meant that 'most [Māori] . . . had . . . a deeply rooted disinclination to enter hospital. The other side of the coin was a reluctance of many hospital boards to admit Maori patients.'[326]

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There was some government discussion of special provision for Māori in the public hospital system in 1878, when the Masterton Hospital was under construction. It was reported that the Government had pledged £195 to build a Māori ward, and it would appear that a room was 'set apart for Maoris'.[327] Further north, no hospitals opened at all until the Pahiatua Hospital was established in 1902, and Dannevirke Hospital in 1906.[328]

We heard no evidence about Māori access to hospital-based care in the twentieth century.

(4) *Maori councils and the Public Health Act 1900*

In the late 1890s and early 1900s, Seddon's apparent willingness to give Māori a measure of self-government extended to health, and was embraced by local Wairarapa communities as well as national leaders. Again, however, historians of public health consider that the impetus faltered because sustained Crown support was not forthcoming. Although there was increasing interest in preventative health measures, Māori health pioneers were providing leadership, and Seddon was on board, there was an essential missing ingredient: broad-based political will to underwrite policies favouring Māori institutions or individuals as recipients of State-funded welfare.

The Young Maori Party had already undertaken steps aimed at preventing disease and improving sanitation – a programme in keeping with the concerns of the new Health Department, created under the Public Health Act 1900.

In the Wairarapa, Hēnare Parata, a respected leader from Pāpāwai, took up the position of native sanitary commissioner. Parata, Carroll, and Tamahau Mahupuku, another leading Wairarapa rangatira who acted as honorary sanitary commissioner, travelled to hui where they discussed sanitary improvements and the proposed Māori Councils Act. Parata inspected the kāinga visited by the ministerial party and gave advice on sanitation and health. According to Lange, 'Much of the future shape of Māori health work in the following two decades emerged from what Mahupuku and Parata did in the next few months.'[329] Until 1903 when he resigned, Parata continued to travel extensively on inspections, educating people about water supply, hygiene, and sanitary living conditions, and achieving some success.[330]

Under the Maori Councils Act, passed in October 1900, councils at a tribal community level were given powers to enforce sanitary regulations for Māori houses and wharenui, improve drainage, water supplies, and housing. From February 1904, inspectors were attached to the councils to oversee sanitary regulations and to educate Māori in health and hygiene matters.[331] By the end of that year, eight sanitary inspectors had been appointed.[332] Leaders responded with enormous enthusiasm to this chance to exercise a measure of local self-government and self-help. In Lange's assessment, however, the Maori council system was handicapped from the start by inadequate Government funding.[333] Nor did Seddon accede to the more ambitious proposal of Carroll and Pōmare (appointed Native Health Officer in the new department) for a network of cottage hospitals for Māori. Māori communities demonstrated their support for this proposal by donating both land and funds.[334] Despite strong local campaigns, such as that led by Taiāwhio Te Tau and his wife in the Wairarapa, the scheme never got off the ground.[335] And before long, the earlier moves to provide healthcare for more remote communities, and via Māori institutions and personnel, met with setbacks. In 1912, the Health Department terminated the role of Māori sanitary inspectors, despite the objections of the Maori councils.

In the years following the second demise of the Rongokako Maori Council, the emphasis of Government policy was much more on universal provision of health services than on involving local Māori leaders, staff, and rūnanga in community health.

(5) *District health nurses*

In the early twentieth century, a system of district health nursing was also introduced – initially as part of the effort to improve access to basic health services for

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Rongokako Māori Council

In October 1900, the Liberal Government passed the Maori Councils Act. The product of collaboration between the Crown, Paremata Māori (the Parliament established at Pāpāwai under Kotahitanga, the Māori political movement seeking Māori self-determination), and the Young Maori Party, it provided for a system of local councils that could enact bylaws in the areas of health, sanitation, and various social matters within Māori communities. National conferences would be held annually.

While Māori health was central to the legislation, the parties involved in its drafting had other motives too. It suited the moderate agenda of the Young Maori Party. As a less radical system than Paremata Māori, the council structure was also more palatable to the Government. The quest for self-determination had long been a driving force within Māoridom, and as the century drew to a close, Kotahitanga was a focus for this, and had gathered mass support. In giving Māori a measure of self-government and providing for a national Māori assembly, the Act was compatible with important Kotahitanga aspirations. It also took the wind from its sails, and the movement disbanded shortly after.

Diluting Kotahitanga's aims produced a mixed reaction amongst Māori. But they still embraced the opportunity for self-government, however limited, and wanted to promote their own welfare. The council system drew on what was familiar, as Māori had used a komiti structure since the 1860s. Its very acceptability to Māori could be considered an accomplishment.

Wairarapa Māori quickly put their energy behind the 1900 initiative. Pāpāwai leadership immediately expressed support for Hēnare Parata, the new 'inspector of maraes'. Accompanied often by rangitira Tamahau Mahupuku, he promptly began the grassroots work of visiting marae and kāinga, even before the district had elected its council. Called the Rongokako Maori Council, it was formed in March 1901.

As its agent, Hēnare worked diligently. Letters from Hēnare to Carroll, written in an energetic hand, contained detailed reports of his inspections and recommendations to remedy problems. What is striking, along with Hēnare's drive, was the willingness of Māori to make good use of the service.

As early as June 1900, Hēnare noted 'considerable improvement' at Pāpāwai, compared with a 'house-to-house visit of inspection' the month before. Condemned water closets had been 'removed as ordered' and pits of others deepened; fowl-houses and pigsties were cleaned; rubbish was removed. Māori at Ākura pā, too, were keen to clean their pā, houses and drains, remove pigsties, and destroy mangy dogs. Hēnare had received an invitation to return 'and address them on sanitary matters'. At Te Uru o Tāne, the pā and houses showed a 'vast improvement', and work was continuing.

Of his favourable reception Hēnare wrote, 'All that had been done has been done willingly, the people seeing that it is for their own benefit.' His simple but practical advice was considered so useful that communities outside Wairarapa invited him to visit.

Further reports, dated July 1900 and January 1902, were in similar vein. At each location his observations were precise and his recommendations specific. People sleeping on the floor at Ākura were advised to get 'bunks or bedsteads which would free them from the damp coming from the ground'. Clean water supply was an issue in several kāinga. Serious measures were needed at Pāpāwai, where Hēnare identified a blocked creek as the source of a typhoid outbreak. He curtailed unnecessary social contact, including an upcoming wedding, and asked the Health Department to resolve a petty dispute between the Greytown and Featherston councils over responsibility for clearing the waterway. Disinfectant was requested.

There emerges a strong sense of personal contact. Those whose houses he inspected were often named: 'The first house which I visited was that of Waitahi Hohepa'. When satisfied, he was generous in his praise. Of Kohunui he said, 'In fact I should say the place was in perfect order', but when occasion called, he pulled no punches. A European's house was 'in a most filthy state', so the Masterton police were asked for their assistance.

Alcohol and tobacco use was also monitored. In Taueru, '48 people in the pah were total abstainers'. A modern-sounding

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warning was made to a Kohunui storekeeper 'against selling cigarettes or tobacco to those under the age'.

Hēnare resigned in 1903 after a dispute with the Health Department, and from November 1904 his work was continued by Taiāwhio Te Tau. The new sanitary inspector was of chiefly rank and used his influence to good effect to promote sanitation issues. He later became chairman of the Rongokako Council, holding the position from 1908 to the late 1920s.

The initial enthusiasm of Wairarapa Māori for the Maori Councils Act was shortlived, however. Disillusionment ensued, because from the outset, the system was hamstrung by a lack of Government funding and practical support. Fines, dog taxes, and donations would become the sole sources of council revenue. Only six 'annual' conferences were held, and Māori had no meaningful voice at an executive level. By 1912, the nationwide system was so rundown it was really a dead letter. The Rongokako Council fell into disuse.

Time passed. The horrors of the First World War came and went, and an influenza pandemic swept the country. When the Government focused its attention once more on Māori health, it again considered the council system, and attempted to revive a version of it under the auspices of the Department of Public Health.

A request for a 'credit account' of the Rongokako Council came in 1920 from Te Rangi Hīroa (Sir Peter Buck), director of Maori hygiene. 'There is no money at all,' replied Taiāwhio: 'the last was spent by the Council for the Returned Maori Soldiers, so we have none left. This Council is a poor Council.'

But the idea of a revitalised council sparked interest in Wairarapa. Writing to the department in 1922, Hoani Paraone Tunuiarangi supported the idea. Some longstanding councillors were 'lethargic', and a new election would bring in fresh faces. The matter was urgent, 'for epidemics will not await the pleasure of man'.

It took until 1928 for the Rongokako Council to regroup officially – 'it will shortly be gazetted,' noted the Health Department that year. 'There [is] no Council machinery in operation but matters should be better in the early future.' A bumpy start proved otherwise. After a three-month wait for a first meeting, one councillor wrote anxiously to the department to check he had not been 'overlooked'.

continued over

Pākehā in isolated rural communities. Under the leadership of Director-General of Health Valentine, the service was extended to Māori in 1911. The Health Department appointed native health nurses to take over from subsidised doctors the task of educating Māori on matters of sanitation.

As with similar initiatives, lack of funding delayed implementation, and it was some time before nurses were available in most districts. They were praised by Te Rangi Hīroa (Sir Peter Buck) in the 1920s as '[o]ne of the most important branches of Native health work' and 'our first line of defence against the spread of infectious disease amongst the Maori'.[336] But it was 20 years before a combined school and district nurse was appointed in the Wairarapa – finally deemed necessary because 'the Maori in this district have received very little attention in the past owing to lack of staff and the very scattered nature of their distribution'.[337] Bedside work – attending the sick over an extensive territory – seems to have dominated the nurse's work, rather than preventive education. One nurse could cover only a relatively small area, although the situation improved somewhat in 1936 when there was a similar appointment to cover Tāmaki-nui-ā-Rua.[338] Stirling comments that Māori who lived within reach of the district nurse 'did indeed benefit from her ministrations'.[339] That was the assessment of the school medical officer who visited the district, and the Minister of Health when responding to complaints about tuberculosis in the Gladstone

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The fresh initiative had been eagerly embraced, he explained: 'My people are strongly in favour of this Council being formed.' Delays in extracting the papers and particulars of the previous council were holding up progress, wrote Hawaiau Tamahau Kīngi, the new chairman. Constraints were also imposed by daily life, like shearing: 'E hoa, it's the devil's own job to try to call a meeting of the committee.'

Early the following year the new Rongokako Council still had not had its first meeting. Nor was Hawaiau in possession of its bylaws, a copy of which he asked to be forwarded 'so as to show my fellow mates the rules and then perhaps I may be able to get them together'.

The issue of a proper authority was pressing. When Hawaiau visited Hurunui-o-Rangi pā with Mr McGregor, the district's health inspector, they were challenged over their right to order the demolition of cow bails and old houses used as pigsties. Seeking clarification from the department, Hawaiau also asked to be sent his licence as chairman of the Rongokako Maori Council: 'The Maoris here are not going to take my word and want me to produce [it] first.'

Enforcing bylaws was another difficulty. Facing a liquor problem at a pā, Hawaiau proposed that the council appoint a Māori policeman. The reply from the Director-General of Health – denying the request – cited an excessively convoluted bureaucracy for dealing with such offences. Nor were the bylaws any way to generate money. Just two fines, totalling £3, comprised council funds at the start of 1931, by which time even Hawaiau had acknowledged the pressures of earning a living: 'I am unable to do my rounds . . . as I have a business of my own in town.' Unlike his predecessors, he received no salary as chairman.

Like the first incarnation, the revived Rongokako Maori Council fell into resource-starved decline – even though Wairarapa Māori lent their enthusiasm and cooperation to a public health innovation that could have benefited their communities. The Health Department annual report of 1933 neatly summarised the situation: 'the lack of financial resources and the difficulty of holding regular meetings would seem to make any striking progress unlikely'.

As was also the case at the start of the century, what small progress the Rongokako Council did achieve was largely through its own efforts.

School.[340] Stirling adds that a more comprehensive scheme of district and Māori nursing could have 'made the difference in health conditions and health education in poorly served communities'.[341]

(6) *Why did Māori health improve?*

In the early years of the twentieth century, officials were divided about what was required for Māori health. Some thought special measures were needed only where there was an especially high Māori population, or facilities were particularly limited. Others saw the educative role of inspectors, medical officers, and associated personnel as key to the social elevation of Māori and the prevention of disease. But nothing much was done, and Māori health continued to be worse than Pākehā health, although the Māori population was no longer in decline. Māori still faced problems in accessing general public health facilities, but more Māori were using the public hospital system in the 1920s. This highlighted unresolved issues of who should pay for it. Questions about the role of rating continued, as did the issue of the lesser capacity of Māori patients to pay fees, while in the early twentieth century the upper cap of the Crown's contribution for specialised Māori care remained at £7000.

Eventually, things began to change for the better. Stirling points to a number of medical developments post-1920, such as penicillin and x-ray machines, plus a 'better understanding of public health itself' as part of the 'greater global revolution in health technology'.[342] Special measures for Māori continued to be mooted; some were attempted, then starved of funds and soon withdrawn. Under the Public Health Act 1920, a Maori hygiene division (with

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Rongokako Māori Council Bylaws

Section 69 of the Rongokako Māori Council bylaws read as follows:

(0) Welfare and Moral Well-Being of the Maori Inhabitants of the District

69.(1) Any person causing pain to any dumb animal in a Maori Settlement by beating or working same when unfit, or by not feeding or watering same shall pay to the Council or Village Committee the sum of not more than FIVE POUNDS – £5.

(2) Any person failing to leave any Maori Settlement when warned to do so by the Chairman or any member of the Council or by the Chairman of the Village Committee shall pay to the Council or Village Committee the sum of not more than TEN SHILLINGS – 10/-.

(3) Any person committing adultery or interfering indecently with any man, woman or child within a Maori Settlement shall pay to the Council or Village Committee the sum of not more than TWENTY-FIVE POUNDS – £25.

(4) Any person assaulting another or any persons fighting in any Maori Settlement shall pay to the Council or Village Committee the sum of not more than TWO POUNDS TEN SHILLINGS – £2-10-0.

(5) Any person who uses bad language or slanders another in any Maori Settlement shall pay to the Council or Village Committee the sum of not more than FIVE POUNDS – £5.

(6) Any person who steals in any Maori settlement shall pay to the Council or Village Committee the sum of not more than FIVE POUNDS – £5.

(7) The proprietor of a picture show established in any Maori Settlement shall pay to the Council or Village Committee the sum of TWELVE POUNDS – £12 per annum, with the exception of a travelling show, who shall pay such sum for each opening as the Council or Village Committee shall decide.

(8) Any person being the owner or occupier of any store within a Maori Settlement shall pay to the Council or Village Committee the sum of TWO POUNDS – £2 per annum, with the exception of a store or stall in temporary use at any gathering the fee shall be TEN SHILLINGS – 10/- per week or part thereof.

(9) No hui or gathering will be permitted in any Maori Settlement without permission has firstly been obtained from the Maori Council of the district. Failing such permit being obtained, the originators of such hui or gathering shall pay to the Council the sum of not more than TWENTY-FIVE POUNDS – £25.

The powers conferred under these by-laws are in addition to and not in substitution for the powers conferred by any other Act.

The above by-laws were passed at a meeting of the Maori Council for the Rongokako Maori District held at Masterton on the 13 day of October, 1924, and are given under the seal of the said Council.

Taiawhio Te Tau Chairman

Te Rangi Hīroa in charge) was established in the Health Department. Efforts were also made to 're-animate' the Māori councils.[343] Under the Native Land Amendment Act 1919, the Government could create special districts where the Māori councils would function as health councils, carrying out sanitation work under the direction of the district health officer. Again, Māori enthusiastically embraced the opportunity. Within three years, all North Island councils were operational.

However, funding remained extremely limited. The Health Department was supposed to meet the costs of administration and pay for sanitary works, with the Native

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Department matching the sum pound for pound. But neither agency particularly wanted the responsibility or the drain on its budget. The result was that councils such as Rongokako were constantly short of money. All in all, says Stirling, 'funding for Maori health remained limited, and was increasingly insignificant beside the burgeoning health budget'.[344] Thus, by 1928, the total budget for health was up to £900,000, of which just £16,400 was devoted to the Maori hygiene division. Dow compares this with the budget for dental hygiene (almost twice as much), and the £20,841 devoted to the school medical service. The Maori hygiene division was abolished entirely in 1930.[345]

As for public hospitals, the dominant philosophy by the end of the 1950s was that one universal law applied. There was no reason for the Native Department to contribute to Māori care costs at all: the Health Department was charged with responsibility for healthcare for the Dominion, 'of which the Maoris are as much a part as the Pakeha'.[346]

In Stirling's opinion, health services for Māori 'leapt ahead' from this date, largely as a result of more general social welfare reforms.[347] However, the failure of Carroll's and Pōmare's earlier plans, and the scrapping of the Māori hygiene division, put an end to the possibility that a specialised Māori health workforce would develop with close links to Māori communities, knowledgeable about Māori approaches to health, and leading Māori community health initiatives. While Māori leaders might be called upon for their assistance in local matters, health management was vested in Pākehā professionals.[348] And still, Stirling contends, Māori suffered 'disproportionately from staggeringly high rates of those diseases linked to their position at the bottom of the socio-economic heap'. Only some problems could be addressed discretely as health issues, because the 'fundamental factors remained poverty, lack of economic development, and a dwindling economic base'.[349]

(7) *Adverse conditions persisted too long:*

Stirling's essential point is that health conditions 'remained far worse than they could have been'.[350] In reaching that conclusion, he draws on the intermittent reports of medical professionals, welfare officers, and the last remaining teacher at the local native school (Ōkautete). These included, for the first time, comparative figures for Māori and Pākehā populations. In 1933, a survey of public health among Māori in the northern Wairarapa was undertaken by the son of Dr Cowie (the Masterton doctor who had treated Māori in the early twentieth century) and a fellow student, R A Wilson, as part of their medical studies. They described the effects of mostly sub-standard housing, poor diet, and inadequate clothing – a state of affairs dictated by 'economic conditions' – in eight communities comprising some 300 people, 252 of whom they had examined medically. According to Cowie and Wilson, respiratory ailments, typhoid, and skin diseases were common. Chronic bronchitis affected 40 per cent of those over 30 years of age (16 per cent of those under 30), and 60 per cent of children had scabies. Over the preceding 10 years, 87 infants under one year had died, accounting for half the total mortality.[351] Other reports confirmed the tenor of these findings. Typhoid, which was closely linked to poor living conditions, continued to be a 'much greater problem for Maori than Pakeha' – especially amongst Māori shearers, who were poorly provided for by local station owners.[352] In 1934, for example, there were only five cases in the Pākehā population of the Wairarapa and Hawke's Bay district, and nine in the much smaller Māori one – seven in Wairarapa, in various kāinga. The Māori death rate from tuberculosis in the district was, in the early 1930s, seven times that of Pākehā, and the death rate for all other respiratory conditions, four times greater. The Wellington medical officer of health, reporting on conditions in Wairarapa-Hawke's Bay, confirmed the local significance of these statistics:

> The position as regards tuberculosis among the Maori . . . is very far from satisfactory . . . The question appears to be chiefly an economic one if one subscribes to the general opinion that bad housing conditions run parallel with a high tuberculosis rate.[353]

In the following decades, the figures remained much the same: 60 per cent of Masterton Hospital's tuberculosis

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patients were Māori in 1941. 'We owe something to the Maori people in this matter, and we must do a job for them', acknowledged one board member.[354] We note that the national figures were even worse: in 1935, tuberculosis was acknowledged to be about 10 times as prevalent among Māori as it was among Pākehā.[355] Two years later, the figures had been 'dramatically revised upwards'.[356] Dow notes that Health Minister Peter Fraser admitted that he had been 'shocked to learn that Maori were 30 times more susceptible than Europeans'.[357]

According to Stirling, 'even towards the end of the boom era of the 1950s Maori health had only improved a little'.[358] A medical study undertaken in 1957, 'Wairarapa Maori Health Problems – In Relation to Other Districts', found that housing conditions were 'definitely inferior amongst a large proportion of the Maori population' and that there was a correlation with the higher incidence of rheumatic fever, typhoid, tuberculosis, middle-ear infections, and upper respiratory and other ailments.[359] The study noted that Māori were disproportionately represented in the numbers hospitalised at Masterton for tuberculosis, with a contagion rate 10 times higher than that for the local Pākehā population. Hospitalisation for pneumonia and bronchitis was six times the Pākehā rate.[360]

3c.3.6 Inequality in housing standards and policies

By the 1950s, public health officials and policy makers were showing an increasing interest in over-crowded living conditions and poor sanitation as an explanation for the high incidence of contagious disease. But Wairarapa Māori had been experiencing these problems for decades. Although records for Wairarapa are scant, they indicate that, by the end of the nineteenth century, Māori here (as in other largely rural areas) were often living in sub-standard, over-crowded housing with poor water supplies.

Shearers and farm hands were a particularly vulnerable group in this regard. They were not classed as 'indigent' because of their seasonal wages, and the apparent prosperity of the community at Pāpāwai, and also at Pahiatua, where inhabitants were described in 1910 as 'not in very necessitous circumstances', meant they received minimal State assistance in health, housing, and sanitation.[361] Some 30 years earlier, an article in the *New Zealand Mail* had

1891 Survey of Māori Shearers and Living Conditions

In 1891, as part of a nationwide survey, the Wairarapa police were instructed to report on the accommodation provided for labourers and shearers on the district's various sheep stations. Although the constables often reported on the numbers of farm hands, Māori were mentioned explicitly only as shearers. Most usually returned to their own homes at night or to nearby pā. Otherwise – and especially in the southern part of the district – they generally lived in tents and fed themselves. The only Wairarapa station that drew strong criticism was Riddiford's Te Awaiti station, where the shearers' accommodation was described as 'wretched and not fit for any man to sleep in . . . dark and wretched'. At Āwhea, also, no real accommodation was provided – shearers slept in the loft above the sheep pen. Again, Māori were not mentioned specifically. However, John Martin, in his study on the nineteenth-century rural wage earner, comments that Māori shearers were treated worse than their Pākehā counterparts as a matter of course:

> While some runholders were generous . . . many others supplied only the bare minimum or nothing at all. This was especially true of the North Island runholders who commonly supplied little or no accommodation for their Maori shearers, claiming Maori preferred it that way. They thereby avoided having to provide the kind of accommodation that was taken for granted elsewhere. Maori conditions remained inferior – virtually all those in the Hawke's Bay and East Coast lived in tents, with the exception of those who lived at home in settlements nearby. Where tents were not used, the woolshed often made do instead . . . Such conditions meant that the mortality rate amongst Maori shearers was particularly high during the disastrous influenza epidemic of 1918–19.

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described Pāpāwai as a community of 100 Māori, predominantly Ngāti Kahukuraāwhitia and Ngāti Moe, all seeming in 'fairly comfortable circumstances, living in European fashion in good well-built houses'.[362] It should be noted, however, that not all reports were so glowing. Those at the turn of the century – a time of increased sensitivity to issues of Māori living conditions and of the working class poor, in general – were dominated by comments about over-crowding, unsatisfactory housing, and ill-health in the district.[363]

Stirling argues that:

> the time was clearly ripe for taking action . . . but until the 1930s there was a general unwillingness on the part of anyone – Government, Maori Land Boards, and private lenders – to finance improvements in Maori housing.[364]

The Rongokako Maori Council did what it could to educate Māori about drainage, hygiene, and water supply, but was limited by lack of income and co-ordinated local body involvement. Nor, once this initiative had been wound back, were the Maori Councils able to address the underlying problem of poverty.[365]

Initially, the focus of national attention was on urban housing; an interest that derived from growing 'public health' awareness. Partly because of the work of the Maori Councils, this focus soon widened to include the appalling conditions under which many rural Māori were living. Stirling argues that 'Land loss and the encroachments of settlement had contributed to poor housing conditions and high mortality in many districts, including Wairarapa.'[366] This was highlighted by the influenza pandemic in 1918. The epidemic commission of 1919 concluded that poor housing of rural Māori, as well as congested urban conditions, had played their part in the rapid spread of the disease.[367] The Māori death rate from influenza was seven times that of Pākehā in the Wairarapa.[368]

The first detailed local study available to us paints a grim picture. Cowie's and Wilson's 1933 investigation of eight Wairarapa pā (Taueru, Hiona, Hurunui-o-Rangi, Te Oreore, Pāpāwai, Ākura, Te Whiti, and Waipoapoa) found that the majority of the 51 houses they visited were 'old and in most cases dilapidated European houses', tin shanties, or one-room wharenui. Water supplies – often streams – were frequently defective and unhealthy. Over-crowding was also common.[369]

By this time, Pāpāwai could no longer be considered a prosperous community. Key individuals had sponsored its cultural and political vibrancy by borrowing on their land, a necessarily short-term funding strategy. There were now only 40 residents – although, according to Cowie and Wilson, the size of the buildings left no doubt about its 'former prosperous days'. They concluded that 'a lack of money now prevents the large tangis and huis which once were common'. It also precluded effective care for cultural well-being, a healthy community, and property maintenance. Here the problem was one of deterioration rather than over-crowding. The Pāpāwai parliament house still stood (though not for much longer), a smaller wharenui and only eight houses – some in the European style, others single-room whare.[370] This was a sad decline for the custodians of the Kotahitanga vision.

Conditions in town were apparently little better. In 1937, the *Evening Post* reported the results of a survey undertaken by the Greytown Borough Council. The survey found some 'shocking living conditions' among Māori, with as many as 20 people living in a five-room house in the centre of town. Another building – a disused shop – was occupied by 14 people, many of them children.[371]

National statistics confirmed these local observations. In the 1936 census, 45 per cent of Māori (and only 7 per cent of Pākehā) lived in 'insubstantial dwellings' or temporary 'non-private' accommodation such as boarding houses. Twenty-eight per cent of Māori lived in grossly overcrowded conditions (three or more people per room) as compared with less than one per cent of the Pākehā population – a gap that did not close substantially until 30 years later. Even in 1951, the living conditions of 14 per cent of Māori still fell within the 'grossly overcrowded' category. It was not until the following decade that the figure

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reduced to a level more comparable with Pākehā (2.7 per cent by 1966).[372]

(1) *Government housing assistance*

In 1905 to 1906, the Government undertook a major initiative to help workers on limited incomes with State housing rentals, and with obtaining State housing loans. The Workers Dwelling Act 1905 and the Government Advances to Workers Act 1906 between them provided for a separate advances to workers branch to be established within the advances to settlers office, with lending to operate similarly to the advances to settlers system.[373] This presumably meant that the criteria applied were similar to those applied to lending on the security of Māori land – in particular, regarding multiply-owned land as inferior security, and requiring secure title and repayment on difficult terms. This remained a problem for most of the period under discussion, even when governments took more direct responsibility for the living conditions of Māori. Mark Krivian, in his masters thesis on the Maori Affairs housing programme upon which Stirling draws extensively, notes that Treasury 'consistently attempted to limit Maori housing expenditure, and when their advice prevailed, as it often did, the lack of adequate finance hindered the effectiveness' of the programme.[374] Māori simply were not in a position to repay loans in an aid system which demanded full cost recovery until the 1940s.

Stirling is critical of the Crown's first efforts, prompted by Ngata, to provide a measure of financial assistance specifically to Māori. This was the Native Housing Act 1935, under which application could be made for State loans for housing. But, in fact, relatively few Māori qualified. Because of this, in Stirling's opinion, the Act does not constitute recognition of any special Māori right to subsidised State resources to address their pressing poverty and housing problem. The body in charge, the Board of Native Affairs, was entirely Pākehā until 1947. It applied criteria that were more restrictive, and more closely supervised, than those applied to Pākehā under parallel legislation like the Government Advances to Settlers Act, the Government Advances to Workers Act, the Housing Amendment Act 1922, or the State Advances Corporation mortgages available from 1936.[375] Māori still had to have a secure title and demonstrate an ability to repay loans. This meant that the uptake remained low – only 47 for the 1400-strong Māori population of the Wairarapa in 1946, a significant proportion of whom were living in sub-standard housing.[376] It also meant that the houses built for Māori were of a lesser standard than those for Pākehā, in order to keep costs low and loans more easily repayable. Until after the Second World War, the houses for Māori lacked baths, sinks, sewage disposal, hot water, and ranges.[377]

Matters gradually improved as the State became more willing to use its resources for the benefit of all those in need from the late 1930s onwards. Even so, a far greater budget appropriation was made for Pākehā housing – even though the problems facing Māori were more pressing. The continuing emphasis on 'self-help' and repayment of loans meant that much of the sum allocated for Māori housing purposes went unspent, since applicants did not meet the criteria.[378] The Government attempted to address the situation by amending the Native Housing Act in 1938 to establish a special £100,000 fund supplemented by one third of the profits realised by the Native Trustee. But the Government's intention was largely thwarted by the Board of Native Affairs, which continued to insist on the recovery of the principal, even though the loans themselves were to be interest-free. As a result, Government expenditure on housing for Māori remained relatively lower than that for Pākehā, never rising above one percent of the total housing budget until 1950. Even then, the 3.2 per cent devoted to Māori must be regarded as inadequate when one considers that they now comprised 7 per cent of the population and that their need for State assistance was demonstrably greater.[379]

After the Second World War, the gap in housing standards between Māori and Pākehā narrowed. This was because benefits for Māori ex-servicemen were on a par with those for Pākehā, including State rental housing allocations and housing loans, the Maori Social and

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A 'Member of the Executive Council Representing the Native Race' Visits Pāpāwai in 1941

Pareire Paikea visited Pāpāwai in 1941, when he was the member of the Executive Council representing the native race. Local Māori leaders Hector Mānihera, George Te Whaiti, and J F Thompson were among the home crowd, along with Pākehā dignitaries – the Greytown mayor, the local Member of Parliament, and others.

Pāpāwai's days of being a centre of mātauranga (learning), politics, and prosperity were long over. Locals raised 'the question of the urgent need for improved housing for natives in the Papawai area' and expressed their 'desire and intention to continue to improve the pa'. They also mentioned the 'advisability of the Maori returning to the land as his source of livelihood rather than attempting to live too much in the towns'.

Paikea responded with a caution that State assistance was only available to those who worked for their living and would make a push to pay back the money:

> In respect to housing he reminded his hearers that while an improvement was obviously urgently required, it would be unwise to embark on a housing system that was not offset on the Maori's part by an undertaking to make some effort which would justify a claim for occupancy. Certain worthy groups would receive their due reward, but no promise could be made to one who merely 'squatted,' waiting to be helped.

He promised, however, that an official would be sent to survey the extent of the problem at Pāpāwai. In a memorandum to the Native Minister, he explained that '[s]trong representations' about the matter had been made at Pāpāwai, and:

> It was desired that a comprehensive Housing survey should be undertaken. I explained, of course, that any building unit must be supported by an economic background, but was assured that in the majority of cases, this was in existence or capable of being developed.

No survey was carried out, but the Native Department did update its information on the improvements that had been carried out on 28 Pāpāwai houses since they were last assessed in 1937. This showed that only limited assistance had been made available under the Native Housing Act 1935 and Amendment Act 1938: only four households did not require financial help, and another two 'apparently' or 'probably' did not. Six householders had been approved for loans totalling £2100, leaving 16 households that required assistance but did not meet the criteria, or whose applications had made limited progress.

There was no assessment of assistance required by other Māori communities in the Wairarapa ki Tararua region.

Economic Advancement Act 1945, and the standardisation of loan limits and mortgage terms in 1947 (when the 30-year mortgages available to Pākehā since 1894 were finally offered to Māori as well). There was a dramatic increase in Government spending on Māori housing – from £103,201 in 1946 to £538,211 in 1950. And, whereas in 1946 the Government spent four times as much on housing for Pākehā 20 to 44 year olds as Māori, by 1950 the relative housing expenditure on Pākehā in this age bracket had fallen to twice as much.[380] Thereafter, especially as the decade drew to a close, the policy emphasis changed from loans enabling Māori to improve their own houses to more widespread provision of State rental accommodation and, in general, a greater recognition of the Government's responsibility for the vulnerable in society. Unsurprisingly, as an economically disadvantaged group, Māori tended to benefit from the enhancement of mainstream welfare policy (in terms of living conditions, rather than home ownership).[381]

But policy still failed to adequately address identified needs. For example, many of the proposals contained in the 1960 Hunn *Report on Department of Maori Affairs*,[382]

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'It Remained Like This until the 1980s': Māori Housing in Wairarapa ki Tararua

The claimants told us of living in sub-standard housing conditions even in recent times.

Niniwa Kahurangi Neva Munro said that:

> Our family had the basics. They carried water from the well, about fifty yards away. There were no bathroom facilities. There was a tin tub outside and wharepaku [toilet] . . . One of the bedrooms had a dirt floor. The floor was sprinkled with water every morning and night to keep the dust down.

Frances Irene Reiri-Smith described how the housing shortage meant that they had too many people living together in one house:

> We were trapped there in our cramped, damp and cold houses because we couldn't borrow money like the Pakeha settlers, none of the banks would lend us money to build in the rural areas of Wairarapa . . . Electricity was not available to our homes in the pa or at Te Whiti until well into the 1960's. This was long after everyone else had electric lights and heating.'

'During my younger years living out at Okautete', said Owen Tinirau Akuira, 'we lived in very poor conditions.' Nine children lived in one small house: 'it was really just one big room, it had no lining but I remember we kept warm because it had an open fire.'

Tame Kaiora Tipene Puhara Te Kooti Whaanga of Whakaki ki raro said that, at the family house in Matariki, 'there was no power, only candles'. 'There was no toilet, just a long drop. We didn't have a fridge, just a safe under the coolest tree. All our cooking was done on a woodstove and an open fire.' It remained like this until the 1980s.

which identified urbanisation and housing as critical to Māori integration into Pākehā society, were not implemented. While there was an overall improvement in Māori housing conditions in the 1960s, particularly for those in most need, they were still living in more crowded and poorer conditions than Pākehā. By 1966, the Māori rate of home ownership had risen to 87 per cent (almost equal to that of Pākehā), while the proportion living in sub-standard accommodation had dropped from 7.5 to 3 per cent. But this was still four times the rate of Pākehā; similarly, the Māori ratio of overcrowding, which had also dropped, still remained twice that of Pākehā.[383]

Little detailed statistical information has been collected on the condition of Māori housing in Wairarapa ki Tararua and the effectiveness for tangata whenua there of the Government services that were put in place. The claimants spoke of sub-standard conditions as an ongoing problem. A national survey confirmed that, despite substantial improvements from the 1950s onwards, a large gap still remained between Māori and Pākehā living conditions in 1967, when about one-fifth of Wairarapa Māori were still living in sub-standard housing.[384]

(2) *Summary*

Crown officials perceived Māori in this inquiry district as 'well-off'. Yet, by the end of the nineteenth century, a large discrepancy in living standards had developed. Though the link between health and housing was increasingly understood, the Government did not start addressing the problem to any effect until the 1930s. Overall, Māori were not only disproportionately represented in sub-standard housing statistics but also discriminated against in housing policies until the 1970s, with ongoing impact on their well-being.

3c.3.7 Tribunal analysis and findings

(1) *The Crown's obligation to Māori of this district*

We find that the Crown undertook, in negotiations to purchase land, to provide for Wairarapa Māori hospitals and doctors.

The Crown concedes that Māori had the right to expect medical benefits since these were mentioned so often in the engagements between Crown officials and local Māori

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in the early years of the colony – the key period for gaining the consent of the Wairarapa people to Crown-sponsored settlement. Elsewhere in its submissions, the Crown acknowledges its obligations to its Māori citizens,[385] referring to the right of Māori to full citizenship under article 3 and the expectation of equality of access to State-supported health services. It has urged us to consider the undertakings to Māori in the 'context of the time and the resources and knowledge available . . . during the periods under review'.[386] Essentially, we are invited to consider what services were provided to Pākehā of the time, and whether what was provided to Māori was comparable.

We do not consider that this should be our focus. The first question is whether the Crown fulfilled its promise. It was not for Māori to check whether the Crown's promises were capable of fulfilment: that was for the Crown. Only the Crown had the means of doing so.

Having determined whether the Crown fulfilled its promise, the next question is whether, if it did not, it nevertheless provided services to Māori equivalent to those provided to Pākehā. This is by way of a plea in mitigation, and is not the primary focus or key argument.

(2) *Did the Crown fulfil its promise?*

The Crown's early promises of hospitals and doctors were palpably not fulfilled – certainly not within any timeframe that those to whom the promises were made would legitimately have expected.

What was provided, then?

Crown counsel cited the existence of a special subsidised medical service as one of the main points in the Crown's favour. These were the native medical officers, available only to Māori. The Crown says their existence demonstrated a particular concern for Māori welfare early in the development of the colony. This was all the more significant given that the State took little responsibility for the well-being of its citizens at this time, and had limited means of doing so.[387]

It is to the Crown's credit that native medical officers were introduced, in that these were better than nothing. From all accounts, though, in the Wairarapa at least, the service did not contribute significantly to Māori health and well-being.

Dr Henry Thomas Spratt assumed the position of native medical officer in May 1859, six years after the komiti nui at Tūranganui.[388] It seems doubtful, to say the least, that Grey implied Wairarapa Māori would have to wait six years, or that the promise of hospitals and doctors would be met by the appointment of one man who could not possibly cover the large rural area that was the subject of the Crown's purchases of land. Māori would surely have inferred that the services would be provided in the areas where they lived. Spratt was based in Greytown and rarely visited coastal kāinga or more remote areas. The quarterly reports show that the great majority of his patients came from Pāpāwai or Waiohine.[389] Dr John Smith attended Māori patients on the east coast from 1862 to 1866, when his subsidy was terminated.[390]

There is probably no point now in entering the debate about whether or not Spratt was effective. More significant is that the Crown did not assume responsibility for funding even that one medical officer, resorting instead to the five percents for part-payment. We deal with the propriety of using that fund for this purpose in chapter 3D. Suffice to say here that the Crown should, at the very least, have taken on the burden of paying for one medical officer. More were really required so that tangata whenua could be visited where they lived, to help advise them, and to improve their health status.

As for a hospital, this promise came to fruition only in the 1870s, when hospitals began at Greytown and Masterton. However, serving the Māori community never seems to have featured to any extent – although, as Crown counsel emphasised, there was a room set aside for Māori use at Masterton Hospital.[391] There is not much evidence about the extent to which Māori went to the public hospitals in Greytown and Masterton in the nineteenth century, but it seems that they were by then wary of such European institutions, and anyway may not have been made welcome.

When Grey spoke of hospitals and doctors, he was

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talking about hospitals and doctors for Māori.[392] What he was apparently offering was a service expressly for Māori, when Māori comprised the whole population of the area. They would not have envisaged a European service they could possibly also utilise at the fringes. It was unlikely that this would ever have met their needs – physical, emotional, or spiritual.

Accordingly, we do not find it difficult to reach the conclusion that the Crown failed to fulfil its promises about healthcare – namely, provision of hospitals and doctors for Māori, and without significant delay. We do not consider the services of one native medical officer sufficed, and anyway the Crown only paid for Dr Spratt in part, and after a great deal of dickering.

We agree that providing doctors and hospitals in the Wairarapa in the 1850s and 1860s would have demanded a great deal of political motivation and funding at a time when the State's attention was usually elsewhere and money was often short. Nevertheless, Grey did not say to the komiti nui: 'We will provide doctors and hospitals if we can manage it, and if the funds are available.' We see no reason for reading down his quite unequivocal statements. We hold the Crown to what we believe the gathered Māori would have understood: doctors and hospitals, for *us*, and *now*. Here, the Crown clearly failed. If the health services for Māori that followed had been of an altogether different standard, the prejudice suffered from the failure to implement its promises fully and early, as it should have done, might have been mitigated. But they were not.

(3) *Did the Crown provide Māori with health services equivalent to those provided to Pākehā?*

The question of whether the Crown provided Māori with health services equivalent to those provided to Pākehā is, as we said, in the nature of a plea in mitigation for it. If the Crown did not do what it said it would do, did it nevertheless do as well for Māori as it did for Pākehā? If it did, its hara (blameworthiness) would arguably be less than if it breached its promise even more egregiously.

Unfortunately, during much of the period under consideration, Māori did not enjoy an equivalent level of care within the general system.

Prior Tribunals have all found that the Treaty requires more than superficial equity in provision. There must be active protection against the adverse effects of settlement and, whenever general provision of services was not giving sufficient protection, additional resources had to be specifically devoted to Māori communities.

While the situation improved with the appointments of the late 1890s, and the tentative development of a Māori-grounded infrastructure of health advice and care, the political will did not really exist for its support. Services directed to addressing Māori health needs were readily cut, without consultation or warning. Wairarapa – with its Māori population scattered and perceived as relatively well-off – was not a priority. Successive administrations, even those relatively sympathetic to the situation of Wairarapa Māori, regularly declined their requests for expanded health facilities, or abolished those already in existence. This meant that the Wairarapa people had to wait many years for some basic services: most notably a subsidised doctor in the northern part of the district in the 1880s and 1890s, and subsequently a district nurse in the 1930s. It also meant that they lost their native medical officer in 1883, although the service was partially reinstituted in 1899.[393] A similar service provided for the community based at Hāmua and the surrounding district lasted for less than a decade (from 1901 to 1909), while that provided for indigent Māori at Masterton in 1908 ended in 1911.

(a) *Changed ethos:* The limitations of the health service in Wairarapa reflected the limits on what governments were prepared to spend on Māori health. Services specifically for Māori came out of the £7000 civil list budget and, although the proportion devoted to health increased towards the end of the century, the overall sum remained the same over the decades. The development of a public hospital system did not make things better for Māori. By the time the first hospital opened in Wairarapa, the public health ethos had already changed from Grey's early

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commitment to ensuring Māori could access the best levels of medical care available, to providing for the settler population. Further expansion of the hospital system concentrated on the goldfields, and Wairarapa was well down the list of priorities.

To begin with, there was no expectation that Māori would pay for their medical care: this was one of the main benefits of settlement and one that Māori had already paid for by accepting low prices for their lands. But the change in the focus of public hospitals heralded a change in attitude about what contribution Māori should make, and what their entitlement should be. By the 1870s, the two were closely linked. A hybrid system of funding by the Crown, local bodies, and voluntary contribution was operating. Māori had a limited place here, largely for reasons not of their making: the non-rateable character of much of their land, and their inability to pay when their lands were liable. Not being ratepayers, Māori were denied access to the boards that ran the hospitals and were peripheral to their main business.

From the introduction of representative government in 1852 until the First World War, no hospital was built anywhere in the country specifically (or even mainly) for Māori. The failure of Seddon to support Carroll's cottage hospital network (which was enthusiastically promoted in the Wairarapa) seems a lost opportunity already noted with regret by the Waitangi Tribunal in the Napier Hospital inquiry. In Wairarapa, there is only one recorded instance where a specific attempt was made to provide for the needs of Māori patients: £195 was contributed for a separate ward at Masterton, and an eight-bed room was put aside for Māori use. It appears there may also have been some separate accommodation for Māori at Featherston.

(b) *Services to outlying areas:* Clearly, the isolation of outlying areas was a difficult problem for the colonial administration. Native Medical Officer Spratt's circuit was Greytown-centred, even though the use of the five percents meant that Māori living in outlying districts were subsidising something from which only those based near the Pākehā towns could really benefit (this is explained more fully in chapter 3D. The repeated requests for more doctors to be subsidised to attend particular kāinga were also mostly declined, either because they were seen as unwarranted (local Māori were relatively well-off) or unrealistic (doctors could not be expected to provide care to isolated areas, nor governments to provide funding for them).

Some positive steps were taken. The evidence indicates that native schools in the district actively supplied their pupils and the wider community with medicines and medical advice. Lange argues that:

> in addition to providing medical services, limited as they were, the Native Schools consistently maintained a health emphasis that cannot have been entirely ineffective in changing Māori living patterns and medical practices.[394]

The frequent requests for additional medicines and associated supplies such as disinfectant did not, however, change the attitude of the authorities to the needs of Wairarapa Māori, nor the responsibility of the Government towards them. We know from Stirling's work that anything 'extra' in the way of medicines supplied through the native schools was approved only in case of 'considerable urgency'.[395] Stirling points out that the definition of 'urgent' appears to have been remarkably narrow, and, in the instance quoted above, did not include an outbreak of typhoid.[396] Crown funding of basic health and hygiene for Māori was niggardly. Further, only a small percentage of the Māori population was likely to have benefited from provision through native schools because most Māori in the region lived too far away from them, and apart from Ōkautete, the schools had a short life-span.

(c) *The 'indigent' requirement to qualify for subsidised services:* The limitation of subsidised health services to those communities of Māori that were classed as 'indigent' was a feature of Māori healthcare into the twentieth century. The application of this policy consistently went against the interests of Wairarapa Māori, who for reasons that are

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difficult to discern were not considered poor enough to qualify. Was any sustained inquiry made as to their economic situation? The 'indigent' label – or, in the case of the Māori in this district, the non-indigent label – seems to have been applied impressionistically rather than in any standard or consistent way, or by reference to criteria. We are inclined to agree with Gilling's suggestion that any impression of affluence must have derived from the communities at Pāpāwai and Pahiatua, and possibly also from individuals such as Iraia Te Whaiti. As such it was localised and specific, but wholesale inferences seem to have been drawn and applied to the Māori population generally. The apparent prosperity was anyway largely illusory because it depended on credit and on-selling land. These petered out early in the twentieth century, and after that tangata whenua usually had only seasonal wages. There is no evidence at all that those seeking medical assistance were affluent, especially those in more remote coastal areas.[397] All we can say, from what we know about the Māori communities of this region, and about the impoverished circumstances of far too many of them, is that the threshold for qualification as indigent must have been extremely low for them to be legitimately deemed ineligible. It is our finding that the subsidised services were wrongly limited to exclude them. They should have received the free medical care they continually asked for, and officials should have acknowledged that the duty arose from earlier Crown promises of health benefits, rather than from the financial status of recipients. The Crown erred when it refused the health-related petitions of Wairarapa Māori, and when it consistently confined its assistance to minimal levels.

(d) *Conclusion:* We adopt the articulation of the Crown's Treaty duty as to Māori health set out in the Waitangi Tribunal's *Napier Hospital and Health Services Report*:

> We consider that three general obligations flow from the duty actively to protect Maori health. The first is protection against *the adverse effects of settlement*. Our view is that this obligation arises over and above considerations of equity. It calls for additional resources and effort to be deployed in favour of Maori whenever general programmes afford them insufficient protection. The scope of such active protection might include, on the one hand, medical responses to the effects of ill-health and, on the other, remedial action against its causes, both direct (medical) and indirect (environmental, social, economic, cultural, institutional). [Emphasis in original.][398]

This commitment was repeated in different words by several key Crown spokespeople, especially when they wanted something from Wairarapa Māori. This occurred at the time of the original opening of the district in the early 1850s, and at the very end of the nineteenth century when Seddon sought to head off the more extreme demands of the Kotahitanga and to settle the Wairarapa Moana question. On these occasions, there was no suggestion that only the poorest would be helped, or only those conveniently situated, or only those who were able to pay. Yet any steps beyond minimal provision and narrow eligibility were tentative, and rarely supported by the colonial legislature for sustained periods. The situation improved only in the twentieth century when the increasing numbers of Māori seeking admission to hospital highlighted the parlous state of their health – especially the preponderance of diseases related to poverty – and only as the State began to take more responsibility for its citizens generally.

Thus, the evidence presented to us suggests that, until at least the latter part of the twentieth century, Māori did not receive equivalent healthcare to Pākehā. For some of the period under review, there were significant limitations on the knowledge and technical abilities of the medical profession to cure some medical conditions. Some still remain incurable. We take those limitations into account. In our opinion, the Treaty, the land fund, and the Crown's specific undertakings to Wairarapa Māori together meant that tangata whenua of this district were – and are – entitled to receive good healthcare without extra cost to them.

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Historically, the care provided should have been of a nature and extent that, as far as possible, protected them against the adverse effects of settlement, and fitted them physically and mentally for full participation in the new colonial order.

In not fulfilling these obligations, the Crown breached the Treaty.

Notes

1. *Te Wananga*, 29 December 1877, p 511 (doc A51(f) (Stirling supporting papers), p 2871)
2. Document I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 162
3. Document I1 (Ngā Hapū Karanga closing submissions), pp 36–37; doc I8 (Rangitāne closing submissions), pp 57–58
4. Document I8 (Rangitāne closing submissions), pp 132–135
5. Document I1(c) (Ngā Hapū Karanga closing submissions), pp 60–63
6. ibid; doc I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 162
7. Document I8 (Rangitāne closing submissions), pp 133–134
8. Document I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 166
9. Document I8 (Rangitāne closing submissions), pp 133–135
10. Document I1(c) (Ngā Hapū Karanga closing submissions), pp 60–63
11. Document I8 (Rangitāne closing submissions), pp 125–126
12. Document SOC 1A (Ngā Hapū Karanga statement of claim, part A), p 21; doc I8 (Rangitāne closing submissions), p 125
13. Document SOC 3 (Rangitāne o Wairarapa statement of claim), pp 35–37; doc I8 (Rangitāne closing submissions), pp 130–131
14. Document I1(c) (Ngā Hapū Karanga closing submissions), p 63; doc I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 165
15. Document I17(d) (Crown closing submissions), pp 7–13
16. Document SOI 1 (Final statement of issues), pp 279–280; doc I17(d) (Crown closing submissions), pp 16–17
17. Ibid
18. Document SOR 5 (Crown statement of response to Ngāi Tūmapuhia-ā-Rangi claim), paras 21.2.5–21.2.11; doc I17(d) (Crown closing submissions), pp 11–12
19. Document A51 (Stirling), p 199
20. Native Schools Act 1867, s 14
21. When more than one acre of land was given for the school site, the Governor could grant a larger subsidy for the expenditure on buildings.
22. Hugh Carleton, 10 September 1867, NZPD, vol 1, part 2, p 863; Carleton report, April 1862, AJHR, 1862, E-4, p 17 (doc A51 (Stirling), p 152)
23. Native Schools Amendment Act 1871; D McLean, 13 October 1871, NZPD, vol 11, p 327
24. Maunsell to Native Minister, 23 April 1880, AJHR, 1880, G-4, pp 12–13
25. Document A51 (Stirling), pp 149–280
26. *Wairarapa Standard*, 25 November 1882 (doc A51(f) (Stirling supporting papers), pp 2591–2592)
27. Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand* (Canberra: Australian National University Press, 1973), p 303; J M Barrington and T H Beaglehole, *Maori Schools in a Changing Society: An Historical Review* (Wellington: New Zealand Council for Educational Research, 1974), pp 122–123
28. Pope to Inspector-General of Schools, 16 November 1903, BAAA 1001/258, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 588–589)
29. Document A51 (Stirling), p 203
30. Ibid, pp 226–234
31. Judith Simon and Linda Tuhiwai Smith, eds, *A Civilising Mission? Perceptions and Representations of the New Zealand Native Schools System* (Auckland: Auckland University Press, 2001), p 9
32. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 3, p 1192
33. Maunsell to Native Under-Secretary, 17 May 1881, AJHR, 1881, G-8, pp 14–15 (doc A51 (Stirling), p 195)
34. Pope to Inspector-General of Schools, 16 November 1903, BAAA 1001/258, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 587–588)
35. The primary schools established by the Government for Māori after 1867 were called 'native schools' until their name was changed to Māori schools in 1947, and these terms are used throughout. From 1878, the Wellington and Hawke's Bay education boards administered schools in the Wairarapa ki Tararua district, government officials typically referring to these schools as 'public schools'; however, in this section, the term 'board schools' is used instead, because native/Māori schools were also public schools.
36. Judith Simon, ed, *Ngā Kura Māori: The Native Schools System, 1867–1969* (Auckland: Auckland University Press, 1998), pp 22–23; Simon and Smith, *A Civilising Mission?*, pp 8–9; doc A51 (Stirling), p 152
37. Simon, *Ngā Kura Māori*, p 23; Simon and Smith, *A Civilising Mission?*, p 65
38. Document A118 (Gilling), pp 310–311; doc A51 (Stirling), pp 194–280
39. Document A51 (Stirling), pp 198–199
40. The Government provided some funding to church boarding schools for Māori, such as Te Aute and St Stephen's, from 1872. In 1880, it altered its funding policies and established the scholarship system: see Simon and Smith, *A Civilising Mission?*, p 10.
41. Judith Simon, 'The Place of Schooling in Maori–Pakeha Relations', p 94 (Waitangi Tribunal, *The Wananga Capital Establishment Report* (Wellington: GP Publications, 1999), p 7)
42. Waitangi Tribunal, *Wananga Capital Establishment Report*, p 7
43. W Fox, W Fitzherbert, W Fox, 31 August 1871, 7 September 1871, 14 September 1871, NZPD, vol 10, pp 196, 323, 440
44. T Ball, 10 September 1867, NZPD, vol 1, part 2, p 866
45. Simon and Smith, *A Civilising Mission?*, pp 158–162
46. Ibid

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47. Ibid, p 10
48. Bird, report, 31 March 1907, AJHR, 1907, E-2, p 7
49. Simon and Smith, *A Civilising Mission?*, p 10
50. T B Strong, 'The Education of South Sea Island Natives', in Patrick Jackson, ed, *Maori and Education: Or the Education of Natives in New Zealand and its Dependencies* (Wellington: Ferguson and Osborn, 1931), p 192
51. Ball to Director of Education, not dated, AJHR, 1933, E-3, p 4
52. John Barrington, *Separate but Equal? Māori Schools and the Crown 1867–1969* (Wellington: Victoria University Press, 2008), p 220
53. Ball to Director of Education, not dated, AJHR, 1937–38, E-3, p 2
54. Kirk, evidence, 4 June 1906, AJHR, 1907, G-5, p 101 (Barrington, *Separate but Equal?*, p 155)
55. In all, 13 native district high schools were established throughout the North Island. Five were established on the East Coast (Te Araroa, Tikitiki, Ruatōria, Raupunga, and Tokomaru Bay), while the Eastern Bay of Plenty (Te Kaha and Murupara), and Northland (Punaruku and Te Kāo) both received two schools apiece. Te Urewera (Ruatoki), Western Bay of Plenty (Matakana Island), Central North Island (Tokaanu), and Taranaki (Manutahi) each received one native high school: see Simon, *Ngā Kura Māori*, pp 139–147; Simon and Smith, *A Civilising Mission?*, p 289.
56. Fletcher, report, 25 June 1946, AJHR, 1946, E-3, p 7
57. Ibid
58. Simon and Smith, *A Civilising Mission?*, pp 262–274
59. Ibid, pp 10–11
60. Ibid
61. Te Puni Kōkiri, *Progress towards Closing Social and Economic Gaps between Māori and non-Māori: A Report to the Minister of Māori Affairs* (Wellington: Te Puni Kōkiri, 1998), p 6
62. Document A51(h) (Stirling), p 10
63. Ibid; doc A51 (Stirling), pp 262–263
64. Document A51 (Stirling), p 254
65. Document I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 166
66. Document I17(d) (Crown closing submissions, vol 5), p 11
67. Piripi Waaka and nine others to Carroll, 29 January 1902, BAAA 1001/386a, 44/4, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 72–73)
68. Ibid
69. Hogben to Piripi Waaka and others, 21 February 1902, BAAA 1001/386a, Ōkautete School, 1902–1916, ArchivesNZ (doc A51(a) (Stirling supporting papers) p 71)
70. As discussed earlier under the Native Schools Act Amendment Act 1871, Māori communities were also able to donate additional land in lieu of monetary contributions towards the school's construction and upkeep.
71. Document A32 (Marr, Cleaver, and Schuster), p 198
72. Ibid
73. W C Buchanan to Native Minister, 30 May 1904, BAAA 1001/386a, Ōkautete School, 1902–1916, ArchivesNZ (doc A51(a) (Stirling supporting papers), p 70)
74. Ibid
75. Taiāwhio Te Tau to Minister of Lands, 31 August 1904, BAAA 1001/386a, Ōkautete School, 1902–1916, ArchivesNZ (doc A51(a) (Stirling supporting papers), p 69)
76. A W Hogg to Minister of Education, 6 June 1905, BAAA 1001/386a, Ōkautete School, 1902–1916, ArchivesNZ (doc A51(a) (Stirling supporting papers), p 67)
77. Document A51 (Stirling), pp 255–257
78. Inspection report, Kaiwhata Native School, 27 October 1906, BAAA 1001/386a, Ōkautete School, 1902–1916, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 61–62)
79. Ibid, p 61
80. Kaiwhata School Committee to Secretary Education Department, 19 July 1907, BAAA 1001/386a, Ōkautete School, 1902–1916, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 59–60)
81. Ibid
82. Document A51 (Stirling), p 260
83. Ibid, p 266
84. Ibid, p 267
85. Document D14 (Paku), pp 5–6
86. Document A51 (Stirling), p 258
87. Ibid, p 259
88. Inspection reports, Ōkautete Native School, 7 November 1916 and 14 November 1923, BAAA 1001/386b, Ōkautete School, 1916–1935, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 122–127, 155–161)
89. Inspection report, Ōkautete Native School, 23 October 1917, BAAA 1001/386b, Ōkautete School, 1916–1935, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 149–154)
90. Document D15 (Bolstad), pp 4–5
91. Ibid, pp 5–6
92. Ibid, p 4
93. Document D20 (Griggs), p 3
94. Ibid, p 4
95. Simon and Smith, *A Civilising Mission?*, p 165
96. Department of Education, *The Teaching of English in Native Schools: The Direct, or Natural, Method* (Wellington: Government Printer, 1917), p 6
97. Simon and Smith, *A Civilising Mission?*, pp 167–169
98. Ibid, pp 169–173
99. Document D20 (Griggs), pp 4–5
100. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 3rd ed (Wellington: Brooker's Ltd, 1993), pp 9–11
101. Simon and Smith, *A Civilising Mission?*, pp 165, 170–171
102. Document C21 (Rahui), p 3
103. Waitangi Tribunal, *Report on the Te Reo Maori Claim*, p 49; Waitangi Tribunal, *Mokai School Report* (Wellington: Legislation Direct, 2000), pp 121, 131

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104. Document A51 (Stirling), pp 152–153, 278
105. G L Stafford report, 14 October 1958, Ōkautete (Kaiwhata) School, 'Inspection Reports and General Correspondence, 1945–1962', BAAA 1001/978a, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 275–276)
106. Document A51 (Stirling), pp 278–279
107. Opus Consultants is a private firm consulting in engineering, infrastructure, development, and property management. Originally a New Zealand Government entity (Ministry of Works and Development), it became a State-owned enterprise in April 1988 and was sold to a private company in November 1996: doc A32 (Marr, Cleaver, and Schuster), pp 204–205; doc A51 (Stirling), pp 277–279.
108. Document C24 (Wenn), pp 4–5
109. Ibid, pp 5, 7
110. Waitangi Tribunal, *Hauraki Report*, vol 3, p 1194
111. Document D16 (Akuira), p 3
112. Document C23 (Nunn), pp 3–4; doc D14 (Paku), p 6
113. Document C23 (Nunn), pp 3–4
114. Document D15 (Bolstad), p 7
115. Document D14 (Paku), p 6
116. 'Report on Maori School Leavers 1948', FW 3129 3/21, ArchivesNZ (doc A51(b) (Stirling supporting papers), pp 621–624)
117. Document A118 (Gilling), p 317
118. Waitangi Tribunal, *Wananga Capital Establishment Report*, p 10
119. Waitangi Tribunal, *Report on the Te Reo Maori Claim*, p 38
120. Waitangi Tribunal, *Wananga Capital Establishment Report*, pp 9–10
121. Document E35 (Pene); doc E34 (Peachey)
122. Document E35 (Pene), pp 2, 6
123. Ibid, pp 4, 6
124. Document C25 (Fox), p 6
125. These kura kaupapa are both primary and secondary schools, and we do not know the split between the primary and secondary students. We also do not know how many primary schools there are in the regions or how many Māori children attend them. However, in 2008, Wairarapa College had 1135 pupils and Dannevirke High School had 493. Again, we do not know what percentage of those students were Māori, but obviously these kura are catering to only a small number of Māori secondary-school students.
126. Document A28 (Sceats, Kukutai, and Pool), p 56
127. Te Mānihera's obituary records that he attended a mission school in Tūranganui-a-Kiwa (Gisborne) during the 1830s, while Hamiora [aka Hāmuera] Mahupuku stated that he attended a mission school at Turanga: see *Wairarapa Standard*, 10 June 1885 (doc A51(f) (Stirling supporting papers), p 2638); Catherine Morrison, ed, *Nga Maharatanga O Wairarapa – The Past Around Us* (Masterton: Masterton District Library, 1991), p 170; and doc A64 (Irvine), pp 45–46.
128. See Mātaikona school attendance book, MS-1409, ATL (doc A64 (Irvine), p 45)
129. Education Ordinance Act 1847
130. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 2, p 807
131. *New Zealand Spectator*, 12 March 1853 (doc A51 (Stirling), pp 155–156)
132. Document A51 (Stirling), p 156
133. Te Whatahoro Jury, evidence, 24 July 1905, Toi Tamati, evidence, 26 July 1905, 'Report and Evidence of the Royal Commission on the Porirua, Otaki, Waikato, Kaikokirikiri, and Motueka School Trusts', AJHR, 1905, G-5, pp 97–98, 101; doc A51 (Stirling), p 161
134. Te Whatahoro Jury, evidence, 24 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, pp 97–98, 101; doc A51 (Stirling), p 161
135. Document A51 (Stirling), p 158
136. Grey, 14 June 1853, 'Grant to Bishop of Land at Wairarapa for a College', AJHR, 1905, G-5, app S, p 197
137. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3rd ed (Wellington, GP Publications, 1996), p 32
138. Archdeacon Fancourt, evidence, 28 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, p 105
139. Document A51 (Stirling), p 190
140. Native Schools Act 1858, ss 9, 10
141. McLean to Wardell, 19 June 1861, MA13/96b, ArchivesNZ (doc A43(d) (Walzl supporting papers), p 753)
142. Document A51 (Stirling), p 192
143. McLean to Wardell, 19 June 1861, MA 13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 753)
144. Mantell to Wardell, 24 March 1863, MA 13/96b, ArchivesNZ (doc A43(d) (Walzl supporting papers), p 753)
145. The Reverend William Ronaldson reported in 1857 that local Māori had raised £100 for a school, and agreed to contribute a similar sum every year if a school opened at Pāpāwai. In 1859 he noted that, in lieu of cash, Māori had gifted five cows and a horse to Ronaldson for the school: Ronaldson to CMS, 29 January 1857, 13 September 1859, QMS-1720, ATL (doc A51 (Stirling), p 190).
146. Document A51 (Stirling), p 192
147. Ibid, p 191
148. Ronaldson to Reverend Henry Venn, 27 December 1860, QMS-1720, ATL (doc A51 (Stirling), p 192)
149. 'Report of Inspectors of St Thomas's College, Papawai', 21 March 1862, AJHR, 1862, E-4, p 12; Archdeacon Fancourt, evidence, 28 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, p 104
150. Document A51 (Stirling), p 193
151. Archdeacon Fancourt, evidence, 28 July 1905 and Te Whatahoro Jury, evidence, 24 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, pp 97–98, 104
152. Wardell, report, 6 July 1868, AJHR, 1868, A-4, pp 34–36
153. H M Rangitākaiwaho, Hāmuera Mahupuku, Rukarei Kīngi, and Matini Te Ore to W C Buchanan, 21 May 1882, BAAA, 101/442a, 44/4, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 384–385)
154. H T Te Whatahoro, 28 February 1878, *Te Wananga*, p 180 (doc A51(f) (Stirling supporting papers), pp 2883, 2888)

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155. HM Rangitākaiwaho, Hāmuera Mahupuku, Rukarei Kīngi, and Matini Te Ore to WC Buchanan, 21 May 1882, BAAA, 101/442a, 44/4, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 384–385)
156. Document A51 (Stirling), pp 216–217
157. Document A51 (Stirling), p 167
158. Ibid, pp 216–247
159. Te Whatahoro Jury, evidence, 8 May 1891, 'Minutes of Meetings with Natives and Others', AJHR, 1891, G-1, pp 72–73
160. Native Affairs Committee report, AJHR, 1896, I-3, p 7
161. Document A51 (Stirling), p 169
162. Ibid, pp 169–170
163. *Notes of Meetings between His Excellency the Governor (Lord Ranfurly), the Rt Hon RJ Seddon, Premier and Native Minister, and the Hon James Carroll, Members of the Executive Council representing the Native Race, and the Native Chiefs and the people at each place, assembled in respect of the proposed native land legislation and Native Affairs generally during 1898 and 1899* (Wellington: Government Printer, 1899), p 40
164. Ibid, p 41
165. Document A51 (Stirling), p 171
166. Ibid
167. *Wallis v Solicitor-General for New Zealand* [1903] AC 173
168. *Hohepa Wi Neera v Bishop of Wellington* (1902) 21 NZLR 655 (CA); doc A51 (Stirling), p 171
169. Ibid, pp 171–172
170. Ibid, p 172. According to Stirling the fund was established under a bequest from Harrington, Secretary of the New Zealand Company in the 1840s.
171. 'Report on the School Trusts', AJHR, 1905, G-5, pp xii, 201–203
172. Hapeta Whakamairū, evidence, 26 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, p 100
173. Diocesan Treasurer Carter to Native Affairs Department, 5 November 1927, AAMK 869/665b, 19/1/3/4, ArchivesNZ (doc A51(e) (Stirling supporting papers), pp 2196–2197)
174. Koruarua Peniamene and others to House of Representatives, 21 October 1927, petition 312/1927, AAMK 869/665b, 19/1/3/4, ArchivesNZ (doc A51(e) (Stirling supporting papers), pp 2198–2199)
175. AJHR, 1927, I-3, p 17; doc A51 (Stirling), p 174
176. Document A51 (Stirling), p 174
177. Ibid, p 178
178. 'Report on the School Trusts', AJHR, 1905, G-5, p xi
179. Archdeacon Fancourt, evidence, 28 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, p 105
180. Hapeta Whakamairū, evidence, 26 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, p 99
181. Document A51 (Stirling), p 176
182. Te Whatahoro Jury, evidence, 24 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, pp 97–98
183. Hapeta Whakamairū, evidence, 26 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, p 99
184. 'Report on the School Trusts', AJHR, 1905, G-5, p xi
185. Ibid
186. Ibid, pp xi-xii
187. Document A51 (Stirling), pp 173–174
188. Document A51 (Stirling), p 178
189. Ibid
190. Ibid, pp 180–181
191. Toka-Tu-Moana Pōtangaroa and 7 others to the House of Representatives, petition 65/1941, AAMK 869/665b, 19/1/3/4, ArchivesNZ (doc A51(e) (Stirling supporting papers), pp 2202–2204)
192. Ibid
193. 'Report on the Otaki-Porirua and Papawai-Kaikokirikiri Trusts Committee', 12 March 1943, AJHR, 1943, I-3A, pp 1–3
194. Document A51 (Stirling), p 181
195. Ibid, p 182
196. William Bird, 'Papawai-Kaikokirikiri and Otaki-Porirua Trusts', 22 October 1942, AAMK 869/665b, 19/1/3/4, ArchivesNZ (doc A51(e) (Stirling supporting papers), pp 2205–2209)
197. Bird, 'Papawai-Kaikokirikiri and Otaki-Porirua Trusts', 22 October 1942, AAMK 869/665b, 19/1/3/4, ArchivesNZ (doc A51(e) (Stirling supporting papers), pp 2205–2209). In the original, the first sentence is underlined for emphasis.
198. Document A51 (Stirling), pp 185–186
199. Ibid, p 182. No other reference to this commission was located by Stirling, who suggests that its report may have been submitted to the 1942 Parliamentary Select Committee and could be located within the Legislative Series of ArchivesNZ or may be held by the Anglican Church.
200. Ibid, pp 185–186; doc A118 (Gilling), p 315
201. Document F30 (Chrisp), p 18
202. Papawai and Kaikokirikiri Trusts Act 1943, s 12(4)(a) and (b)
203. W Grounds, 26 August 1943, NZPD, vol 263, p 1125
204. A McLagan, 9 October 1946, NZPD, vol 275, p 583; doc A51 (Stirling), pp 185–186; Papawai and Kaikokirikiri Trusts Act 1943; Papawai and Kaikokirikiri Trusts Amendment Act 1946
205. H Daniell to Jones, 20 April 1951, AAMK 869/636b, 17/1, ArchivesNZ (doc A51(e) (Stirling supporting papers), p 2193)
206. Document A51 (Stirling), p 189
207. Document F30 (Chrisp), p 15; doc A51 (Stirling), pp 187–188
208. Document C6 (Broughton), p 5
209. Document A118 (Gilling), p 317
210. Te Whatahoro Jury, evidence, 24 July 1905, 'Report on the School Trusts', AJHR, 1905, G-5, pp 97–98
211. Waitangi Tribunal, *Hauraki Report*, vol 3, p 1195
212. W Bird and J Porteous, 'Inspection Report', 10 February 1914, AJHR, 1914, E-3, p 13
213. W Bird and J Porteous, 'Report of Inspectors', 15 February 1915, AJHR, 1915, E-3, p 6
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215. Document A51 (Stirling), pp 198–199
216. Ibid
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218. Document A51 (Stirling), p 180
219. Papawai and Kaikokirikiri Trusts Act 1943, s 12(4)(a)
220. *Wellington Independent*, 7 January 1854 (doc A51(f) (Stirling supporting papers), p 2665)
221. Document F11 (Chrisp), pp 10–11
222. Document I1 (Ngā Hapū Karanga closing submissions), pp 87–88
223. Document I7 (Ngāti Kahungunu closing submissions), pp 97–99
224. Document I17(d) (Crown closing submissions), p 7
225. Ibid, p 15
226. Ibid, p 13
227. Ibid, p 14
228. Ibid
229. Ibid
230. Ian Pool, *Te Iwi Maori* (Auckland: Auckland University Press, 1991), pp 53–58
231. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 79
232. Colenso, journal, 20 March 1850, p 327 and 7 May 1851, p 532 and app 28, ATL (doc A51 (Stirling), pp 7–8)
233. Reverend William Ronaldson to Church Missionary Society, 16 November 1856, 29 October 1857, qms 1720, pp 19, 45, ATL (doc A51 (Stirling), p 8)
234. H Wardell, 'Approximate Census of the Maori Population', 1 June 1874, AJHR, 1874, G-7, pp 13–15; W Butler, 'Census of the Maori Population', 24 July 1878, AJHR, 1878, G-2, pp 24–25 (doc A51 (Stirling), pp 9–10)
235. Document A51 (Stirling), p 10
236. Ibid, pp 12, 16
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241. Mason Durie, *Whaiora: Māori Health Development*, 2nd ed (Auckland: Oxford University Press, 1998), p 83 (Waitangi Tribunal, *Napier Hospital Report*, p 52)
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243. Russell to Hobson, 9 December 1840, BPP, vol 3, p 148 (Waitangi Tribunal, *Napier Hospital Report*, p 84)
244. Russell to Hobson, 28 January 1841, BPP, vol 3, pp 173–174 (Waitangi Tribunal, *Napier Hospital Report*, pp 84–85)
245. Ibid
246. Colonial Secretary to Colonial Surgeon, 10 June 1842, Colonial Secretary Outwards Letterbook (medical) 1842–1855, IA 4/281, ArchivesNZ (Waitangi Tribunal, *Napier Hospital Report*, p 85)
247. Bishop Selwyn to FitzRoy, November 1845 (Waitangi Tribunal, *Napier Hospital Report*, p 85)
248. Grey to Earl Grey, 5 April 1848, BPP, vol 6, cmd 1120, p 20 (Waitangi Tribunal, *Napier Hospital Report*, p 86)
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251. Derek A Dow, *Maori Health and Government Policy, 1840–1940* (Wellington: Victoria University Press, 1999), pp 17–18
252. Ibid, pp 58–60
253. Ibid, p 39
254. Ibid, pp 40–44, 46
255. Document A51 (Stirling), p 49; Dow, *Maori Health*, pp 40–41
256. Dow, *Maori Health*, p p 43
257. Ibid, pp 44–45
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259. Document A51 (Stirling), p 44
260. Ibid, p 51
261. Ibid, pp 47–48
262. Dow, *Maori Health*, pp 81–82
263. Ibid, pp 84–85
264. Document A51 (Stirling), p 50
265. *Wairarapa Mercury*, 12 August 1869 (doc A51(f) (Stirling supporting papers), p 2540); *Wellington Independent*, 14 August 1869 (doc A51 (Stirling), p 49)
266. Erihapeti Whakamairū to Rolleston, 4 March 1881, MA 13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 105–106)
267. Heaphy, 'Journal of Events at Wairarapa', MA 13/96a, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 370–372)
268. Ibid
269. Heaphy, memorandum, 'Re computation of 5 per cents', 19 March 1881, MA 13/96a, 81/847, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 98)
270. Lewis to Bryce, 14 December 1880, MA 13/96a, 80/3361, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 118)
271. Bryce to Lewis, 13 January 1881, MA 81/132, 80/4087, ArchivesNZ, Wellington (doc A43(a) (Walzl supporting papers), p 116); Lewis to Heaphy, 14 January 1881, MA 13/96a, 80/53, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 233–234)
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281. Document A51 (Stirling), p 58
282. 'Meeting between the Premier and Maori Chiefs, at Papawai, 26 May, 1898', in *Notes of Meetings*, pp 39–47
283. Under-Secretary of Justice to Native Minister, 7 July 1898, J 1/1900/842, ArchivesNZ (doc A51(b) (Stirling supporting papers), p 946)
284. Seddon to Under-Secretary of Justice, 3 June 1899, J 1/1899/1121, ArchivesNZ (doc A64 (Irvine), p 61)
285. Document A64 (Irvine), p 61
286. Nireaha Tāmaki and 185 others to Seddon, 22 June 1899, J 1/1899/830, ArchivesNZ (doc A51 (Stirling) p 62)
287. Petition to Seddon, 5 September 1899, J 1 1899/1121, ArchivesNZ (doc A64 (Irvine), p 61)
288. Hoani Tunuiarangi to Carroll, 15 May 1900, J 1/1900/842, ArchivesNZ (doc A51(b) (Stirling supporting papers), p 965)
289. Document A64 (Irvine), p 62. The source for this direction appears to be Native Under-Secretary to Ross, 29 August 1899, J 1 1899/1121, ArchivesNZ.
290. Document A64 (Irvine), p 62. Irvine provides no date for the letter from Dr Ross to the Native Department in the J 1/1903/817, ArchivesNZ file, but it would likely have been between 30 August and 11 September 1899.
291. Native Under-Secretary to Ross, 12 September 1899, J 1/1899/1121, ArchivesNZ (doc A64 (Irvine), pp 61–62)
292. H Wiremu to Carroll, 31 July 1901 (doc A64 (Irvine), p 62)
293. Seddon to Under-Secretary of Justice, 16 August 1899, J 1/1900/842, ArchivesNZ (doc A51(b) (Stirling supporting papers), p 693)
294. Document A64 (Irvine), pp 60, 62
295. Ibid, p 62
296. Dawson to Carroll, 22 April 1903, MA 21/2, Water supply 1900–1929, ArchivesNZ (doc A64 (Irvine), p 63). Stirling maintains that Dawson was not appointed until 1906: see doc A51 (Stirling), p 96.
297. Mason to Buddo, Minister of Public Health, 31 March 1909, MA 1/1910/3882, ArchivesNZ (doc A51(c) (Stirling supporting papers), p 1289)
298. Pōmare minute to Mason, 2 September 1908, MA 1/1910/3880, ArchivesNZ (doc A51(c) (Stirling supporting papers), p 1258)
299. Mason minute to Minister for Public Health, 3 September 1908, MA 1/1910/3880, ArchivesNZ (doc A51(c) (Stirling supporting papers), p 1259)
300. Document A51 (Stirling), p 97
301. Ibid
302. Document A51 (Stirling), p 102
303. File note, January 1922, H 1 13508, 160/65, Native Medical Aid, Pahiatua, ArchivesNZ (doc A51(b) (Stirling supporting papers), p 694)
304. Mihi Reita, Tangi Matutaera, and 17 others to Carroll, 16 August 1910, MA 1/1910/4158, ArchivesNZ (doc A51(c) (Stirling supporting papers), p 1324)
305. Carroll to W Buchanan, 2 August 1910, MA 1/1910/4158, ArchivesNZ (doc A51(c) (Stirling supporting papers), p 1325)
306. Raeburn Lange, *May the People Live: A History of Maori Health Development 1900–1920* (Auckland: Auckland University Press, 1999), p 82
307. Ibid, p 75
308. Document A51 (Stirling), p 64
309. Ibid, pp 64–66
310. Ibid, pp 119–124
311. David Dunwoodie to Director of Education, 21 August 1935, BAAA, 1001/976c, 44/6, Ōkautete School, 1926–1944, ArchivesNZ (doc A51(a) (Stirling supporting papers), pp 210–212)
312. Secretary of Education to Brittain, 16 August 1889, BAAA 1001/442a, 44/4, ArchivesNZ (doc A51(a) (Stirling supporting papers), p 309)
313. Native Under-Secretary to Thirtle, Ōkautete School, 16 February 1910, MA1/1910/4004, ArchivesNZ (doc A51(c) (Stirling supporting papers), p 1310)
314. Waitangi Tribunal, *Napier Hospital Report*, p 86
315. Document A51 (Stirling), pp 43–44
316. Grey to Earl Grey, 4 February 1847, BPP, vol 5, pp 640–641 (Dow, *Maori Health*, p 27)
317. Dow, *Maori Health*, pp 33–34, 61
318. Ibid, p 60
319. For instance, Dow cites Wanganui's resident magistrate Woon noting in 1877 that Māori were 'practically being shut out of the Wanganui Hospital, an institution originally endowed and set apart for their special benefit': Woon to under-secretary, 22 May 1877, AJHR, 1877, G-1, p 17 (Dow, *Maori Health*, p 66).
320. Dow, *Maori Health*, p 70
321. Document A51 (Stirling), p 44
322. Dow, *Maori Health*, p 69
323. Inspector of Hospitals to Colonial Secretary, 14 December 1882, AJHR, 1883, H-3A, p 10
324. *Wairarapa Standard*, 11 July 1883 (doc A51(f) (Stirling supporting papers), p 2598); Dow, *Maori Health*, p 60
325. Grey to Earl Grey, 5 April 1848, BPP, vol 6, cmd 1120, p 20 (Waitangi Tribunal, *Napier Hospital Report*, p 140)
326. Lange, *May the People Live*, p 233
327. *Wairarapa Standard*, 11 July 1883 (doc A51(f) (Stirling supporting papers), p 2598)
328. Dow, *Maori Health*, p 70
329. Lange, *May the People Live*, pp 129–130
330. Ibid, p 205; doc A51 (Stirling), pp 78–83

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331. Lange, *May the People Live*, pp 144–145, 226
332. Ibid, pp 206–212
333. Ibid, pp 194–195
334. Waitangi Tribunal, *Hauraki Report*, vol 3, p 1175
335. Lange, *May the People Live*, p 235
336. Te Rangi Hīroa, report, AJHR, 1925, H-31, pp 14, 50 (doc A51 (Stirling), p 105)
337. Health Department, annual report, 1934, H 1/172/21/56, ArchivesNZ (Document A51 (Stirling), p 106)
338. Document A64 (Irvine), p 68
339. Document A51 (Stirling), p 106
340. Ibid, pp 106–107
341. Ibid, p 107
342. Ibid, p 100
343. Document A51 (Stirling), p 100
344. Ibid, p 101
345. Dow, *Maori Health*, pp 157–158
346. Native Under-Secretary to Director-General of Health, 14 April 1926, H 1 54/24, ArchivesNZ (Dow, *Maori Health*, p 163)
347. Document A51 (Stirling), p 100
348. Ibid, p 101
349. Ibid, p 100
350. Ibid, p 114
351. Ibid, p 115
352. Ibid
353. Health Department, annual report, 1932, H 1 172/21/55, ArchivesNZ (doc A51 (Stirling), p 116)
354. *Evening Post*, 8 February 1945, AAMK 869/1097a, 36/12, ArchivesNZ (doc A51(e) (Stirling supporting papers), p 2239)
355. I L G Sutherland, *The Maori Situation* (Wellington: Harry H Tombs Ltd, 1935), p 116
356. Dow, *Maori Health*, p 193
357. Ibid
358. Document A51 (Stirling), p 117
359. P H Palmer, 'Wairarapa Maori Health Problems – In Relation To Other Districts', MB CHB thesis, Medical School, Otago University, 1957, pp 11–12 (doc A51 (Stirling), pp 117–118)
360. Ibid, pp 18–21, 66
361. Carroll to Ross, 2 February 1910, MA 1/1910/3882, ArchivesNZ (doc A51(c) (Stirling supporting papers), p 1279)
362. *New Zealand Mail*, 23 May 1891 (doc A51(f) (Stirling supporting papers), p 2486)
363. Pōmare, report, not dated, AJHR, 1902, H-31, pp 62–63; Pōmare report, not dated, AJHR, 1903, H-31, pp 67–70 (doc A51 (Stirling), p 287)
364. Document A51 (Stirling), p 294
365. Ibid, pp 288–289
366. Ibid, p 288
367. Ibid, pp 288, 290
368. Geoffrey Rice gives excellent comparative statistics in his book on the 1918 influenza pandemic: Geoffrey Rice, *Black November: The*

Sidebars

Page 290: 'Ngā Kupu Rangatira mō te Whakaakoranga (Chiefly Remarks on Education), Te Whatahoro Jury'. Sources: H T Whatahoro to editor, 15 May 1876, *Te Wananga*, 1876, p 202 (doc A51(f) (Stirling supporting papers), p 2767); doc A51 (Stirling), p 154. Stirling writes:

> It appears from the context of the rest of this letter that Whatahoro is referring to the Repudiation Movement's bilingual periodical, Te Wananga, to which he is writing, rather than to the traditional institution of wananga. However, the word is not italicised in the original Maori text (there being no italics used at all), but it is capit291.

Page 291: Ngā Kupu Rangatira mō te Whakaakoranga (Chiefly Remarks on Education), Te Whatahoro Jury'. Sources: Te Whatahoro Jury, evidence, 24 July 1905, 'Royal Commission on the Porirua, Otaki, Waikato, Kaikokirikiri and Motueka School Trusts', AJHR, 1905, G-5, p97; doc A51 (S292g), p 160.
Page 292: 'Ngā Kupu Rangatira mō te Whakaakoranga (Chiefly Remarks on Education), Wi Mahupuku'. Source: *Wairarapa Standard*, 25 November 1882 (doc A51(f) (Stirling supporting papers), pp 2591–2592).
Page 293: 'Ngā Kupu Rangatira mō te Whakaakoranga (Chiefly Remarks on Education), Hāmuera Tamahau Mahupuku'. Source: 'Meeting between the Premier and Maori Chiefs, at Papawai', 26 May 1898, *Notes of Meetings between His Excellency the Governor (Lord Ranfurly), the Rt Hon R J Seddon, Premier and Native Minister, and the Hon James Carroll, Members of the Executive Council Representing the Native Race, and the Native Chiefs and the People at Each Place, Assembled in Respect of the Proposed Native Land Legislation and Native Affairs Generally during 1898 and 1899* (Wellington: Government Printer, 1899), p 44.
Page 294: 'Pākehā Views on Educating Māori'. Sources: doc A51 (Stirling), pp 151, 156–157; Haultain to McLean, 18 July 1871, AJHR 1871, A-2A, pp 8–9; 'Meeting between the Premier and Maori Chiefs, at Papawai, 26 May, 1303p 40
Page 303: 'Sir Apirana Ngata Visits Ōkautete School'. Sources: doc D16 (Akuira), p 3; Ngata to Atmore, 19 September 1930, Māori school records, ArchivesNZ (J M Barrington and T H Beaglehole, *Maori Schools in a Changing Society: An Historical Review* (Wellington: New Zealand Council for Educational Research, 1974), p 206).
Page 304: 'Loss of Te Reo Māori in the District'. Sources: doc C6 (Broughton), p 4; doc C17 (McGregor), p 4.
Page 307: 'Access to Education'. Source: doc D14 (Paku), p 6.
Page 327: 'Ngā Kōrero mō te Ora: Takare Leach'. Source: doc C3 (Leach), p 2.

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1918 Influenza Pandemic in New Zealand, revised ed (Christchurch: Canterbury University Press, 2005).

369. Graham Cowie and Robert Wilson, 'Public Health Survey of Maoris in North Wairarapa District' (fifth-year student research essay, Otago: Medical School, Otago University, 1933), pp 197, 210–212 (doc A51 (Stirling), pp 298–299)

370. Ibid, pp 164–180 (p 301)

371. *Evening Post*, 4 August 1937, MA W2490, 30/1, ArchivesNZ (doc A51(e) (Stirling supporting papers), p 2097)

372. Mark Krivian, 'The Department of Maori Affairs Housing Programme, 1935 to 1967', masters thesis, Massey University, 1990, pp 24–25 (doc A51 (Stirling), p 307)

373. Government Advances to Workers Act 1906, s 16

374. Krivian, 'Department of Maori Affairs Housing Programme', MA thesis, pp 29–30 (doc A51 (Stirling), p 308)

375. Document A51 (Stirling), pp 308–309

376. Ibid, p 325

377. Ibid, p 313

378. Ibid, p 310

379. Ibid, pp 310–311

380. Ibid, pp 313–314

381. Ibid, p 331

382. J K Hunn, *Report on Department of Maori Affairs: With Statistical Supplement, 24 August 1960* (Wellington: Government Printer, 1961)

383. Document A51 (Stirling), pp 339–343

384. Ibid, pp 344–345

385. Document I17 (Crown closing submissions), p 38

386. Document I17(d) (Crown closing submissions), p 15

387. Ibid, p 13

388. Document A51 (Stirling), p 44

389. Ibid, p 51

390. Ibid, pp 47–48

391. Document I17(d) (Crown closing submissions), p 14

392. *Te Wananga*, 29 December 1877, p 511 (doc A51(f) (Stirling supporting papers), p 2871)

393. Seddon to Under-Secretary of Justice, 16 August 1899, J 1/1900/842, ArchivesNZ (doc A51(b) (Stirling supporting papers), p 963)

394. H Hill, 'The Maoris To-day and To-morrow', *Transactions and Proceedings of the New Zealand Institute*, vol 35, no 2 (1902), p 170 (Lange, *May the People Live*, p 82). Lange references Hill in support of this comment.

395. Secretary of Education to Brittain, 16 August 1889, BAAA 1001/442a, 44/4, ArchivesNZ (doc A51(a) (Stirling supporting papers), p 309)

396. Document A51 (Stirling), pp 64–65

397. Document A118 (Gilling), p 308

398. Waitangi Tribunal, *Napier Hospital Report*, p 53

Page 327: 'Ngā Kōrero mō te Or: Matai Broughton'. Source: doc C6 (Broughton), pp 4–5.

Page 328: 'Ngā Kōrero mō te Ora: Colleen Pringle'. Source: doc C4 (Pringle), pp 3–4.

Page 337: 'When the Doctor's Bill Means Debt'. Source: doc A51 (Stirling), pp 53–55.

Page 344: 'Rongokako Māori Council'. Sources: Health Department annual report, 1934, H 1/172/21 56, ArchivesNZ (doc A51 (Stirling), p 113); doc A51 (Stirling), pp 107–113.

Page 347: 'Rongokako Māori Council Bylaws'. Source: MA W1369, box 20, 26/3/17, ArchivesNZ (doc A51(e) (Stirling supporting papers), p 2096).

Page 349: '1891 Survey of Māori Shearers and Living Conditions'. Sources: Bowden to Thompson, 26 May 1891, LE 1/1891/177, ArchivesNZ (doc A118 (Gilling), p 167); John E Martin, *The Forgotten Worker: The Rural Wage Earner in Nineteenth Century New Zealand* (Wellington: Allen & Unwin, 1990), p 151; doc A118 (Gilling), p 168.

Page 352: 'A "Member of the Executive Council Representing the Native Race" Visits Pāpāwai in 1941'. Sources: *Wairarapa Times-Age*, 20 October 1941, AAMK 869/1018d, 30/3/21, ArchivesNZ (doc A51(e) (Stirling supporting papers), p 2228); Paikea to Native Minister, 21 October 1941, AAMK 869/1018d, 30/3/21, ArchivesNZ (doc A51(e) (Stirling supporting papers), p 2229); doc A51 (Stirling), pp 320–325.

Page 353: '"It Remained Like This until the 1980s": Māori Housing in Wairarapa ki Tararua'. Sources: doc C33 (Munro), p 5; doc C27 (Reiri-Smith), p 12; doc D16 (Akuira), p 8; doc G5 (Whaanga), p 5.

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CHAPTER 3D

CROWN PURCHASING: KOHA/FIVE PERCENTS

3D.1 What Was the Five Percents Fund?

As we discussed earlier in this chapter, Grey introduced the idea of using a percentage of the on-sale price of land the Crown purchased from Māori to create a fund directly benefiting its former Māori owners. In the Wairarapa, 5 percent of the on-sale price was to go into the fund. (The idea was applied in a few other places, and different percentages were used.) This 'five percents fund' was in addition to the endowment from the general land fund for all Māori that Secretary of State Russell authorised in January 1841. In early Wairarapa purchase deeds, the Māori word 'koha' – meaning present or gift – was used to describe the five percents.

Grey's objective was to tie Wairarapa Māori to the Crown, and give them a direct stake in settlement. The fund also gave the Governor a means of financing projects of immediate importance to Māori welfare at a time when his responsibilities and power were increasingly challenged by settler government. An important element of Grey's proposal was the involvement of Māori in the management of the fund.

3D.2 What the Claimants Say

We outlined in chapter 3A the legal arguments concerning the place of the five percents in Crown purchase policy in the Wairarapa, and how the promise of koha influenced the Māori decision to sell. Here, we summarise only the submissions on administration of the five percents fund. It is not possible, however, to separate entirely issues of policy and administration, since shortcomings in the one were likely to contribute to failure in the other.

Counsel for Ngā Hapū Karanga submitted that 'Because of the nature of the fund and its role in inducing the alienation of land in the Wairarapa, the proper administration of the fund was subject to the Treaty duties of utmost good faith and active protection'. The fund was also subject to the law governing trusts: holding the accumulated funds on behalf of the beneficiaries, the Crown had to account as trustee for their proper administration. Counsel argued that the Crown fell well short of its obligations on both counts. It failed to respond adequately to Māori complaints about a variety of problems in the fund's administration. Disbursements were made in an extremely dilatory manner. Even the

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Crown's best attempt to address concerns (under Heaphy) produced 'nothing in the way of audited statements' and no way for Māori to check or challenge the figures presented to them. Moreover, as there was no final accounting, any outstanding issues simply lapsed when the fund came to an end.[1]

The Crown's poor response to Māori queries and complaint was a key concern for claimants. So too was the fact that 'none of the Crown officials involved in the administration of the fund made any attempt to reconcile the terms of the five percent clauses contained in the deeds with the wider promises that had induced the pre-1865 land alienations'.[2]

Counsel summarised the Crown's failure like this:

> The failure to utilise the fund for infrastructural development in the aftermath of the Crown purchase transactions, diminished any possible value of the fund to Wairarapa Maori as a whole, while after Crown officials formed the view that the monies could simply be distributed, the ongoing delays, the failure to account, and general uncertainty surrounding the administration of the fund resulted in minor and haphazard payments, which could have provided little or no lasting benefit to even the particular vendors.[3]

Counsel for Rangitāne o Tāmaki-Nui-ā-Rua agreed, but also noted that the guarantee to Māori of citizenship should have meant that social services did not need to be paid for out of the fund.

Counsel for Ngāi Tūmapuhia-ā-Rangi usefully drew on the Tribunal's Whanganui a Tara report, where it found the Crown was obligated, as regards the tenths fund, to

- devise a satisfactory policy for its effective administration;
- provide effective administration and supervision;
- consult with the beneficial owners;
- be responsible for ensuring that those owners were correctly identified; and
- promptly disburse funds.[4]

This did not happen here in Wairarapa, counsel said: 'Essentially, once McLean had finished the 1853/4 transactions, the Crown lost interest in the koha fund . . . The overwhelming evidence is of official disinterest and outright denial.'[5] At best, small ad hoc payments met specific Māori requests, but there was no coordinated or coherent response. And at worst, goods and services were charged against it, without Māori knowledge and consent, and for inappropriate purposes. Added to this was the failure to keep proper accounts and to deal promptly with problems.[6]

3D.3 What the Crown Says

Crown counsel acknowledged that 'there were other promises of benefit that were contractual in nature – notably the 5% provisions', but argued that the terms were carefully prescribed. The Crown had never accepted that koha/five percents payments were due on all blocks: they were payable only where specified in deeds, and had no general application. They were one of Grey's tools, deployed because his funds were limited and calculated after costs of survey ('a heavy item') had been deducted – a matter of negotiation, perhaps offered when price became an obstacle. Also, Māori showed a good understanding of the five percents accruing on some blocks only and of payments not being open-ended.

The Crown conceded, with regard to the administration of the fund, that:

> There are a number of respects in which administration of the fund is open to criticism. The clause obliged the government to consult with Maori over the expenditure on the first category of benefits [schools, hospitals, mills and medical attendance]. This did not happen. Had it done so, Maori uncertainty about the use of the fund and dissatisfaction at the delay in its implementation might well have been reduced. Issues such as the extent to which the costs of medical care should be offset from the contributions to the fund

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A group of Māori alight from a waka, with the Lake Ferry Hotel in the background, 1940s. Land around Wairarapa Moana, which includes Lake Ferry, was included in the early Crown purchases in which koha/five percents clauses appeared in the deeds.

might have been better resolved if the process stipulated in the clause had been followed.

Instead, there was no coherent policy governing the form of benefits to be passed to Maori.[7]

The Crown contended that later misunderstanding over the nature of the scheme was probably more attributable to the failure to set up a management committee than to a misunderstanding of what Grey had promised. Crown counsel dismissed the claimants' argument that the use of the term 'koha' in the deeds suggested to Māori that open-ended benefits would flow to them as a result of their sales.[8]

The fund was cumbersome and early payments were made in 'haphazard response to importunities', but officials had acted in good faith, and Counsel gave the construction of Rāniera's mill as an example.[9] The Crown said that the fund, by its very nature, was 'probably destined' to

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disappoint, being 'small, finite, and diminishing'; it 'may have originally seemed to offer more than it could actually deliver'.[10]

In its memorandum of 9 May 2005, the Crown conceded that the implementation of the five percent clause breached the Treaty. The memorandum states:

> The Crown acknowledges that it failed reasonably to discharge its obligations under the five per cent clauses that were incorporated into certain purchase deeds in the Wairarapa area. This failure caused prejudice to Wairarapa ki Tararua Māori and was a breach of the Treaty of Waitangi and its principles.[11]

3D.4 What Issues Do the Koha/Five Percents Raise?

The inclusion of koha/five percent clauses in a number of the Crown's purchase deeds in 1853–1854 raises the following questions:

- Should we see the koha/five percents as applying only on the deeds containing those specific clauses, or did they apply to all the lands in the Wairarapa district?
- How did Māori view the koha/five percents? What did they think Grey and McLean had promised them?
- What weight can we place on the koha/five percents as part of the Crown's effort to make suitable provision for the long-term welfare of Wairarapa Māori?
- What commitments did the Crown acknowledge? Did the Crown fulfil them?

Chapter 3A has already explored aspects of the first two questions – whether the five percents were properly limited to particular deeds, the different perspectives of Māori and officials, the way in which Grey presented the five percents to Māori at the komiti nui as part of his bold new vision for their future, and the fact that early release of money would have been concrete evidence of the kinds of benefits Māori could expect to receive for agreeing to sell their land to the Crown.

We now consider other aspects of the koha/five percents regime. In particular, we examine how the Crown conceived and implemented it, and whether – both in their conception and implementation – the koha/five percents supported the Crown's effort to make suitable provision for the long-term welfare of Wairarapa Māori.

3D.5 The Language in the Deeds

The English version of the five percent or koha clause from the Tūranganui deed states:

> It is further agreed to by the Queen of England on her part to pay us at certain periods, within certain years to be decided on by the Governor of New Zealand and ourselves, that is, that we are to have a certain additional consideration for the lands we have sold, to be paid to us for the forming of Schools to teach our children, for the construction of Flour Mills for us, for the construction of Hospitals and for Medical Attendance for us, and also for certain Annuities to be paid to us for certain of our chiefs; but it is hereby agreed that we ourselves and certain Officers, who shall be appointed by the Queen or the Governor of New Zealand, shall carefully discuss in Committee, to which and at what times and in what proportions the said money shall be applied to each of the purposes above specified. The payments to be made annually to our Chiefs are to be decided upon by the Governor of New Zealand only or by an Officer appointed by him, who shall have the power of deciding as to which Chiefs shall receive the said annual payments.[12]

The deed goes on to say that the costs of 'surveys and other expenses connected with laying off the said Lands' would be deducted.[13]

The Māori text typically expressed the five percent clause simply as 'Ko nga koha e whakaritea mo matou o taua wahi'.[14] Takirirangi Smith gives the meaning as: 'The koha will be paid to us for that place'.[15]

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According to Tipene Chrisp's translation of the full Māori version of the deed, the concept of koha was expressed like this:

> This is a further arrangement that is agreed by the Queen of England, that she will provide at certain times in future years, as agreed by the Governor of New Zealand and ourselves certain benefits [he koha] derived from our homes that we have passed over to provide for the establishment of schools for our children, for the erection of mills . . . for the establishment of hospitals and [provision of] doctors for us, and for the payment of pensions in future years for some of our rangatira.[16]

These words conveyed the idea of partnership in managing the fund, except for the annuities:

> In this regard, we and the officers of the Queen or the Governor of New Zealand will consider in committee the allocation of those monies. The payments for our rangatira . . . will be made by the Governor of New Zealand, or by someone with his delegated authority.[17]

Koha Clause from the Tūranganui–East Side of the Lake Deed 582

The koha clause from the Tūranganui–East side of the Lake deed 582 reads as follows:

> Tenei ano hoki tetahi ritenga e wakaaetia nei e te Kuini a Ingarani mona kia homai ki a matau i etahi takiwa i roto i etahi atu tau e wakaritea e te Kawana a Nui Tireni e matau hoki ara ko taua ritenga he koha o a matau Kainga ka tukua nei kia hoki mai ano ki a matau hei whakaritenga Kura whakaako mo a matou tamariki, hei wakatunga Mira huri parao mo matou, hei wakaritenga whare turoro, takuta hoki mo matou, hei homaitanga utu hoki i roto i nga tau mo etahi o a matou rangatira Maori, otira ma matou tahi ko nga Kaiwakarite e wakaritea mai e te Kuini, e te Kawana o Nui Tireni ranei e Komiti marire nga ritenga hei wakatumaunga mo aua moni. Ko nga utu mo a matou tangata rangatira i roto i te tau ma te Kawana o Nui Tireni ma tetahi atu tangata e wakaritea i ai a te tikanga mo nga Rangatira mona aua utu i roto i nga tau. Ko te ritenga hoki o aua utu koia tenei ki te mea ka oti te rurita nga ka hokona aua whenua o matou kua tukua kia te Kuini o Ingarani, ki nga Kingi Kuini ranei o muri iho i ai a ko etahi o nga moni i riro ki a te Kuini, ki a te Kawanatanga o Nui Tireni hei utu mo aua whenua ka wakamutuhia mo aua tikanga mo matou kua oti nei te korero te ritenga o nga moni e hoki mai kia matou he 5 per cent ka rite ki te rima pauna o roto o te rau kotahi £100 aua oti atu ano i a nga utu mo te ruritanga mo nga mahinga wakarite ki runga ki aua whenua.

3D.6 The Deeds that Contained the Clause

The clause was included in only 12 of the deeds that McLean signed:

Rigby told us that at least one other deed – that for Waiōrongomai (aka Wairongomai), which was reserved from an earlier sale – should have entailed the same conditions. There was no specific mention of the five percents in the Waiōrongomai deed, whereas there has been in the deed for the parent block, West Side of Lake (Tūrakirae). The Crown never acknowledged the obligation.[18]

3D.7 Why was the Clause in Some Deeds and Not in Others?

In the absence of a detailed record of negotiation, it is unclear why McLean inserted the clause in only some deeds. After the initial signings following the komiti nui, when Grey specifically instructed that these arrangements be made, McLean seems to have used the promise of the five percents as a negotiating tool. Once Grey left New Zealand on 31 December 1853, McLean was less

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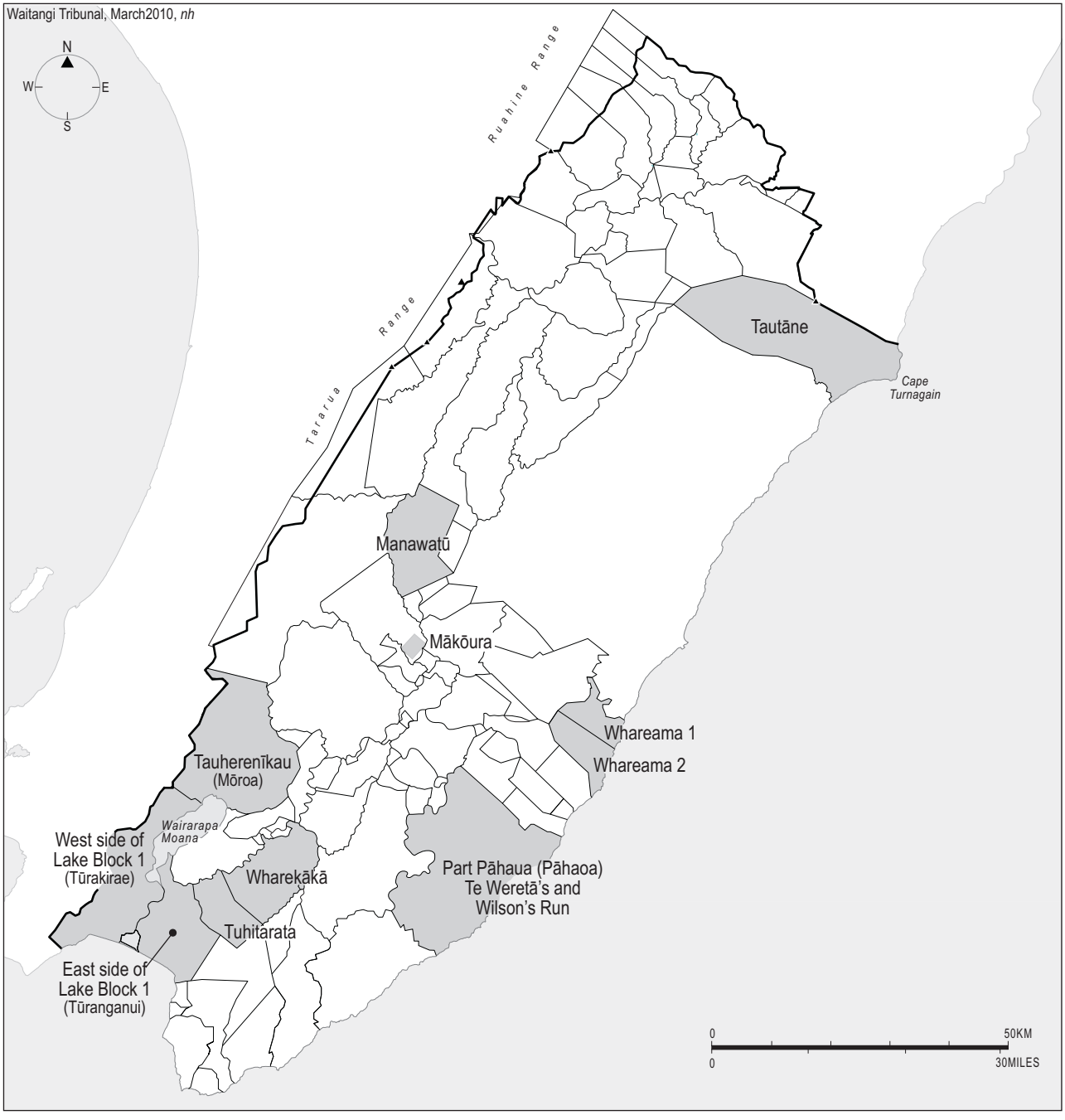

The inquiry district. The shaded blocks are those where the Crown's purchase deeds contained a koha or five percent clause.

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No	Parent block	Date of deed	Estimated acreage	Nature of reserve
1	No 1 West Side of Lake (Tūrakirae)	1 September 1853	66,760	Four land reserves, plus eel fishing
2	No 2 East Side of Lake (Tūranganui)	6 September 1853	30,253	Eight land reserves
3	No 3 Tuhitarata	10 September 1853	20,900	None
4	No 4 Tauwharenīkau (Mōroa)	19 September 1853	61,400	None
5	Part Pāhaoa (Te Weretā's) and Wilson's Run	29 October 1853	107,000	Four land reserves
6	Whareama No 2	1 November 1853	12,931	Three land reserves, plus eel fishing
7	Whareama No 1	9 December 1853	11,583	Two land reserves
8	Manawatū	10 December 1853	45,550	Two land reserves
9	Mākōura	10 December 1853	2291	None
10	Part West Side of Lake – Pōnui, or Tāmihana reserve (Part Tūrakirae)	14 December 1853	Included in Tūrakirae above	None
11	Tautāne	3 January 1854	70,000	Two land reserves
12	Wharekākā	4 January 1854	28,398	One land reserve

Deeds that contained the koha/five percent clause

inclined to enter into the engagement – the last occasion was 4 January 1854. In April of that year, the Colonial Secretary instructed McLean not to enter into any arrangements that might infringe the Constitution Act 1852 or the land regulations of 4 March 1853, and after that no more deeds included koha/five percent clauses.[19]

There was some suggestion in the years immediately following the Wairarapa purchases that the clause had been applied to compensate for the loss of rentals. This was the assessment of Native Reserve Commissioner Heaphy, who reported on the fund in 1873. He said that the idea had been introduced as 'it was not desirable that they should have cause to regret their act'. He hastened to add that 'It must not be considered from this that the Natives were underpaid for their land'.[20]

In our view, however, price probably was the main factor. McLean deployed the koha/five percents when he was purchasing large blocks at low prices. McLean commented later (in 1862) that Māori would consent only to survey costs being deducted from the fund 'especially as they sold the land at a cheaper rate in consequence of being promised the five per cents'.[21]

The idea that the koha/five percents were to compensate former lessors for loss of rents seems less likely because in places like Mangawhai, north of Auckland, 10 percent of the proceeds went into a fund, but there was no background of leasing in that part of the country.

There was no consistent practice, however. The deeds for some very large blocks did not include the clause. For example, the Te Awaiti deed (signed on 3 January 1854, where the Crown paid £1500 for an estimated 100,000 acres) and the Kōhangawariwari deed (signed on 11 January 1854,

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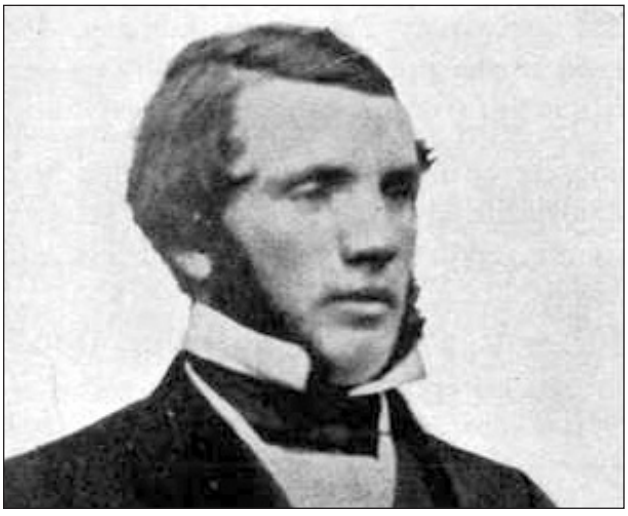
where the Crown again paid £1500, this time for an estimated 150,000 acres) look like obvious candidates, but the clause was not included. Nor did McLean ever explain why Whareama 1 and 2 were subject to the five percents, but not the larger Whareama 3 (North) block, where McLean signed a deed on 2 December 1853 for the Crown to pay only £300 for an estimated 100,000 acres.[22] In one case – Tautāne, which we discussed in chapter 3A – the decision was made not to allow the 'real owners' who were party to the second deed to participate in the five percents. For an additional payment of £500, the signatories to the second Tautāne deed of March 1858, gave up the five percents from the resale of the block – a benefit that had been included in the first Tautāne deed of January 1854. Whether this happened at the Crown's instigation (to save costs), or Māori suggested it to obtain a better immediate return, or greater autonomy from Government intervention, is unknown.



Donald McLean. McLean came to New Zealand in 1839, and in April 1844 became protector of aborigines for the Western district. In 1850, he received a commission empowering him to acquire land for the Government and in 1853 he set up the Native Land Purchase Department, with himself as chief commissioner. He was knighted in 1874 and died in 1877, just a month after he retired from 32 years in public service.

3D.8 Were the Koha/Five Percents of General Application?

We think that Grey's idea of the koha/five percent clauses was based on sound principle. He wanted to ensure that those Māori who agreed to sell their land to the Crown would derive direct benefits that were not confined to money. To the extent that eligibility for the fund was an advantage that offset the low prices paid, we discern something positive. One way of looking at it is that the Crown withheld part of the purchase price to ensure that it went into a fund to be spent for proper purposes. There had already been experience of Māori, new to a cash economy, squandering sale proceeds without fully appreciating that there would not be a continuing supply of such moneys. Clearly though, 'proper purposes' for fund expenditure would not include services or benefits for which the Crown should anyway have been liable.

It would certainly have been preferable if this approach had been applied to the whole district, and there is strong evidence that Māori thought so too, though it was not long before the true purpose of the fund was obscured by the Crown using it to pay handouts to influential people. It is clear that Grey *was* also setting up a system of patronage; and there was such an obvious flaw in an endowment that would decline rather than grow that it makes us question whether the Crown's intention was principled at all.

We think that Grey's message at the komiti nui would have created a legitimate expectation that all sellers would benefit from the fund. Thus, we cannot accept the argument that specifically and expressly benefiting only a few demonstrates the Crown's intention not to honour the more general promises to the many. What if the Crown had

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proffered the notion of the koha/five percents, but none of the deeds had included them? Would that have absolved the Crown of the responsibility to follow through? No. Therefore, we think that the legitimate expectation of the many remains, irrespective of the deeds that specifically benefited those particular sellers.

We accept, though, that the Crown did not see the koha/five percent clauses as having application beyond the particular deeds in which they were included, and it remained consistent in this view over time – although there is one possible exception to this, which we come to later.

In 1874, Heaphy determined that the area of the 11 blocks (excluding Tautāne) that was subject to the koha/five percents was 387,066 acres, and this is the figure the Crown worked on from that point. In a memorandum dated 16 January 1856, McLean indicated that the fund applied to specific blocks and not to all. He described the boundaries of 12 blocks (including Tautāne block) where the clause applied, and estimated the area at 140,000 acres.[23] McLean's list did not include Mākōura, but did include Tautāne and also a block 'at Ahuriri'. Native Minister Francis Bell agreed with McLean's figure in January 1863. But in March that year, Commissioner for Crown Lands Fitzherbert gave a much higher estimate of 416,900 acres – but for only nine blocks excluding Mākōura and Tautāne, and possibly part of Tūrakirae.[24]

3D.9 Administration of the Fund, 1853–70

How well did the Crown deliver on those commitments that it did acknowledge at the time, namely:

- the proper administration of the fund generated by five percent of the resale of the 12 specified blocks after deductions for survey and other costs;
- the use of those moneys for the construction of schools, hospitals, mills, and beneficial projects which, the clause stated, were to be decided in consultation with Māori 'in committee'; and
- the payment of moneys variously described by officials as 'annuities', 'pensions', and 'presents', at the sole discretion of the Crown.

3D.9.1 Māori requests

As Māori saw lands on-sold and the district settled, they began to ask the Government to deliver on its side of the bargain. Their requests and concerns were varied. Some asked that promised payments be made on particular lands, or on all of them. Others wanted to be shown accounts, helped with a mill, or provided with stock. Sometimes, they protested subtractions from their moneys for purposes they did not acknowledge. In some instances, they complained that so little had come from Grey's comprehensive initial promises.[25] They also came to see disbursements from the accumulated moneys as a way of partly making up for the low prices they had 'foolishly' accepted in the early years of Crown purchase.[26]

3D.9.2 Crown officials' approach to running the fund

Crown officials almost immediately abandoned any idea of using the fund to actively promote the welfare and social advancement of Māori in the district – except as a possible way of funding projects to which the Crown was already committed. These included the Pāpāwai mill, which Grey promised separately in negotiations, and the local school, also separately endowed to the Bishop of Wellington.

Up to 1860, the account had been drawn upon to a total of £941 17s, including £366 17s in March 1858 for the Pāpāwai mill and another £260 for the Bishop of Wellington for the Anglican school (St Thomas' College). Māori later insisted that the cost of the mill and the school should not be a charge on the fund. Some officials agreed, but the matter remained unresolved for many years, and in the absence of clear lines of accounting and with the involvement of different officers, it remains unclear exactly what was charged against the fund and what was

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not. Though the Crown acknowledged that the fund was not liable for the initial cost of the mill, repairs for damage caused by the earthquake, totalling £366 17s, were deducted.[27]

The only other project undertaken – this on Māori initiative but approved by the Crown largely for political reasons – was the construction of Rāniera's mill at Tauānui in the lower Wairarapa. There appear to have been three disbursements for this purpose: two by Searancke in 1860, and another larger one in 1862 at McLean's instigation. Searancke wrote to McLean in August 1860:

> I have also made a further advance of Twenty pounds (£20) on the five per cents to Raniera, in order that the mill so much required by the Natives in the lower part of the valley should at once engage their attention. They have now received Fifty pounds (£50) on account, which is placed in the Bank at Wellington.[28]

A third much larger payment of £400 was approved by Colonial Secretary William Fox in 1862.[29] These charges against the account were also subsequently challenged because other beneficiary parties had not been consulted. By the time they were, when the Government was attempting to disburse what remained of the accrued funds, the mill had fallen into disuse and Māori were reluctant to accept that the fund should have paid for it. Ultimately, £300 was charged against the account after the machinery was sold off for £77 10s.[30]

3D.9.3 How was the fund spent?

A return compiled by McLean in 1863 – a rough list titled 'Advances to Natives on Account of 5 Per Cents Chargeable upon Land Sales at Wairarapa' for the period up to 1860 – showed that the fund was drawn upon most frequently for 'koha' – meaning cash payments to, or through, individual chiefs. A number of small sums were paid to Rāniera (amounting to £78), with lesser amounts to Ngāiro, Te Weretā, Wiremu Wāka, Karaitiana, and Ngātuere. Altogether, these payments totalled £197.[31]

But the most puzzling item in the accounts is the first debit, dated September 1853. Against the sum of £100 is the item 'Castlepoint Natives'. Yet there was no five percent clause in the Castlepoint deed, and when tangata whenua there later claimed koha on the block, the Crown rejected the claim. The payment was somehow linked to the signing of the first deeds after the meeting with Grey, but its exact purpose was not recorded and we were offered no evidence on this point. We speculate that McLean was indicating at that early stage that the owners at Castlepoint would receive five percents like the vendors in the southern Wairarapa. Another point favouring the view that McLean initially expected that five percents would be paid on the land in the Castlepoint purchase is the list of koha blocks he made in 1856. Among those in the Wellington province was one 'at Ahuriri'.[32] None was payable on the Ahuriri purchase, however. We wonder whether he was referring to the Castlepoint purchase, as the northernmost of those in Wairarapa. Later, as we have said, a different view prevailed.

McLean and his successors were not above manipulating the accounts to finance projects that ought to have been funded from other sources. We number among these the initial construction of the Pāpāwai mill and school (see below), the provision of basic medical services, and payouts to certain of the beneficiaries at Pāhaoa to redeem debts on the land, or to persuade them to accept a final settlement of outstanding claims.[33] As for the proceeds from land that the Crown had on-sold, by 1863, when McLean compiled this return, 84,314 acres of the 416,900 acres to which the five percents applied (in the Crown's estimation), had been sold for a total of £36,769 and £6544 in scrip. This meant that £909 10s 4d was available in cash to be spent from the fund according to Native Reserves Commissioner Swainson, who reported on the matter to Native Minister Mantell in April 1863. He had already deducted the expenditure on Rāniera's mill and the repairs at Pāpāwai. At this stage, officials regarded themselves as having an obligation to disburse amounts from the fund, or benefits from it, only to the signatories of the original

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deeds. Although this may sound straightforward, problems arose immediately as to how to allocate benefits.[34]

3D.9.4 An administrative burden for the Government

Tony Walzl's evidence shows that the Government, from the early 1860s, wished to be rid of the responsibility of administering the five percents fund. In 1863, Bell raised the possibility of immediately paying out to Māori a lump sum calculated on an estimate of likely on-sale profit, plus the money sitting in the fund. This idea was discussed for several years without consulting Māori, but was eventually dropped because of unresolved difficulties about what could legitimately be charged against the fund, and differences between the Māori right holders as to their respective entitlements. (These inevitably arose because McLean did not properly investigate the owners' interests before purchasing their land.) Officials were ill-equipped to resolve these tricky questions, armed as they were with only the deeds and the incomplete surveys of the parent blocks.[35] There was also an issue about responsibility as between the general and provincial government, which was only resolved in 1869 when the liability of the Province of Wellington with regard to the koha blocks was assessed at £1365. The debt was to be discharged by payment to the general government, although it appears that this did not happen.[36] The accountant to the Treasury, Balkin, relied on old figures – the latest update had been in mid-1866 – to calculate that the five percents arrangement had yielded a total of £2915 4d after deducting survey costs. By this date, the fund's liabilities were estimated at £1200, but later rose to £1365.[37]

By the mid-1860s, officials had almost completely lost sight of the importance of Grey's promise to Māori and the original intention of using the fund as an endowment. Instead, they saw the fund as a nuisance and a source of ongoing Māori grievance. They wanted to make cash payments to the former owners of the blocks as if the payment were another instalment of the purchase price.[38] According to Walzl, in 1869, Native Minister J C Richmond briefly considered the idea of using the accrued funds for a school; he directed Resident Magistrate Wardell to investigate whether one might be established in the district and financed from the five percents, but nothing came of it.[39]

Instead, and partly in response to ongoing Māori inquiries about sums due or how moneys had already been expended, H T Kemp was instructed to arrange for the distribution of the accumulated funds at a meeting in Greytown. The Crown recognised that any move towards a final payment would require Māori agreement (the wording of the clause required it) and/or an Act of Parliament.[40] One official, Swainson, said in a memorandum that Māori would probably accept a final settlement, since the fund had never been properly administered or its goals put into effect – 'more especially', he explained, 'as the mode of applying the sums accruing from the 5 per cents as expressed in the clause has never been carried out'.[41]

3D.10 Kemp's Distribution, 1870

3D.10.1 The Greytown hui

It took four days for Māori to gather for what would be a very large hui (meeting) in the public hall at Greytown. The Government authorised the payment of £20 from the fund to help Ngātuere and Ngāiro pay for the necessary manaakitanga (traditional hospitality), but this contribution was only a loan.[42]

Kemp discussed matters informally with the early arrivals, and the hui proper began on 29 October. It adjourned several times so that Māori could discuss matters amongst themselves, and lasted until 11 November when the final outstanding matter (payment of moneys on Mākōura block) was settled.

The officials – Kemp and Wardell – were concerned largely with getting Māori to accept and agree upon the distribution of a sum they feared would be rejected as too small. Thus Kemp invited the assembly to 'take a more enlarged view of the measure, and not to confine it too closely to the mere money payments'. He argued that the

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Greytown looking south, with the hotel on the left and other commercial buildings and houses, circa 1870s

term koha really referred to the benefits of colonisation, which had been already achieved: 'they were in common with their neighbours and friends, joint holders of property, which otherwise must have remained a comparative wilderness and waste'. These comments, Kemp reported, 'were accepted by them in good spirit,' and 'paved the way to a friendly negotiation'.[43] When Wardell spoke of the funds, he used the metaphor of a feast. His message was that the only question for the hui to decide on was how to share the bounty amongst themselves.[44]

The principal Māori speakers at the hui included Ngāiro, Noera Whakataha, Te Mānihera, Wī Mahupuku (also referred to in the minutes as Hikawera), and Ngātuere.

Some of the most interesting comments came from Te Mānihera, who clearly saw that, although sale had brought some material benefits, money and goods had not been

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accompanied by equal access to Western knowledge, or partnership in the future of the district. According to the notes of the meeting, he acknowledged the 'difficulties and jealousies' that had 'sprung up through these different interpretations of the term [interest/koha] but he thought perhaps the misunderstandings had been equal on all sides'. He also thought his own lead ought to have been followed. He then remarked:

> Many of the things introduced into this district for the benefit of the Natives were still here – as also were the love and good feeling which had always existed, as a proof of which he would say that while almost all parts of the Island had been more or less disturbed by fighting etc peace was still maintained in this district and we are living in comfort. But he must say that some of the things which had been introduced for the good of the Maoris had almost entirely failed. There was the college which he thought would have been the means of providing for the education of the young Maoris of the district, but his experience had been that the money of the Government had been only wasted by paying the teachers who were appointed and that the children instead of being instructed had only been made use of as servants to the wives and families of the ministers . . .
>
> The mill was still there (at Papawai) but had almost fallen into disuse, although it might yet be turned to good account.[45]

Te Mānihera said that now he would wait for the money to be paid, once it had been arranged 'what each man had to receive'.[46]

The people's sense of disempowerment – of having been taken advantage of, rather than advantaged as promised – found expression in their anxiety at McLean's absence. Noera Whakataha's sentiment was similar to others':

> He had already asked how it was that Mr McLean had not come in person and had been told that he was very busy. His opinion was that it was desired that they should be unwise now as they were in former days and that was the reason he had asked why Mr McLean had not come himself.[47]

Wī (also known as Hikawera) Mahupuku – identified by officials as a Kingite and subsequently, as a supporter of the Repudiation movement – also lamented McLean's absence, but, as he could not come, 'they would arrange with Kemp and Wardell as his representatives'.[48] He insisted on a proper account of the land sold, moneys received by the Government, and sums advanced out of the fund. He too was concerned that the mistakes of the past not be repeated:

> Hikawera said the land was formerly sold foolishly in the days of their ignorance. It was Mr McLean who invariably fixed the price for each block and not the sellers. Mr McLean had purchased the greater portion of the land in this district and as such was the case interest ought to be paid both on land on which it had been agreed to pay it and on that about which no arrangement had been made because through their ignorance they had received much less than they ought for the land.[49]

3D.10.2 The state of the accounts

Hikawera drew attention, rather sharply, to the fact that Wairarapa Maori had been kept in the dark about the state of the accounts, asking how they were to know whether the koha amounted to £2000, £5000, or even £50,000? Kemp hastened to inform the assembly that the total in mid-1869 was £3170, but that after deductions, only £1940 was left for disbursement. Even McLean, he told them, would be able to give only an approximate accounting. Interest would 'not be due from the commencement continuously inasmuch as there had frequently been long intervals during which very little if any land had been sold to Europeans out

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of the blocks on which interest was due'. The Government now proposed to 'get a final settlement of the affair' up to 30 June 1869, and to make regular three-yearly disbursements of any funds accumulated after that.[50] The meeting then adjourned until the next day.

Hikawera kept demanding to see the accounts, because a 'distinct promise had been made to them that 5 per cent of the proceeds of sales of land to Europeans out of the various blocks ceded to the Government would be paid to them'.[51] Kemp and Wardell countered that accounts could not be supplied in the sort of detail that would show how moneys were distributed over the blocks and allocated to the signatories of the particular deeds. They clearly did not want to have to postpone the settlement until after detailed accounts were prepared. Wardell warned that might take a year, so it was better to take the money on offer: the accumulated revenues from the sale of 200,000 acres of land – or 5 percent of £63,500 – which, less deductions of £1230, left the £1940 for disbursement. Māori were obviously wary about accepting this. Kemp said he was 'sorry to find his friends' seeming to infer that there was an 'attempt on the part of the Government to hide the particulars asked for'. He assured the assembly that 'considerable care had been taken to furnish as correct a return as possible', and warned that a further search would produce no different result and only hold up matters. Wardell assured them of the Government's good intentions. To this, Mahupuku responded that 'they felt certain that the required papers were in the hands of the Government and therefore persisted in having them produced. The Europeans talked much of fair fighting and fair play, and they wanted nothing more.'[52]

They put together a committee of chiefs, which agreed on 3 November to accept the £2000 on offer, on the condition that the requested returns would be furnished at a later date.[53] Kemp immediately telegraphed the Native Department, requesting that they send £1000 in notes and £1000 in gold. He reported that Māori were 'friendly . . . but earnest on many points.'[54]

3D.10.3 Who should get what?

The hui reconvened on 7 and 8 November to come to a decision on the difficult matter of how to distribute the moneys.[55] Wardell gave this breakdown of what was owed on each of the blocks concerned:

Tūrakirae (two purchases)	£250
Tūranganui	£200
Tuhitarata	£200
Tauwharenīkau aka Tauherenīkau	£430
Te Weretā's Pāhaoa aka Pāhaua	£250
Manawatū	£100
Whareama 1	£110
Mākōura	£100
Whareama 2	£110
Wharekākā and Pūhangina	£250

How this was to be distributed was, Kemp said, was a question for them.[56]

Several proposals were made. Hikawera (or Wī) Mahupuku favoured each hapū selecting who amongst them should receive the moneys. Tikawenga proposed that any disputed blocks should be left until last. Hikawera then suggested that in cases where the deed signatories were still alive, the moneys should be paid to them, but Mātire objected to this. Then Te Mānihera objected to the amount due on the Tūrakirae block, because 'he was told the other day that the amount was £380'. Payments for Rāniera's mill should not have been taken out of the sums owing on Tūrakirae, because 'that had been paid long ago by the Government as part of the koha and consequently had not ought to be charged against the koha to be paid now'.[57] Wardell explained that there seemed to have been some misunderstanding about the amounts that had been read out. On the following day, the accrued funds were disbursed, except for Mākōura, which was settled several days later on 11 November.[58]

Kemp reported, 'Finally the natives urge that for the future no advances whatever may be made to anyone on account of this Fund'.[59]

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Walzl comments that Kemp had found that 'Maori held a markedly different view about the nature of the koha they had been promised than that now held by the Crown. Overwhelmingly they were disappointed by the neglect they had experienced over the past 17 years.'[60]

3D.11 Heaphy's Allocation, 1873

Māori interest in the koha increased rather than diminished after that first public distribution at the Greytown hui in 1870.

The attendees had only accepted the payments on offer because Kemp promised that in future there would be more detailed accounting, and regular distribution of the koha as it accrued. Over the next three years, Māori made various requests for payments or 'advances' out of the fund. Sometimes, the reasons were not stated, but in some instances they sought payment because they were 'in a state of great destitution', or in 'great want' and the money was required 'to pay our lawyers and to satisfy the persons who assembled to discuss the Tararua question.'[61] When the new Native Reserve Commissioner for Wellington Province, Charles Heaphy, began making inquiries in 1873, he discovered that Kemp had paid out on blocks using guess-work ('a kind of sliding scale of what he thought was fair and pleasant'), rather than by properly calculating what was owing on which blocks, and to which owners. Recalculating what had really been accrued on each block, Heaphy found that too much had been paid on Mākōura, while owners of other blocks had received too little. The question of the charge against Rāniera's mill was unresolved, and other owners objected to a charge on Pāhaoa of £100 paid to Te Hei in 1872. Nor, he discovered, had the £2000 paid out in 1870 been the full amount outstanding, and funds had accumulated in the meantime.[62]

All in all, the five percents account was a mess, and Heaphy acknowledged that Māori were owed a proper explanation.

He met with Wairarapa Māori in December 1873, and 'found that certain Europeans had been exercising a pernicious influence with the natives, in misrepresenting the object and extent of the deductions that had been made from the gross proceeds'. Again, Māori were disappointed. Only £596 was to be paid out, drawing unfavourable comparisons with the £2000 paid out three years earlier. Heaphy commented that since 'land had risen in value, population was coming in, and the place prospering, they could not understand how the amount could be so small'.[63] He expressed the view that the system was not adequately explained at the time, but did not acknowledge that this was a Crown responsibility. The blame, he thought, lay with their counsellors, who had 'not told how the income must necessarily be a decreasing one, as the balance of unsold land became annually less, or how the high prices ruling were on private – not Government – land sales'.[64]

3D.11.1 Entitlements on the Pāhaoa block

Those interested in the koha payable on the Pāhaoa block were also reported as being disappointed because their entitlement was only £35 9s 11d. They resented that one individual, Te Hei, had been paid £100 from the fund. We do not know what this transaction involved, nor its circumstances, but it was clearly contrary to Kemp's undertaking that there would be no more disbursements of that kind without prior consultation and the opportunity to examine the accounts.

According to Heaphy, it was disappointment at the small entitlement of £35 that lay behind the Pāhaoa beneficiaries' displeasure at the payment to Te Hei. We think his analysis may have been simplistic. Heaphy's own report stated that the right holders complained that Te Hei had 'never occupied the ground', that she lived in the Hawke's Bay and only derived her claim through general ancestry, 'while they cultivated the place'.[65] Heaphy told the undersecretary that:

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> The £100 was paid on the Unu Unu Reserve, in that block. Now the area of the Unu Unu is 1900 acres, which at 10/5 an acre (survey expenses deducted) would only give £45.2.6 as 5 per cents, assuming, then, that the Unu Unu exclusively belonged to her, which the natives deny, and that all the land in it is sold.[66]

This meant that, even if Te Hei was entitled to payment, she was paid too much

Ultimately and 'with a great deal of difficulty,' Heaphy induced the Pāhaoa beneficiaries to accept as legitimate the payment of £45 out of the disputed £100, with the issue of the balance (£55) to be addressed when Te Hei was there in person. In the meantime – 'until the matter [was] satisfactorily settled' – he would hold onto the koha of £39 10¾d that the fund had recently accrued.[67]

Nor was this the only charge upon the Pāhaoa funds. Heaphy also found 'an item on a letter in Dr Featherston's handwriting, showing that £60 was lent to the late chief, Wereta, one of the sellers, in 1862, and Heaphy required that it should be regarded as a set-off'. This, 'after some considerable discussion' they allowed.[68]

These issues resurfaced in 1881, when Heaphy had to bring the account up to date and Māori again objected to the loss of the reserve and a number of the deductions that had been made.

3D.11.2 Dissatisfaction generally

Heaphy recorded that the fund now held the following amounts against the following blocks:

Tūranganui and Tūrakirae	£ 28	16s	7¼d
Tuhitarata	£ 65	4s	2d
Mōroa and Tauwharenīkau/ Tauherenīkau	£578	13s	1½d
Pāhaoa	£ 39		10¾d
Manawatū	£ 79	7s	2d
Whareama 1	£ 27	1s	3d
Mākōura	£ 54	8s	3d
Whareama 2	£ 11	11s	1d
Wharekākā and Pūhangina	£311	12s	3d[69]

But, after all the confusion, Māori did not trust these figures, and formed a committee to scrutinise the accounts. Heaphy characterised the group as 'chiefly of members of the old Hau-Hau party', and their leader as a 'man who had been active a short time since with Henare Matua at Hawke's Bay and elsewhere'. This was apparently Hikawera (Wī) Mahupuku, whose assumption of leadership Heaphy opposed on the basis that he had interests only in Wharekākā and Pāhaoa so could not speak for all. However, Mahupuku's concerns were shared by others whom Heaphy invited to speak. Some simply sought payments of the amounts still outstanding, but there were other complaints. One was about the deduction for the salary of the doctor, whose competence was impugned because he had made Karaitiana's leg 'two inches shorter than unbroken leg'. They also objected to the earlier deduction for the Pāpāwai school, 'as the Master and Mistress gave too little teaching and had too much industrial work done'. Heaphy complained that Te Mānihera 'instead of being of use was decidedly obstructive' taking 'their side in all their discussions . . . and he in possession of a salary and enjoined to help me!!!'[70]

3D.12 Winding up the Koha Fund, 1880–1900

3D.12.1 The third public disbursement hui

The next opportunity for Māori to look at the Crown's accounts came some eight years later, at a hui in 1881.

By the early 1880s, the fund had dwindled because the Crown had sold off nearly all the land subject to the clause. Heaphy was faced with a third public disbursement, but this time with less money at his disposal and heightened Māori expectations. There had been a number of requests in 1880 for payments, and for a matter 'still unsettled after seven years' to be resolved.[71] Maunsell also reported being frequently asked for information about the fund.[72]

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Also in 1880 – a time of economic downturn – Native Minister Bryce authorised the cost of medical assistance for Wairarapa Māori to be deducted from the fund as a means of reducing Government expenses. Native Under-Secretary Lewis told Heaphy that the Minister considered it would be a 'fair arrangement' if the fund paid half the salary of Dr Spratt, Wairarapa medical officer, for the past five years – a sum of £250.[73] After some to-ing and fro-ing about whether half, or the whole of the salary should be charged to the fund, and on which blocks, Lewis told Heaphy to deduct £332 10s (half of Spratt's salary for nearly seven years). Heaphy replied that he and Maunsell had decided that 'it would be best to charge to the Lower valley (to Makoura) natives half of their koha and to the upper valley and outside districts 1/3 of the koha.'[74]

Maunsell opened the meeting by reading extracts from the deeds relating to the five percent clause, and then gave a breakdown of the money accrued on each block from 30 September 1875 to 30 June 1881. Predictably, his mention of 'deductions to cover half [the] salary of Dr Spratt during that period'[75] did not go down well. The brouhaha was not confined to the injustice of being charged for the doctor's services when they did not use them. Complaints extended to the Government's general neglect of the koha fund, and indeed its failure to follow through on the promises about koha made at the outset. Where were the schools that had been promised, and why was koha not paid on all blocks? Particular deductions were also opposed, especially those from Te Unuunu reserve (the Te Hei issue).[76]

Maunsell handed over the schedule of accounts, and the meeting adjourned.[77] Discussion continued outside, and some parties agreed to accept the accounts and take the amounts on offer. Hapū from Mākōura, Pāhaoa, and Whareama 2 blocks had floated the idea of accepting the money only as an instalment, but no: Heaphy said they must accept it as full payment of what was owing, and sign a receipt to that effect. Erihapeti Whakamairū and Karaitiana Korōu agreed to do this for Mākōura, signing a receipt for £1 4s 5d. Payment was made two days later, but according to the schedule of payments that accompanied Heaphy's report, only £1 2s was paid. Heaphy recorded that the owners of Pāhaoa were willing to accept their money too, but 'their representatives were not all present' to sign the receipts. They accepted their allocation of £284 9s 4d on 21 February. This was the biggest sum; the smallest was 11s 10d calculated as owing on Tuhitarata.[78]

Showdown at the Hui of 1881

This extract from the minutes of the public disbursement hui of 1881 summarises the exchanges between Māori leaders and the commissioner (Heaphy). Although it gives only a very compressed version of what took place, it does convey the depth of Māori dissatisfaction:

> *Karaitiana Korou:* The reserves for educational purposes in Masterton have not been considered (the Bishop) and we had no accounts furnished to us of land receipts.
>
> *Wi Mahupuku:* Schools should not have been mentioned as we have given separate lands for the purpose of education. The Doctor's pay is now imposed on us for the first time. He has not visited us. We have bought medicine at chemist shops. The Doctor has a circuit of two miles only.
>
> *Commr:* If any of you had been sick and sent for him he would have attended on you. You speak of educational lands no charge is made for education.
>
> *Wi Mahupuku:* Why are the reserves at Pahaoa withheld from us?
>
> *Commr:* That is beside the subject – not 5 per cents.
>
> *Wi Mahupuku:* But this is a good time for asking why those reserves are withheld.
>
> Objected to conditions of 5 per cents not applying to the Arikirau, he said they were told they would get 'koha' on that block and no conditions were specified.
>
> *Commr:* The koha promised was to be similar to that in the large blocks bought by Messers McLean and Searancke.
>
> *Wi Mahupuku:* I demand the whole sum £ [blank] for Pahaoa, without any deduction; I will not take less.
>
> Other chiefs followed in same stream.

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Castlepoint in the 1920s. There was a question about whether the five percents should have applied to land in the Castlepoint purchase, but the Government rejected Māori arguments that they should on the basis that the deed contained no koha clause.

3D.12.2 The fund grinds on

Māori continued to inquire about the fund. Hoera Te Rautū, although a forward-looking chief who had bought back 'reserve' land so that he could hold it under Crown grant, nevertheless took the view that the Crown was bound to pay Māori ongoing koha while it remained in possession of ancestral lands. He asked why koha had not been paid on Castlepoint lands – 'beyond Rangiwhakaoma . . . to Waimata & Arataura'. The translation of Te Rautū's letter that was provided to Rolleston[79] said 'it was a promise made by Sir Donald McLean that this should apply to all these lands, forty years has now elapsed and nothing has been done'.[80] As we observed earlier, 'Castlepoint Natives' received money from the fund right at the outset, but Te Rautū's claim was rejected because the Castlepoint deed had no koha/five percent clause.

Erihapeti Whakamairū asked for an inquiry into the five percents on her land at Mākōura. She complained about the payment for the unsatisfactory medical officer, Dr Spratt, whom beneficiaries of the fund had petitioned to have removed, and stated: 'Another cause of discontent is, there being no schools established, churches, hospitals or flour mills, yet a certain amount is withheld from us for the support of institutions which do not, and have never,

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existed.' Whakamairū could not understand why they were paid so little:

> I am quite aware as to the reason why those five per cents are made payable to us, and further, I know the Government exact payment from the Europeans who reside upon the lands in this township year after year down to the present day, thus I am of [the] opinion the money received must amount to a considerable sum, and further, there must be more due to us than what has been paid.[81]

Lewis, the under-secretary of the Native Department, attached a copy of the five percent clause to the letter and forwarded it to the Native Minister. He advised that:

> The writer has rather mistaken the terms of the deed. I think it would be sufficient to inform the writer that a medical officer having been provided specially for their district, it is only fair that the salary paid to him should be charged against the money intended for that and other similar purposes.[82]

Rolleston, who took over as Native Minister for eight months in 1881, asked whether the requirement for expenditure from the fund to be approved by a committee of beneficiaries had been implemented. He also queried why the expenses of a medical man were charged to the fund, but not those of schools and mills and the other things named. His assessment was: 'The whole matter seems to require revision.'[83]

3D.12.3 Heaphy's memorandum

Lewis instructed Heaphy to prepare a memorandum on the subject. Heaphy duly reported that he had paid out £556 18s 6d, after deducting £332 10s for medical services.[84] This latter charge on the fund was justified to the beneficiaries with 'very considerable difficulty', because the doctor provided services near Greytown, where few five percents were still generated by on-sale. It was in the outlying blocks where five percents had accrued more recently, and the owners there were beyond the reach of the doctor. Anyway, he observed, Māori remained superstitious about doctors, and availed themselves of their services only reluctantly. Heaphy said that the beneficiaries had accepted the medical services contribution and their consequently low payout after 'considerable discussion, and objection.'[85]

And, although no committee had met to endorse the decision to draw on the fund for the medical officer's services, Heaphy considered that Māori had 'tacitly agreed to' it, since the people of Pāpāwai and settlements in the lower valley went to him when they were sick. Even so, Heaphy did not think the principle of funding the Greytown doctor was sound, because of the difficulties of apportioning the expense between groups based in the lower valley, the upper valley and at the coast. Nor could he find any record of Māori concurring with Bryce's decision to begin this practice in the first place. He therefore recommended that use of the fund for this purpose should stop until Dr Spratt furnished a report on what services he actually provided.[86]

Thus, Heaphy supported the beneficiaries' position up to a point. But he otherwise defended his own accounting, and glossed over some of the early problems with how the moneys had been disbursed. He made no mention of general Māori disappointment about how the fund had come to be something quite different from what they thought was promised. He did acknowledge, using the Tauherenīkau deed as the template, that the original concept of a 'preliminary Committee of the vendors and officers appointed by the Governor to "discuss to which and at what times and in what proportions the money [should] be applied"' had not come to fruition. Rather, 'it appears to have been the practice for a Chief to come to the Native Minister, and in anticipation of time of payment, ask for a sum of money or a Flour Mill'. Heaphy went on to describe examples of payouts from the fund, but his advice to his minister was not altogether candid. With respect to payouts for Rāniera's mill, and on the Pāhaoa blocks (including the £100 to Te Hei), the Minister could not have derived from Heaphy's account an understanding of what the real controversies

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Dr Henry Thomas Spratt (1827–1908), who settled in Wairarapa in 1856, and practised there as a doctor, and also as a district coroner, for many years. Spratt was at the centre of a controversy about whether the five percent fund should pay for the costs of a medical officer in Wairarapa. In practice, the fund paid for part of Spratt's costs, and beneficiaries strongly objected.

were. After listing several of the main payouts from the fund, he continued:

> Although the above described mode of proceeding was irregular I do not think that any injustice befell the natives. Where the payments were made of £2000, by Mr Kemp in 1870, and of £1192 15 8, by me, in 1873, the natives very closely scrutinised all that was done. By me a Dr and Cr account with each block, from the first land sales, was rendered, and if any charge for mill, etc were found to press unfairly it was remitted, or transferred, until the natives were satisfied. A payment to Te Hei, made by Sir Donald McLean, on account of Pahaoa Block, was the only one strenuously objected to, and such objection was clearly a matter for the Governor or his Officer to decide, according to the 2nd provision of the Compact [ie, that payments would be made to chiefs as 'decided upon by the Governor'].[87]

As we know, however, and contrary to what Heaphy said, Māori could not 'closely scrutinise' the accounts. There was no way for them to challenge the figures presented; they could only question the legitimacy of certain deductions on the grounds that they were outside the stated purposes of the fund – although, as in the case of Te Hei that Heaphy cites here, the response then was likely to be that payments to individuals were a matter for the Government.

3D.12.4 The ongoing issue of using fund moneys to pay for the medical officer

Using the fund to pay part of Dr Spratt's salary remained a sore point, as did the deductions from the moneys payable on the Pāhaoa block to satisfy the debts of individuals.

In 1883, Maunsell again queried whether it was the Government's intention to charge the native medical attendant's salary against the fund, noting that the 'Maories have evinced great discontent at the deduction made at the last payment'. He advised against the practice continuing, because 'an injustice will be committed' for the reasons already canvassed.[88] Lewis advised Minister Bryce to accept Maunsell's suggestion to split the costs of Dr Spratt's salary (now £60) between the three principal townships, while attempting to put in place 'an arrangement with the Medical Officers as should satisfy the Natives, the total cost of medical attendance in Wairarapa not to exceed £75 to be deducted from the 5% fund'.[89] Bryce approved this step, but Lewis subsequently instructed Maunsell to wait for the local Māori committee to consider the device of splitting the £60 between the three townships. (They were not to be consulted on whether the fund should be liable at all.) Agreement to consult on the issue of apportionment only came after an approach to Maunsell 'to give them (as representing Maoris generally in the District) the opportunity of coming to a decision as to the best mode of distributing the annual sum allowed for Medical Attendance'.[90]

Although the Government did not seek the Māori committee's views on whether the fund should pay for Spratt, it was apparent that the committee gave them anyway later in the year. The committee did not accept that this was a legitimate charge on the fund. Maunsell reported that Māori were suspicious of him because he was Spratt's son-in-law. Advising that 'it being the wish of the Wairarapa Natives that other arrangements be made respecting medical attendance' he recommended that Spratt should be

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Dr Spratt's house

informed that his services would 'terminate at the end of the present quarter'.[91] It is not clear whether Spratt's termination was on the basis that other arrangements for medical attention in the region would in fact be made.

3D.12.5 The fund in its death throes

Queries about koha on different blocks trickled in over the next few years because, as one applicant (Rākai Hikuroa) put it, this had been 'an arrangement established by Sir George Grey and continued in Sir Donald McLean's time and it was to continue to my children and grandchildren'.[92] Waaka Kahukura, writing two years later, also thought that the 'word said by Donald McLean [was] abiding' and that he had promised that the koha would 'be continually paid . . . for ever and ever'.[93] Marakaia Tawaroa wanted a 'full explanation of the kohas for Wairarapa so that we may know'.[94] Others simply requested any moneys due. The matter was briefly discussed between Treasury and the Native Department, but no distribution was made because the sums involved (stated to be £192 5s 7d at 31 December 1885) were considered too small to make the exercise one of any urgency.[95] The matter seems to have been dropped until August 1896, when Whatahoro Jury and Enoka Te Taitea wrote to Seddon, when he was Premier, with particular reference to the Mōroa–Tauwharenīkau (or Tauherenīkau) block.[96]

The Native Under-Secretary asked the commissioner of Crown lands to supply a list of the sales that had occurred since 1880. It is not clear what happened next. The amount owing to Wairarapa Maori had gradually grown (with interest) until the figure reached £252 16s 7d for the year ended 31 December 1892.[97] From then on, interest no longer seems to have been payable for some reason, so

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the amount remained the same until sometime after 31 March 1898. In the following year, this amount was transferred from the Public Trust Office to the Consolidated Fund as part of a group of 'unclaimed' accounts (ie, supposedly unclaimed for six years).[98] We have not been able to trace, however, whether a payout was actually made in 1899 or in the years immediately following. If it was, the disbursement does not seem to have caused the same degree of local interest as it did on previous occasions, because we have seen no account of such an event taking place. There is a higher likelihood, we think, that the £252 16s 7d remained in the Consolidated Fund, and the beneficiaries of the koha/five percents fund received no further payment.

3D.13 Tribunal Findings and Recommendations

3D.13.1 The Crown's concessions

The Crown conceded that its implementation of the five percents was inadequate and breached the Treaty, because the Crown:

- failed to consult as promised;
- failed to set up an adequate administration; and
- failed to act in a timely manner when problems were identified.

We agree that these were indeed significant failings. However, they focus on the Crown's failure to do things properly, rather than a failure in conception that we perceive, and will explain below.

Also, we considered whether the whole koha/five percents regime was such a debacle that we would be justified in finding that the Crown had failed to act in good faith. We are very close to such a finding, but on balance we have decided that the threshold is not met. Although the Crown's conduct was consistently poor, its primary attribute was muddle rather than bad faith. Of course, if muddle goes far enough it becomes negligence, and if negligence is bad enough it becomes gross negligence, which in turn verges on criminality. The question is whether the Crown's conduct went far enough along this continuum to justify a 'bad faith' finding. We think that it did not, but only by a small margin.

3D.13.2 Issues raised

At the start of this chapter, we identified four issues arising out of the inclusion of the koha/five percent clause in a number of the early deeds, and said that two remained to be addressed. They were:

- What weight can we place on the koha/five percents as part of the Crown's effort to make suitable provision for the long-term welfare of Wairarapa Māori?
- What commitments did the Crown acknowledge? Did the Crown fulfil them?

We answer these questions now.

3D.13.3 Remaining issue 1

The first issue remaining to be addressed is what weight can we place on the koha/five percents as part of the Crown's effort to make suitable provision for the long-term welfare of Wairarapa Māori?

(1) *Koha/five percents a conceptual failure without other suitable provision*

As best we can now ascertain the situation, it seems that on that fateful day at Tūranganui in 1853, Governor Grey put to Wairarapa Māori his vision of a new colonial world. In that world, Māori were assured of a full and meaningful part, provided that they agreed to sell their land to the Crown and let the newcomers in. Central to the vision was that the Government would ensure a place for Māori by providing mills (enabling their engagement in commerce), schools (an avenue for acquiring the knowledge of the new world), and doctors (giving access to western medical knowledge and services, such as they were). In addition, Māori would derive an ongoing benefit from a fund into which the Crown would put 5 percent of the returns from on-sale of their land. This money would be used to

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meet the costs of other measures for Māori advancement, and also some cash benefits by way of annuities for certain individuals.

As far as it goes, this was fair enough. But it was not going to work (however well implemented) if the only benefits targeted at Māori were those that came via the fund. This was because the fund was too small and it quickly declined, as the Crown rapidly on-sold the land.

(Another huge problem, of course, was that the koha/five percent clauses appeared in only 12 of the purchase deeds, and that the Crown therefore deemed most Wairarapa Māori to be ineligible to benefit from the fund. But we have already talked about that in chapter 3C and concluded that all Māori who attended the komiti nui would have had a legitimate expectation that the koha/five percents benefits would flow to all.)

Thus we think that, set against a backdrop of general provision for Māori welfare, the idea of the koha/five percents on top might have worked. The Crown would also have had to explain to Māori that the idea of the koha/five percents was to give them a quick leg-up into the new dispensation in the first few years when the money would be rolling in, because afterwards they would be well established and would not need it. *If* Māori had accepted this, and *if* the Crown had fulfilled its ancillary promises about general provision for Māori welfare, the koha/five percents might have been Treaty-compliant. But this is a lot of 'ifs' and 'buts'. The truth of the matter is that the backdrop of general provision was almost entirely lacking, and there is no evidence that the funding trajectory of the five percents (ie many receipts to begin with, but declining rapidly after that) was thought about at all – much less explained to and understood by Māori. Indeed, the tenor of all the public disbursement hui was very much one of mystification on the Māori side: many obviously did not understand why the fund was diminishing fast just as land prices were rising. Although Crown officials clearly did understand why this was, no one seems to have foreseen that a system that provided for fund receipts to decline sharply at the very time that land prices were highest – that is, when the supply of land to settlers had nearly dried up – would be galling for Māori, who had sold their land for so little. McLean apparently saw the koha/five percents as a means of compensating Māori for the low price paid to them, but if this was the objective, it certainly failed.

We agree with claimant counsel that the Crown was obliged to deliver, or to try to deliver, all the benefits promised as inducements for the 1853–65 Crown purchases. In fact, it neither delivered them nor tried to. Instead, the Crown:

- took a very miserly approach to the provision of general benefit to Wairarapa Māori in return for their consent to sell at low prices;
- limited access to the koha/five percents fund to a random group of former landowners whose deeds happened to contain the clause; and
- resorted to the koha/five percents fund to finance projects that were separately promised, rather than using the fund exclusively to provide additional benefits.

The Crown's intentions may have been good at the outset, but the failure to attend to the underpinning of general benefit, and to develop a clear and coherent policy for the purpose and use of the five percents, meant that a poor result was inevitable.

The Crown never really committed to the koha/five percents as a means of delivering a social endowment, and officials never consistently applied to it the effort it required. This was probably at least in part because it was seen as a failure. The general benefits that Grey promised certainly never came to fruition. H T Kemp, for example, commented that the 'Mills, Schools etc, intended in the first instance for their common benefit . . . had unfortunately proved to be in a great measure, and from many unforeseen causes a comparative failure'. Officials tended to see Māori jealousies and lack of prudence as the root cause of the fund not working, but there is no real sign that they ever tried to make it fulfil its original conception.[99]

The social, moral, and economic advancement of Wairarapa Māori are objectives barely discernible in the payouts

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we know about. Evidence is fragmentary largely because administration was erratic. For long periods, there was none.

From the first, the fund was used almost exclusively for cash payments, very often to favoured individuals. This is borne out by McLean's returns for 1853–60. Walzl characterises fund management as a 'haphazard response of paying on demand, without considering the state the fund was in or who was entitled', or what future requirements were likely to be.

The only project actually completed was the construction of a flour mill for the southern Wairarapa, and this was undertaken without consultation with all those whose lands had contributed to the fund. Walzl says that the motivation to fund the mill was political, rather than any desire to promote engagement with the colonial economy. In 1862, it was important to reward Rāniera and his tribe for their 'good conduct'. The fact that it was always known as 'Rāniera's mill' indicates that people understood this background.[100]

(2) *The public disbursement hui*

From early on, Crown officials simply wanted to be rid of the responsibility of administering the fund. In the 1860s, they discussed amongst themselves the possibility of reducing entitlements to a lump sum payment, but a combination of dispute and poor records and accounts made this unachievable.

Eventually the rising level of Māori complaints about inaction led to the first of three public disbursement hui.[101] As we have seen, at each hui, the beneficiaries who attended eventually accepted the payments the Crown officials offered, making it possible for the officials to claim success. Kemp, for example, attributed Māori grievance to their over-inflated expectations of the fund. Once they understood what was on offer, he noted that their 'annoyance and irritation . . . had subsided', and the chiefs were united in 'doing their share of the work, by seeing that the division and subdivision was fairly and equitably carried out'.[102]

But close reading of the minutes discloses a different picture. Of course, Māori were too realistic – and probably too hard-up – not to accept the money. This did not mean that they were happy with the situation. Their disappointment sprang not only from the small sums available, but also from their sense that on a larger scale, they had been duped: Grey's vision had simply not come to pass. They had not been assisted to engage with the colonial experience as promised, and substantially they were not engaged with it. In reality, they did not have access to doctors, hospitals, and schools on an equal basis with settlers. Although they may not have been formally denied such access, in practical terms, the services were not available to them. Even with their own five percents fund, they played no part in deciding how the money was spent. They found it hard to understand why, as land values rose, they got less.

(3) *Payments outside the purposes of the fund*

One of the worst things the Crown did was to use the five percents fund basically as its own slush fund. It used the money that accumulated there to pay randomly (sometimes over long periods) for expenses as they came up. Often these were outside the stated purposes of the fund, or were costs that the Crown should have met.

One example that rankled at the time – and seems objectionable to this day – was the Crown's long-running insistence that the cost of providing medical services based at Greytown should be a charge on the fund. There is absolutely no reason why the Crown did not meet all the expenses of the hapless Dr Spratt, not least because:

- Grey had promised medical services to Wairarapa Māori as part of the general benefit that would flow from selling their lands, and this implied that the Crown would provide them.
- Tangata whenua of this area were not disposed to go to Dr Spratt, as (for reasons now unknown) they disliked him. Thus, their fund was paying for a service they were generally disinclined to use.

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- Dr Spratt was based in Greytown, and all the land nearby was sold. It was the outlying blocks that were selling then, and the beneficiaries of the five percents on those lands often lived too far away from Greytown to use Dr Spratt's services, even if they had wished to.

Another unauthorised use of the fund was to allow favoured individuals like Rāniera and Te Mānihera to draw money to pay debts, treating the fund really as if it were a bank. The other beneficiaries had no say in this, although of course there was less money for them as a result.

Another poor practice was to dangle entitlements to fund moneys in front of parties to a dispute, enticing them to agree with the Crown so that they would be paid. As outlined earlier, this happened at Pāhaoa.

Even though the accounts were poorly kept and are hard to understand, it is plain that the Crown misused the fund. It made disbursements according to its own lights, and to serve its own agenda, without the knowledge and consent of its beneficiaries.

(4) *Conclusion*

As a result of all the shortcomings summarised here, the koha/five percents contributed little to the Crown's effort to make suitable provision for the long-term welfare of Wairarapa Māori. Indeed, the way that the Crown ran the fund must surely have underlined to them their relative unimportance and powerlessness in the scheme of things. For once the Crown had their land, Māori really had little influence; that is why the Crown felt free to run the fund as it pleased, substantially ignoring both the terms of the koha/five percent clauses, and Māori preferences and requests.

3D.13.4 Remaining issue 2

The second issue remaining to be addressed is what commitments did the Crown acknowledge and did it fulfil them?

The commitments that the Crown acknowledged essentially relate to fair process. The Crown's concessions lie in this area. In addition to those concessions, we think that the Crown's process was otherwise flawed.

For the sake of completeness, we emphasise that the Crown was certainly hampered in its endeavours to manage the fund by its failure to properly investigate title in the first place, so that the class of beneficiaries of the fund was always undefined and open to dispute. And although the Crown's concessions on process overlap with some of the following, we confirm our conclusion that the Crown failed:

- to fulfil its contractual obligations under the deeds, both as to process and the purpose of the fund;
- to pay out the accumulated moneys promptly and openly;
- to provide regular accounts, or ever to render a full and final accounting; and
- to respond to ongoing complaints and queries in a meaningful way.

3D.13.5 Finding

In both process and substance, the Crown breached the Treaty in its interpretation and management of the koha/five percent clauses and the fund, as described here. It breached the contracts it entered into in the deeds, breached article 3 by using fund moneys to pay for services to which Māori were entitled as citizens, and also signally failed to protect Māori interests actively.

It also breached article 2, because Grey's promise of the koha/five percents, and their underpinning of general benefit, persuaded Māori to consent to the purchase of their land. But they were duped. The promises – including provision of additional assistance via the koha/five percent clauses to engage with the new colony – were broken. Thus, the Crown gained Māori consent to the sale of their land under false pretences; there was no free and willing consent.

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Notes

1. Document I1(a) (Ngā Hapū Karanga closing submissions), pp 59–60
2. Ibid, pp 59–61
3. Ibid, p 63; doc A40 (Walzl), pp 97–98
4. Document I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), pp 68–70
5. Ibid, p 63; doc A40 (Walzl), p 7
6. Document I13 (Ngāi Tūmapuhia-ā-Rangi closing submissions), pp 65–66
7. Document I17 (Crown closing submissions), p 51
8. Ibid, pp 39, 50–53
9. Document I17 (Crown closing submissions), p 51
10. Document I17 (Crown closing submissions), pp 50–51
11. Document I17(j) (Crown memorandum), p 2
12. The English translation of the five percent clause in the 'East side of the Lake – Deed 582' aka Tūranganui: see doc A105 (Tūranganui – East Side of the Lake Wairarapa, deed 582). See also doc A102 (Tūranganui, East Side of the Lake, deed 219-B). The same clause is also in 'Block 1, West side of Lake, Wairarapa district' (also known as the Tūrakirae block) in document A100 (Turton's Deed), deed 88.
13. Ibid
14. Document A100 (Turton's Deed), deed 103; doc A53 (Smith), p 2
15. Document A53 (Smith), p 2
16. Document A105 (Tūranganui, East Side of the Lake, deed 582), pp 1–2 of English translation; doc F11 (Chrisp), p 10. Also see doc A102 (Tūranganui, East Side of the Lake, deed 219-B).
17. Ibid
18. Document A33 (Rigby), p 134
19. Waitangi Tribunal, *The Kaipara Report*, (Wellington: Legislation Direct, 2006), pp 124–125
20. Heaphy, report, 31 December 1873, MA13/96b, 74/1100, ArchivesNZ (doc A43(c) (Walzl supporting papers), p 577)
21. McLean, memorandum, 5 June 1862, MA13/96a, ArchivesNZ (doc A43(c) (Walzl supporting papers), pp 422t–423)
22. Document A33 (Rigby), p xvii
23. McLean, memorandum, 16 January 1856,I A 14/6, ArchivesNZ (doc A43(i) (Walzl supporting papers), pp 2501–2502)
24. Bell to Mantell, 23 January 1863, and Fitzherbert to Swainson, 23 March 1863, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 422i–4220, 430–433)
25. Document A40 (Walzl), pp 8–17, 22–26
26. Document A40 (Walzl), pp 33–46
27. Mantell to Wardell, 24 March 1863, MA13/96b, ArchivesNZ (doc A43(d) (Walzl supporting papers), pp 753–754). See also Heaphy, report, 31 December 1873, MA13/96b, 74/1100, ArchivesNZ (doc A43(c) (Walzl supporting papers), p 590) and McLean, return, 'Advances to Natives on Account of 5 per cents Chargeable upon Land Sales at Wairarapa', 22 April 1863, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 434).
28. Searancke to McLean, 20 August 1860, AJHR, 1861, p 295
29. Document A40 (Walzl), p 13
30. Heaphy, report, 31 December 1873, MA13/96b, 74/1100, ArchivesNZ (doc A43(c) (Walzl supporting papers), pp 583–586)
31. McLean, return, 22 April 1863, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 434)
32. McLean, memorandum, 16 January 1856, IA 14/6, ArchivesNZ (doc A43(i) (Walzl supporting papers), p 2501–2502)
33. McLean, return, 22 April 1863, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 434)
34. Swainson to Mantell, 23 April 1863, MA13/96b, ArchivesNZ (doc A43(d) (Walzl supporting papers), pp 683–696); Fitzherbert to Swainson, 23 March 1863, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 430–433)
35. Document A40 (Walzl), pp 17–18
36. Heaphy, report, 31 December 1873, MA13/96b, 74/1100, ArchivesNZ (doc A43(c) (Walzl supporting papers), pp 576–577); Treasury, memorandum, 28 September 1869, 'Wairarapa 5 per cents Fund', MA13/96b, ArchivesNZ, (doc A43(d) (Walzl supporting papers), pp 612–615)
37. Heaphy report, 31 December 1873, MA13/96b, 74/1100, ArchivesNZ (doc A43(c) (Walzl supporting papers), p 576)
38. Bell to Mantell, 23 January 1863, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 422m–4220)
39. Document A40 (Walzl), p 30
40. Minutes of meetings at Greytown, 29 October–11 November 1870, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 407–422b)
41. Swainson, memorandum, 23 April 1863, MA13/96b, ArchivesNZ (doc A43(d) (Walzl supporting papers), pp 690–691)
42. Wardell to McLean, 28 October 1870, and McLean, minute, not dated, MA13/96b, ArchivesNZ (doc A43(c) (Walzl supporting papers), p 563)
43. Minutes of meetings at Greytown, 29 October–11 November 1870, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 407–422b); Kemp to Halse, 16 November 1870, MA 13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 198–199)
44. Minutes of meeting at Greytown, 29 October 1870, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 410)
45. Ibid, pp 408–409
46. Ibid
47. Minutes of meeting at Greytown, 31 October 1870, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 413)
48. Ibid. Also see doc A40 (Walzl), pp 39, 69; doc A50 (Stirling), p 49
49. Minutes of meeting at Greytown, 31 October 1870, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 414)
50. Ibid, pp 414–415
51. Minutes of meeting at Greytown, 1 November 1870, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 417)
52. Ibid, pp 418–420

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53. Minutes of meeting at Greytown, 3 November 1870, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 421)
54. Kemp to Halse, 3 November 1870, MA13/96b, 70/1499, ArchivesNZ (doc A43(c) (Walzl supporting papers), p 562)
55. Minutes of meeting at Greytown, 7–8 November 1870, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 421–422)
56. Ibid. For a breakdown of funds owed on which blocks, see 16 Nov 1870, Kemp to Halse, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 196–204)
57. Minutes of meeting at Greytown, 7–8 November 1870, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 422–422b)
58. Ibid, p 422b
59. Kemp to Halse, 16 November 1870, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 196–204)
60. Document A40 (Walzl), p 33
61. Matiaha Mokai et al, 17 February 1871 and 2 March 1871, and Wī Kīngi and others to McLean, 8 August 1873, MA13/96b, 71/87, ArchivesNZ (doc A43(c) (Walzl supporting papers), pp 474, 515, 520–522)
62. Heaphy to Cooper, 30 November 1873, MA13/96b, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 320–322). According to 'Controller's Account of the Public Trust Fund', AJHR 1871, B-7, p 3, the total at 30 June 1871, after the payment of £2000, was £520 13s 3d.
63. Heaphy, report, 31 December 1873, MA13/96b, 74/1100, ArchivesNZ (doc A43(c) (Walzl supporting papers), pp 579–80)
64. Ibid
65. Heaphy to under-secretary, 11 December 1873, MA13/96a, 73/6536, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 167–173). See also doc A40 (Walzl), pp 45, 70–71
66. Heaphy to under-secretary, 11 December 1873, MA13/96a, 73/6536, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 167–173)
67. Heaphy, report, 31 December 1873, MA13/96b, 74/1100, ArchivesNZ (doc A43(c) (Walzl supporting papers), p 599)
68. Ibid, p 598
69. Ibid, pp 583–604
70. 'Journal of Events at Wairarapa in connection with payment of 5 percents', MA13/96a, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 371–372); Heaphy, report, 31 December 1873, MA13/96b, 74/1100, ArchivesNZ (doc A43(c) (Walzl supporting papers), pp 580)
71. Ngaiao and others to Bryce, 28 April 1880, 80/1504 MA13/96a, (doc A43(a) (Walzl supporting papers), p 134)
72. Maunsell to under-secretary, 6 December 1880, MA13/96a, 80/4087, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 119)
73. Lewis to Heaphy, 22 June 1880, MA13/96a, 80/53, ArchivesNZ (doc A43(b) (Walzl supporting papers), p 235)
74. Lewis to Heaphy, 16 February 1881; Heaphy to Lewis, 18 February 1881, MA13/96a, 81/20, ArchivesNZ (doc A43(b) (Walzl supporting papers), pp 226–228)
75. 'Minutes of a Meeting to Pay Wairarapa 5-per-cents', 19 February 1881, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 84)
76. Ibid, pp 84–86
77. Ibid, p 85
78. 'Minutes of a Meeting to Pay Wairarapa 5-per-cents', 19 February 1881 and Heaphy to Lewis, 'Report of the third payment to natives of the Wairarapa 5-per-cents', 19 March 1881, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 84–100)
79. In fact, the original of the letter in Māori does not mention 40 years, but the substance is the same. We translate the relevant passage as saying to the Minister 'You should know that the koha money for these lands hasn't been sorted out since the time when the Government purchased them'. At that time, the purchase had happened slightly less than 30 years before.
80. Hoera Te Rautū to Rolleston, 23 February 1881, 81/584, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 108–109)
81. Erihapeti Whakamairū to Rolleston, 4 March 1881, 81/702, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 103– 106)
82. Lewis to Rolleston, 10 March 1881, 81/702, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 101)
83. Rolleston to Lewis, 10 March 1881, 81/702, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 101)
84. Heaphy advised that the differing proportions charged against the koha for the provision of medical services (ie, one-half for lower valley blocks and one-third for the outside blocks) gave a total of £311 14s 8d, leaving a shortfall of £20 15s 4d. However, he said that £56 8s 7d of interest had accrued under the Public Trustee's administration of the fund and so the shortfall would be deducted from this interest balance: see Heaphy to Lewis, 'Report of the Third Payment to Natives of the Wairarapa 5 Percents', 19 March 1881, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 87–95).
85. Ibid
86. Heaphy, memorandum, 'Re Computation of 5 per cents', 19 March 1881, 81/847, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 96–100)
87. Ibid
88. Maunsell to Lewis, 3 March 1883, 83/879, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 71)
89. Lewis to Native Minister, 30 April 1883, 83/879, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 69)
90. Maunsell to Morpeth, 18 July 1883, 83/2176, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 67–68)
91. Maunsell to Lewis, 4 September 1883, 81/840, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 81)
92. Rakai Hikuroa to Lewis, 19 May 1884, 84/1715, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 51)
93. Waaka Kahukura and others to Native Minister, 1 April 1886, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 42)

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94. Marakaia Tawaroa to Lewis, 18 June 1886, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 34)
95. Morpeth to Lewis, 27 May 1886, 86/1040, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), p 36
96. Whatahoro Jury and Enoka Te Taitea to Seddon, 4 August 1896, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 16–17)
97. 'Accounts of the Public Trust Office', AJHR 1893, B-9, p 3
98. 'Public Accounts of the Govt of NZ', AJHR 1899, B-1
99. Kemp to Halse, 16 November 1870, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 196–204)
100. Document A40 (Walzl), p 19; see also doc A40(a) (Walzl), p 5
101. Bell to Mantell, 23 January 1863, MA13/96b, ArchivesNZ (doc A40 (Walzl), pp 16–18, 49); see also doc A40(a) (Walzl), p 5
102. Kemp to Halse, 16 November 1870, MA13/96a, ArchivesNZ (doc A43(a) (Walzl supporting papers), pp 196–204)

Sidebars

Page 371: 'Koha Clause from the Tūranganui–East Side of the Lake Deed 582'. Sources: doc A102 (Tūranganui, East Side of the Lake, deed 219-B); doc A105 (Tūranganui, East Side of the Lake, deed 582); doc F11 (Chrisp) p 10.
Page 383: 'Showdown at the Hui of 1881'. Source: doc A43(a) (Walzl supporting papers), pp 84–85.

Tables

Page 373: 'Deeds that Contained the Koha/five Percent Clause'. Sources: AJHR, 1874, G-4; doc A43(i), (Walzl supporting papers), pp 2501–2502; doc A33 (Rigby).

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