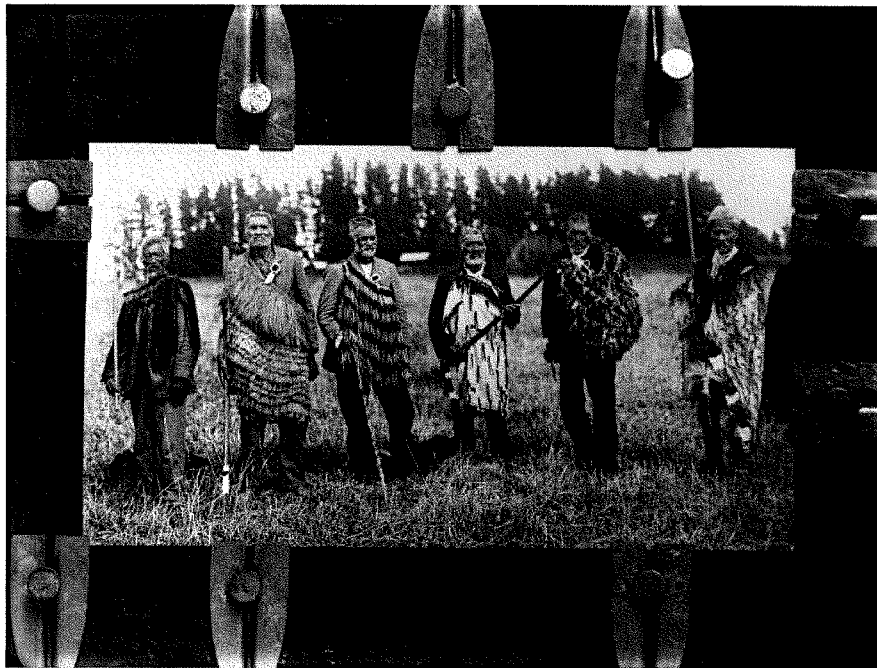


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Te Rohe Potae War and Raupatu



A report commissioned by the Waitangi Tribunal

**Dr Vincent O'Malley
December 2010**

The Author

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Cover image: 'Maori survivors of war', James Cowan collection of photographs, c. 1914, 1/1-017975-G, ATL: (left to right): Te Wairoa Piripi, Hekiera Te Rangai, Poupatate Huihi, Te Huia Raureti, Matiu Te Munu, Te Wharerangi Parekawa.

Preface

The following report traverses issues of war and raupatu as they relate to the Rohe Potae inquiry district. This report is a lengthy one – much longer than I would have hoped to produce – but I make no apologies for that. Given that many of the issues covered here have not previously been considered by the Waitangi Tribunal, other than as context to more marginal inquiries (that is, with respect to the Waikato War and raupatu) such as Tauranga or Hauraki, I have taken the view that it is necessary to set out the evidence as fully and plainly as possible. That has inevitably resulted in some very lengthy quotations in some sections, especially where multiple accounts of the same contested incidents or events are described.

Another factor adding to the overall length of this report has been that, where possible, I have sought to incorporate both the original te reo Maori and English translation versions of many source documents. That has not always been feasible, of course, especially where only English translations have been available to me or there have been issues with respect to the legibility of the Maori version.

It should also be noted that, although the involvement of Rohe Potae hapu and iwi in the first Taranaki War of 1860-61 would appear to fall within the brief for this project, I have taken the view that these issues are better covered as part of the companion report on Te Rohe Potae political engagement, 1840-1863. The involvement of hapu and iwi from the inquiry district in that war became a key justification for the later invasion of Waikato, and this report is less concerned with the origins of the Waikato conflict than with its course and consequences.

Acknowledgements

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List of Abbreviations

AJHR	<i>Appendices to the Journals of the House of Representatives</i>
AJLC	<i>Appendices to the Journals of the Legislative Council</i>
Archives NZ	Archives New Zealand, Head Office, Wellington
Archives NZ (Akl)	Archives New Zealand, Auckland Regional Office
ATL	Alexander Turnbull Library
DNZB	<i>Dictionary of New Zealand Biography</i>
GBPP	<i>Great Britain Parliamentary Papers</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
RDB	Raupatu Document Bank

1. Introduction

This report for the Rohe Potae inquiry is an unusual one in that many of the issues and incidents which it traverses took place outside the inquiry district boundaries. While there have been various rulings with respect to the extent to which the Rohe Potae Tribunal is prepared to consider war and raupatu claims beyond those boundaries, I have not been overly concerned with such matters. Historians need to follow where the evidence leads and in the case of the topics covered here a neat geographical fit is notably lacking. Members of Ngati Maniapoto and other Rohe Potae iwi participated in battles well beyond their own customary lands, and even the notion that the Puniu River formed the northern border of some kind of hard and fast 'aukati' in the wake of the Waikato War can be seen as somewhat misleading.

In many respects, then, this report may be seen as problematising matters previously regarded as uncomplicated, and readers in search of simple answers to straightforward questions may be disappointed to find all too often rather less than complete answers to more complex queries. That is partly because the matters traversed here are inherently complicated. Take the 'war' part of the title to this report: throughout the Waikato conflict of 1863-64 there were several highly controversial incidents which are still remembered today, for each of which there exist numerous conflicting accounts from eye witnesses and participants, not to mention wildly variable casualty estimates. Just whose version, under such circumstances, should we believe?

Raupatu is another matter entirely. I have long maintained that this is the most complex form of land loss to understand, and this project has only reinforced that impression. There was no Land Court sitting to record detailed evidence of customary associations such as might reveal to us precisely whose lands were being taken in any instance or – a slightly different question – who the Crown thought it was depriving of lands. Major inconsistencies were apparent in the way the Crown went about implementing confiscation from one district to the next and significant questions are raised as to the extent to which the legal requirements of the New Zealand Settlements Act were complied with in the various takings that were proclaimed. While the natural temptation for most historians is to seek explanations for such anomalies, the bottom

line is that confiscation was all too often a chaotic, disorganised, confusing and poorly documented process, and that is before we even get to the Compensation Court. If officials themselves frequently failed to fully comprehend what was happening at any particular time, it may legitimately be asked how we may be expected to do so today.

A further complicating factor is the sheer number of things happening at any one time. Even as the Waikato War was still being fought, for example, statutory provision was being made for its confiscation, military settlements were being planned, surveyors were being sent in behind the front lines, finance being touted for in London (and troops in Melbourne, Sydney and Hobart), and protests and letters of complaint being got up on both sides of the globe. Although it is necessary in a report such as this to attempt to separate out these issues thematically in order to try and make sense of this multitude of contemporaneous developments, it is also important to avoid losing sight of the overlap and connections between many of these things. We need to be wary, for example, of decoupling ‘war’ and ‘raupatu’ quite so easily, when the truth is that there was considerable overlap between the two, and indeed disputes among Crown officials as to the future course of military operations or possible responses to peace overtures from members of the Kingitanga appear to have reflected such tensions.

That leads to another complicating factor, perhaps more readily apparent with respect to war and raupatu than any other major theme, namely the lack of any single, coherent Crown voice. The Colonial Office, the governor, the colonial ministry, military authorities, provincial administrations, the Compensation Court and various other individuals and entities each had their own set of priorities and their own concerns, and it was only the playing out of these within a complex series of contests that led to anything vaguely resembling a policy framework. This already very substantial report could easily be doubled in length if the full story behind these rival claims to authority was fully articulated here, but this factor nevertheless still needs to be noted.

Other difficulties are more obvious ones, such as the problems involved in attempting to document the impact of war and raupatu on Rohe Potae communities in the absence of basic information such as reliable census figures and within a district from which

most Europeans were excluded most of the time. The documentary record, while hardly non-existent, is far from overflowing. Anecdotal evidence from fleeting visitors to the district is sometimes the best that is available.

Issues also arise with respect to the terminology employed and we need to be careful to avoid assuming that the labels we take for granted today had the same meaning to the men and women of nineteenth century New Zealand. There was no 'King Country' or 'Rohe Potae' district prior to at least 1864 and this report seeks to avoid using either label for that period unless absolutely necessary. Much of the area that later came to carry those labels was instead usually regarded as part of the broader Waikato district, or (even more precisely) part of the upper Waikato district, which was generally defined as the area south of the junction of the Waipa and Waikato rivers at Ngaruawahia (lower Waikato being the district to the north of this). Sometimes, though, it was described as being part of the Waipa, or upper Waipa, district, or even simply as 'Ngatimaniapoto country'. The further south (and away from the Waikato River) one went, the less likely it was that the term 'Waikato' would be applied, and along the coast in particular the settlements of Mokau, Kawhia, Aotea and Whaingaroa tended to be more precisely defined. But while we can point to tendencies, there really were no commonly agreed rules when it came to naming conventions for the district.

In the same way that most of the district was regarded for most of the time as part of the 'Waikato', so too for the most part were its hapu and iwi. When nineteenth century Pakeha, especially in the period before about the 1870s, made reference to the Waikato tribes they usually meant Waikato proper (that is, the groups collectively known today as Waikato-Tainui), Ngati Haua, Ngati Raukawa and Ngati Maniapoto, along with some other smaller groups. In other instances, however, a distinction was drawn between some or all of these groups, and where 'Waikato' is employed in this more restrictive sense (that is as referring solely to Waikato-Tainui) that is indicated in the report by use of the designation 'Waikato proper'. Where no clear distinction of this kind is made the term 'Waikato', as employed in this report, should be taken as embracing both the Rohe Potae inquiry district and its hapu and iwi, depending on whether it is being used to describe a geographical location or a people. At the same time it should be noted that in the case of many sources it is far from clear whether the

restricted or broader 'Waikato' definitions were originally intended. A certain level of ambiguity is therefore unavoidable.

The extent to which various issues are interconnected with one another, along with the multiplicity of simultaneous developments, has inevitably resulted in a certain level of overlap between different sections, besides rendering it virtually impossible to adopt a strictly chronological approach in the structure of this report. Chapter Two covers the Waikato War of 1863-64, focusing not on its causes (the topic of a separate report) but its course. After discussing military preparations and the build-up to the invasion of the Waikato in July 1863, the chapter then moves on to analyse the various engagements that followed. Particular attention is paid to any evidence concerning the tribal affiliations of those involved in the various conflicts, and there is also extensive discussion of the extent to which opportunities to enter into meaningful peace negotiations were embraced by Kingitanga and Crown representatives during the course of the conflict. In discussing the war, and indeed with other events and incidents covered in this report, more attention is paid to developments of greatest interest to Te Rohe Potae hapu and iwi than might otherwise be the case. The sacking of Kihikihi, for example, barely rates a mention in most histories of the war but is covered in greater length here given its significance as the home settlement of Rewi Maniapoto. Other sections within the chapter focus on especially controversial events, such as the circumstances surrounding the surrender at Rangiriri in November 1863, or the British attack on the undefended village of Rangiaowhia a few months later.

Chapter Three considers the impact of the war on the hapu and iwi of the Rohe Potae district, examining the issue from a number of different angles. On the basis of admittedly very incomplete and patchy evidence some effort is made to calculate the overall level of Maori casualties suffered, an exercise that results in some surprising (if necessarily tentative) findings. The broader social and economic impacts of the war through until the early 1880s are then discussed. As this section makes clear, such impacts were felt in a number of ways, including the loss of lands to the north of the Puniu River, significant damage to the economic infrastructure and capital base of the tribes, demographic impacts, and the significant burden involved in supporting a population of refugees substantially larger than the number of Maori normally resident in the district prior to the Waikato War. Some attempt is then made to

examine life behind the aukati, which (it is suggested) operated less as a kind of nineteenth century Iron Curtain than as a flexible instrument of policy designed to prevent further trouble and conflict.

In Chapter Four attention shifts to the development of confiscation proposals in the colony. The chapter first considers the extent to which raupatu as practiced by the Crown in the 1860s could be seen to have its roots in Maori custom, as government officials sometimes sought to argue. International precedents for confiscation are then considered, notably in Ireland and elsewhere within the British empire, before moving on to examine a number of local precedents dating from the 1830s and 1840s that might be seen as forerunners to the full-blown raupatu of the 1860s. The development of confiscation proposals in the 1860s, and early arguments over the right of the Crown to confiscate customary Maori lands are next considered. As is examined in this chapter, an elaborate plan for a series of military settlements stretching across the North Island from Raglan to Tauranga had been devised even prior to the invasion of Waikato. Towards the end of the 1863 parliamentary session a package of legislative measures designed to provide for the suppression of 'rebellion', besides sanctioning the raising of a very large loan to fund the scheme of military settlements and enabling the confiscation of Maori lands, was passed by the General Assembly. Those measures met with minimal opposition inside the debating chambers, as will be seen, but encountered more opposition elsewhere, especially in Britain. But despite the fact that Colonial Office consent to the confiscatory measure (the New Zealand Settlements Act) was made dependent on a number of important safeguards with respect to its implementation, these conditions were largely ignored by successive colonial administrations. As the final section of this chapter discusses, they continued to pass various legislative measures relating to the scheme of confiscation with only minimal reference to such concerns.

Chapter Five moves from the statutory and policy framework for confiscation to a consideration of its implementation on the ground in the Waikato district. As will be seen, however, in practice the distinction was a fine one as Governor George Grey and his ministers, having initially agreed upon the broad thrust of confiscation policy, subsequently entered a lengthy period of conflict over the extent of land to be confiscated, before Grey (who purported to be opposed to extensive or unjust takings)

ultimately backed down, enabling the wholesale confiscation of lands in the Waikato. The curiously worded proclamation of December 1864 emerged as a result, with other notices following until by September 1865 something like 1.2 million acres of Waikato had been confiscated. Military settlements soon began to take shape after modest beginnings but quickly ran into problems. Ongoing military scares made it too dangerous to occupy many of the rural allotments, for example, while many of the military settlers, being poorly capitalised and lacking in even basic farming skills, chose to quit the district as soon as they could. The private sale of many of the military sections (dampening the market for government-owned blocks) and ongoing insecurity were among the reasons why the grand projections advanced in 1863 that the whole scheme of confiscation and military settlements would turn a profit for the Crown proved far from the truth. In fact, as this chapter will argue, about the only group to do well out of the confiscations was a handful of wealthy Auckland speculators (some of them involved in passing the Settlements Act), who stood to make an enormous profit from buying up vast areas of confiscated land in a depressed market and selling years later under more rewarding conditions. Corners were being cut in many directions, it would seem, and in the final section of this chapter issues concerning the legality of the confiscations will be discussed, drawing in large part upon previous analyses of this question.

Early Crown pronouncements were unambiguous that the lands belonging to ‘loyalists’ and neutral Maori would be guaranteed to them in full. That promise was subsequently modified to exclude any lands owned jointly with those deemed ‘rebels’, a shift of such monumental proportions as to virtually repudiate the original undertaking. Instead, most Waikato ‘loyalists’ received back a mere fraction of their original estate if anything, as Chapter Six explains. Historians who have examined the operations of the Compensation Court in other districts have been in general agreement that it was a chaotic, confused, confusing and poorly documented body, and close analysis of the Court’s operations in the Waikato district does nothing to alter such a picture. Given awards were generally made to named individuals, without any specified tribal affiliations, it is difficult to discern any overall pattern to its awards, while many arrangements were reached out-of-court, and were even less open to scrutiny. It is argued in this chapter that the individualised nature of the awards was no accident. The Compensation Court shared many of the same personnel as the

Native Land Court and can be seen as part of a single Crown drive to eliminate customary (and communal) tenure. That helps to explain why significantly more land was confiscated than the Crown ever intended retaining or transferring to settler ownership. Confiscation can thus be seen in many ways as part of an overall programme of Crown-imposed tenurial reform.

Initial confiscation legislation made no provision at all for so-called ‘returned rebels’ to receive back part of their lands upon which to live, and it was not until 1867 that the Confiscated Lands Act finally authorised such awards. However, as we shall see in Chapter Seven, it was a further 12 years before any legal steps were taken to set aside lands for these purposes within the Waikato district. The Waikato Confiscated Lands Act of 1880 made provision for additional lands to be set aside for ‘former rebels’ wishing to take advantage of its provisions. A time limit of two years was imposed on Maori wishing to seek lands under the Act, and although that was twice subsequently extended, the poor quality of the lands available for selection appears to have been one of the main factors in the low response rate on the part of Waikato Maori.

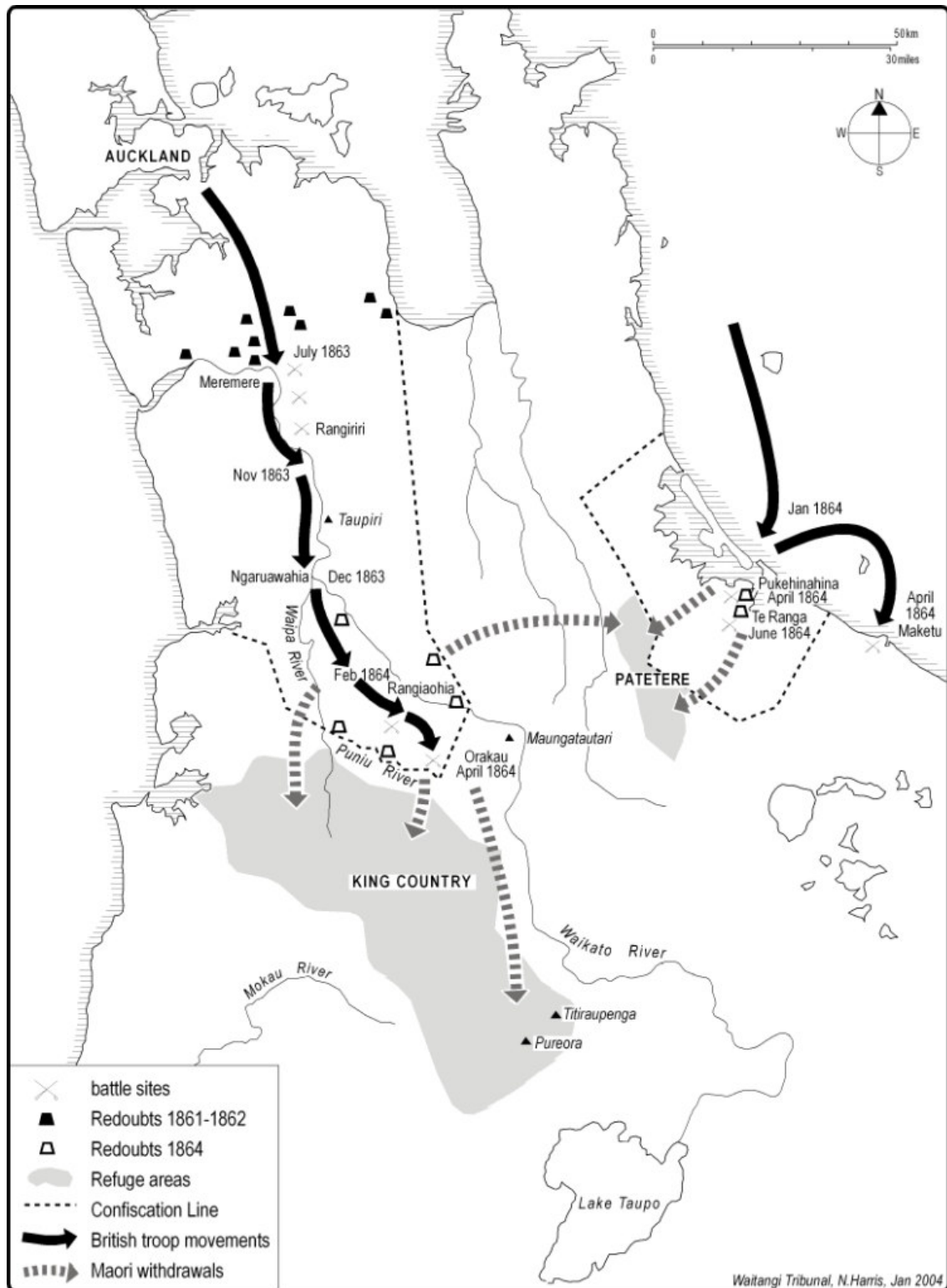
Up to this point the report is focused more or less exclusively on the Waikato district, but in Chapter Eight attentions are turned briefly to Taranaki. The chapter examines the confiscation of land at Taranaki and, in particular, looks at the way in which Rohe Potae interests were dealt with. Building on evidence to be outlined in more detail in the political engagement report for the period to 1863, it is suggested that although there was a high degree of awareness of Ngati Maniapoto claims over Taranaki lands during the first Taranaki War in 1860-61, by the time of the Taranaki confiscation proclamations in 1865 there was virtually no recognition of such an interest. Ngati Maniapoto do not appear to have taken any part in the subsequent Taranaki Compensation Court process, though the February 1869 attack on the Pukearuhe redoubt served as a reminder that customary claims south of Parininihi continued to be asserted in other ways. It could also be seen as an act of resistance to the Crown’s military actions and subsequent confiscation in the district.

Chapter Nine surveys Rohe Potae hapu and iwi responses to confiscation. It will be seen here that the process of petitioning Parliament for relief so common in other

districts was just one of a range of responses on the part of the Rohe Potae tribes. Indeed, in many respects it was less favoured than other options given that many Ngati Maniapoto and others continued to live beyond the aukati and had never surrendered to the Crown. The chapter therefore surveys a wide range of different types of responses to raupatu, including further military scares and confrontations in the period through until 1872. Other forms of early protest included an attempt to block the auction of confiscated lands, the disruption of surveys, letters and direct appeals to Crown officials, and a pamphlet protesting the injustice of the confiscations. A series of three petitions from Wiremu Tamihana over 1865 and 1866 gathered significant attention, and the rangatira travelled to Wellington to present the last of these in person. His efforts were to little avail, however, and a range of other nineteenth-century petitions met with a mixed response. A far more dramatic gesture came in 1884, when King Tawhiao travelled to London in an effort to present the grievances of his people directly to his Treaty partner. But an attempted meeting with Queen Victoria was blocked, largely thanks to the behind-the-scenes efforts of New Zealand's Agent-General in London. Tawhiao was referred back to the New Zealand government for a response to his petition. It maintained that there had been no infraction of the Treaty of Waitangi since assuming full powers of governance from the British in 1865. But for a long period it seemed that high-level political negotiations with government representatives – essentially taking on something of the nature of diplomatic exchanges between rival states – had the greatest potential to deliver a result, at least until the 'opening up' of the Rohe Potae to European settlement from the mid-1880s. At various times it appeared that Tawhiao might be on the verge of accepting various government offers to restore part of the confiscated lands to him, only for negotiations to fall through at the last moment. Yet as this chapter will show, closer analysis suggests that the amount of land being offered was no more than a tiny fraction of that originally confiscated. And by the time that the Sim Commission came to examine the confiscations in the 1920s it was no longer a question of seeking a political settlement of the outstanding issues arising from the war, so much as a clear case of redress being pursued for historical injustices and grievances.

In short, the report will suggest that war and raupatu had multiple and disastrous effects on the hapu and iwi of Te Rohe Potae and their wider Waikato kin. Alongside

what appear to have been horrendous casualty rates suffered during the British invasion of their district, war and the confiscation of lands almost crippled their economic infrastructure. Although the government failed in its objective of destroying the Kingitanga, the confiscation of so much of the Waikato district left the movement and its people seriously damaged. Considerable deprivation and disease followed, and starvation was an ever-present threat in the years immediately following the Waikato War. Yet the people of Te Rohe Potae met these challenges, and the burden of hosting a huge refugee population from north of the Puniu River, with considerable communal strength and innovation. The formation of an aukati from about 1866 onwards and the fact that the tribes continued to preside over a largely autonomous district are powerful testament to this strength. Despite this, the painful legacy and impact caused by war and raupatu continued to be felt and expressed in a number of ways, and was given voice in frequent demands for the confiscated lands to be returned. That call was one that successive governments failed to heed. For Ngati Maniapoto and the other iwi of Te Rohe Potae, war and raupatu remain unaddressed grievances.



(Source: Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p.72)

Figure 2 The Waikato Campaign 1863-64

2. The Waikato War

2.1 Introduction

On 12 July 1863 British troops poured across the Mangatawhiri River – New Zealand’s Rubicon – signalling the start of what has been described by Alan Ward as ‘the climactic event in New Zealand race relations’ history.¹ The background to the invasion of the Waikato district and the official rationale for it are discussed (and critiqued) at some length in the political engagement 1840-1863 report. In this chapter the focus is solely on the military aspects of the conflict, including the course of the war and the respective strategies, strengths and weaknesses of both sides (along with some discussion of the various opportunities for peace talks to be successfully concluded at different stages of the conflict and the various factors that may have prevented this from occurring).

Inevitably, this section draws heavily on James Belich’s seminal work, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, first published by Auckland University Press in 1986. Although Belich’s book was warmly received in scholarly circles, a documentary television series drawing on that work which aired on New Zealand screens more than a decade later, in 1998, introduced Belich’s work to a much wider audience and provoked significant controversy. Much of the criticism directed at Belich’s interpretation of the wars could not be regarded as scholarly. Nor, more importantly for the purposes of the present report, could it be regarded as especially relevant. Indeed, the many vehement denials of Belich’s suggestion that Maori had invented modern trench warfare arguably revealed more about the mindsets of Belich’s critics than anything else.²

This chapter accordingly does not seek to engage with such arguments, though neither does it accept Belich uncritically. Although his analysis of the wars frequently comes across as dated by comparison, for example, James Cowan’s two-volume work *The*

¹ Alan Ward, ‘The Origins of the Anglo-Maori Wars: A Reconsideration’, *New Zealand Journal of History*, vol.1, no.2, October 1967, p.165.

² For an exception to this, see Chris Pugsley, ‘Maori Did Not Invent Trench Warfare’, *New Zealand Defence Quarterly*, Spring 1998, pp.33-37.

New Zealand Wars, originally published in the 1920s, remains a source of rich and invaluable narrative detail. Cowan grew up on a farm located on confiscated Waikato land just a stone's throw from the Puniu River, and including part of the Orakau battlefield scene.³ He became fluent in the Maori language from a young age and devoted much of his life to talking to and corresponding with both Maori and Pakeha veterans of the wars. His extensive use of this oral testimony in his account of the wars, albeit not without considerable filtering to accord with his own theories and preferences at times, lends his work further weight.

Besides Belich and Cowan, useful secondary accounts of the course of the war (as opposed to its causes) are thin on the ground. There is a greater range of primary accounts, including official British reports of engagements and the letters and diaries of some of the officers and soldiers involved. Belich, of course, has argued that the 'dominant interpretation' among contemporary Europeans was one in which Maori military success was consistently either downplayed or ignored altogether, while corresponding British victories were either entirely fictional or greatly exaggerated. These biases, Belich argues, were evident in the more or less consistent tendency to exaggerate both Maori casualties and total Maori participants (especially if there was any suggestion of defeat or a less than comprehensive victory on the part of the British).⁴ But if we accept for the moment Belich's argument here as accurate, then what this points to is the need to treat contemporary British accounts of the Waikato War with particular caution, not to eschew such sources altogether.

Detailed primary accounts of the course of the war written from the perspective of the Maori participants are much more difficult to find. However, famous scenes such as the battle of Orakau did prompt at least one later history from one of those who had been inside the pa.⁵ Moments of controversy or even outrage also prompted a strong Maori response, recorded in various ways, whether in letters of complaint to European officers or officials, petitions or later statements. The circumstances surrounding the surrender at Rangiriri and the later attack on the largely defenceless settlement of

³ David Colquhoun, 'Cowan, James, 1870-1943', DNZB, vol.3, p.119.

⁴ James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Auckland: Auckland University Press, 1986, pp.311-321.

⁵ Hitiri Te Paerata, *Description of the Battle of Orakau, As Given by the Native Chief Hitiri Te Paerata, of the Ngatiraukawa Tribe, At the Parliamentary Buildings, 4th August 1888*, Wellington: Government Printer, 1888 (Christchurch: Kiwi Publishers, 1999).

Rangiaowhia are two examples of events that provoked such responses. In addition, 'loyalist' chiefs acting as intermediaries often provided rare insights into what was happening behind Kingitanga lines, and we also have some of the recollections of former Maori veterans of the war such as Raureti Te Huia available to us courtesy of the papers of James Cowan. At the same time, the volume of such material is small by comparison with the available European sources, and it remains necessary to remember the culturally skewed nature of many accounts as we consider particular events.

2.2 The Respective Armies

In May 1861, as plans were made for a possible invasion of the Waikato district, the recently arrived commanding officer of British forces in New Zealand, Lieutenant-General Duncan Cameron, reported the situation to his superiors in London. Cameron informed the Military Secretary that:

If the tribes of the Waikato should persist in refusing to acknowledge the Queen's supremacy, and in setting up a king of their own race, I shall doubtless receive instructions from the Governor to carry the war into their territory. My first object would then probably be to penetrate into the angle formed by the Waipa and Horatiu Rivers, and to take possession of a point near their confluence called Ngaruawahia, which is understood to be the focus of the King-movement agitation.⁶

Cameron thus identified capturing and holding the Upper Waikato district from the outset as the primary objective. While that was hardly surprising given the area was perceived to be the centre of 'disaffection' among the Kingitanga tribes, and especially Ngati Maniapoto, to penetrate so deeply into the Waikato district would require an overwhelming force, both for logistical purposes and actual fighting. Yet at that time the total number of British troops in New Zealand was just 4234.⁷ By

⁶ Cameron to Military Secretary, 6 May 1861, Selections from Despatches and Letters Relative to the Conduct of Military Operations in New Zealand, 1860-1865, p.54, WO 33/16, Archives NZ.

⁷ Distribution of the Troops Serving in New Zealand, 6 May 1861, Selections from Despatches and Letters, p.57, WO 33/16, Archives NZ. By June 1862 the total number of British troops stationed in

contrast Cameron reported that ‘the Waikato tribes alone can bring from 4,000 to 5,000 fighting-men into the field’, and further reminded officials that:

It must also be borne in mind, in considering the amount of force required for an invasion of the Waikato country, that the influence of the tribes inhabiting it is so great, that any attack upon them would probably be followed by a rising of the whole native population south of Auckland, and that therefore all the English settlements in the Northern Island would be placed in a perilous position, and require strong garrisons for their protection.⁸

Cameron nevertheless remained gung-ho about prospects for a successful invasion of Waikato at this time, predicting that a field force of about 2500 regular infantry, combined with a further body of 1000 troops to guard the supply chain would be adequate for these purposes. As will be seen in the political engagement report, Governor Gore Browne was on the verge of ordering the invasion to proceed when news of his imminent replacement by Sir George Grey reached the colony on 27 July 1861.⁹ Grey, upon his arrival in the colony late in September 1861, quickly assessed the situation, concluding that British forces were ill-prepared for a direct confrontation with the Kingitanga, and bringing an end to plans for an imminent invasion. He spent the best part of the next 21 months successfully lobbying for further reinforcements, ordering the construction of the Great South Road and securing the services of steamers from Australia so that if and when the time came for a show-down the British would be well and truly prepared.

The question of Grey’s intentions is considered more fully in the political engagement report for the period to 1863, but one tantalising piece of evidence suggests the new governor may have been planning a confrontation with the Kingitanga all along.

New Zealand had increased to 5706. See ‘Return shewing the number of troops in New Zealand during the year ended June 1862’, Le 1/1862.119, Archives NZ.

⁸ Cameron to Military Secretary, 6 May 1861, Selections from Despatches and Letters, p.54, WO 33/16, Archives NZ. In January 1861 Governor Browne had estimated that Waikato had 2000 men under arms, with rumours this could increase to 5000. Browne to Pratt, 26 January 1861 (confidential), pp.327-331, CO 209/160, Archives NZ.

⁹ B.J. Dalton, *War and Politics in New Zealand, 1855-1870*, Sydney: Sydney University Press, 1967, p.134.

Referring to the brief period in September 1861 after Grey had arrived but Browne had yet to leave the colony, the latter subsequently wrote that:

Tamati Ngapora was I believe really a friend of mine [;] he said he always trusted me. I wrote to him to come to see Grey but he remained aloof for some time. I told Grey I did not think this looked well. He replied I think it is well for I want an excuse to take the Waikato.¹⁰

If Browne had accurately recorded Grey's stated intentions then this would appear to have major implications for our understanding of the crucial period between September 1861 and July 1863. It may have been less a case of if the Crown would invade Waikato than when precisely Grey would choose to do so. That assessment turned on military readiness rather than broader political considerations such as the prospects for successfully pursuing a peaceful settlement of all outstanding difficulties.

One thing seems clear enough. Had Grey not cancelled Browne's preparations to invade Waikato in 1861, the fate of New Zealand as a British colony (and especially the North Island) may well have hung in the balance. As Grey informed the Colonial Office in April 1863, when he arrived in New Zealand for his second governorship:

I soon found that from the dense forests, and impassable swamps, which intervened between Auckland and the country inhabited by the Waikato tribes, and from the want of roads or other means of communication, it was impossible to commence operations against them with any hope of success. On the contrary, they had become so confident in their own strength and resources, and were so encouraged and emboldened by the events of the recent war that the question was, how we could protect the country round Auckland from the attack they might at any moment make on it, and which they were certain to make if we began a war at Taranaki, or in any other part of the North Island.¹¹

¹⁰ J.E. Gorst, *The Maori King, or The Story of Our Quarrel with the Natives of New Zealand*, London: Macmillan & Co., 1864, p.203 [with annotations by Thomas Gore Browne], MS-0860, ATL.

¹¹ Grey to Newcastle, 6 April 1863, no.37, pp.353-354, CO 209/172, Archives NZ.

Grey asserted that, if, under these circumstances, he had attempted to ‘agitate any questions with the Natives of Taranaki’, a general war of disastrous proportions for the European settlements must inevitably have followed. Under these circumstances, he wrote:

The only proper proceeding appeared therefore to me to be, to take no measures which would irritate the native people, or justify them in commencing a general war; and yet as the Waikato tribes were evidently the head and front of this great and general conspiracy against us, gradually and surely to take measures which would not only place the settlement of Auckland in a state of fair security against them, but would place us in a position which would enable us with just hopes of success to strike a blow at them if they deserved punishment, and at all times so to threaten them, that if we ever required to take measures against the Natives elsewhere, they would hardly dare to venture to detach any considerable force to aid such people, when a force capable of readily invading their territories lay at their own doors.¹²

The governor added that it was ‘with a view of attaining these end’ that Cameron was, ‘at my request, pushing on, with all the means at his disposal, a military road through the forests and swamps which lay between Auckland and the Waikato river; and...our outposts were gradually being established in strength on the banks of the river at a point which nearly cut it in half, and gave us a great command over it; and...arrangements had been made for placing an armed steamer upon it, which would enable us, if unhappily such a course became necessary, to undertake operations with facility and fair prospects of success.’¹³

Browne and Cameron’s collective bravado had led them to the edge of a perilous precipice. But Grey, no doubt recalling British military humiliations at the hands of Maori in the 1840s, was more prudent. This was arguably the most important call he

¹² *ibid.*, pp.355-356.

¹³ *ibid.*, p.357.

was required to make during his entire two terms as governor of New Zealand. As Sir William Fox later wrote:

...had the intended invasion of Waikato been attempted with the small military force under General Cameron's command, and with the colony so unprepared as it was at that date, nothing but the most fearful disasters could have ensued. If, with nearly 15,000 men, and two years' preparation, he was barely able to drive back the invading Waikatos from Auckland in 1863, what would have been our position if the invasion of their country had been attempted by us with a force of barely 3,000 men, and the colony altogether unprepared? We may well be thankful that we were spared the calamities that must have inevitably followed.¹⁴

Henry Sewell reached a similar conclusion, writing with respect to Browne's intention to attack Waikato in 1861 that:

Fortunately for Colonel Browne, the Colony, and I think the credit of the British army, Colonel Browne's plans were interrupted. Had he then attempted an invasion of the Waikato the chances are that it would have led to disaster. At that time there was no road completed to the River Waikato beyond Drury – a distance of not more than twenty-five miles from Auckland. Beyond Drury, for about twenty miles, the intervening country was dense, impenetrable bush, through which it would have been impossible to keep communications open. The projected invasion became practicable, only after Sir George Grey had completed the road to the river; till then, the idea of such an invasion into the native territory appeared to me, as I know it did to men of military science, a rash adventure.¹⁵

By July 1863 the invasion of Waikato could no longer be described as a 'rash adventure', at least from a military point of view. This was not even solely a question of numbers. In fact, just four days before troops crossed the Mangatawhiri, Cameron

¹⁴ William Fox, *The War in New Zealand*, London: Smith, Elder and Co., 1866, p.40.

¹⁵ Henry Sewell, *The New Zealand Native Rebellion: Letter to Lord Lyttelton*, Auckland: Printed for the Author, 1864, p.11.

wrote to the War Office in London to forewarn them of the likely movement (something Grey avoided doing with respect to his own superiors in the Colonial Office). He informed them that 'the plan which his Excellency Sir George Grey and myself have determined upon, under present circumstances, is that I should move, with as large a force as I can collect, against the tribes of the Waikato, and I am accordingly making preparations for an expedition up that river.' He added that:

The weather at this time of the year is unfavourable for operations in the field; but as it is almost certain, whatever we may do, that the tribes above mentioned will commence hostilities against us before long, it is better that we should take the initiative, if possible, and carry the war into their country, than that we should wait until they attack this settlement [Auckland]. I therefore propose to commence the movement as soon as all the preparations are complete, and the reinforcements, which are daily expected from Australia, have arrived.

The force then assembled in this province will amount to more than 3,000 men; but after providing for the protection of the settlement and of the depots along the line of operations, and furnishing the necessary posts of communication, I do not expect to collect a field force of more than 1,800 men...¹⁶

Although Cameron was thus proposing to invade the Waikato with fewer troops than he had envisaged as a minimum necessity when formulating his initial plans in May 1861, in reality the Crown's total military strength was much greater. A further 2931 armed militia and volunteers were also on active service by the end of July 1863,¹⁷ while the recruitment of military settlers from Australia, a further influx of Imperial regiments from India and elsewhere, and the support of a small number of Maori allies, further boosted the British cause. Belich states that at the time of the invasion in July 1863 there were less than 4000 troops in Auckland Province, building to a

¹⁶ Cameron to the War Office, 8 July 1863, Selections from Despatches and Letters, p.109, WO 33/16, Archives NZ.

¹⁷ Distribution of the Militia and Volunteers in the Province of Auckland (all armed), 29 July 1863, GBPP, 1864 [3277], p.46. [Note: original pagination is cited in all GBPP references rather than Irish University Press page numbering].

peak of about 14,000 'effective troops' by March 1864. Of these, he adds, some 9000 were Imperial troops, 4000 were colonial forces and the balance was represented by kupapa fighters.¹⁸ The total Imperial contribution to the war effort meanwhile reached nearly 12,000 men by May 1864, including a naval brigade which saw active service during several engagements during the Waikato War.¹⁹ Even by the standards of the then British Empire this was a very substantial commitment.

The colonial contribution came in three ways. Although their total numbers were small, the Colonial Defence Force and Forest Rangers, the latter of which famously included the colourful and dashing Gustavus Ferdinand Von Tempsky, were fully trained standing bodies, able to punch above their weight. According to Belich, they rarely had more than about 200 men between them on active service in the Waikato at any one time.²⁰ The Waikato Militia, commonly referred to as military settlers, were the second group. Although there were initial plans to recruit up to 20,000 military settlers, chiefly from Australia and the Otago goldfields, with half of this number to man a frontier line extending from Raglan across to Tauranga,²¹ the total number on active service at the end of 1863 was just 3617, peaking at nearly 4000 by early the following year.²² The third category was composed of members of the Auckland Militia and Volunteers. Their numbers fluctuated, but according to Belich peaked at about 1650 men on actual and useful service in August 1863, from a nominal force of over 3000 men.²³

It is much more difficult to obtain accurate estimates of the number of Maori who fought on the Crown side during the Waikato War since there was no process of formal enlistment for such men at this time, while information on their hapu and iwi affiliations is often also lacking. There are also questions around what would constitute active service. Although there was a tendency among European officials at

¹⁸ Belich, *New Zealand Wars*, pp.125-126.

¹⁹ *ibid.*, p.126.

²⁰ *ibid.*

²¹ Alfred Domett, Memorandum on Roads and Military Settlements in the Northern Island of New Zealand, 5 October 1863, AJHR, 1863, A-8A, p.3.

²² Return of Militia, Volunteers, Military Police, and Other Forces (exclusive of Regular Troops) in New Zealand, 31 December 1863, AJHR, 1864, E-3, p.34; T. Russell, Colonial Defence Office, memorandum for His Excellency, 29 February 1864, AJHR, 1864, E-3, pp.34-36; Belich, *New Zealand Wars*, p.126.

²³ Belich, *New Zealand Wars*, p.126.

the time to categorise Maori communities in the Waikato as either ‘loyalist’ or ‘rebels’, many Maori defied such categorisation. As the Tribunal commented in its *Hauraki Report*:

...problems of definition surrounded the concept of “Loyalist” or “kupapa”. Many simply tried to keep from being caught up in the conflict. Others chose to cooperate with the Crown’s forces or Crown officials out of the complexity of inter-hapu rivalry. Many changed sides (either way) during the course of the conflicts.²⁴

Wiremu Nera Te Awaitaia and other Ngati Mahanga at Whaingaroa were among the few groups resident within (or on the fringes of) what is now the Rohe Potae inquiry district to have been deemed solid allies of the Crown during the 1860s. Such was Te Awaitaia’s standing that he was able to act as an intermediary between the Kingitanga leaders and British forces, especially in the period after the capture of Ngaruawahia in December 1863, when there seemed a very real prospect for peace. Yet Ngati Mahanga were also supplied with arms to defend the settlement of Raglan against possible attack, offered to send men to Auckland for similar purposes and acted as guides to Lieutenant-General Cameron and his troops.²⁵ Although such actions were undoubtedly beneficial from the Crown’s perspective, it is difficult to depict them as those of hardcore ‘loyalists’. Indeed, few if any of the Waikato rangatira and their followers described in these terms seemed willing to actually serve in the front lines against their kin.²⁶ Rejecting the Kingitanga was one thing, but killing blood relations was a different matter altogether.²⁷ This was perhaps doubly so for groups such as

²⁴ Waitangi Tribunal, *The Hauraki Report*, 3 vols, Wellington: Legislation Direct, 2006, vol.1, p.227.

²⁵ Gary Scott, ‘Te Awa-i-taia, Wiremu Nera, ?-1866’, DNZB, vol.1, p.442.

²⁶ The Ngati Naho leader Wiremu Te Wheoro, for example, similarly confined the services of his followers to acting as guides and transporting supplies up the river – vitally important work, of course, but not quite the same as taking to the rifle pits against their kin. Gary Scott, ‘Te Wheoro, Wiremu Te Morehu Maipapa, ?-1895’, DNZB, vol.1, p.524.

²⁷ Although there was periodic talk of recruiting outside tribes such as Ngapuhi or Te Arawa to fight against the Waikato Kingitanga – which would have been an altogether different proposition – little came of such suggestions, although many Te Arawa later fought alongside Crown troops in the Bay of Plenty. John Featon records an 1863 incident in which a group of Auckland Militia and Volunteers set out for Manukau to pick up and destroy any enemy waka found in the harbour: ‘They were to have been accompanied by 50 friendly natives who had arrived from Rotorua and were armed with rifles supplied by the Government but the navals refused to march in company with armed natives. The townspeople took the matter up, and a deputation waited on the Governor and Native Minister, the Hon. Dillon Bell, and the result was that the natives were disarmed.’ John Featon, *The Waikato War, 1863-4*, Auckland: J.H. Field, 1879, p.31.

Ngati Hikairo who were 'partly loyal & partly rebel' at the time of the wars.²⁸ A best guess for 'loyalist' forces available during the Waikato War would thus probably number in the few hundreds at most, generally, if not entirely, restricted to non-combat roles. Nor, as will be discussed later in the report, was their objective always identical with that of the British troops and their commanders.

Keeping the supply chain and lines of communication open were vital aspects of the war effort, sometimes sucking up more troops than were available as a column of attack. But as Belich notes, Cameron and most of his leading officers were veterans of the disastrous Crimean War and 'were determined to avoid a repetition of that logistical fiasco.'²⁹ This emphasise on securing supply lines with its concomitant slow and steady progress was to frustrate European critics who originally envisaged or hoped for a speedy victory in the war, but was perhaps ultimately the decisive factor in allowing British troops to conquer much of the Waikato district. As Belich concludes, 'The campaign was one of the best-prepared and best-organized ever undertaken by the British army.'³⁰

Although historians have sometimes highlighted the unique motivations and objectives of kupapa forces or pointed to rifts between particular individuals, on the whole it is taken as a given that there was a coherent British or Crown force with a clear and coherent command structure and agreed tactics, strategies and objectives. The same consensus around this cannot be said to apply to the Kingitanga side. Many historians have rejected the notion of any kind of clearly identifiable Kingitanga army, instead insisting that different iwi and hapu fought under their own leadership and in pursuit of their own tribal objectives. It was this very absence of any kind of coherent strategic approach which, according to a number of historians, provided the basis for defeat. As B.J. Dalton writes:

The splendid courage of the Maoris, which was warmly admired by the troops, and their skill in preparing field defences, probably unequalled in any other native people, were not matched by strategic sense. Making no serious attempt

²⁸ Otorohanga MB 35, p.207

²⁹ Belich, *New Zealand Wars*, p.127.

³⁰ *ibid.*

to use their superior mobility in order to interfere with the troops' highly vulnerable communications, the tribes fought for the most part each in defence of its own territory with little cooperation from others.³¹

Nor has the notion of the Kingitanga forces as a largely uncoordinated rabble entirely died away in the aftermath of Belich's compelling arguments to the contrary. The Hauraki Tribunal, for example, concluded in its 2006 report that 'Contrary to Professor Belich's picture of an elaborately organised Kingitanga strategy and campaign, the evidence indicates that Maori actions demonstrate local motivation and initiative.'³² Perhaps there is less of a gap in this instance than would appear to be the case, however, since Belich does not deny the importance of local and specific motivations (but rejects the notion that Maori fought without shared strategic objectives). Moreover, the Tribunal qualifies its own position in this case in going on to cite the submissions of Crown counsel that the military encounters of any one group could not be considered in isolation since 'many groups and encounters were inter-connected across the region from Raglan to Tauranga.'³³ The Tribunal commented with respect to this submission that 'The Crown is probably correct in this, although local and particular motives can also be discerned.'³⁴

The local and particular can be discerned throughout the entire history of the Kingitanga, since participation in this body was never compulsory and was never intended to supplant deeply-rooted hapu or iwi affiliations. Wiremu Tamihana did not stop being Ngati Haua or Rewi Maniapoto Ngati Maniapoto simply because they supported the Kingitanga. Allegiances did not have to be binary. Rangatira and their people had supported the Kingitanga precisely because it was seen as consistent with fostering and supporting the well-being of their own kin groups. But the Kingitanga was also greater than the sum of its parts, and if we are to reject the notion of any kind of shared strategic objectives then we are essentially challenging one of the central edifices upon which Belich's analysis is based. A credible body of evidence in support of such a case does not appear to exist.

³¹ Dalton, *War and Politics in New Zealand*, p.179.

³² Waitangi Tribunal, *Hauraki Report*, vol.1, p.206.

³³ *ibid.*

³⁴ *ibid.*

While the existence of a Maori 'army' composed of several thousand fighters from a number of different iwi and hapu might at first glance seem wholly without precedent, on closer consideration the obvious comparison might be with some of the very large inter-tribal taua or war parties of the 'musket wars' era. Yet many European observers were scathing as to the supposed ill-discipline and lack of leadership of these early taua. The missionary George Clarke Snr., for example, declared that:

...a New Zealander in the field of battle is the most ungovernable creature imaginable [sic] for though a Soldier he is quite independent and if he like[s] he will obey the voice of his leader or he will not[;] the action commences with the war dance which consist of the most hideous yelling imaginable, and then without any discipline an irregular fire is opened upon them which endangers the life of friends almost as much as enemies[;] after the first fire all is confusion every one seeking for a hiding place and so on till one of the parties retire when the others pursue slaughtering all before him.³⁵

Another missionary, Henry Williams, having inquired why a particular war party did not keep in closer formation with one another, was informed in response that:

...it was their usual way for each party to go where they liked, that every one was his own chief. Without any one to direct, not only does each tribe act distinct from the other, but each individual has the same liberty. If one be bent on mischief, he cannot be restrained by the others.³⁶

Joel Polack was of a similar view, writing that:

The obstinacy and sullenness of the people is unbounded. It is an invariable rule in expeditions undertaken for mutual defence, that they act opposed to each other and their general interest.

³⁵ George Clarke to 'My dear Father and Brother', 31 March 1828, MS-Papers-250-11, ATL, in Supporting Papers to the report of Vincent O'Malley and John Hutton, 'The Nature and Extent of Contact and Adaptation in Northland, c.1769-1840', report commissioned by the Crown Forestry Rental Trust, April 2007, vol.1, p.59.

³⁶ Henry Williams, Journal, 6 January 1832, in Lawrence M. Rogers (ed.), *The Early Journals of Henry Williams, Senior Missionary in New Zealand of the Church Missionary Society, 1826-1840*, Christchurch: Pegasus Press, 1961, p.213.

Instead of keeping together in silent bodies to avoid exposure, each party straggles about, chattering like apes congregated to discuss their political affairs; thus, if one chief alone is bent on doing mischief, nobody can restrain him.³⁷

According to Angela Ballara, early Maori accounts of warfare suggest that military leadership was usually vested in a single chief in the case of relatively small taua, but that ‘very large taua including ope...from many independent hapu would display the lack of single direction that some of the missionaries and early settlers complained about.’³⁸

It seems clear, then, that even if the Kingitanga army did not march under an entirely centralised command structure, the nature of the force was significantly evolved from the large taua of the pre-Treaty era. This shift mirrored broader changes in Maori governance structures over the same period towards more formalised and distinct decision-making bodies.³⁹ Both changes could be seen to have come about more or less directly in response to the challenges posed by the new colonial order, whether in the political or military sphere. This is important to recognise at the outset because it points to another layer of Maori innovation in terms of the war effort over 1863-64 that if anything may have been downplayed by Belich.

While we know that they were heavily outnumbered by their opponents, assessing the overall strength of the Kingitanga force is much more difficult. Although Cameron had claimed in 1861 that Waikato alone could call on 4000 to 5000 fighting men, it is not clear what this estimate was based on. All of Waikato did not fight against the

³⁷ J.S. Polack, *New Zealand, Being a Narrative of Travels and Adventures During a Residence in that Country between the Years 1831 and 1837*, 2 vols, London: Richard Bentley, 1838, vol.2, p.102.

³⁸ Angela Ballara, *Taua: ‘Musket Wars’, ‘Land Wars’ or Tikanga? Warfare in Maori Society in the Early Nineteenth Century*, Auckland: Penguin Books, 2003, p.144. There is considerable evidence to suggest that although in times of peace rangatira had great influence within their community but little actual authority, in times of war a kind of temporary power could be vested in military leaders. See, for example, F.D. Fenton, Report as to Native Affairs in the Waikato District, March 1857, AJHR, 1860, E-1C, p.11.

³⁹ See Vincent M. O’Malley, ‘Runanga and Komiti: Maori Institutions of Self-Government in the Nineteenth Century’, PhD thesis, Victoria University of Wellington, 2004; Vincent O’Malley, ‘Reinventing Tribal Mechanisms of Governance: The Emergence of Maori Runanga and Komiti in New Zealand Before 1900’, *Ethnohistory*, Winter 2009, vol.56, no.1, pp.69-89.

British, in any case, and Cameron's estimate of the potential military force appears much too high. F.D. Fenton's 1858 census, for example, had estimated a total population for the Waikato district of 10,319.⁴⁰ Even if we assume for the sake of argument that there had been no population decline in the intervening five years, it would clearly be stretching things to regard every male in the district, regardless of age or condition, as a potential fighter. A more realistic estimate, at least based on the 1858 estimates, might put the total potential force at 2500, from which deductions would need to be made for those communities which had either remained neutral or aligned themselves with the British. While it is virtually impossible to estimate this on a numerical basis, one might safely reduced the available force by a minimum of 20%, thus giving a total potential fighting strength within the Waikato tribes of no more than about 2000 men at the most.

That figure ironically coincides with best estimates as to the peak Kingitanga force actually in the field at any one time. As Belich notes, some historians have pointed to this figure as one suggesting the limited support the Kingitanga received, declaring that no more than 2000 Maori were prepared to answer the call to arms.⁴¹ This is, however, to confuse peak strength with total mobilisation. Clearly, the same 2000 men did not spend the entire time from 12 July 1863 to 21 June 1864 (or even 2 April 1864, if we restrict it solely to the Waikato theatre of operations) in the field, fighting against the British. The old truism about an army marching on its stomach was doubly true in the case of the Kingitanga, which did not have the logistical resources available to the British. Fighting men in the field would therefore be required to regularly retire to their homes in order to attend to their crops, leaving a hole that would need to be filled by replacements from somewhere. A mad dash into action by all those eager to fight against the British would have been simply disastrous.

But while the total potential fighting force within Waikato was clearly exaggerated by at least some European observers, Belich makes out a convincing case for a higher

⁴⁰ See Table Showing (as far as can be ascertained) the Aboriginal Native Population of New Zealand, in F.D. Fenton, *Observations on the State of the Aboriginal Inhabitants of New Zealand*, Auckland: New Zealand Government, 1859. Fenton does not provide a single 'Waikato' figure as such. This number has instead been calculated by combining his figures for the following districts: Central Waikato, Lower Waikato, Lower Waipa, Central Waipa, Aotea, Whaingaroa, Kawhia, Upper Waipa, Mokau, Rangiaowhia, Horotiu and Horotiu Upper.

⁴¹ Belich, *New Zealand Wars*, p.128.

level of support for the war effort against the British than has sometimes been assumed. As he notes, of about 26 major descent groups in the North Island, at least 15 are known to have sent contingents to the conflict, either at Waikato or Tauranga.⁴² In some cases this clearly represented a very small fraction of the overall group, such as with the few Te Arawa groups such as members of Ngati Rangiwewehi and some Ngati Pikiao who fought at Tauranga despite the overwhelming majority of Arawa aligning themselves with the Crown. In other cases, as with Tuhoe and Ngati Porou, there was a higher level of support, and the actual numbers who went to the aid of the Kingitanga forces would have been substantially higher if it were not for the successful efforts of Te Arawa to resist the incursion onto their rohe of large numbers of Tairawhiti reinforcements bound for the war.⁴³

As Belich suggests, in some cases tribes may have sought to restrict their military support for various reasons, including the impact on their own tribal economy and fear of possible British reprisals, even while actively sympathising with the Kingitanga cause.⁴⁴ That option was simply not possible for those in the path of the British invasion, and although the number of fighters in the field at any one time had to be balanced by the need to also tend to their crops, for the iwi and hapu of the Rohe Potae district the war was much more of an all-consuming effort. The general pattern, Belich argues, was one of 'a constant turnover of personnel – small groups came and went all the time.'⁴⁵ But this still required assembling large armies of between 1000 and 2000 men and keeping them in the field for three months on three separate occasions, at Meremere (August-October 1863), at Paterangi (December 1863-February 1864) and at Hanganaki and Maungatautari (April-June 1864).⁴⁶ These periods of sustained effort seriously strained Kingitanga resources and, Belich adds, were followed by periods of dispersal; the cycles were to have important implications for the manner in which operations were conducted.⁴⁷

⁴² *ibid.*

⁴³ Vincent O'Malley and David Armstrong, *The Beating Heart: A Political and Socio-Economic History of Te Arawa*, Wellington: Huia Publishers, 2008, pp.67-70.

⁴⁴ Belich, *New Zealand Wars*, p.129.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

Although there was some overlap between the forces assembled during each of these phases of the war, Belich further contends that this was never complete. Consequently, although the total force in the field at any one time did peak at about 2000 fighters manning the Paterangi line of defences in January 1864, the total Maori mobilisation was likely to have been at least 4000. Such a figure, he suggests, equates to something in the order of one-third of the total available man power.⁴⁸ Seen in those terms the war effort begins to look considerably more impressive. By way of comparison, for example, during World War One, around 40% of New Zealand's available manpower served in the armed forces.⁴⁹ That has long been regarded by historians as a staggering level of participation, especially in comparison with many other countries which had much lower levels of service in percentage terms.

The Kingitanga army was, however, much less impressive by comparison with the 18,000-strong force ranged against them, and the very fact of being outnumbered by a margin of greater than four to one and with a much weaker logistical support base dictated overall Kingitanga objectives and strategies. While the British sought to exploit their numerical and logistical superiority by drawing the Kingitanga forces into decisive battle, the Maori response was more flexible and fleet-footed, including attacks on British supply lines and the establishment of defensive lines of pa at strategic points.⁵⁰ Through checking or retarding the British advance through the Waikato the Kingitanga forces thus hoped to consolidate their position further south, holding on to some lands and to the institution of the Kingitanga itself in the process.

Judged against these objectives the war effort can be seen to have been much more successful. Or to reverse the equation, we might ask whether, at the outset of the war in July 1863, Grey would have regarded an acceptable victory as one in which the Maori King continued to preside over a largely autonomous district in which the writ of English law did not run and over which substantive Crown sovereignty had not been imposed. Clearly, the answer to this is 'no', since if such a result had been deemed tolerable earlier then Grey could have simply proclaimed Waikato as a 'native district' under section 71 of the Constitution Act, thus in all likelihood

⁴⁸ *ibid.*, p.130.

⁴⁹ James Belich, *Paradise Reforged: A History of the New Zealanders From the 1880s to the Year 2000*, Auckland: Penguin Books, 2001, p.96.

⁵⁰ Belich, *New Zealand Wars*, pp.133-141.

avoiding the need to go to war in the first place. He had gone to war in order to crush the Kingitanga and had failed in this objective, even if the loss of so much of the Waikato district left the movement seriously weakened.

Perhaps such an outcome ought not to have come as a complete surprise. Belich sets out a compelling case as to the numerical and other disadvantages which the Kingitanga forces operated under, but at the same time it is necessary to avoid overstating these circumstances. For one thing, Maori in general had already carved out a reputation among Europeans as a formidable military foe, and earlier British setbacks in Northland and elsewhere had only added to this impression. Their large population, including one of the largest number of potential fighters of any of the tribes in the country, combined with their close proximity to Auckland, earned the hapu and iwi of the broader Waikato district immediate attention from the British. And with good reason too. In the massive inter-tribal battle known as Hingakaka, for example, which took place around 1807, Waikato proper and Ngati Maniapoto had emerged victorious from a conflict said to have involved up to 16,000 fighting men, and literally dozens of tribes from all over the North Island.⁵¹ British troops had also quickly learnt during the first Taranaki War of 1860-61 that the Waikato tribes knew how to fight, though lest they had forgotten this lesson they were served with early reminders during the initial phases of the Waikato War.

2.3 Early Engagements

As will be discussed more fully in the political engagement report, on 9 July 1863, just a few days before British troops crossed the Mangatawhiri River on 12 July 1863, marking the start of the invasion, all Maori living between Waikato and Auckland were forcibly expelled from their homes and what property they could not carry away with them was seized and destroyed. Grey later sought to justify this action on the basis that the leading Waikato chiefs who had supposedly been plotting to attack the settlers 'had considerable numbers of their relatives and adherents living on different tracts of land in the midst of the most prosperous European settlements in this district, and these people had amongst them some of the most turbulent natives in this part of

⁵¹ Ballara, *Taua*, pp.288-291.

the country, who were the instigators of the proceedings which were being taken against the European race.’⁵² Grey can surely not have been so ill-informed as to seriously believe that this was the case, especially given the description of the South Auckland Maori population by Gorst and others as an inoffensive, and predominantly elderly, community who had never caused any problems for their neighbours.⁵³ More likely, this was yet another of the falsehoods Grey regularly fed the Colonial Office in order to justify the unjustifiable.

In any event, Grey claimed that it was ‘impossible to leave a strong disaffected population, well armed (many of whom were known to be bent on plans of violence and murder), in rear of the General and of the troops, when they occupied the frontier for the purpose of preventing armed bands from falling upon the out-settlements.’⁵⁴ The only definite plans for ‘violence and murder’ being prepared at this time were those of Grey and his military commanders, but in any case the brutal treatment received by Maori north of the Mangatawhiri literally pushed them into the arms of the Kingitanga, as even Cameron (who nevertheless believed their treatment had been justified by subsequent events) later admitted. Writing to the War Office at the end of July, the Lieutenant-General stated that:

on the 9th instant, I assembled a considerable force at Drury, while magistrates were sent round to the native villages, with instructions to call upon the inhabitants either to take the oath of allegiance, or to remove into the interior of the country. All refused to take the oath of allegiance (as I thought was to have been expected), some deserted their villages, others had to be expelled by the troops, and the greater part, instead of removing into the interior, retreated into the bush lying between Drury and the Waikato, from which, on account of its great extent and density, it will be a very difficult task to expel them.

They have murdered and plundered several harmless settlers living near the bush.

⁵² Grey to Newcastle, 1 August 1863, GBPP, 1864 [3277], p.39.

⁵³ J.E. Gorst, *The Maori King, or The Story of Our Quarrel with the Natives of New Zealand*, London: Macmillan and & Co., 1864, pp.380-382.

⁵⁴ Grey to Newcastle, 1 August 1863, GBPP, 1864 [3277], p.39.

Foreseeing this danger, I had proposed to march detachments suddenly on the same day, without previous notice, to disarm the natives and compel them to retire up the Waikato. The consequence of this plan not having been adopted is, that the bush is now so infested with these natives, that I have been obliged to establish strong posts along our line of communication, which absorbs so large a portion of the force, that until I receive reinforcements it is impossible for me to advance further up the Waikato.⁵⁵

The prevailing pattern for the early phase of the war was thus set, with various raids on British communication and supply lines slowing Cameron's advance through the Waikato and requiring a large force to counter, reducing the overall numbers available to act as an attack column. If these were indeed the random and uncoordinated efforts of particular tribal groups acting in accordance with their own priorities, then it was remarkably fortuitous that they had the combined effect of frustrating plans for a rapid advance on Ngaruawahia.

On 10 July 1863, Cameron had shifted his headquarters to the Queen's Redoubt, located on the Great South Road about a mile and a half from the Mangatawhiri, in anticipation of the initial advance.⁵⁶ At dawn on the morning of 12 July 1863 he led 380 Imperial troops across the river.⁵⁷ Although Governor Grey was remarkably tardy and understated in reporting this movement to the Colonial Office, doing so on 28 July 1863 and in a brief and matter of fact way,⁵⁸ the implications of this movement were plain to all. As the Deputy Assistant Quartermaster General stated in his monthly report, 'The passage of this stream by an European force has been always regarded by the natives of the Waikato as tantamount to a declaration of war.'⁵⁹ Cameron's immediate objective was to secure the Koheroa Ridge about 500 yards on the opposite bank in order to command navigation of the river and secure

⁵⁵ Cameron to War Office, 30 July 1863, Selections from Despatches and Letters, p.120, WO 33/16, Archives NZ.

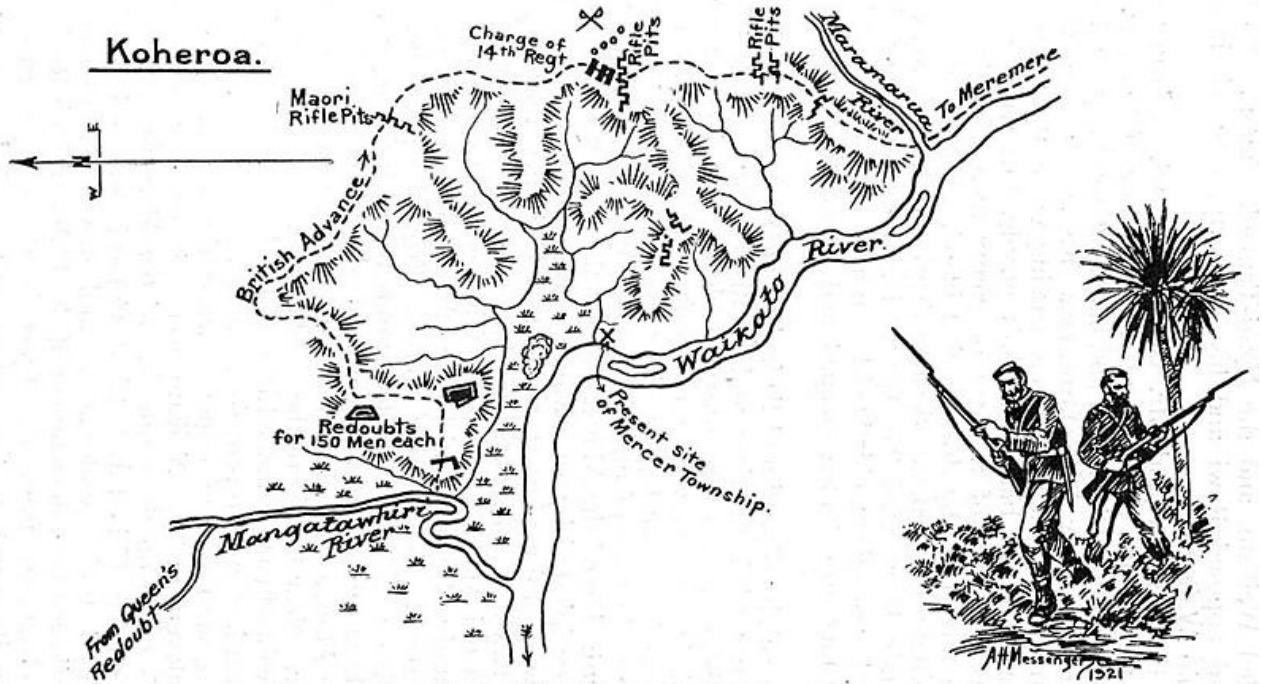
⁵⁶ General Records, 10 July 1863, 40th (2nd Somersetshire) Regiment, Miscellaneous Records, Micro-MS-Coll-20-2579, ATL.

⁵⁷ Cameron to Grey, 13 July 1863, GBPP, 1864 [3277], p.38.

⁵⁸ Grey to Newcastle, 28 July 1863, GBPP, 1864 [3277], p.38. Just as remarkably perhaps, the despatch attracted no minutes at all from officials in the Colonial Office. They can hardly have been unaware of the significance of Imperial troops crossing the Mangatawhiri. Grey to Newcastle, 28 July 1863, no.83, pp.550-551, CO 209/173, Archives NZ.

⁵⁹ G.R. Greaves, 5 August 1863, Journals of the Deputy Quartermaster General in New Zealand, 1861-1865, p.44, WO 33/16, Archives NZ.

communication between the Queen's Redoubt and a stockade on the Waikato River.⁶⁰ His force made their way up the steep ridge without resistance and proceeded to construct a redoubt, where reinforcements joined them over the following days.



(Source: Cowan, *New Zealand Wars*, vol.1, p.254)

Figure 3 Plan of the Battlefield of Koheroa

Meanwhile, on the same day Colonel Wyatt and 300 men of the 65th regiment marched from Drury to Tuakau, on the north bank of the Waikato River, where local Maori either had not heard of Grey's earlier proclamation to clear out or had refused to heed it. As John Featon wrote:

The village was situated on the edge of the river, and justly considered one of the prettiest and most flourishing in the lower Waikato. The land was good. Potatoes, kumeras [sic], and corn grew luxuriantly, and each year filled the storehouses of the Natives to overflowing. A water mill close by ground their wheat into flour, and their fruit trees were loaded with apples and peaches, whilst the branches of the vine bending under their juicy weight trailed in the

⁶⁰ Cameron to Grey, 13 July 1863, GBPP, 1864 [3277], p.38.

swift running stream. No wonder the Natives were loth [sic] to leave their beloved home. The 65th debouched suddenly from the bush in the rear of the settlement, and surprised the Natives, who hastily collecting their lares and penates, moved mournfully down to the canoes, and with many tears and deep sighs paddled away.⁶¹

While the former occupants hastily collected what they could carry and retreated to the relative safety of the south bank of the Waikato River, Imperial troops seized possession of what remained left behind.⁶² If the people of Tuakau were not dangerous and disaffected 'rebels' prior to the invasion of their community, then they probably were by time it was over. In the early phases of the war the British literally drove large numbers of people into the arms of the Kingitanga.

Throughout the 1860s and beyond officials maintained a sharp (and sometimes scarcely credible) distinction between British casualties inflicted by 'rebel' forces during the course of combat and supposed murders of ordinary settlers that were deemed to be criminal acts. Thus the first victims of the war, a Ramarama farmer named Michael Meredith and his son, who were tomahawked on their property about four miles from Drury on 15 July 1863, were officially deemed to have been murdered.⁶³ In reality, they were unfortunate enough to live within what was now a war zone as a result of the invasion of the Waikato, and to have been killed by young men anxious to draw first blood in the conflict.⁶⁴ At least three further fatal attacks on outlying settlers occurred over the remainder of July, each requiring the diversion of British troops to mount rescue patrols.⁶⁵ Thus from a strictly military point of view, the attacks could be seen to have made sense.

On 17 July 1863 the first two military engagements occurred. At Koheroa, the 500-strong garrison observed a body of Maori gathering on the ridge opposite their camp, where the party proceeded to entrench themselves. After being pursued for nearly two

⁶¹ Featon, *Waikato War*, p.20.

⁶² Greaves, 5 August 1863, Journals of the Deputy Quartermaster General, p.45, WO 33/16, Archives NZ.

⁶³ *Daily Southern Cross*, 1 August 1863.

⁶⁴ James Cowan, *The New Zealand Wars: A History of the Maori Campaigns and the Pioneering Period*, 2 vols, Wellington: Government Printer, 1983 (original edition 1922), vol.1, p.253.

⁶⁵ Belich, *New Zealand Wars*, p.135.

miles, the Maori force turned and opened fire on the British. Cameron's official report of the engagement noted that:

as we advanced upon them they retired along the narrow crest of the hills towards the Maramarua, making a stand on every favourable position which the ground presented. Some of their positions, which had been recently fortified by lines of rifle pits, and which from the nature of the ground could not be turned, they defended with great obstinacy, and as we had no artillery in the field, they could only be dislodged from them by successive attacks with the bayonet, which were executed by the 2nd Battalion 14th with great gallantry and success.

We pursued them from one position to another, a distance of about five miles, until we drove them in great confusion across the mouth of the Maramarua, some escaping up the Waikato in canoes, and others along its right bank after swimming across the Maramarua. A considerable portion of them, however, before reaching the Maramarua, escaped down a gully to the left, seeking shelter in a swamp, and suffered severely from the fire of our men on the heights. As we had no means of crossing the Maramarua, I ordered the troops to return to camp.⁶⁶

The British hailed this two-hour long engagement a great success. Grey claimed that 'a more signal defeat cannot well be imagined than the enemy sustained on this occasion.'⁶⁷ Another official account claimed that, 'for the first time...in the annals of New Zealand warfare' the Maori had been 'worsted in fair combat on open ground, without artillery, to the presence of which alone, in former wars, he attributed our superiority.'⁶⁸

But while Koheroa was undoubtedly a victory for the British, Belich queries both the extent of the defeat inflicted on the Kingitanga forces and the significance of this engagement. Contrary to British claims that between 300 and 400 Maori took part in

⁶⁶ Cameron to Grey, 18 July 1863, GBPP, 1864 [3277], p.42.

⁶⁷ Grey to Newcastle, 1 August 1863, GBPP, 1864 [3277], p.41.

⁶⁸ G.R. Greaves, 5 August 1863, Journals of the Deputy Quartermaster General, p.47, WO 33/16, Archives NZ.

the engagement, Belich suggests that the true figure was no higher than 150 and may have been as low as 100.⁶⁹ He also queries some estimates that put total Maori killed at as high as 150, compared with one British death and 12 wounded.⁷⁰ Belich notes that five Maori sources confirmed that between 14 and 15 Maori had been killed in the engagement.⁷¹ In fact, at least one official report also gives a precise and evidently quite reliable figure of 14 killed. Three days after the battle T.A. White, who appears to have been a Native Department employee,⁷² visited the scene of the battle in the company of Wiremu Te Wheoro. The chief was able to name all of those killed (many of whom were no doubt his own relations).⁷³ Meanwhile, an appended 'List of Maoris killed at the Koheroa (From Native sources)' gave a slightly higher figure of 17, as well as providing the hapu affiliations of those killed. Five of the dead were described as being from Ngati Mahuta, two belonged to Ngati Hine, one was from Ngati Pou, four were listed as Ngati Naho, and a further five from Pakahorahora.⁷⁴ White's report, meanwhile, noted that on 21 July he, Te Wheoro and some officers had met with a party of ten men from the Kingitanga sent in response to an invitation to come and collect the bodies of their dead. From them, they learnt that 'a great many' more had been wounded, and that as the party had scrambled to their canoes many had been forced to throw away their clothing, blankets, mats, mere, hatchets, arms and ammunition in order to lighten their load.⁷⁵

On the same day as the fight at Koheroa, one anonymous soldier recorded in his diary: 'Another affair much more disastrous to the Troops occurred to the Convoy proceeding to Drury.'⁷⁶ Belich has argued that the strategic significance of this attack on a convoy and its escort at Martin's farm, on the road between Queen's Redoubt and Drury has been overlooked in many conventional analyses of the war.⁷⁷

⁶⁹ Belich, *New Zealand Wars*, p.134.

⁷⁰ *ibid.*; Featon, *Waikato War*, p.25. In fairness, it should be pointed out that estimates by Cameron and other officers placed the number of Maori killed at a much lower level than this. Cameron stated that 'upwards of 20 dead' were counted on the ground, while the Deputy Assistant Quartermaster's report spoke of not less than 30 to 40 killed. Cameron to Grey, 18 July 1863, GBPP, 1864 [3277], p.42; G.R. Greaves, 5 August 1863, Journals of the Deputy Quartermaster General, p.47, WO 33/16, Archives NZ.

⁷¹ Belich, *New Zealand Wars*, p.134.

⁷² This is deduced from the fact his letter on the subject is addressed to the Native Minister and employs the valedictory phrase 'your obedient servant'.

⁷³ T.A. White to Native Minister, 22 July 1863, MA 1/1863/244, Archives NZ.

⁷⁴ List of Maoris killed at the Koheroa (From Native sources), n.d., MA 1/1863/244, Archives NZ.

⁷⁵ White to Native Minister, 22 July 1863, MA 1/1863/244, Archives NZ.

⁷⁶ Anon, Diary of a British Soldier, Queen's Redoubt, 17 July 1863, Micro-MS-0445, ATL.

⁷⁷ Belich, *New Zealand Wars*, p.134.

Ambushed by numerous Maori who appeared from out of the bush, the convoy found itself under heavy fire and when a horse fell blocking the road for those behind, the British found themselves split into two groups. Although other British forces eventually came to their aid, four troops were killed in this attack, and a further 12 injured – something like a third of the total convoy strength – compared with perhaps one or two Maori killed.⁷⁸ More importantly, Belich argues, the attack highlighted a clear Kingitanga strategy and intention to use the bush cover available to them between Hunua and the Pokeno Ranges to ambush and attack vulnerable convoys travelling along the Great South Road.

Although the road itself had been a great boon to the cause of the British, in places it passed through thick bush, providing perfect cover for continued attacks of a similar nature. A day after the attack, one soldier noted that ‘The road is now considered very unsafe’.⁷⁹ Simply completing the road itself, just a few months before the invasion, had been a massive effort. But following the ambush at Martin’s farm it was apparent that bush clearing was desperately required. An official British report from early August observed that:

The Colonial Government having, at the instance of the Lieutenant-General Commanding, taken steps for clearing the dense bush skirting the road between Drury and Queen’s Redoubt, the work has already commenced by contract: and the principle at present followed, by way of experiment, is to clear the undergrowth, thick stuff and saplings, with a view of burning them after a few weeks, in piles, round the large forest trees, which will be left standing, and be killed by the effect of the fire.

In this way, it is believed, that while the labour of clearing will be materially lessened, the enemy will be deprived of thick cover, while, should he attempt to avail himself of that offered by the standing trees, we shall have avenues for following him. On the other hand, the large trees, if felled, would still afford

⁷⁸ *ibid.*; James Ring (Captain, Royal Irish) to the Officer Commanding the Royal Irish, 17 July 1863, GBPP, 1864 [3277], p.40; G.R. Greaves, 5 August 1863, Journals of the Deputy Quartermaster General, pp.47-48, WO 33/16, Archives NZ; Featon, *Waikato War*, p.29.

⁷⁹ Anon, Diary of a British Soldier, Queen’s Redoubt, 18 July 1863, Micro-MS-0445, ATL.

cover for the enemy's ambuscades, and be, in the first instance, a serious obstacle to the troops in attempting to follow them.⁸⁰

In all 100 men were soon put to work on bush clearing, of whom half were civilians and the remainder members of the 40th and 65th regiments, with a further 100 'Nova Scotians, and some German colonists' to also be employed as bush cutters by the provincial government.⁸¹ This created yet another drain on already overstretched resources. At the end of July Cameron observed that 'the bush is now so infested with these natives that I have been obliged to establish strong posts along our line of communication, which absorbs so large a portion of the force that until I receive reinforcements it is impossible for me to advance further up the Waikato.'⁸²

Meanwhile, in a further irony, the parties engaged in bush clearing themselves became targets for attack. On 25 August 1863 a group of some 25 men of the 40th Regiment employed as bush cutters on the Great South Road came under a 'determined and unexpected attack'.⁸³ They had stacked their arms on the side of the road under the guard of a sole sentry, oblivious to the fact that their every movement was being monitored. The Kingitanga force suddenly appeared on the scene, seizing all but two or three of the 25 firearms. Two British soldiers were killed in the initial exchanges and the remainder of the party, unarmed and surrounded as they were, might have all been felled as well, were it not for the fortuitous and coincidental arrival on the scene of a convoy of the 65th regiment from Drury, who managed after a fierce exchange of gunfire lasting more than an hour to eventually rescue their stricken comrades.⁸⁴ This had been a chastening and humiliating experience for the British, and could so easily have proven a disastrous one were it not for the chance arrival of the convoy.

⁸⁰ G.R. Greaves, 5 August 1863, Journals of the Deputy Quartermaster General, p.49, WO 33/16, Archives NZ.

⁸¹ D.J. Gamble, 4 September 1863, p.54, Journal of the Deputy Quartermaster General, WO 33/16, Archives NZ.

⁸² Cameron to War Office, 30 July 1863, pp.569-570, WO 33/12, quoted in Belich, *New Zealand Wars*, p.135.

⁸³ D.J. Gamble, 4 September 1863, p.55, Journal of the Deputy Quartermaster General, WO 33/16, Archives NZ.

⁸⁴ *ibid.*; A Cook, Captain, 40th Regiment, to Assistant Military Secretary, 25 August 1863, AJHR, 1863, E-5, p.18; Anon, Diary of a British Soldier, Queen's Redoubt, 25 August 1863, Micro-MS-0445, ATL; 40th (2nd Somersetshire) Regiment, General Records, 19 [sic] August 1863, Micro-MS-Coll-20-2579, ATL.

The Kingitanga forces involved in these early raids appear to have consisted mainly of members of iwi such as Ngati Paoa and Ngati Whanaunga from the Hauraki district, Ngati Koheriki from the lower Wairoa valley, some Ngati Haua and a few Tauranga Maori.⁸⁵ Lower Waikato hapu had also been prominent in the engagement at Koheroa, but Ngati Maniapoto or other Rohe Potae iwi do not appear to have taken any part in these conflicts. This was not a matter of groups simply pursuing their own tribal objectives aimed at defending their own rohe without regard for the interests of others and without any kind of strategic overview, as has sometimes been suggested. Indeed, Cowan notes that when news of the invasion first spread, ‘Canoe-paddles dipped and flashed all along the broad Waikato as the Upper Waikato tribes and Ngati-Maniapoto, Ngati-Haua, and Ngati-Raukawa came hurrying down the river, eager to measure their strength with the *pakehas*.’⁸⁶ That they did not rush headlong into battle belies the notion of Kingitanga forces lacking any coherent or strategic overview. Indeed, it could be argued that many of the early raids on British supply lines were reliant upon a degree of local knowledge of the bush. If so, it was an advantage to have (for the most part) hapu and iwi from these areas or nearby heading the early Kingitanga war effort.

This kind of inside knowledge was less crucial during the next phase of the conflict. In August 1863 the second key plank of the Kingitanga strategy – dubbed the ‘Meremere Line’ by Belich – began to become apparent.⁸⁷ It was in that month that substantial numbers of Kingite toa began to entrench themselves at Meremere, a slightly elevated ridge running up from the Waikato River beyond the Whangamarino River. Cameron first reported this development on 15 August 1863, informing Grey that ‘The Natives are collected in considerable force on the right bank of the Waikato, near Meremere, about two miles above the Whangamarino, and occupy a commanding position, which they have strengthened by lines of rifle pits.’⁸⁸ John Featon declared in his history of the war that:

⁸⁵ Cowan, *New Zealand Wars*, vol.1, pp.259-260; Barry Rigby, ‘Hauraki and East Wairoa’, report commissioned by the Waitangi Tribunal, April 2002, pp.24-30.

⁸⁶ Cowan, *New Zealand Wars*, vol.1, p.253.

⁸⁷ Belich, *New Zealand Wars*, p.135.

⁸⁸ Cameron to Grey, 15 August 1863, AJHR, 1863, E-5, p.15. An earlier naval reconnaissance of the Waikato River above Kohekohe, which was conducted on 6 August, had reported just 60 or 70 Maori at the Meremere settlement. J.W. Sullivan, Commander and Senior Naval Officer in New Zealand to

From the British outposts, with the aid of a glass, the Maories could be plainly discerned throwing up rifle-pits in all directions; and from the numbers of them that swarmed the hill side it was evident that they intended to make a determined stand at this point against the further advances of the troops. The natives who had taken up the position at Mere Mere consisted mainly of the Ngatimaniapotos, who, with their chief Rewi, had come down the river to assist the Lower Waikatos after their disastrous defeat on the Koheroa.⁸⁹

Other iwi also involved in garrisoning Meremere included Ngati Haua, Ngati Raukawa, Taranaki, Ngai Te Rangi, Ngati Paoa, and Ngati Tuwharetoa.⁹⁰ One deserter from the Kingitanga force who made his way to the Queen's Redoubt by late August stated that there were 1100 men at Meremere.⁹¹ He confirmed that the Kingitanga forces believed the British were short of provisions. That explained Wiremu Tamihana's recent gift to General Cameron, via the loyalist chief Wiremu Te Wheoro, of goats, turkeys and other provisions, accompanied by a letter citing the old scriptural injunction that 'when their enemy hunger feed him, when he thirst give him drink.'⁹² Considered from the perspective of a more cynical age, it would be easy to interpret this gesture as something of an ironic dig at the expense of the British. It may have been, but it might also have been a genuine act of Christian charity by one of the great idealists of his age.

At least some of the Imperial troops evidently considered that they could use all the charity they could get. Even the Queen's Redoubt encampment, the British base for the war effort and the place from which they had launched their invasion of the Waikato, was evidently exposed to the rifle pits at Meremere on a clear day. Soldiers there had taken to the habit of sleeping in their clothes and lived in 'continual danger' of being shot at by Maori lurking in the surrounding bush.⁹³

Lieutenant-General Cameron, 6 August 1863, *New Zealand Gazette*, 11 August 1863, no.39, pp.327-328.

⁸⁹ Featon, *The Waikato War*, p.40.

⁹⁰ Belich, *New Zealand Wars*, p.140; Chris Pugsley, 'Walking the Waikato Wars: A Halt Before Meremere', *New Zealand Defence Quarterly*, Spring 1996, p.28

⁹¹ Anon, Diary of a British Soldier, Queen's Redoubt, 27 August 1863, Micro-MS-0445, ATL.

⁹² Anon, Diary of a British Soldier, Queen's Redoubt, 25 August 1863, Micro-0445, ATL.

⁹³ Anon, Diary of a British Soldier, Queen's Redoubt, 30 August 1863, Micro-MS-0445, ATL.

Meremere was flanked by further positions at Pukekawa to the west and Paparata to the east, all three of which enabled further raids behind the British lines, again tying up significant British strength to combat. With the push forward of Ngati Maniapoto and other groups to these positions, involvement in the conflict on the part of Rohe Potae hapu and iwi greatly intensified. The numerous small engagements fought between August and October 'paralysed' the British, according to Belich, and included a surprise raid on the British base at Camerontown on 7 September, which was mainly led by Ngati Maniapoto forces. This station, located on the north bank of the Waikato River midway between the Waikato Heads and a redoubt at Tuakau was part of a newly-established supply line, by which supplies were ferried up river by canoe by 'friendly' chiefs Waata Kukutai, Wiremu Te Wheoro and their people, under the supervision of Lower Waikato Resident Magistrate James Armitage.⁹⁴ By these means an arduous overland journey of fifteen miles was avoided, while the fact that 'loyalist' supporters were responsible for conveying the supplies freed up British manpower for other tasks. Belich argues that the Kingitanga forces determined to destroy this as a viable route.⁹⁵ This followed an earlier apparent agreement brokered by the 'loyalist' chiefs that the north bank of the lower Waikato River would be deemed neutral territory from the Waikato Heads as far as Kohekohe, a distance of some thirty miles.⁹⁶ If this agreement had been reached in order to allow the river to serve as a conduit for British supplies, then members of the Kingitanga do not appear to have shared this understanding.

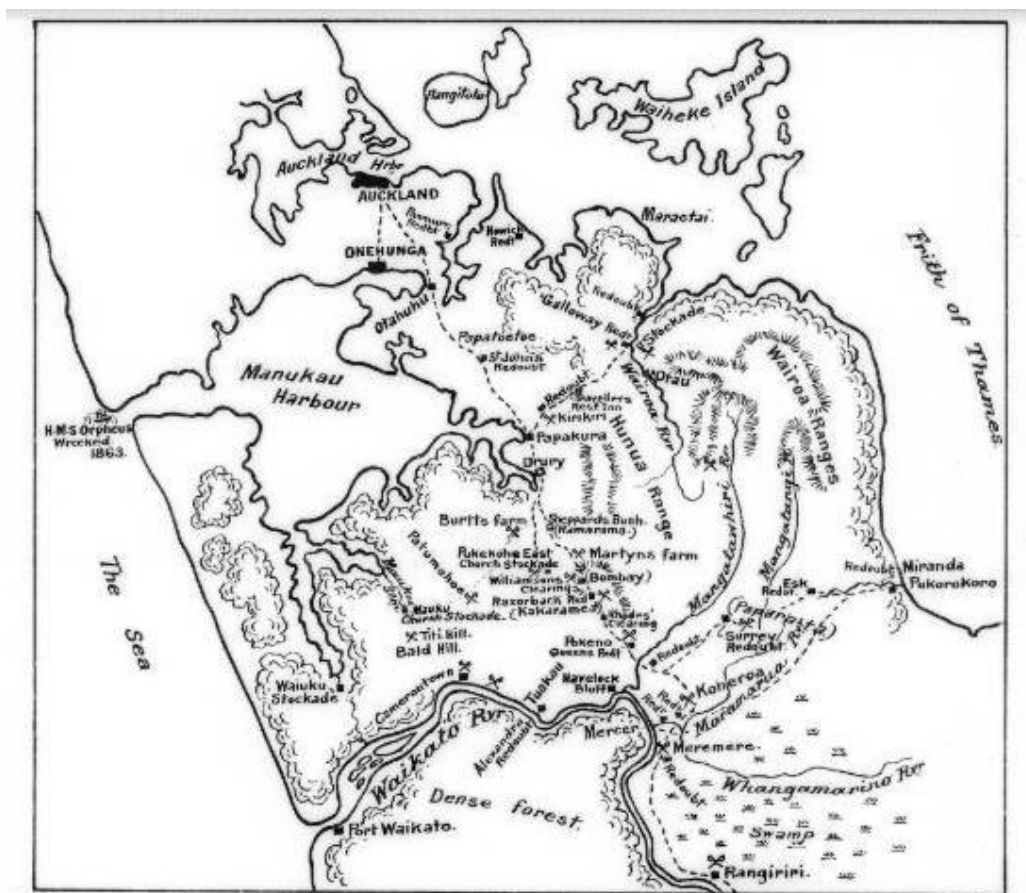
At about 6am on the morning of 7 September, Armitage set out from Bluff Stockade further up river, travelling down to the coast in the company of two or three other canoes manned by members of Te Wheoro's tribe. At Tuakau, a delay caused Armitage and his three Maori companions to press on to Camerontown unescorted. When they arrived at about 8.30am, Armitage set off to visit a house occupied by two Pakeha men, but soon after the trio returned to the river bank a party of some 100 to 200 Kingitanga (and mostly Ngati Maniapoto) fighters launched their attack, shooting

⁹⁴ Cameron to Grey, 9 August 1863, *New Zealand Gazette*, 11 August 1863, no.39, p.328.

⁹⁵ Belich, *New Zealand Wars*, p.54.

⁹⁶ W. Pi Kukutai to Tireni Te Hura (Tioriri), 12 August 1863, AJHR, 1863, E-5, pp.18-19; W. Pi Kukutai to William and George Te Wheoro, 12 August 1863, *New Zealand Gazette*, 27 August 1863, no.43, p.361; D.J. Gamble, 4 September 1863, Journals of the Deputy Quartermaster General in New Zealand, p.54, WO 33/16, Archives NZ.

dead Armitage, his companions and two other Maori.⁹⁷ Meanwhile, the local Ngati Whauroa people, numbering only about 20, retreated into the bush, emerging only when the three other delayed canoes arrived at Camerontown. Although gunfire was subsequently exchanged with the Kingitanga force, there do not appear to have been any casualties on either side. But before departing, the Kingitanga force had seized or destroyed some 41 ton of commissariat supplies, set fire to the pa and effectively destroyed the fledgling canoe-borne supply line.⁹⁸ It was perhaps little surprise after such an experience that the 'luke-warm Queenites' of Ngati Whauroa defected to the Kingitanga soon after.⁹⁹



(Source: 1/2-002209-F, ATL)

Figure 4 The South Auckland District, Showing Military Posts and Scenes of Engagements, 1863

⁹⁷ H. Burton, Lieutenant, 40th Regiment, to Deputy Quartermaster General, 9 September 1863, AJHR, 1863, E-5, p.23; R.O. Stewart, to Colonial Secretary, 7 September 1863, AJHR, 1863, E-5, p.24.

⁹⁸ D.J. Gamble, 3 October 1863, Journals of the Deputy Quartermaster General, p.57, WO 33/16, ATL; B.Y. Ashwell to Church Missionary Society, 5 October 1863, qMS-0090, ATL.

⁹⁹ Belich, *New Zealand Wars*, p.136.

At Tuakau, where the gunfire at Camerontown had been clearly heard, reports soon arrived of the successful attack.¹⁰⁰ Captain Swift and 50 men of the 65th regiment set out on the difficult overland trek of eight miles, but upon approaching Camerontown heard the Kingitanga loudly conversing, in a manner that led the British to conclude that they were drunk. Swift ordered his men to fix bayonets and charge, but the British soon discovered that their enemy was ‘in reality on the *qui vive* [i.e., on the alert]’.¹⁰¹ The Kingitanga force ‘opened a most terrific fire’.¹⁰² Both officers fell to mortal wounds, and although the British fought bravely into the night to extricate themselves from a difficult situation – two of their number being awarded Victoria Crosses for their actions – there was no doubt that they had once again been humiliated.¹⁰³

Belich suggests that contemporary accounts focusing on the bravery of the British troops after their officers had fallen missed the wider strategic significance of these events. Not only had the British been thumped, but they had lost a major supply route. It was this, Belich suggests, that made the raid on Camerontown ‘easily the most important single action of the first phase of the war.’¹⁰⁴

A second significant engagement in which Ngati Maniapoto were again prominent occurred a few days later at Pukekohe East. It was here that, on 14 September 1863, members of the Royal Irish Regiment along with the 70th Regiment went to the aid of the small garrison of the local stockade. The Kingitanga force were driven back from the stockade, and retreated into the bush after a sharp skirmish lasting more than an hour. British estimates put the number of Maori killed in this engagement at 12, with 2 British soldiers killed.¹⁰⁵ Te Huia Raureti of Ngati Maniapoto, speaking to James Cowan about the engagement in 1920, recalled that those who had taken part in the attack included Ngati Maniapoto, some other upper Waikato tribes, and Ngati Pou from lower Waikato. One of those involved who later went on to become one of the

¹⁰⁰ Statement made by Lieutenant Butler, 65th Regiment, n.d., AJHR, 1863, E-5, pp.20-21.

¹⁰¹ D.J. Gamble, 3 October 1863, Journals of the Deputy Quartermaster General, p.57, WO 33/16, ATL

¹⁰² E. McKenna, Color Sergeant, 65th Regiment, to W. Hutchins, Lieutenant-Colonel, Assistant Military Secretary, 8 September 1863, AJHR, 1863, E-5, p.27.

¹⁰³ Featon, *Waikato War*, p.47.

¹⁰⁴ Belich, *New Zealand Wars*, p.137.

¹⁰⁵ Captain Inman, 18th Royal Irish, to Lieutenant-Colonel Chapman, 14 September 1863, AJHR, 1863, E-5, pp.31-32; D.J. Gamble, 3 October 1863, Journals of the Deputy Quartermaster General, pp.58-59, WO 33/16, Archives NZ.

leading chiefs of Ngati Maniapoto was on this occasion deemed to have brought bad luck upon the party. Raureti recalled that, on the eve of the raid a war council had met and agreed that members of the taua should confine themselves strictly to fighting and were to refrain from touching any of the property of the settlers. Despite this, when the party commenced its advance early the follow morning, Wahanui and a number of his men went on ahead of the rest of the group, looting a settler's house. According to Raureti, this breach of their agreement made the other members of the war party angry: 'it was a bad omen for us in the fight'.¹⁰⁶ Contemporary British estimates put the number of Maori killed on this occasion at somewhere between 6 and 14.¹⁰⁷ Raureti, recalling the event many decades later, thought the figure might have been as high as 40.¹⁰⁸

Further raids followed throughout September and October, including an attack on Burt's Farm, midway between Pukekohe and Drury, on the same day as the unsuccessful attack on the Pukekohe East stockade. It appears to have been conducted by a small party of about 20 Ngati Pou and other lower Waikato Maori.¹⁰⁹ Skirmishing occurred in the Wairoa district over the next few days, evidently led by Ngati Koheriki, though with the assistance of some Tauranga Maori, along with Ngati Haua.¹¹⁰ One young British soldier, writing home to his mother on 20 September, summed up the situation in declaring that 'we have had several engagements with them but nothing decisive as they will not come out of the Bush.'¹¹¹ There had been little change in the state of things by the time that Governor Grey made a personal visit to the Queen's Redoubt on 12 October 1863.¹¹² Although Grey had privately assured the British Secretary of State of his confidence in a rapid victory at the outset

¹⁰⁶ Cowan, *New Zealand Wars*, vol.1, p.279.

¹⁰⁷ D.J. Gamble, 3 October 1863, Journals of the Deputy Quartermaster General, pp.58-59, WO 33/16, Archives NZ; Featon, *Waikato War*, p.50; G.A. Ryan, 70th Regiment, to Lieutenant-Colonel Chapman, 14 September 1863, *New Zealand Gazette*, no.49, 18 September 1863, pp.414-415.

¹⁰⁸ Cowan, *New Zealand Wars*, vol.1, p.282.

¹⁰⁹ Arthur Rait, Mounted Corps, to Colonel Chapman, 14 September 1863, AJHR, 1863, E-5, p.31; Cowan, *New Zealand Wars*, vol.1, p.284; *Daily Southern Cross*, 5 October 1863.

¹¹⁰ Cowan, *New Zealand Wars*, vol.1, pp.289-295; Ashwell to Church Missionary Society, 5 October 1863, qMS-0090, ATL; Cameron to Grey, 18 September 1863 (and enclosures), *New Zealand Gazette*, no.50, 24 September 1863, pp.421-423.

¹¹¹ George Tatler to 'Dear Mother', 20 September 1863, George Tatler Letters, 1854-1864, MS-Papers-2076-2, ATL.

¹¹² Anon, Diary of a British Soldier, Queen's Redoubt, 12 October 1863, Micro-MS-0445, ATL.

of the war,¹¹³ a decisive victory had continued to elude the British. Indeed, if anything the Kingitanga forces had had the better of this opening phase of the war, as they did once again at Mauku, on 23 October 1863, when the British somehow narrowly avoided being completely routed at the hands of a Kingitanga force which appears to have consisted of at least some Ngati Maniapoto (including Rewi Maniapoto, as the chief many years later informed James Mackay).¹¹⁴

Although Cameron had initially attempted to use the minimum of resources to counter these raids, by October he had been forced to construct around twenty redoubts to try to guard against ongoing attacks on British supply lines, sucking up (according to Belich) more than three-quarters of his effective force and preventing further advances.¹¹⁵ But British forces were strengthened at the end of October 1863 with the deployment of members of the Waikato Militia recruited in Australia, along with the arrival of the naval steamer H.M.S. *Pioneer* and the frigate H.M.S. *Curacoa*, with more than 500 Imperial troops onboard.¹¹⁶

These reinforcements at last allowed Cameron to move forward. On 27 October the *Pioneer* arrived at the Bluff Stockade, on the Waikato River, accompanied by a small flotilla of gunboats.¹¹⁷ Two days later, Lieutenant-General Cameron proceeded up the river in order to make a reconnaissance of the Meremere position. As the steamer anchored about 450 yards from the main landing place, the occupants of the pa headed for their rifle pits in large numbers and proceeded to open up a steady fire,

¹¹³ 'I had a private letter from Sir G.G. in very good heart & expecting to bring the war to a close in a short time.' Newcastle, minute on Grey to Newcastle, 10 August 1863, no.94, p.78, CO 209/174, Archives NZ; Mackay to McLean, 10 July 1873, AJHR, 1873, G-3, p.6.

¹¹⁴ W.G. Mair, 'Flight at the Bald Hills, Mauku, October 1863', Gilbert Mair, Papers, MS-Papers-4862, ATL; W.G. Mair, 'Flights of 1863', J.C. Andersen, W.G. Mair Diaries, MS-0059, ATL; Cowan, *New Zealand Wars*, vol.1, pp.296-305; Cameron to Grey, 29 October 1863 (and enclosure), *New Zealand Gazette*, no.57, 31 October 1863, pp.474-475; Featon, *Waikato War*, pp.56-57; Keith Sinclair (ed.), *A Soldier's View of Empire: The Reminiscences of James Bodell, 1831-92*, London: The Bodley Head, 1982, pp.133-134.

¹¹⁵ Belich, *New Zealand Wars*, p.138. Belich's argument that these attacks on British supply and communication lines delayed the British advance upriver is rejected by Chris Pugsley, who states that Cameron had always intended waiting for a summer campaign, while consolidating his hold on the lower Waikato. Chris Pugsley, 'Walking the Waikato Wars: A Halt Before Meremere', *New Zealand Defence Quarterly*, Spring 1996, p.32. It is not clear what Pugsley bases this statement on, though if Cameron's original plan was simply to cross the Mangatawhiri and wait for summer then he had evidently failed to share this with Grey, his ministers or the wider public.

¹¹⁶ Belich, *New Zealand Wars*, p.139.

¹¹⁷ D.J. Gamble, 5 November 1863, Journals of the Deputy Quartermaster General, p.66, WO 33/16, Archives NZ.

including firing from two or three large guns which had been hauled into place.¹¹⁸ The crew of the *Pioneer* reciprocated, firing into the pa from the vessel's 40-pound Armstrong gun and other rifles during the two hours in which it was anchored offshore from Meremere. One of Cameron's senior officers later reported that:

While the "Pioneer" replied with her Armstrong guns and rifles, we had an opportunity of observing the ground and the disposition of the enemy's works. The whole place appeared, from our point of view, to be very formidable, and to offer no particularly favourable point in front to effect a landing under fire, and in the face of any determined opposition. It could only be attempted under cover of heavy artillery fire.¹¹⁹

Cameron himself reported to Grey that 'I found that the difficulty of landing Troops rapidly for an attack, and the resistance to be expected from the nature of the defences had not been overestimated, which induced me to make a further reconnaissance higher up the river, with the view of selecting some point at which a force could be landed to turn the enemy's position while his attention was occupied in front by the Steamer and Gunboats.'¹²⁰ On 30 October the *Pioneer* set out on a second reconnaissance, this time sailing right past Meremere and travelling up the river until a suitable landing place was found a further nine miles upriver. Cameron ordered immediate preparations for a party of some 660 officers and men to land at the spot, his plan being to outflank the seemingly impregnable Meremere position and instead attack it from the rear.¹²¹

Accordingly, at 2.30am on the morning of 31 October the *Pioneer* and the *Avon* set off, with four gunboats in tow, reaching their destination about dawn. Although the party were clearly seen, as they were fired at from the shoreline, no attempt was made to resist their landing, a fact which the British greeted with some relief, as 'had there been, our landing could not have, from the conformation of the ground, been effected

¹¹⁸ *ibid.*

¹¹⁹ D.J. Gamble, 5 November 1863, Journals of the Deputy Quartermaster General, p.66, WO 33/16, Archives NZ.

¹²⁰ Cameron to Grey, 4 November 1863, *New Zealand Gazette*, no.58, 7 November 1863, pp.486-487.

¹²¹ Fox, *The War in New Zealand*, p.77; Cameron to Grey, 4 November 1863, *New Zealand Gazette*, no.58, 7 November 1863, pp.486-487.

without considerable loss.’¹²² As the British entrenched themselves in a strong plateau position some 400 yards from the river, Cameron determined to reinforce their position with a further 500 troops, with a view to proceeding with the attack on the rear of Meremere. But before they could reach their position, on the afternoon of 1 November 1863 reports came through from an observation post at Whangamarino that Maori were leaving Meremere. Cameron and 500 men arrived on the scene some two hours later. As they approached the shore sailors charged up the hill, and as one of their number later recalled, ‘The men first got up to the rifle-pits, and then to the stockade, but not a soul was inside; all had run. So our men quietly pitched their tents at the top, and hoisted the English flag.’¹²³

Belich argues that the primary British response to the capture of this empty yet formidable pa site was not great satisfaction at the ‘bloodless victory’¹²⁴ but rather ‘great disappointment’ at the failure to bring about a decisive victory.¹²⁵ But although at least one member of the Royal Irish Regiment declared that the men were all very much ‘disgusted’ to find Meremere empty,¹²⁶ there was another side to this story. As the Deputy Quartermaster General reported:

Although, had we caught the whole of the enemy at Meri-Meri, an overwhelming blow might have had the effect of putting a speedy end to the war, yet, as we have gained the place without loss of a life, and gained with it a solid advantage, the result is on the whole one for congratulation.

Differing from the ordinarily unimportant results of the loss of a Maori position, which is usually followed by taking up another without any felt

¹²² D.J. Gamble, 5 November 1863, Journals of the Deputy Quartermaster General, p.67, WO 33/16, Archives NZ.

¹²³ Cecil George Savile Foljambe (Earl of Liverpool), *Three Years on the Australian Station*, London: Hatchard, 1868, p.26.

¹²⁴ *Daily Southern Cross*, 2 November 1863.

¹²⁵ Belich, *New Zealand Wars*, p.139. Fox noted that, following Meremere, ‘On too many occasions in previous wars, the Maories had given us the slip in a similar manner, and our troops on entering an evacuated pah had found nothing but perhaps a short pipe and an old pair of breeches. We began to be afraid that our triumphs in Waikato were destined to be of the same inglorious and ineffectual character, and as little likely to bring the campaign to an end.’ Fox, *The War in New Zealand*, p.80.

¹²⁶ Journal of Andrew Thomas Carbery, Assistant Surgeon, 18th Royal Irish Regiment, p.7, MS-Papers-2310-2, ATL.

damage in the way of prestige, the fall of Meri-Meri carries with it a most significant meaning.

Here the greatest efforts were expended in fortifying a commanding position of considerable natural strength. The Maori saw that here was a happy point at which to dispute our passage into his country, which he succeeded in doing for two whole months; here, at the very gateway, he appeared bent on a fight: but when he found that his retreat, for which he always intelligently provides, was in serious jeopardy, he gave up all hope of attempting a defence.¹²⁷

As Gamble recognised, Meremere was no ordinary pa, erected in haste and just as easily abandoned when circumstances dictated the need for this to take place. Instead, it had been constructed and garrisoned only with an enormous effort. That effort would inevitably and eventually take a toll on the Kingitanga forces. As Belich notes, their real problem after 1 November 1863 'arose from the fact that they had temporarily exhausted their resources in building and manning Meremere, and in conducting operations behind the front.'¹²⁸ The loss of Meremere was also a strategic blow for the Kingitanga forces, given that the pa had been sited specifically with a view to impeding further British progress into the Waikato. As Gamble added, 'Consequent on the fall of Meri Meri, we have now free access by land to the Waikato country, while the steamers running over the river with impunity afford the best evidence that there is no longer any real barrier to our progress.'¹²⁹

Two days after the capture of Meremere, British forces took a further reconnaissance mission up the Waikato River, stopping on their way to torch the village of Tapaihina (with the exception of its church), but coming under fire at Paetai and at Rangiriri.¹³⁰ It was the latter settlement, located about 13 miles upriver from Meremere, at which the bulk of the Kingitanga forces now gathered and where, later that month, they would suffer their most serious defeat of the entire war, raising for a time the very real

¹²⁷ D.J. Gamble, 5 November 1863, Journals of the Deputy Quartermaster General, p.67, WO 33/16, Archives NZ.

¹²⁸ Belich, *New Zealand Wars*, p.139.

¹²⁹ D.J. Gamble, 5 November 1863, Journals of the Deputy Quartermaster General, p.67, WO 33/16, Archives NZ.

¹³⁰ Foljambe, *Three Years on the Australian Station*, p.26.

prospect of an early end to the fighting. However, the circumstances in which that defeat came about remain very much mired in controversy.

2.4 Rangiriri

Following the abandonment of Meremere a primary concern for Cameron was not just to engage the Kingitanga forces but also to inflict a decisive defeat on them through ensuring that a route of retreat was denied them. Rangiriri, a partially constructed pa which was still in the process of being built when it was attacked by 1400 British troops on 20 November 1863, appeared to offer that opportunity, but in fact was more formidable than Cameron initially realised. Entrenchment of the site had been underway for some time, though when Cameron undertook his reconnaissance past Rangiriri on 30 October, the British were underwhelmed by what they saw. The Deputy Quartermaster General recorded that:

Rangiriri (*Anglice* ‘Angry Heavens’) is situated very low; and the entrenchment from the position from which we saw it, about half a mile below, appeared to be open to enfilade from the river, besides seeming to be otherwise not formidable. It is just a common embankment thrown up, with a trench cut in front of it also.¹³¹

The special correspondent for the *Daily Southern Cross* was also unimpressed. Writing in the immediate aftermath of the capture of Meremere, he observed that:

The Maoris by abandoning their position, guns, and cultivations, acknowledged themselves foiled by the generalship of our commandant, who has now the actual command of the Waikato to Ngaruawahia. The natives had almost entirely abandoned Rangiriri when last seen, and as it is not a post to be defended, being greatly exposed from the river, I suppose when next heard of it, likewise, will fall without a blow.¹³²

¹³¹ D.J. Gamble, 5 November 1863, Journals of the Deputy Quartermaster General, p.67, WO 33/16, Archives NZ.

¹³² *Daily Southern Cross*, 2 November 1863.

Echoing this line, an editorial in the same newspaper triumphantly declared that, in the wake of Meremere, ‘the neck of the rebellion is broken.’¹³³ The Kingitanga would never make a stand at Rangiriri, it was thought, and nothing stood between Meremere and the King’s capital at Ngaruawahia.¹³⁴

On 12 November 1863 Cameron went up the Waikato River in the *Pioneer* with the intention of making a further reconnaissance of Rangiriri. High winds, and the ‘very defective steering qualities’ of the steamer, which was too long and unwieldy for river work, meant they never made it that far. After struggling as far as Meremere, the *Pioneer* ran aground on the left bank of the river, and was eventually able to sail away after three hours with assistance from the other steamer, the *Avon*. The trip to Rangiriri was abandoned, though the *Pioneer* managed to come to grief again on a shoal as it made its way down river, and only got off the next morning, after most of the provisions on board had been taken off to lighten the load.¹³⁵ Finally, on 18 November the *Pioneer* made it as far as Rangiriri, though not before getting stuck in precisely the same spot on the left bank of the river as it had less than a week before. ‘A few natives were seen on the works, but not probably more than forty’, according to one report, which also concluded that ‘It was evident that the position might be taken in reverse, by landing a force in rear of the main entrenchment.’¹³⁶

In fact, all of the evidence suggests that there had been no simple retreat from Meremere to Rangiriri, but that instead the latter site was occupied over the coming weeks by a largely fresh set of defenders. As the evidence above indicates, Rangiriri was considered lightly occupied in the immediate aftermath of Meremere, and official British reports had the former occupants of Meremere making their way for the upper Waikato by canoes, taking advantage of flooded marshes to make their retreat without

¹³³ *Daily Southern Cross*, 3 November 1863.

¹³⁴ Another newspaper report adopted a similar tone, claiming that messengers had been sent on to Ngaruawahia to issue orders for the removal of Potatau Te Wherowhero’s remains to a place of safety from ‘pakeha invasion’, and that the capture of Meremere had ‘had a most striking effect upon the native mind’, with many Maori already now convinced the Waikato was lost to them. *New Zealand Herald*, 16 November 1863.

¹³⁵ D.J. Gamble, 1 December 1863, Journals of the Deputy Quartermaster General, p.70, WO 33/16, Archives NZ. Clearly, Belich’s argument that the arrival of the *Pioneer* was not the decisive factor that allowed the British to press forward prior to the capture of Meremere may have some merit. Belich, *New Zealand Wars*, p.139.

¹³⁶ D.J. Gamble, 1 December 1863, Journals of the Deputy Quartermaster General, p.70, WO 33/16, Archives NZ.

venturing on to the Waikato River itself.¹³⁷ Fox noted that ‘For a few days after the natives evacuated Meri-Meri, it was supposed they had scattered and retreated far up the river, which I believe was true of the Ngatimaniopotu [sic] contingent. Information however soon reached General Cameron that a strong party of them were entrenching themselves at Rangiriri’.¹³⁸ But although there was likely to have been some overlap, on the whole the defenders of Meremere and the defenders of Rangiriri appear to have been two different set of people.

In the case of Rangiriri, we have some Maori evidence of those hapu and iwi who participated in the battle, including a list of the names of the more than 180 prisoners captured, and some of those who escaped. The list of those captured included members of Ngati Haua, Ngati Te Ata, Ngati Tou, Ngati Hine, Patupou, Te Ngaungau, Ngati Parikino, Ngati Tamaoho, Ngati Puhiawe, Tainui, Ngati Mahuta and Ngati Mahuta (Kawhia).¹³⁹ In the wake of the battle Wiremu Tamihana wrote to the loyalist chief Wiremu Te Wheoro. In his letter he listed those persons who had escaped from Rangiriri and made their way to Ngaruawahia, including 19 ‘belonging to the tribe Ngatihaua and Ngatikoroki’.¹⁴⁰ Tamihana then listed a further 17 names without specifying their iwi, other than to note that they variously belonged to Ngati Mahuta, Ngati Hinetu, Ngati Terau, Ngati Whanaunga, Ngati Hikairo, Te Ngaungau, Ngati Te Ata, Ngati Hine, Te Patupo, Ngati Naho.¹⁴¹

On the basis of this information, it is impossible to dismiss some level of Ngati Maniapoto involvement in the Rangiriri conflict. The reference to Ngati Hinetu certainly suggests this is possible, though it may not necessarily relate to the Ngati Maniapoto hapu of that name. Claimants would be best placed to clarify this, though we do know that at least some Rohe Potae groups were involved in the conflict (Ngati Hikairo, for example). Much remains obscured in the documentary record, and this is

¹³⁷ D.J. Gamble, 5 November 1863, Journals of the Deputy Quartermaster General, p.67, WO 33/16, Archives NZ.

¹³⁸ Fox, *The War in New Zealand*, pp.80-81.

¹³⁹ Names of Prisoners Taken at Rangiriri, n.d., AJHR, 1863, E-5D, p.11. At the end of the list it is added that ‘There are others whose names are not yet known.’ However, given that approximately 171 names are listed, and 183 prisoners in total were said to have been taken, there cannot have been more than about 12 unnamed prisoners whose tribal affiliations were not recorded.

¹⁴⁰ Wiremu Tamihana to Wiremu Te Wheoro, 4 December 1863, AJHR, 1863, E-5D, p.9. Tamihana included himself among those named.

¹⁴¹ *ibid.*, p.10.

especially so when we consider that Tamihana's list of 36 escapees, combined with the 170 or so names recorded as prisoners totals just over 200 men in all, while the total garrison at Rangiriri has been estimated at something in the order of 500.¹⁴² That would leave the majority of the Kingitanga army at Rangiriri, some 300 men in all, unaccounted for in terms of tribal affiliations. Logic suggests that this figure would consist of those killed in the conflict and further escapees not listed by Tamihana.

In the absence of this information concerning the tribal connections of the remainder of the Rangiriri force, it is possible that the makeup of the overall garrison was quite different to what has been assumed. Yet it would appear that, if there was indeed a Ngati Maniapoto presence at the battle, it was not a large one. *The New Zealand Herald*, commenting on the lists of prisoners, declared that:

It contains no member of the Maniapoto; that "bumptious" division of the Waikato braves, under their truculent chief Rewi, made tracks after their reverse at the Mauku, where their defeat was complete, and their loss much more serious than we shall probably ever learn.¹⁴³

This was hardly the first – or the last – accusation of cowardice to be levelled against Ngati Maniapoto during the course of the New Zealand Wars. Indeed, as Belich comments, 'Ngati Maniapoto were the colonists' favourite bogeymen. They were paradoxically accused of both cowardice – some asserted that it was this which kept them away from Rangiriri – and of an intransigent determination to kill all Europeans and to fight to the death.'¹⁴⁴ On the face of it, perhaps a more credible explanation for the relative absence of Ngati Maniapoto from Rangiriri attributed this to a dispute with the other tribes present, possibly involving some kind of breach of tikanga.¹⁴⁵ Whether this was indeed a factor is a matter best left to claimant evidence. Belich, though, suggests that the 'supreme effort' which had gone into constructing and

¹⁴² Foljambe, *Three Years on the Australian Station*, p.32.

¹⁴³ *New Zealand Herald*, 27 November 1863.

¹⁴⁴ Belich, *New Zealand Wars*, p.145.

¹⁴⁵ Belich, *New Zealand Wars*, p.145. See also R.C. Mainwaring to the Native Minister, 25 November 1863, AJHR, 1863, E-5D, p.4. Mainwaring reported that 'Ngatimaniapoto are gone up the country, and I fancy...that they have had a quarrel with Ngatihaua, and will either go on their own responsibility to Taranaki or remain quiet up beyond Mokau.' Mainwaring is, however, writing some days after the battle at Rangiriri had ended.

holding the Meremere line appears a far more probable explanation for their absence.¹⁴⁶ Sheer exhaustion and the weight of British numbers may have been beginning to take their toll.

Even more complex and contested are the actual details of the battle and the curious set of circumstances under which it ended with the 'surrender' of the Rangiriri garrison. One thing nearly all contemporary observers were agreed upon was the formidable nature of the pa, despite its deceptively low position. One newspaper correspondent who toured the site a few days after the battle wrote that:

We...landed and proceeded to examine the famous earth-works that (manned only by naked savages, armed with any sort of old guns) had kept English soldiers and sailors with the most powerful weapons ever invented at bay for so many hours, and certainly a more wonderful specimen of engineering was never seen. An intricate net work of rifle-pits connected by covered ways, having in front of it a ditch eighteen feet deep by thirteen wide, and running from a swamp on one side to the river bank on the other, and assailable only at one point by a narrow ditch through which only one man could pass at a time. Without sapping and mining it would be almost impossible for any troops in the world to have taken it, as it was impossible to get at it. A few steady men could have shot down hundreds as they came up one by one, and had they had artillery the Maoris might have held such a place against ten thousand men....¹⁴⁷

One British soldier wrote that 'Rangariri [sic] was more formidable in many respects than Meremere as its main defences and internal construction were unknown to the General as they could not be seen from the River'.¹⁴⁸ Referring to the central redoubt within the fortifications, Cameron himself confirmed after the battle that 'the strength of this work was not known before the attack as its profile could not be seen either from the river or from the ground in front.'¹⁴⁹

¹⁴⁶ Belich, *New Zealand Wars*, p.145.

¹⁴⁷ *New Zealand Herald*, 27 November 1863.

¹⁴⁸ Carbery, Journal, p.8, MS-Papers-2310-2, ATL.

¹⁴⁹ Cameron Report, 26 November 1863, pp.224-226, Selections from Despatches and Letters, WO 33/16, quoted in Belich, *New Zealand Wars*, p.144.

General Cameron's greatest concern at Rangiriri, Belich argues, was to prevent a repeat of what had occurred at Meremere. The British were left convinced after their final reconnaissance of Rangiriri on 18 November not only that the pa could be taken by a frontal assault, but that a decisive engagement was necessary.¹⁵⁰ To this end, a key component of Cameron's plan of engagement was to cut off any potential route of retreat. As the Lieutenant-General later reported, 'On a reconnaissance made on the 18th, I had determined on landing a force in rear of the position simultaneously with attacking it in front, with the view of turning and gaining possession of a ridge 500 yards behind the main entrenchment, and thus intercepting the retreat of the enemy.'¹⁵¹



(Source: Charles Heaphy artist, A-145-004, ATL)

Figure 5 Naval Attack at Rangiriri

¹⁵⁰ Belich, *New Zealand Wars*, p.147.

¹⁵¹ Cameron to Grey, 24 November 1863, *New Zealand Gazette*, no.62, 30 November 1863, p.513.

Cameron's force was therefore to be split into two groups, with the main body of more than 860 officers and men marching overland from Meremere on the morning of 20 November, timing their arrival to coincide with the landing by steamer of 300 men of the 40th Regiment to the rear (and with a further 200 sailors also available to bolster the rear force if necessary).¹⁵² All initially went to plan, with the overland force and steamers arriving at their destination at more or less the same time (3pm). From this point things began to go wrong. As Colonel Gamble reported:

As we came near the position the steamers arrived in good time, and everything promised fair for the combined attack. While, however, the troops were taking up their formation, it became evident that the "Pioneer" had become unmanageable just at the most critical juncture. She was unable, against wind and current, to gain the point indicated for the landing of the 40th, and not only so, but got in the way of the gunboats, the fire of all of which, but one, and occasionally a second, was thus completely masked. The "Avon" made every attempt to assist her, but without avail. Persevering efforts were made by Commodore Sir William Wiseman, and the officers and men under his command, but in vain, and the fire of the naval guns from the steamers altogether, and from all the gunboats but one or two, was lost to the operations of the day.¹⁵³

Gamble added that, as perplexing and trying as was the situation, 'it was hoped every moment that all would be right'. The preconcerted signal to land the troops never came, however, and by 4.45pm Cameron had decided he could wait no longer, issuing orders for the land force to commence their assault on the front of the pa. From this point onwards official accounts of the battle begin to diverge from some other versions and especially from Belich's later re-interpretation of events. Cameron claimed that the initial assault had been 'brilliantly executed by the troops', who had

¹⁵² D.J. Gamble, 1 December 1863, Journals of the Deputy Quartermaster General, pp.70-71, WO 33/16, Archives NZ; Belich, *New Zealand Wars*, p.147; Fox, *The War in New Zealand*, p.81. Pugsley gives a total British force of 1488 officers and men, supplemented by some Maori guides, in his unreferenced account of the battle. See Chris Pugsley, 'Walking the Waikato Wars: Controversy at Rangiriri: 20 November 1863', *New Zealand Defence Quarterly*, Summer 1996, p.32.

¹⁵³ D.J. Gamble, 1 December 1863, Journals of the Deputy Quartermaster General, pp.71-72, WO 33/16, Archives NZ.

to pass over a distance of some 600 yards in the face of a heavy fire.¹⁵⁴ Gamble told a similar story, reporting that:

The enemy's fire was sharp, quick, and heavy; but nothing could check the impetuosity of the assault. The ladders once planted, the 65th were immediately seen forcing their way into the enemy's works. As the troops passed the front line they wheeled up to the left, from which direction the enemy's fire was now brought to bear on them from the entrenched line of rifle-pits facing the Waikato. It was only the work of a few minutes to storm and carry this, when the enemy fell back on the centre redoubt and adjacent works.¹⁵⁵

Both Gamble and Cameron made special note of the efforts of the 65th Regiment, which, as Belich notes, with their ladders and engineers, were obviously intended as the storming party.¹⁵⁶ But W.G. Mair recalled a different scenario:

When the advance was sounded the 65th descended to the tea-tree on their left, and, cowed by the heavy fire, lay down, while the 14th went on, three of their officers...falling before they got near the great ditch. St. Hill then went to his regiment, and said: "I'm ashamed of you, 65th; close to your right and charge," and told Colonel Austin to do the same with the 18th [sic – 12th] and 14th.¹⁵⁷

Belich cites other accounts referring to a 'slight hesitation' in the advance of the 65th and a subsequent rumour in circulation that men had refused to obey their officers at some point in the battle. He also points to the obvious incongruity of the supposed storming party escaping with relatively light casualties, by comparison with the very heavy losses suffered by the 12th and 14th regiments, both of which were merely intended to keep down fire from their position on the left.¹⁵⁸ Although the details of

¹⁵⁴ Cameron to Grey, 24 November 1863, *New Zealand Gazette*, no.62, 30 November 1863, p.514.

¹⁵⁵ D.J. Gamble, 1 December 1863, Journals of the Deputy Quartermaster General, p.72, WO 33/16, Archives NZ.

¹⁵⁶ Belich, *New Zealand Wars*, p.148.

¹⁵⁷ W.G. Mair, 'Battle of Rangiriri', J.C. Andersen, W.G. Mair Diaries, MS-0059, ATL.

¹⁵⁸ Belich, *New Zealand Wars*, pp.148-149.

this first phase of the assault are particularly confusing, Belich posits the following hypothesis:

Contrary to plan, the 65th appears to have inclined to the left, perhaps to take advantage of the cover of some scrub. Whether or not they actually ‘lay down’ as Mair asserted, this movement seems both to have upset their momentum and to have caused their extreme left, including a few ladder-bearers, to fuse with the 12th’s right. Perhaps these men caught up their new neighbours in their own appointed task, because the 12th and 14th then pressed home an unscheduled attack against the Maori centre-right...Despite the massive ditch and parapet this attack was made with great vigour. But heavy Maori frontal volleys, apparently reserved until the enemy were very close, and a galling flanking fire from a salient, repelled it. The degree of British determination is illustrated by the fact that, despite this fire, several men got on to the Maori parapet where with the exception of Ensign Green they were all killed. Casualties may have been as high as forty men killed and wounded.¹⁵⁹

At this point, the 65th Regiment rallied well, Belich suggests, and carried the left line of the main defences relatively easily and with few casualties. This Belich attributes to the small size of the garrison and the probable need to fend off the advance on their centre-right by the 12th and the 14th regiments. As Belich concludes, ‘The unplanned and unsuccessful attack of the 12th and 14th thus constituted a costly but text-book perfect feint which enabled the 65th to roll up the Maori left.’¹⁶⁰

It was shortly after the land force commenced their assault that the men of the 40th Regiment were finally able to disembark not far from the spot selected for their landing. They secured a ridge to the rear of the pa, driving before them some of defenders who attempted to make their escape across Lake Waikare. A number of sailors also assisted in this work. As one of their number later wrote:

About 4.30 P.M. the soldiers on shore charged the redoubt across the fern hills, and every one thought on board all was over! But not so; we saw many

¹⁵⁹ *ibid.*, p.149.

¹⁶⁰ *ibid.*, p.150.

of the natives running away through the fern to the swamp, and we (the blue-jackets) were sent after them. We shot nearly all of those that were running away, and after getting up to our middles in water, returned and proceeded up the hill to attack the rifle-pits on the left, and came on thus from the redoubt. Some fled, many were killed, and the greater part went into the redoubt.¹⁶¹

According to Mair's account, Cameron was by this time 'furious'.¹⁶² He ordered two further attempts to take the central redoubt, the first launched by 36 men of the Royal Artillery under Captain Mercer and the second involving 90 seamen from the Royal Navy.¹⁶³ Both groups of men were armed with revolvers and both failed in their mission. Mercer, who was fatally shot in the head, and all but one of his men who attempted to find a way through a narrow opening in the rear of the works were either killed or wounded in the effort.¹⁶⁴ Meanwhile, the sailors attempted to breach the front but to no avail. As one of their number wrote:

We went straight up to the redoubt and charged them. It was up a hill of short fern, with sharp stakes purposely laid there. The ditch was about 14 feet high, from the bottom of the ditch. We had to rush up this hill, open to their fire, for we could not see them, as they only showed their heads for a second, and then bobbed down, and let fly at us without taking much aim...We made several attempts to get over the earthwork, but failed. We also threw hand-grenades in amongst them, which must have done a good deal of damage.¹⁶⁵

Those who made it as far as the ditch in fading light spent an anxious evening 'lying in the ditch, with the Maoris yelling awfully and firing at us.'¹⁶⁶ It being too late to launch a further assault, Cameron suspended operations for the night. A sapping operation was then ordered, but had barely got underway when, just after dawn,

¹⁶¹ Foljambe, *Three Years on the Australian Station*, pp.27-28.

¹⁶² W.G. Mair, 'Battle of Rangiriri', J.C. Andersen, W.G. Mair Diaries, MS-0059, ATL.

¹⁶³ Cameron to Grey, 24 November 1863, *New Zealand Gazette*, no.62, 30 November 1863, p.514.

¹⁶⁴ D.J. Gamble, 1 December 1863, Journals of the Deputy Quartermaster General, p.73, WO 33/16, Archives NZ.

¹⁶⁵ Foljambe, *Three Years on the Australian Station*, pp.29-30.

¹⁶⁶ *ibid.*, pp.30-31.

according to the official version, 'a white flag was hoisted by the enemy, and he surrendered unconditionally.'¹⁶⁷

Contemporary British reports attributed this 'surrender' to the supposed fact that Rangiriri was surrounded. Yet as Belich has highlighted, even a cursory consideration of the available evidence shows quite clearly that this was not the case. Even Cameron's initial (and very brief) telegraphic report of the engagement was sufficient to make this clear. On the one hand, Cameron declared that 'being completely surrounded and cut off, they surrendered unconditionally'.¹⁶⁸ Yet the General then went on to add that 'The king was present at Rangariri [sic], and escaped during the night by swimming across the swamp, as did several others.'¹⁶⁹ In a later and fuller report on the battle, Cameron modified his earlier assertion that Rangiriri was completely surrounded, instead stating simply that British troops 'almost completely enveloped the enemy.' He also noted that 'Their wounded must have been removed during the night, as there were none among the prisoners.'¹⁷⁰ Important rangatira, including (according to his own statement) Wiremu Tamihana and possibly King Matutaera (who later adopted the name Tawhiao), were also evacuated from the site.¹⁷¹ All of this points to the fact that the Maori forces at Rangiriri were able to leave in substantial numbers at their choosing. Clearly, Belich is right to suggest that being surrounded is an unconvincing explanation for the subsequent surrender.¹⁷²

Another seemingly plausible explanation for the surrender, advanced by James Cowan on the basis of the statement of an unnamed Ngati Tamaoho veteran of the

¹⁶⁷ D.J. Gamble, 1 December 1863, Journals of the Deputy Quartermaster General, WO 33/16, p.73, Archives NZ. Cameron wrote that 'Shortly after daylight on the 21st, the white flag was hoisted by the enemy, of whom 183 surrendered unconditionally, gave up their arms, and became prisoners of war.' Cameron to Grey, 24 November 1863, *New Zealand Gazette*, no.62, 30 November 1863, p.514.

¹⁶⁸ Cameron, 21 November 1863 (telegraphic despatch), *New Zealand Gazette*, no.60, p.503.

¹⁶⁹ *ibid.*

¹⁷⁰ Cameron to Grey, 24 November 1863, *New Zealand Gazette*, no.62, 30 November 1863, p.514.

¹⁷¹ Wiremu Tamihana to Wiremu Te Wheoro, 4 December 1863, AJHR, 1863, E-5D, p.9. There are conflicting accounts as to whether the Maori King was present at Rangiriri. It seems unlikely that the Kingitanga would have placed its head in a position of such danger, since (as Belich comments), his capture would have dealt 'a crippling blow to the King Movement'. Belich, *New Zealand Wars*, p.153. The most credible piece of evidence on this subject, evidently derived from Wiremu Te Wheoro's discussions with Kingitanga leaders some two weeks later, has it that the King was not at Rangiriri, but that his sister, Te Paea Tiaho (known to Europeans as Princess Sophia) was there and was wounded in the battle. *Daily Southern Cross*, 9 December 1863.

¹⁷² Belich, *New Zealand Wars*, p.153.

New Zealand Wars, was that the inhabitants of the pa had run out of ammunition. Cowan quotes this source as telling him that:

‘The highest chief who remained in the *pa*, Ta Kerei te Rau-angaanga, spoke to the interpreter sent forward by the General, and said, “*Kaore e mau te rongo*” (“Peace shall not be made”). In response to the summons to surrender, he declared, “We will fight on.” Then he made the request, “*Ho mai he paura*” (“Give us some gun-powder”). He thought it would be fair play if the soldiers gave the Maoris some powder to continue the fight. But the interpreter said, “No.” Ta Kerei and his people therefore decided to surrender.’¹⁷³

There appears to be no other evidence of such an exchange having taken place, or indeed to indicate that those at Rangiriri had exhausted their supply of gunpowder. On the contrary, one official British account of the battle noted that ‘they appeared to have a plentiful supply’ of ammunition, and other British and Maori sources would appear to confirm this.¹⁷⁴ This does not, therefore, seem like a convincing explanation for the surrender.¹⁷⁵

Other evidence, though, indicates that the white flag was raised, not to indicate an unconditional surrender, but to arrange a halt to the fighting so that the terms which might be offered them could be heard. This was entirely consistent with established military etiquette around the use of the white flag, and Belich cites one account from a reporter for the *New Zealander* who subsequently spoke to the Rangiriri prisoners:

At Rangiriri, the prisoners strongly affirm, they had discussed in the night whether they should decamp as had done Thompson [Wiremu Tamihana], Wharepu...and others. They affirm that they were not surrounded. Some of the Chiefs, however, said that the pakeha had always respected the white flag in

¹⁷³ Cowan, *New Zealand Wars*, vol.1, p.334.

¹⁷⁴ D.J. Gamble, 1 December 1863, Journals of the Deputy Quartermaster General, p.73, WO 33/16, Archives NZ.

¹⁷⁵ A variant on this argument appears to be that the gunpowder of the defenders was damp. One website claims that this explanation is accepted by the New Zealand Army, which continues to teach recruits about the battle as a case study in war strategy. See <http://www.teararoa.org.nz/index.cfm/PageID/48/ViewPage/> (accessed 2 October 2009). It is unclear what if any evidence this claim is based upon.

the war in Taranaki, and that it would be better to hoist it in the morning and treat. At daylight it was hoisted, in tumbled the soldiers...[who] shook hands with them and got completely intermixed with them. After about twenty minutes, up came the General, and his first step was to command them to deliver up their arms. 'Halloo!' said they 'we did not bargain for this. We hoisted the white flag with a view to treating.' 'It is now too late' said some of the chiefs, 'we must give in.'¹⁷⁶

The same newspaper's contemporary report of the end of the battle described a similar scene:

...a native appeared on the parapet showing a white flag and was very much annoyed to find that no white flag was shown on our side, but that the troops gradually closed in, and lastly got inside, while he was calling out for an interpreter and waving the soldiers back, evidently wishing to make terms for himself and his party. They were all very much surprised when they found they must give up their arms and be considered as prisoners.¹⁷⁷

The *New Zealander* was widely perceived at this time as a philo-Maori newspaper and its reports on race relations issues were often rejected as inaccurate by contemporary critics in consequence. The *New Zealand Herald*, on the other hand, could not be so lightly dismissed, and indeed was sometimes regarded by *its* critics as being little more than an 'organ' of government.¹⁷⁸ Its report of the circumstances behind the surrender differed in some important respects from that of the *New Zealander* (notably on the question of whether the British also flew a white flag in response to the one flown inside the pa), but in other regards was consistent. According to this report:

It seems though that upon reflection the chiefs...finding themselves completely surrounded and unable to escape and knowing that if the troops forced their way in, in the assault that not a man would be spared, thought it better to hoist

¹⁷⁶ *New Zealander*, 23 June 1864, cited in Belich, *New Zealand Wars*, pp.153-154.

¹⁷⁷ *New Zealander*, 26 November 1863, cited in Belich, *New Zealand Wars*, p.154.

¹⁷⁸ Vincent O'Malley, 'The East Coast Petroleum Wars: Raupatu and the Politics of Oil in 1860s New Zealand', *New Zealand Journal of History*, vol.41, no.1, April 2008, p.73.

a flag of truce and endeavour to come to terms with the General. A white flag therefore was hoisted, and the soldiers hoisting one too, crowded into the works, and when it came to the question of terms; the General sent word that he would make none, but that they must lay down their arms and surrender themselves prisoners of war unconditionally; it was too late for resistance, the soldiers were amongst them, and the place was lost, and the lives of all in it perfectly at the disposal of our men.¹⁷⁹

If the British had indeed flown a white flag in response to the Kingitanga one then this would have been a clear indication that they regarded the flag flying in the pa as being a flag of truce rather than of surrender. The deception involved in signalling agreement to a truce and then wilfully exploiting the opportunity created by this to convert it into a surrender would arguably have been even greater under these circumstances.

One variant on this scenario has it that the Kawhia rangatira Wiremu Te Kumete (also known as Whitiora) saw a white flag flying on one of the British ships and, interpreting this as a request to talk, waved one in return. This halt to the fighting enabled British troops to enter the pa, and when the General appeared he ‘told the Maoris to give up their arms, which, after some palavering, they did.’¹⁸⁰ Many years later, in 1882, the chief told one reporter a very similar story. According to Te Kumete there were about 200 people in the pa at the time, the remainder having retreated on the advice of Wiremu Tamihana during the night. According to this version of events:

In the morning Whitiora discovered what he believed to be the flag of truce flying on the steamer on the river, and as he understood this to be an indication on the part of the Pakeha of their desire to treat for peace, or at least a temporary cessation of hostilities, he ordered a white flag to be hoisted likewise, indicating their desire to treat for peace. General Cameron with fifty

¹⁷⁹ *New Zealand Herald*, 27 November 1863.

¹⁸⁰ Neville Ritchie, *The Waikato War of 1863-64: A Guide to the Main Events and Sites*, Hamilton: Department of Conservation, 2007, p.14. Pugsley, ‘Walking the Waikato Wars: Controversy at Rangiriri’, p.36. The quote itself comes from Foljambe (quoted in Ritchie) who, however, did not mention anything about a British white flag, real or mistaken. *Three Years on the Australian Station*, p.31.

of his men advanced to the redoubt, and instead of entering into a verbal negotiation for peace as the natives expected, he ordered them to lay down their arms, and took about 90 of them prisoners.¹⁸¹

Many of those who had fought at Rangiriri would have been familiar with British use of flags and general military etiquette, having in all likelihood a number of veterans of the first Taranaki War in their ranks. Indeed, Te Kumete told the reporter that he was one. Having taken part in several engagements during the Taranaki War:

...and having always seen the white flag sent up when the pakehas were desirous of a peaceful treaty, he was under the impression that in this case a like significance was attached to the hoisting of the flag on the steamer. His confidence, however, was misplaced, and had they known that General Cameron and his men advanced to meet them with the intention of making an arrest, all would have suffered the penalty of death.¹⁸²

Whether or not there was some kind of white flag flown by the British, what is clear is that the Maori flag was never intended as a signal of surrender but merely of a desire to talk terms. This is confirmed by further eyewitness testimony, including that of Lieutenant Pennefather. He described the scene at Rangiriri in the early hours of 21 November 1863 to the CMS missionary Robert Maunsell some six weeks later:

The troops had dug so far into the parapet as to make it shake. The Maori then (at 5 a.m.) hoisted the white flag. He [Pennefather] then at once scrambled down into their redoubt, and with his men mixed amongst them shaking hands, and the General came up about ten minutes afterwards, complimented them on their bravery, and demanded their arms. To this they demurred; but the chiefs felt that to resist now was out of the question and decided upon delivering up the arms he required, having first said that the reason of hoisting the white flag was that they might ask what terms they might expect.¹⁸³

¹⁸¹ *Waikato Times*, 2 May 1882.

¹⁸² *ibid.*

¹⁸³ Maunsell to CMS, 4 January 1864, quoted in Helen Garrett, *Te Manihera: The Life and Times of the Pioneer Missionary Robert Maunsell*, Auckland: Reed Books, 1991, p.258.

W.G. Mair, writing in relation to a later battle, intriguingly remarked that he ‘did not like to show a white handkerchief on account of the misunderstanding about it at Rangiriri’.¹⁸⁴

Belich cites other contemporary evidence which supports this version of events and concludes that:

On their own criteria, the British took unscrupulous advantage of one of the most practically valuable and widely accepted laws of war. It is ironic that the hand-shaking between troops and warriors at Rangiriri, of which much is made in New Zealand legend, should be bound up with such an incident.

Despite this, the degree of British duplicity at Rangiriri should not be overstated. The finer points of the conventions of warfare were not necessarily always uppermost in the minds of privates and subalterns, and the action of Pennefather and his men appears...to have been spontaneous. Cameron’s decision a few minutes later to utilize this action to disarm the Maoris despite the flag of truce was more conscious, and it was not exactly honourable. But Cameron had had eight assaults on the central redoubt bloodily repulsed, and it was not surprising that he should seize his chance rather than risk more of his men, particularly in the case of what he perceived as a “savage” enemy.¹⁸⁵

2.5 Peace Negotiations?

Given the dubious circumstances under which a flag of truce was either deliberately or conveniently used by the British to secure the surrender of the Rangiriri fighters, it is difficult to state with any confidence what the intentions of the latter may have been at the time. If they were responding to a real (or imagined) British white flag then they might simply have been curious to learn of Cameron’s intentions, which could potentially have been as minor as something along the lines of a temporary truce to allow both sides to bury their dead. On the other hand, if we assume for the sake of

¹⁸⁴ Andersen and Petersen, *The Mair Family*, p.117, quoted in Belich, *New Zealand Wars*, p.154.

¹⁸⁵ Belich, *New Zealand Wars*, pp.154-155.

argument that Maori were not responding to what they believed to have been some kind of British flag, then the question is what they may have had in mind, taking into consideration the entirely unconvincing nature of the evidence for an unconditional surrender. One suggestion is that the defenders of Rangiriri may have been attempting to buy time while they waited for reinforcements.¹⁸⁶ It is even possible, under this scenario, that Wiremu Tamihana had left the pa during the first night in order to secure reinforcements, since soon after the surrender he was seen to the east of Rangiriri at the head of 400 men. Cameron's first telegraphic despatch announcing the capture of the pa noted that, soon after the 'surrender' had been made:

A party of 400, under William Thompson, approached from the East, with a flag of truce after the surrender. Interpreter was sent, who states that William Thompson appeared inclined to surrender, but his people were opposed, and went back; he has sent in his *Mere* by the interpreter, with what object I am not aware.¹⁸⁷

It would seem likely that this party were intended reinforcements. Once they saw the garrison at Rangiriri taken by the British the question then became one of whether they should similarly surrender, with Tamihana evidently in favour of such a course of action but many of those with him opposed. They cannot have headed towards Rangiriri with an initial intention of surrendering, because if they did then presumably Tamihana would not have been overruled by his companions. The theory that the Rangiriri defenders sought to delay matters in order to allow reinforcements to reach them is plausible, then, though it remains unsupported by any firm evidence, including later evidence from those inside the pa.

Another possibility floated by Belich is that the Kingitanga may have been attempting to enter into overall peace negotiations from a position of relative strength.¹⁸⁸ This would seem a very likely scenario, especially bearing in mind that the Kingitanga forces were essentially fighting a defensive war not of their own choosing. Later evidence also tends to back up this proposition, though it must be said that it is very

¹⁸⁶ *ibid.*, p.155.

¹⁸⁷ Cameron to Grey, 21 November 1863 (telegram), 21 November 1863, *New Zealand Gazette*, 21 November 1863, no.60, p.503.

¹⁸⁸ Belich, *New Zealand Wars*, p.155.

difficult to disentangle what was intended at the time a white flag was raised with what was subsequently understood to have been agreed at the time of their surrender. With respect to the latter point, the evidence is fairly clear that the defenders of Rangiriri believed their submission marked not simply an end to the battle but an end to the Waikato War as a whole. One of those who had fought at Rangiriri many decades later confirmed his understanding of what had been agreed. Te Puhi Paeturi told E.H. Schnackenberg that:

The chiefs understood that by our submission peace was to be declared, and there was to be an end of the war throughout the land. We handed over all our firearms and ammunition, but the General (Cameron) said he could not conclude negotiations at that spot, and that we must go to Te Ruato (Queen's Redoubt).¹⁸⁹

Contemporary reports also back up this suggestion. A few days after the capture of Rangiriri a reporter for the *New Zealand Herald* travelled to Otahuhu in order to learn more details of what was happening in the Waikato. He found the village in a state of commotion, with 100 of the prisoners recently arrived, having been forcibly marched the 30 or so miles from the Queen's Redoubt. The reporter noted that the men 'looked way-worn and foot-sore', and some were 'so completely knocked up that they had to be conveyed in ambulance carts'.¹⁹⁰ According to his report:

...they appeared to be very much chop-fallen, and if any credit may be attached to their own assertions they unquestionably are so. They admit that they have been thoroughly beaten, and that they have submitted once and for ever. They add, that Waikato being the head of the revolt, and Waikato being conquered, they are prepared to surrender their lands. But they express great surprise that, having made unconditional submission, they should be held in

¹⁸⁹ E.H. Schnackenberg, *Maori Memories, As Related by the Kaumatuas of Kawhia to E. H. S., Kawhia*, Kawhia: Kawhia Settler Print, 1926, no pagination.

¹⁹⁰ Their condition may have been attributable at least in part to abuse received from various settlers during their long march. Bishop Selwyn, who was accompanying the Imperial troops as war chaplain, wrote to his sons, William and John, a few weeks after the Rangiriri surrender. He stated that, 'All night the Maoris kept up a fire, and then at break of day hoisted a white flag. The soldiers instantly rushed up and fraternized with the Maoris, giving them biscuit. Not so the civilians at Otahuka, some of whom are said to have thrown stones at them as they passed along.' H.W. Tucker, *Memoir of the Life and Episcopate of George Augustus Selwyn*, London: William Wells Gardner, 1879, p.190.

captivity, as they look upon themselves as penitent subjects of the Queen, to be punished with the loss of land, but not of liberty. They affirm that Waikato will never strike another blow; and that William Thompson and his 400 would have come in and laid down their arms on Saturday morning, but that their captivity had deterred Thompson and his party from doing so.¹⁹¹

Nevertheless, Wiremu Tamihana's decision to send his mere to Cameron shortly after the conflict was also clearly intended as a token of peace and other more direct messages reinforced this point.¹⁹² On the same day that Rangiriri fell a number of the leading chiefs among the prisoners (including Takerei Te Rau, Wi Kumete and others) sent their own message to Wiremu Tamihana and the rest of Waikato. They wrote:

Ehoa ma ko matou i ora 175 kua riro matou kei Te Ruato. Kua mau te rongo ko a matou pu kua riro i a Te Tianara me koutou hoki kia penei me matou. Kia mau te rongo. Ko te rongo mau nei. Ko te mana o te motu me tuku ki raro, me hoatu te mana kia Kawana, kei whakaputa ke koutou i tetahi ritenga ma koutou. Huia mai kia kotahi he tikanga ma tatou ki runga ki te maungarongo. Kia tere mai i ta koutou reta kia matou, i te taenga atu o te tamaiti o ta matou reta hoki. Whakaaetia mai, kia tere mai i te taenga atu o ta matou reta.

Friends, those of us who are alive – in number, 175 – we are sent to the Queen's Redoubt. Peace is made. Our guns are given up to the General. Be you like unto us: let peace be made. These are (the terms of) lasting peace: The mana of the island let it be put down; let the mana be given up to the Governor. Do not devise any different plan of action. Join with us in one the same plan in reference to peace. Let your letter (in reply) be quick, immediately on our young man with our letter reaching you.

Consent to this. Be quick as soon as our letter reaches you.¹⁹³

¹⁹¹ *New Zealand Herald*, 27 November 1863.

¹⁹² Wi Te Wheoro to Grey, 23 November 1863, AJHR, 1863, E-5D, p.4; Ann Parsonson, 'Tainui Claims to Onewhero and Maramarua Forests: Historical Overview', (report commissioned by the Tainui Maori Trust Board in association with the Crown Forestry Rental Trust), 1995, p.114.

¹⁹³ Tireni and others to Wiremu Tamihana and others, 21 November 1863, AJHR, 1863, E-5D, p.3.

Two days later, on 23 November, Wiremu Te Wheoro, who was continuing to act as an important intermediary between British and Kingitanga forces, wrote to Governor Grey to update him on developments. Te Wheoro wrote that:

He mea atu tenei naku kia koe kua hinga Waikato kua riro mai nga oranga kei Te Ruato ko 177 me nga Rangatira Takerei Te rau, Wi Kumete, Waikato Te Tawhana, Te Tapihana Tiriwa, Kihi Taiporutu, Pairoroku Tuhikitia, Reihana Tepoki, me te tini o nga Rangatira.

Ko nga pu kua homai kia Te Tianara. Kua puta mai te kupu o nga Rangatira i ora kia haere atu au me Te Kaneri kaiwhaka maori kia whakaritea nga mea e mau ai te rongu, kua whakaae ratou ki nga kupu a nga herehere kia mau te rongu kia kore te kingi kia homai te whenua. Ko nga kara ma kua whakaarahia ki o ratou kainga.

Kua mea atu au kia Te Tianara kia haere maua ko Kaneri kaiwhaka Maori, ki hai i whakaae kei a koe te kupu. Ki te pai koe kia haere maua ko tetei kaiwhaka maori o Te Kawanatanga. Otiia mau te kupu.

Kua riro mai te mere a Tamehana ia Tianara hei maunga rongu.

This is to tell you Waikato has fallen. The survivors have been brought to the Ruato – 177 in number – and the Chiefs Takerei Te Rau, Wi Kumete, Waikato Te Tawhana, Te Tapihana Tiriwa, Tioriori, Kihi Taiporutu, Pairoroku Tuhikitia, Reihana Tepoki, and many other Chiefs.

The guns have been given up to the General.

Word has come from the Chiefs who escaped that Mr. Gundry, the interpreter, and I should go and arrange the terms of peace. They have consented to the words of the prisoners that peace be made, - to do away with the king and give up their land.

White flags have been hoisted at their places.

I have said to the General that I and Mr. Gundry the interpreter should go. He did not consent. It is for you to say if you are willing that I and a Government Interpreter should go. But you must give the word.

The General has Tamihana's mere in token of peace.¹⁹⁴

If Wiremu Te Wheoro's letter was an accurate description of where things stood immediately after the battle of Rangiriri – and there is no reason to suggest that it is not, but on the contrary considerable other evidence to support this version of events – then a grand opportunity presented itself for an end to the war. William John Gundry, the interpreter (who was the son of a Te Rarawa mother and Pakeha father)¹⁹⁵ wrote to the Native Minister on 22 November to give his account of the surrender. He stated that:

About 6 o'clock in the morning, just when the troops were going to drive the Maoris out, a Maori came forward with a white flag, on which the soldiers sprang in amongst them and commenced shaking hands with the Maoris. Soon after the General came and ordered them to give up their arms, and he would treat them well as prisoners because of their brave conduct...They wanted to make peace, as they were the principal Chiefs of Waikato. The General told them he could not do that until the Governor arrived...White flags are flying all about the native settlements...In my opinion, the Maories will give up their arms when His Excellency comes up here.¹⁹⁶

According to at least two separate accounts, therefore, white flags were flying throughout the Waikato district, and the Kingitanga were ready to come to terms. Cameron had refused to act in this matter in the absence of Grey, and it now

¹⁹⁴ Wi Te Wheoro to Grey, 23 November 1863, AJHR, 1863, E-5D, p.4.

¹⁹⁵ Biographical details gleaned from a name search of the Tapuhi website. See <http://tapuhi.natlib.govt.nz/cgi-bin/spydus/FULL/ARCHIVESNR/OPHDR/395/44172.1> (accessed 13 October 2009). See also C.A. Lawn, 'Pioneer Surveyors of New Zealand', unpublished manuscript, n.d., pp.370-371. Lawn gives his middle name as James rather than John.

¹⁹⁶ W.J. Gundry to Native Minister, 22 November 1863, AJHR, 1863, E-5D, p.5.

seemingly only awaited the governor's arrival for the Waikato War to be brought to an end.

Further confirmation that peace was potentially close at hand came on 25 November, when some of those who had escaped from Rangiriri sent the following message to Grey:

Tena koe! He mea atu tena ki a koe kua whawhaitia te whawhai, a, kua mate, kua ora. Wakahokia mai Waikato. Kati ki a koe ko nga tangata mate ko nga mea ora whakahokia mai.

Salutation! This is to say to you the fight has been fought, and some are dead, some alive. Restore to us Waikato. Let it suffice for you,- the men who are dead. Return to us those who live.

From your friend,

PENE PUKEWHAU

From all the Chiefs of Waikato.¹⁹⁷

Although it is possible that the letter had been sent without any real mandate or authority from the Kingitanga leadership, all of the available evidence is against such a scenario and at least one historian has suggested that the message had been sent on behalf of the King's Council, which had indeed decided to sue for peace.¹⁹⁸ If we accept that this was indeed the case, then the letter may be said to represent the clearest and most direct indication of the terms the Kingitanga were prepared to accept at this time. Those terms were far from the unconditional surrender the British continued to insist upon. Not only did they seek the return of those taken prisoner at Rangiriri, but contrary to suggestions that the Kingitanga accepted the inevitability of confiscation, they instead appeared to demand the return of those lands already

¹⁹⁷ Pene Pukewhau to Grey, 25 November 1863, AJHR, 1863, E-5D, pp.5-6. The author of this letter was also known as Pene Te Wharepu and in some published versions this name appears as a second signatory. The version in the AJHRs also described this as a letter from 'Pene Wharepu'. See, for example, *Wellington Independent*, 24 December 1863. However, Grey seemed clear that Pukewhau and Te Wharepu were one and the same person. Grey to Cardwell, 30 November 1864, GBPP, 1865 [3455], p.15.

¹⁹⁸ Harold Miller, *The Invasion of Waikato*, Auckland: Paul's Book Arcade, 1964, p.16.

occupied by Imperial troops. There was no indication of a willingness to renounce their King or to live under English law in future, meaning neither of the fundamental British demands for the Kingitanga to be wound up and for large areas of land to be confiscated had been agreed upon.

Grey, in forwarding a copy of this letter to the Colonial Office, was dismissive, describing it as having been ‘written by a chief of secondary rank’; he also added his own gloss on the phrase ‘Restore to us Waikato’ by adding ‘our chiefs’ in parentheses following this, clearly hoping to convince those who read the translation of the letter from Pukewhau that it did not constitute a rejection of the confiscation policies Grey and his ministers had drawn up even prior to the invasion of the Waikato.¹⁹⁹

On 30 November 1863 the Colonial Secretary, William Fox, responded to Pukewhau’s letter on behalf of the government. Fox insisted that:

The Governor will hold no communication whatever with you whilst you continue in arms; but give up all your guns, your powder, and all your arms, to the Governor: then only will a way of communication be open for you: at present there is none.²⁰⁰

Confirmation that Pukewhau’s letter had wider support came when the government’s response was in turn replied to by Wiremu Tamihana. At this point it became considerably more difficult for Grey to dismiss the calls for peace as merely those of a solitary chief of secondary rank. Tamihana wrote from Ngaruawahia on 4 December 1863, enclosing a list of those who had escaped from Rangiriri and declaring that:

Kua tae mai to reta i mea mai nei kia hoatu nga pu, nga paura kia Kawana. Whakarongo mai, kaore he pu paura i riro mai; kua kite hoki nga Pakeha katoa i te kaunga mai i te moana o nga mea i ora; ko a ratou pu, paura, poto katoa atu ki te moana.

¹⁹⁹ Grey to Newcastle, 30 November 1863, GBPP, 1864 [3355], p.5.

²⁰⁰ Fox to Pene Pukewhau, 30 November 1863, AJHR, 1863, E-5D, p.6.

...your letter has arrived in which you say that our guns and powder be given up. Hearken; we brought away no guns or powder with us. All the Pakehas witnessed the swimming across the lake of the survivors; their guns and their powder were all lost in the lake.²⁰¹

Tamihana declared that he could not bear arms 'whilst the Chiefs of Waikato, who have been made prisoners of, are making proposals of peace.' He hinted, however, at a possible division within the Kingitanga in adding that 'If I were still desirous of bearing arms, I would have remained at Paetai, for some of our other tribes were staying there...with arms and ammunition.'²⁰² This does not appear to have been a reference to Ngati Maniapoto, since their fighters had reportedly gone south. Tamihana also appeared to confirm that the force which he had led to Rangiriri had initially been intended as reinforcements and provided more details on what happened when they arrived on the scene:

E hoa, kia rongo ano koe. I haere atu ano he whakauru a nga rau 200, i hoea atu i te moana, u atu ki uta haere atu ana, eke atu i tetahi hiwi kua kite atu i nga haki ma kua tare mai. Heoi ano, noho tonu iho i runga i taua hiwi, a ka tae mai hoki a Himi awhe kaihe raua ki Teremie kua ki mai kua mau te rongo.

Na, hoki tonu mai nga rau e 200, hoki rawa ki tona kainga ki tona kainga.

E hoa, engari nou anake te taha kei te mau patu i roto i enei ra, ara ko te tima e mahi nei i roto o Waikato, e hanga haere nei i te pa, ka oti, nuku mai, ka oti, nuku mai.

Ko tenei, me noho atu te tima, kaati te haere mai.

Friend, hear also that 200 (400?) went to assist (at Rangiriri). They paddled across the Lake, landed, and went on, and arrived at the top of a ridge, where

²⁰¹ Wiremu Tamihana to Wiremu, 4 December 1863, AJHR, 1863, E-5D, p.9. In the AJHR version this is headed as a letter from Tamihana to Wiremu Te Wheoro. That is possible, as Te Wheoro appears to have delivered Fox's letter to Ngaruawahia on 3 December 1863. However, as the letter opens with 'Friend Wiremu, Writer of the letter to Pene Pukewhau', it seems more likely to have been directly addressed to William Fox.

²⁰² *ibid.*, p.10.

they saw white flags flying. That was all; thereupon they sat down on the top of a ridge; afterwards Himi, a half-caste, came up in company with Teremie; they said, "Peace has been made."

The 200 (400?) then returned to their respective homes. Friend, it is your side alone which is still in arms – that is to say, the steamer which is at work in the Waikato, making pas as it goes on; when they finish one, they come a little further and make another.

Now, then, let the steamer stay away; do not let it come hither.²⁰³

In August 1864 Tamihana wrote to the Catholic Bishop Jean Baptiste Francois Pompallier to lament the failure to bring the war to an end in the immediate aftermath of the Rangiriri battle.²⁰⁴ Tamihana wrote:

O friend, the war is over, and if it had been stopped at Rangiriri, we should have been since that time without war and in perfect peace, for those of us, who became prisoners there, and asked for peace, had our consent: and we went in consequence to Ngaruawahia. But when I observed that the soldiers still arrived at Taupiri, then I said to the chiefs of Waikato, let us get up and go to Maungatautari, leaving for peace sake the land where we are at present. When we were at that place (at Maungatautari), some of the native prisoners sent to us, went there, and in the meantime the soldiers arrived there also. Hence I said again to the same chiefs (of Waikato) let us go to Pateteri [sic]. Finally, here I remained quite disappointed (in my hopes of peace.) Don't suppose then that I am a man wishing for war. No, I am not, and even now I

²⁰³ It seems likely that the 'Himi' referred to here was 'Hemi' (or James) Fulloon, a young Ngati Awa man of mixed parentage who was attached to the British forces as an interpreter during the Waikato campaign. See W.T. Parham, *James Francis Fulloon: A Man of Two Cultures*, Whakatane: Whakatane & District Historical Society, 1985, pp.44-50. 'Teremie' seems likely to have been a transliteration for 'Gundry'.

²⁰⁴ The decision to write to Pompallier was in itself an interesting one. The Anglican Bishop, George Selwyn, was perceived by many Kingitanga supporters to have aligned himself too closely with British troops during the Waikato War by serving as chaplain to Cameron's forces. Pompallier, by contrast, as a Frenchman and a Catholic well known for his pro-Maori sympathies, was automatically considered suspect and the fact of Tamihana writing to him no doubt only added to that impression.

remain quiet. When the above prisoners came to me, saying “give up Waikato,” I have fully complied with their proposal.²⁰⁵

Although Grey rather feebly attempted to deny the allegation that an opportunity for peace had been squandered in the aftermath of Rangiriri,²⁰⁶ his ministers were more willing to concede the point. Colonial Secretary William Fox wrote in October 1864 that ‘whether Thompson’s present statement be correct or not, an opportunity was lost on that occasion, and the Natives have too much reason to complain that faith was not kept with them by his Excellency, who had promised to talk with them after General Cameron should have arrived at Ngaruawahia.’²⁰⁷

It was Grey’s own actions and uncompromising demands to the Kingitanga that did much to destroy this opportunity for peace. On 6 December 1863 he wrote to the Waikato chiefs that:

Me haere tika Te Tianara ki Ngaruawahia, me tare te Haki o te Quini ki reira;
katahi ka korero atu a au ki a koutou.

The General must go uninterrupted to Ngaruawahia; the flag of the Queen must be hoisted there. Then I will talk to you.²⁰⁸

There was hardly any room for ambiguity here. Grey did not indicate that he might talk to the Kingitanga once Cameron’s troops had entered Ngaruawahia and planted the Union Jack there: he promised that he would talk to them once this had been done. This was no small ask: essentially the Kingitanga were required to allow British troops unimpeded access to their headquarters in order to be able to enter peace talks.

²⁰⁵ Te Waharoa Tamehana to Bishop Pompallier, 9 August 1864, GBPP, 1865 [3425], p.155. Tamihana had written to Pompallier earlier, in January 1864. In a clear reference to the events at Rangiriri, on that occasion he asked the Catholic Bishop ‘is it an ancient law, the law of the Governor, in this our war with his soldiers “Peace is made, & a white flag hoisted, afterwards the guns are taken away, & next the Maori are made prisoners.” Is the law of France like this murderous war.’ Tamihana to Pompallier, 26 January 1864, Gore Browne, Box 3 (Miscellaneous Correspondence, 1863-1873), Archives NZ.

²⁰⁶ Grey to Cardwell, 30 November 1864, GBPP, 1865 [3425], pp.14-15.

²⁰⁷ Fox to Grey, 11 October 1864, GBPP, 1865 [3425]. p.15.

²⁰⁸ Grey to Pene Pukewhau and ‘All you chiefs of Waikato’, 6 December 1863, AJHR, 1863, E-5D, p.8.

Even more galling perhaps, the King's flag was to be taken down and replaced with the Queen's one.

It was testament to the remarkable desire of the Kingitanga tribes at this time for peace to be restored that they seemed perfectly willing to allow Cameron's forces to march to Ngaruawahia so that the war might then be brought to a speedy end. But Grey's demand for the Queen's flag to be hoisted there was more troubling. Wiremu Te Wheoro, who was acting as an intermediary in preliminary communications, visited Ngaruawahia in early December. Here he found a debate between Waikato proper and Ngati Maniapoto over whether the King's flagstaff should remain standing. Te Wheoro informed William Fox that:

When we arrived there, they assembled, and fired from both sides of the road. We were between them, while they fired as they went along. When we reached the house of Matutaera, which has a carved verandah, he and his people stood up (to receive us)[;] Ngatimaniapoto were on the Waipa side and Waikato on the Horotiu side. They stood for a while and then sat down. Paora Te Ahuru stood up to make a speech. "Welcome my child. Welcome all of you, your ancestors, and your fathers. Come to see your fallen tribe, and your broken canoe. My fighting has ceased, peace is made." After him Tikaokao stood up. "Come, my child, come to see your fallen tribe and your broken canoe." Then Patara Te Tuhi stood up. "Welcome my brother. Come to see your fallen tribe and your broken canoe."²⁰⁹

There were no speeches of defiance or indicating a wish to fight on. All of those gathered at Ngaruawahia evidently sought an end to the war. But concerns remained. With Rangiriri fresh in everyone's mind, some speakers told Te Wheoro that they were afraid 'If we give up the guns, we shall perhaps be made prisoners.' Others noted their fear 'of the steamer and of the soldiers which are coming this way.'²¹⁰ The next day there was an even more dramatic development. Te Wheoro reported that:

²⁰⁹ Wiremu Te Wheoro to Fox, 4 December 1863, AJHR, 1863, E-5D, p.7. According to another report, Te Wheoro had been accompanied on the trip to Ngaruawahia by three of his men. *Daily Southern Cross*, 8 December 1863.

²¹⁰ Te Wheoro to Fox, 4 December 1863, AJHR, 1863, E-5D, p.7.

In the morning Ngatimaniapoto came to cut down the flagstaff at Ngaruawahia. Waikato would not allow them. The quarrel was great. Both sides fired without aiming. Then Tamati Ngapora, Mohi te Ahiatengu, Patara Te Tuhi, Paora Te Ahuru and W. Thompson gave it (the flagstaff) to me with these words, “William, we give over this flagstaff to you with those buried here and Ngaruawahia, for you to give over to the General and to the Governor. Especially let not the remains of the buried be ill treated by the soldiers. As for Ngaruawahia the cultivations, leave them alone. We are going away through fear. Moses gave his “hoeroa” (weapon made from the jaw of a whale), for the General, for a pledge of peace, and the flagstaff for a pledge of peace.”²¹¹

A correspondent for the *Daily Southern Cross* who was with the advance party of British troops at their camp at Taupiri, some 12 or 13 miles from Ngaruawahia,²¹² when Te Wheoro returned from his mission to the Kingitanga capital, provided some further details into what had taken place there. This report noted that:

On his arrival at Ngaruawahia, he found the Ngatimaniapotos drawn up on one side, and the Ngatihaua and Ngatimahuta on the other, the whole number of natives collected being about 1,000; he walked up the centre, and a volley was fired in honour of the visit, they calling on him at the same time to look at the broken condition of his tribe. He was then shown into a whare, while a discussion was held; William Thompson, who was absent, was sent for, and arrived that night. Te Wheoro was then asked, whether, if they gave up their arms and land, they would be allowed to go to their houses, or be made prisoners. This question he could not answer; but these conditions he was deputed to convey to the Governor, viz., surrender of arms and land, but freedom of person for themselves. A discussion then arose about the flag-staff, which the Ngatimaniapotos wanted to cut down; this was objected to by the others, and high words ensued, and firearms were discharged; ultimately, it

²¹¹ *ibid.*, pp.7-8.

²¹² D.J. Gamble, 1 December 1863, Journals of the Deputy Quartermaster General, pp.73-74, WO 33/16, Archives NZ.

was handed over to Te Wheoro, together with the graves of the dead, with the request that the General would allow them to remain undisturbed.²¹³

The same report had noted that Cameron had sent an urgent despatch to Grey for instructions as to what response he should give to the requests for peace. That despatch, after noting that Te Wheoro had just returned from Ngaruawahia, added that:

He states that the Waikatos are ready to give up their arms if they are allowed to remain unmolested in their villages. It appears to me that we ought to let these people know distinctly on what terms their submission will be accepted, and that there should be some person with the force, with full power to accept their submission on those terms.

I should think it bad policy to drive them to desperation, as they still have it in their power to give us an immense deal of trouble.

I shall of course move on as I intended unless I should receive instructions to the contrary from you.²¹⁴

Grey had earlier informed Cameron that the government had no intention of acting on the pleas for peace from the Rangiriri prisoners but would wait for those in arms to seek an end to the war themselves.²¹⁵ Now that that had happened, he changed tack again, informing the General that both he and his ministers were agreed that British troops must not stop short of Ngaruawahia. It was clear, he claimed:

...from Thompson's letter to Te Wheoro that their great object is to keep you from going on to Ngaruawahia. But we all think, and I am sure you will agree with us, that we can only convince the rest of the island that the Waikato has succumbed by the Queen's flag flying at Ngaruawahia...When you are at

²¹³ *Daily Southern Cross*, 9 December 1863. For a similar account of the meeting see *Hawke's Bay Herald*, 23 December 1863 (reproducing a despatch from the correspondent for the *New Zealander*).

²¹⁴ Cameron to Grey, 5 December 1863, G 16/2, Archives NZ.

²¹⁵ Grey to Cameron, 27 November 1863, G 36/4, Archives NZ.

Ngaruawahia and the Queen's flag is flying there, the Government will be quite ready to consider any proposals that the Natives may make.²¹⁶

This was Grey at his typical, blustering best. If the 'great object' of the Kingitanga was to prevent British troops entering Ngaruawahia, then presumably the tribes would have attempted to prevent such a movement, instead of actually agreeing to allow this to take place unimpeded, albeit only after some dispute over the fate of their flagstaff. Cameron claimed to be in full agreement with Grey on the need to press on, and at the same time advocated a new and more targeted approach to future operations. He wrote to Grey on 8 December 1863 that:

I am glad you have written to your children to tell them that you will have nothing to say to them until I get to Ngaruawahia, for I shall know what answer to give to any offers of submission. I had no idea of stopping short of Ngaruawahia, but, being told by Te Wheoro that the Natives were willing to give up their arms, if they were allowed to remain unmolested in their villages, I thought it right to refer to you for instructions. I not only think that we ought not to stop short of Ngaruawahia, but that when we have established ourselves at the place, we ought to carry the war into the country of the Ngatimaniapotos. For this reason I hope that fair terms will be offered to the Waikatos, as, if they are driven to desperation, they may give us so much trouble, on our long line of communication as to make render [sic] it impossible for us to advance without a multiplicity of posts along the bank of the river, a consideration which may not occur to people in Auckland.²¹⁷

If Waikato proper were offered sufficiently modest terms in order to allow them to return peacefully to their homes then the threat to already overstretched British communication and supply lines would be greatly lessened, allowing Cameron to target the Ngati Maniapoto tribe with greater confidence. On the other hand, he seemed to imply, harsh terms such as excessive land confiscations or imprisonment would provoke a desperate response and make it much more difficult to push operations south.

²¹⁶ Grey to Cameron, 6 December 1863, G 36/4, Archives NZ.

²¹⁷ Cameron to Grey, 8 December 1863, G 16/2, Archives NZ.

Cameron's suggestion assumed, of course, that Waikato proper and Ngati Maniapoto were susceptible to a divide and rule approach. Perhaps the reported debate over the fate of the flagstaff had hinted at such a possibility. Grey's covering message to the Secretary of State for the Colonies, when forwarding Te Wheoro's news of his meeting with the Kingitanga leaders, noted that:

I understand from Te Wheoro's letter that the Ngatimaniapoto tribe, fearing that the Queen's flag would fly from the King's flagstaff, wished to cut it down before they abandoned the place, and hence that they do not contemplate an absolute submission to us; but that, on the other hand, the king's own family and tribe, in order that they may make their submission complete, are determined to leave the flagstaff standing, that the Queen's flag may fly from it.²¹⁸

Amidst various reports of the dispute over the flagstaff, it should be remembered that in the end it remained standing, and even the King's flag was handed to Te Wheoro as a present for Grey. There was never any suggestion that Ngati Maniapoto sought to prolong the war, and indeed one report from several Te Atiawa messengers who returned to Taranaki from Waikato in mid-December noted that Ngati Maniapoto from Mokau northwards were then travelling to a large meeting to be held at Rangiaowhia 'to consider the question of peace proposed by Waikato.'²¹⁹ Their objections to the flag-staff remaining standing appear to have stemmed not from opposition to ending the war (which had been started by the British, after all) so much as a reluctance to do so on terms perceived as humiliating. In this respect, Grey's demand for 'absolute submission' was troubling.

By 6 December 1863, Ngaruawahia ('the late head quarters of Maori sovereignty' as one reporter dubbed it)²²⁰ had been deserted as its former occupants retreated in order to await the government's response to their overtures for peace.²²¹ Two days later

²¹⁸ Grey to Newcastle, 8 December 1863, GBPP, vol.13, 1863 [3355], p.12.

²¹⁹ Robert Parris to Colonial Ministers, 14 December 1863, G 16/2, Archives NZ.

²²⁰ *Hawke's Bay Herald*, 23 December 1863.

²²¹ *Daily Southern Cross*, 9 December 1863. Indicative of the supply line difficulties which the Imperial troops continued to experience, on 8 December (prior to the decision to land troops at the

Cameron proceeded up river on board the *Pioneer* to inspect Ngaruawahia, and finding it deserted returned to camp, where 500 men were ordered to embark. Shortly before 4pm that same day Cameron and his troops landed at the empty village, where the British flag was soon hoisted on the 80-foot high flagstaff.²²² One official British military report of this development noted that:

The moral, political, and strategical importance of the occupation of this place can scarcely be over-estimated. Following closely on the enemy's defeat at Rangiriri, associated, as the place has been, with all the hopes of Maori sovereignty, and standing at the confluence of the great arteries of the upper country, its possession becomes identical in meaning with an important success.²²³

Grey seemed no less confident, informing the British Secretary of State for the Colonies, the Duke of Newcastle, on 9 December that '[t]here can, I think, be no doubt that the neck of this unhappy rebellion is now broken'.²²⁴ In a private letter to Newcastle of the same date, Grey was equally upbeat, writing 'I do hope now that this contest may be shortly brought to a thoroughly satisfactory close'.²²⁵ Grey added that, 'the happiest moment in my life will be when it [the war] ends.' That 'happy' moment ought to have been within reach at this point. On the same day that Grey sent the Colonial Office news of the capture of the King's capital, Kingitanga representative Pene Te Wharepu wrote again to Grey, reaffirming their desire to talk and accepting the Queen's flag at Ngaruawahia.²²⁶

At this point, however, the divided responsibilities of Grey and his ministers once more greatly complicated matters. Grey was advised to travel to Ngaruawahia in

settlement) Cameron wrote to Grey that 'I proceeded up the river in the "Pioneer" this morning to look at Ngaruawahia, where, if I had only enough bread and beef I could establish myself at once; for I believe that the place is unoccupied.' Cameron to Grey, 8 December 1863, G 16/2, Archives NZ.

²²² Extract from telegram from Cameron to Grey, n.d. [9 December 1863], AJHR, 1864, E-2, p.3.

²²³ D.J. Gamble, 4 January 1864, Journals of the Deputy Quartermaster General, p.77, WO 33/16, Archives NZ.

²²⁴ Grey to Newcastle, 9 December 1863, GBPP, 1864 [3355], p.13.

²²⁵ Grey to Newcastle, 9 December 1863, Duke of Newcastle Papers, Micro-MS-Coll-20-1577, ATL. Much of the remainder of this letter was taken up by Grey lamenting the involvement of women in the Kingitanga forces. He stated that 'Even their women and young girls now take an active part in it', and added that reports suggested nine women had been killed at Rangiriri and many more wounded.

²²⁶ Pene Te Wharepu to Grey, 9 December 1863, AJHR, 1863, E-5D, p.8.

person to offer terms of submission to the King party, but initially refused to do so if ministers remained adamant in their determination to accompany him. He eventually relented, and draft terms were printed in preparation for the event.²²⁷ These declared that:

Now, General Cameron and his soldiers are at Ngaruawahia, they are sitting there with their guns, and the Queen's flag is flying on the Flag-staff where formerly the flag of Potatau, the flag of Matutaera, used to fly. Now, therefore, I, the Governor, am ready to talk to those people of Waikato, who have been in arms against the Government. These are my words. Let those who desire peace, and who will be obedient to the Queen's law, come before me. Let every man who comes give up his gun, his powder, his bullets, and his caps. Let him give them to me, or to General Cameron. Let his name also be written down, that he will obey the Queen's law. Then let him go to whatever place I shall tell him to go to; let him live there till it shall be pointed out to him where shall be his permanent place to reside.

All the land of those who have been fighting at Waikato and Taranaki shall belong to the Queen and it must be understood, that in laying down their arms, they relinquish all their lands; except only such pieces as I shall allow each man. I will keep 500,000 acres for them at Waikato and Taranaki, and other places where they have been fighting, to live upon. I will give land to each man where he shall live – to this "hapu" so much, to another "hapu" so much, according to their number. This shall be for these men to live upon and cultivate; for them, their wives, and their children.

Each man of the "hapu" shall have his own piece and shall have a Crown Grant, for the same as a bond of permanent possession for himself and his descendants for ever.

²²⁷ Dalton, *War and Politics in New Zealand*, p.184.

All of the lands of those who have been fighting will be forfeited to the Crown. Any part of it, that is restored to them, will be so done from consideration to the wants of themselves and their children.

Those who agree to this, and do as above written, will not be made prisoners, nor punished personally for what they have already done; except those who have committed murders – who have murdered men who were not fighting, men working quietly at their farms, or sitting in their houses, or women or children. These murderers I will not forgive. When they are discovered, they will be tried and punished for their evil work.²²⁸

If Cameron had hoped for relatively magnanimous terms for Waikato proper that would have left him free to focus future operations on Ngati Maniapoto then this draft of the government's demands surely failed to deliver. Indeed, the description of those who were to be considered murderers rather than merely soldiers engaged in a war, if applied in reverse, would arguably have applied to all those who took part in the later raid on Rangiaowhia, along with the British troops who killed women at Rangiriri, Orakau and elsewhere. The wholesale confiscation of the entire district was hardly any more reassuring. It is also worth noting that the text of these draft terms was 'after much discussion and several important alterations made by His Excellency...finally agreed to by him, and printed.'²²⁹

Grey was expected to leave for Ngaruawahia on the morning of 16 December 1863 and arrangements were made for his stay there in advance of this, but in the event he changed his mind the night before. In a memorandum two days after the abortive trip to Waikato, Grey outlined his purported reasons for refusing to make the journey. The governor claimed that:

...strictly speaking, the only Native chiefs who had yet offered any terms of submission to the Government, were the chiefs who had been taken prisoners,

²²⁸ Grey to Pene Pukewhau and all the people of Waikato, December 1863 (draft), AJHR, 1864, E-2, p.4.

²²⁹ Marginal note on Grey to Pene Pukewhau and all the people of Waikato, December 1863 (draft), AJHR, 1864, E-2, p.3. No author is provided for this note but its tone is such that it is more likely to have been prepared by ministers than Grey.

or some of their immediate relatives. He could not find that the Native king, or any other leading chiefs than those he has mentioned above, who can easily at any time be dealt with, had given anything which could be considered as a clear utterance of their desire to accept any terms of submission whatever. On the contrary, he had reason to believe that some of the leading chiefs of the Upper Waikato, aided by the Ngatimaniapotos, were constructing new fortifications within twelve miles of our present position; and generally, from various minor indications, some of which it would be difficult for him even now to recollect, an impression was produced upon his mind that many of the Natives did not consider themselves as yet subdued.²³⁰

Grey's first excuse for failing to travel to Waikato was thus essentially that he had an impression that the tribes were not yet ready to make their submission, though he could not remember why exactly, and the only chiefs who had so far offered their submission were those already imprisoned after Rangiriri. This was a switch from his previous tactic of arguing that those he had been corresponding with were second rate chiefs who did not speak for the Kingitanga, but was no less a case of grasping at straws for all that.

The governor next claimed that 'any terms with the Natives in arms, which are agreed upon without having been first earnestly solicited by them, and which might, from any action on the part of the Government, appear to have sprung from overtures made by the Government, might prove only temporary and delusive, and might result in a renewed struggle between the two races, at a time when we are less prepared for it than now.'²³¹ This might have sounded a little more convincing if it were not for the fact that the entire purpose of Grey's cancelled trip to Waikato was to accept the offers of submission made to him. It had never been a case of the Crown acting spontaneously or unilaterally. In response to Kingitanga requests for peace to be restored a series of preconditions had been laid down before the government would be prepared to talk to them. These had been complied with and it now remained for Grey to honour his word and travel to the Waikato to accept their submission. Much as

²³⁰ Memorandum by the Governor as to going to Ngaruawahia, 18 December 1863, AJHR, 1864, E-2, p.5.
²³¹ *ibid.*

Grey liked to muddy the waters and obfuscate his way out of situations not of his own choosing, it really was as simple as this. Indeed, as Henry Sewell later wrote, when recalling this missed opportunity:

A distinct written pledge had been given by the Governor, after Rangiriri, that he would meet the natives at Ngaruawahia, when the Queen's flag should be planted there, and would then talk to them about terms of peace. Upon the strength of this promise they evacuated Ngaruawahia abandoning their position without a struggle. The Governor was bound as a man of honour to fulfil that promise. His excuses for not doing so, are poor and trifling, but it was the duty of Ministers to measure the full extent of the obligation, and if Sir George Grey refused to allow them to accompany him, they ought, under protest, to have allowed him to go by himself. It was their duty to advise him, *at all events to go*. All the War after this, with all its consequences, loss of money, loss of life, and destruction of native confidence, lies at the door of the Governor primarily, but in a second degree at that of the late Ministers.²³²

Grey final excuse was that he objected to travelling to Ngaruawahia in the company of the Premier and Colonial Secretary (Whitaker and Fox respectively), fearing that any failure to broker peace would lessen his influence over both Maori and Pakeha in the colony. He had instead proposed that either the ministers make the journey themselves or that he do so.²³³ Whitaker rejected either of these options, and stated that ministers had only concurred with Grey's initial suggestion that he should travel to Ngaruawahia because of Cameron's suggestion that the tribes appeared willing to make a satisfactory submission, and to refuse to entertain their proposals might (in the General's words) have had the effect of 'driving them to desperation.'²³⁴ He added that it might have been useful to have someone on the spot at Ngaruawahia with full authority to receive any submission without the delay involved in having to communicate with Auckland, 'especially as those from whom it might have been expected, were in the rear of General Cameron's advanced forces, and it was clearly of importance to remove any obstacle to his advance up the Waipa against the

²³² Sewell, Journal, 19 January 1865, qMS-1788, ATL.

²³³ Memorandum by the Governor as to going to Ngaruawahia, 18 December 1863, AJHR, 1864, E-2, p.5.

²³⁴ Frederick Whitaker, memorandum by Ministers in reply, 19 December 1863, AJHR, 1864, E-2, p.6.

Ngatimaniapoto.²³⁵ Grey replied that same day, declaring that 'his own belief is that he ought, as soon as practicable...be with General Cameron, but he yields to their advice in the matter.'²³⁶

On 24 December 1863 ministers yielded the point, declaring that although they could see no advantage arising from Grey travelling to Ngaruawahia, they would not oppose this if it was in accordance with the governor's wishes.²³⁷ One could be forgiven for wondering why, at this point, Grey did not rush off to Ngaruawahia and enjoy what he claimed would be the happiest day of his life by bringing the Waikato War to an end. Instead, he went nowhere, and when this failure to latch on to a potential opportunity for peace was raised again nearly a year later, Grey feebly declared that 'I felt satisfied, from the nature of the events which had taken place between the 8th and 24th, that no good could result from my going to Ngaruawahia subsequently to the latter date. The causes which made me think so are stated in my Memorandum of the 18th of December 1863'.²³⁸ The system of shared decision-making between Grey and his ministers and the jealousies that emerged from this had clearly been an initial factor in his decision to remain in Auckland. Grey wrote to Cameron on 19 December 1863 that:

I quite agree with you that I ought to have been up there with you, or that if my Responsible advisers objected to my being there alone under the system of responsible Govt. that they should have been there themselves. But I do not think that I am to form one of a commission with every consecutive ministry as they come rapidly on, following one another, none of the members of their ministries being chosen by myself.²³⁹

Grey, the natural autocrat, was unaccustomed to sharing power, a situation altogether different from the complete control he had had over the colony's affairs during his first governorship between 1846 and 1853. He complained that the government had lost all character for consistency as a result of changing ministries and informed

²³⁵ *ibid.*

²³⁶ Memorandum by the Governor, 19 December 1863, AJHR, 1864, E-2, p.6.

²³⁷ Whitaker, memorandum by Ministers, 24 December 1863, AJHR, 1864, E-2, p.6.

²³⁸ Grey to Cardwell, 30 November 1864, GBPP, 1865 [3455], p.15.

²³⁹ Grey to Cameron, 19 December 1863, G 36/4, Archives NZ.

Cameron that in future 'I will either work in my own way, doing what I think is right or let my Responsible Advisers work in their way.'²⁴⁰ Grey's specific objections to travelling to Ngaruawahia in the company of ministers had been removed by 24 December, however, so if there was any truth to his later claim that he had refused to go for the reasons outlined in his memorandum from six days earlier, then presumably Grey continued to doubt the willingness of the Waikato tribes to make their submission and preferred that any such act be spontaneous.

With Grey, though, there was usually much more to the story than what appeared on the surface, and historians have offered various explanations for Grey's last-minute refusal to travel to Ngaruawahia with Fox and Whitaker. Grey's biography, John Rutherford, for example, declared that:

The real reason for Grey's hesitancy was probably his suspicion that Whitaker and Fox, with their eyes on the rich lands of the Rangiaowhia district beyond Ngaruawahia, did not want peace yet awhile and had insisted on accompanying him to prevent any undue leniency.²⁴¹

But the draft terms of peace agreed between Grey and his ministers certainly did not point to any great leniency, and although it is true that Whitaker and Fox may have had their eyes on the rich lands south of Ngaruawahia and extending into the Rohe Potae inquiry district,²⁴² Rutherford's explanation fails to account for Grey's refusal to make the journey after 24 December, when ministers eventually buckled to his wishes.

²⁴⁰ *ibid.*

²⁴¹ J. Rutherford, *Sir George Grey, K.C.B., 1812-1898: A Study in Colonial Government*, London: Cassell, 1961, p.502.

²⁴² Henry Sewell commented at this time that 'I have little doubt that Peace could be made with advantage and safety, but I question whether the Government is in the mind to make it. The interests of this Province (and the Government is simply an Auckland one) are on the side of War. Kennedy (the Government Banker) said to me the other day, that no calamity could happen to Auckland at the present moment so great as Peace. The place is at this moment living upon the War; fortunes are being made and there is the prospect of Native Lands without limit.' Henry Sewell, *Journal*, 31 December 1863, qMS-1787, ATL.

B.J. Dalton suggested that fear of being perceived by the colonists as too eager for peace may have weighed heavily on Grey.²⁴³ Ann Parsonson, on the other hand, suggests that perhaps the governor did not go to Ngaruawahia because he did not believe that the Kingitanga would accept the terms offered them, and especially the confiscation of their lands.²⁴⁴ There were certainly mixed messages on this front. While the Rangiriri prisoners were reportedly willing to part with at least some land in exchange for their own freedom, as we saw earlier in the immediate aftermath of the battle the remaining Kingitanga leadership appear to have taken a more hardline stance. But by the time of Te Wheoro's visit to Ngaruawahia in early December that seems to have softened. At least some of the Kingitanga leadership appear to have considered a limited confiscation of lands south as far as Ngaruawahia a price they were willing to pay in order to end the war and retain their hold over the upper Waikato district. This was not a matter of legitimising the raupatu of their lands and could hardly be considered a real choice, given that the equation boiled down to one of agreeing to confiscation or enduring further attacks by Crown forces. The scope for Maori agency to be exercised in this context was very limited.

But if Belich's point about the desire to impose substantive sovereignty is accepted, then perhaps a more important factor behind the governor's decision not to travel to Ngaruawahia was that Grey did not believe this had yet been achieved. This was less a case of doubting the extent of support for peace among the Kingitanga tribes as Grey had claimed, so much as a deeper concern that the movement had not yet been sufficiently damaged or destroyed to ensure it did not again pose a challenge to the Crown's assumption of sole sovereignty over the entire country.²⁴⁵ Grey had not gone to war to teach the Kingitanga a salutary lesson but to destroy the movement entirely, and if he could not do that then to at least ensure that the question of sovereignty was answered decisively and for all time in favour of the Crown. Whether such an outcome had been achieved by December 1863 remained very much open to question.

²⁴³ Dalton, *War and Politics in New Zealand*, p.185.

²⁴⁴ Parsonson, 'Tainui Claims', p.115.

²⁴⁵ Grey informed Cameron late in December 1863 that he disagreed with the General's assessment that the Kingitanga were ready to comply with the government's demands. Earlier in the month he had stated that he hoped to come to terms with the lower Waikato tribes within a matter of days, perhaps suggesting that he had initially hoped to adopt the divide and rule strategy advocated by Cameron of making peace with Waikato proper while focusing future operations on Ngati Maniapoto. See Grey to Cameron, 11 December 1863, 22 December 1863, G 36/4, Archives NZ.

While Rangiriri had been a blow for the Kingitanga, it had not necessarily been a decisive one. Indeed, in terms of total casualties from the conflict, the figures for both the British and Maori combatants were comparable. At least 37 British troops were killed in the battle, while Belich suggests that 36 male defenders of Rangiriri were killed, along with five women and children.²⁴⁶ Belich relies upon the number of corpses found at Rangiriri by the British in arriving at his estimate of Maori losses. What this appears to forget is that many of the wounded had been evacuated from the pa prior to its 'surrender' on 21 November, and some of the more badly wounded among their number subsequently died of their wounds. Among their number was Pene Te Pukewhau. He had written the last of his many letters to Grey desiring the restoration of peace on 9 December and died sometime between then and 16 December, when his relations applied to Grey for a coffin in which to bury him.²⁴⁷ If we take into account this additional factor of those who later died from wounds incurred during the engagement then the number of those killed on the Kingitanga side would appear to be somewhat higher, and perhaps the best estimate came following Wiremu Te Wheoro's visit to Ngaruawahia on 5 December, when the chief was told by Kingitanga leaders that 47 of their people had been killed in the battle or had subsequently died of their wounds.²⁴⁸ Remembering that Te Pukewhau had died subsequent to this visit, the number would be increased to at least 48, though the possibility that others died after this cannot be excluded.

Considered in human terms this was, of course, a great tragedy, and one that is likely to have touched many hapu and whanau throughout Waikato. But considered in military terms, far more Maori died in later battles such Orakau or Te Ranga. British casualties at Rangiriri had been not much less than on the Maori side, and many of the Imperial troops felt their losses keenly, dubbing the scene of the bitter conflict 'bloody Rangiriri' in the aftermath of the battle.²⁴⁹

²⁴⁶ Belich, *New Zealand Wars*, p.155.

²⁴⁷ Grey to Cardwell, 30 November 1864, GBPP, 1865 [3455], p.15. Te Pukewhau had been wounded in five places during the engagement, including a serious wound in the back of his neck, and no one, it seems, seriously expected him to live. His efforts as a peacemaker had been made not for his own sake, but for that of his descendants and people. See *Hawke's Bay Herald*, 23 December 1863.

²⁴⁸ *Daily Southern Cross*, 9 December 1863.

²⁴⁹ William Race, *Under the Flag. Reminiscences of the Maori Land (Waikato) War*, by a Forest Ranger, pp.28-29, qMS-1671, ATL.

The difference was that the Kingitanga had a much lower number of fighters to call upon to begin with, and hence were hit disproportionately hard by the loss of those who were available to them. In this respect it was not just those killed but the loss of the nearly 180 prisoners seized by the British upon the ‘surrender’ of Rangiriri that made this conflict a serious blow for the Kingitanga.²⁵⁰ As Belich concludes, ‘The number of killed and wounded was not great, but when the prisoners were added Rangiriri became the most costly defeat in terms of men which the Maoris ever suffered at British hands.’²⁵¹ Perhaps it was a similar realisation on the part of the Kingitanga leaders in the wake of Rangiriri that caused them to press for peace. Grey and his ministers were not finished yet, however: they had failed to achieve the objectives set when Waikato had been invaded in July 1863. Thus although the war could easily have been ended in December 1863 the invasion continued, and Rohe Potae groups such as Ngati Maniapoto were now firmly in sight.

2.6. Bypassing Paterangi

Having taken possession of Ngaruawahia unopposed, and with all efforts to negotiate a peaceful end to the war hitherto stalled, in mid-December General Cameron took a break from the front in order to attend a meeting of the Executive Council in Auckland. Here Cameron outlined ‘the further operations that might be necessary to be taken to bring the Rebel Natives to perfect subjection’.²⁵² Although the details of Cameron’s plan are far from clear on the basis of the sparse Executive Council records available, the General later denied any memory of a frontier line from Raglan or Kawhia across to Tauranga being discussed on this occasion. He also denied Whitaker’s suggestion that future military operations in the Waikato district had been undertaken with a view to establishing such a line.²⁵³ Those denials had evidently been intended to bolster the position of Grey, who (as will be discussed in some detail in a later chapter) had by mid-1864 locked horns with ministers over the extent of

²⁵⁰ The fate of those prisoners is a long and convoluted tale in its own right but is briefly discussed in a later chapter in the context of disputes between Grey and his ministers over the implementation of confiscation policies.

²⁵¹ Belich, *New Zealand Wars*, p.157.

²⁵² Minutes of the Executive Council of New Zealand, 14 December 1863, p.559, EC 1/2, Archives NZ.

²⁵³ Cameron to Grey, 26 August 1864, G 16/9, Archives NZ.

lands to be confiscated, and claimed rather unconvincingly to have been unaware of their intentions at an earlier stage.²⁵⁴ Whitaker, though, asserted in a June 1864 memorandum that:

At an Executive Council convened on the 14th day of December last, at the request of General Cameron, the question was put to Ministers how far did they propose the troops should go into the interior and what was the precise object they desired to attain by Military operations in the Waikato? to which they replied that the establishment of a frontier line from Raglan or Kawhia to Tauranga was what they desired, and that that line was the extent to which they proposed to permanently occupy the country.²⁵⁵

Whether or not such a plan was discussed at the December meeting, the proposal for such a frontier line had first been raised by Grey himself in June of that year, and committed to paper soon after by the Premier Alfred Domett.²⁵⁶ But although the broad parameters of this approach were readily understood and agreed, it was not until October 1863 that Domett provided a more detailed outline of where the line would run. In a lengthy memorandum he wrote that:

The tract of country to be settled so as to form a barrier for the rest of the Province against incursions from the South may be considered as stretching from Raglan, on the West Coast, to Tauranga, on the East – dipping in the centre Southwards, so as to include some of the Upper Waipa country. This tract would be bounded on the West by the Pirongia Ranges (south of Raglan); on the South by those of Rangitoto; on the South-west it would stretch across the open land to Maungatautari, and on the East be bounded by the Thames or the wooded ranges running parallel and a mile or two from its western bank, with a branch down to Tauranga itself. The frontier line defended should not merely be a line direct across the island from Raglan to Tauranga, but would have to run irregularly a considerable distance to the southward, within thirty

²⁵⁴ Dalton, *War and Politics in New Zealand*, pp.193-194.

²⁵⁵ Whitaker, memorandum by Ministers, 25 June 1864, AJHR, 1864, E-2, p.58.

²⁵⁶ Domett, memorandum for the Governor, 24 June 1863, AJHR, 1863, E-7, p.8.

miles of Taupo; and to the northward, both at its eastern and western extremities, to make the inner country embraced by it thoroughly secure.²⁵⁷

Soon after Cameron returned from Auckland orders were given for a military force to be despatched to Raglan. On 26 December 1863 some 300 men of the Waikato Militia embarked for Raglan, where their orders were to construct a strong redoubt, with a garrison of 150 to 200 men, while attempting to open up a line of communication with the Waipa River.²⁵⁸ Meanwhile, in January 1864, 600 Imperial troops under Colonel Carey were landed at Tauranga, where they commandeered the local CMS mission station at Te Papa and proceeded to construct redoubts.²⁵⁹ These moves left Cameron and the main body of his men free to push up the centre of the intended frontier line, his route the Waipa Valley and his destination the rich agricultural lands around Rangiaowhia and Otawhao. All thoughts of a quick peace had now evaporated, if indeed officials had ever seriously entertained any thoughts of ending the conquest of Waikato at Ngaruawahia. Although Grey had drafted a letter to the chiefs of Waikato on 16 December in lieu of his cancelled visit to them, it was little more than an invitation to send a deputation to Auckland if they wished to learn of the governor's terms for their submission, along with an assurance that those who surrendered their arms and ammunition would not be made prisoners.²⁶⁰ The message ended with a warning that 'They should quickly determine what they intended to do in this matter, as the General will continue to move to the front, without a stop in his progress.'²⁶¹ Grey later claimed that the letter had been sent to the brother of Pene Te Pukewhau but made no mention of whether a response was received.²⁶² However, having allowed British troops to enter Ngaruawahia unopposed on the basis that this was a necessary precondition for peace talks to be commenced, it would not be surprising if at this point, seeing those troops continue their advance further into the Waikato

²⁵⁷ Alfred Domett, Memorandum on Roads and Military Settlements in the Northern Island of New Zealand, 5 October 1863, AJHR, 1863, A-8A, p.3.

²⁵⁸ D.J. Gamble, 4 January 1864, Journals of the Deputy Quartermaster General, pp.78-79, WO 33/16, Archives NZ.

²⁵⁹ See Memoranda and Correspondence on the Subject of the Tauranga Expedition, AJHR, 1864, E-2, pp.7-15; Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims*, Wellington: Legislation Direct, 2004, pp.84-87.

²⁶⁰ Grey to Pene Te Wharepu and the chiefs of Waikato, 16 December 1863, AJHR, 1864, E-2, pp.4-5.

²⁶¹ *ibid.*, p.5.

²⁶² Grey to Cardwell, 30 November 1864, GBPP, 1865 [3455], p.15.

district, Kingitanga leaders did not begin to entertain serious doubts as to the intentions of Grey and his ministers.

The Ngati Mahanga rangatira Wiremu Nera reported a conversation he had had with Cameron at Ngaruawahia ten days or so after its capture, in which the General had declared that 'I thought that when I arrived at Ngaruawahia it (the war) would end here. Now they are still determined on fighting. I have no thought about the Waikatos; the Waikatos are dead (utterly defeated); but the Ngatimaniapoto still survive.'²⁶³ But although Grey undoubtedly thought this useful evidence of the Maori determination to fight on (and no doubt forwarded the report to the Colonial Office for this very reason), Nera encountered a different attitude when he met with Wiremu Tamihana at Maungatautari. There the chief declared:

I don't say that peace is made. The gift (Koha) to your fathers and younger brothers is this, Meremere has been given up, and Rangiriri and Paetai and Rauwhitu, and Ngaruawahia and this flowing stream. They are my gift to your fathers and brothers; as for me, I shall remain here. If the Governor follows me here, I shall fight. If not I shall remain quiet.

However, when peace is made let it include Waikatos, Ngatimaniapoto, and Taranaki. Then only would it be good. But if the General goes to Waipa (to attack) the Ngatimaniapoto I shall be there.²⁶⁴

Nera later travelled to Paterangi where he was met by a large body of Ngati Maniapoto, whose speakers declared their determination not to be taken to the mountains but to die in the Waikato alongside and 'with the Waikatos'.²⁶⁵ Clearly the plan of attempting to split Waikato proper from Ngati Maniapoto was hardly viable at this time, notwithstanding ongoing rumours to the contrary.²⁶⁶ While at least some

²⁶³ Account of Wiremu Nero's visit to Maungatautari, n.d., encl. in Grey to Newcastle, 17 February 1864, AJHR, 1864, E-3, p.26. Nera arrived at Ngaruawahia on 20 December 1863, according to one British account. D.J. Gamble, 4 January 1864, Journals of the Deputy Quartermaster General, pp.77-78, WO 33/16, Archives NZ.

²⁶⁴ Account of Wiremu Nero's visit to Maungatautari, n.d., encl. in Grey to Newcastle, 17 February 1864, AJHR, 1864, E-3, p.26.

²⁶⁵ *ibid.*, p.27.

²⁶⁶ One official British report from January 1864 claimed that 'since Rangiriri the Waikatos have given vent to their feelings of disgust with the Ngatimaniapotos, who, while the former were fighting at

Kingitanga leaders seemed willing to acknowledge the British conquest and occupation of lands north of Ngaruawahia as the price to be paid for brokering an overall peace deal, it was clear that any further incursion south of this would be resisted by the combined Kingitanga forces.

Cameron and his troops made a slow advance up the Waipa River towards the important settlement of Rangiaowhia. Ongoing logistical difficulties hampered their movement, but by 28 December 1863 Cameron had pushed up as far as Whatawhata, some 14 miles beyond Ngaruawahia.²⁶⁷ On 1 January 1864 the main force moved a further three miles on to Tuhikaramea, from where they caught their first glimpses of new and apparently formidable Kingitanga fortifications in the distance.²⁶⁸ One report from 15 January 1864 stated that Wiremu Nera had given orders that he would ‘not allow any Europeans to be murdered on his lands.’ The report added that:

This may probably account for the impunity with which we can move about within several miles of the camp, and for no attempt having been made to pick off sentries at the outposts. It has been rather a matter of surprise, that, with so many Ngatimaniapotos close to us, there has been no annoyance hitherto.²⁶⁹

The Kingitanga forces were, however, at this point more concerned with constructing and completing their defences than with conducting the sorts of lightening raids that were a feature of the early phase of the war. On 14 January Cameron and his officers reconnoitred the Kingitanga fortifications from a high hill less than two miles from their camp at Tuhikaramea. According to Gamble’s subsequent report:

These “pahs,” or rather entrenched works, are disposed with a view of blocking the main approaches to Rangiaowhia [sic], the head quarters of the Ngatimaniapotos.

Rangiriri, were plundering their houses behind their backs at Paetai and farther up.’ D.J. Gamble, 4 January 1864, Journals of the Deputy Quartermaster General, p.77, WO 33/16, Archives NZ.

²⁶⁷ D.J. Gamble, 4 January 1864, Journals of the Deputy Quartermaster General, p.79, WO 33/16, Archives NZ.

²⁶⁸ *New Zealand Herald*, 7 January 1864; D.J. Gamble, 4 January 1864, Journals of the Deputy Quartermaster General, p.79, WO 33/16, Archives NZ.

²⁶⁹ *New Zealand Herald*, 19 January 1864.

To return to Ngaruawahia, one main road leads up the Horatio [sic] (or Waikato) River by Kirikiriroa, and is blocked at Te Pura. Another main road or track leads by Whata-Whata on the Waipa, over a central ridge of the delta formed by the two rivers, and is blocked by the pahs of Piko Piko, “Pa-te-rangi,” Te Ngako, and Rangiatea. The strength of all these pahs, the nature and extent of their defences, and the numbers of the enemy at each, were variously, but not very reliably, reported.

“Piko Piko” and “Pa-te-rangi” were visible from the hill top at about ten miles in a direct line, but little could be ascertained from inspection at such a distance beyond that the positions appeared to be of formidable strength generally.²⁷⁰

As early as 9 January 1864, in fact, it had been reported that these were ‘very strong positions, most favourable for defending’ and certainly ‘much stronger’ than those at Rangiriri.²⁷¹ The Kingitanga party were said to be determined to make a stand and numbered about 1000, ‘consisting of the Ngatimaniapotos and others of the Waipa tribes’.²⁷²

On 28 January 1864 Cameron and his troops pushed up further to Te Rore, just three miles from the entrenchments at Paterangi, where Maori were busily seen completing earthworks.²⁷³ Ongoing difficulties in shoring up the British supply lines had provided ample opportunity for this defensive line to be completed by late January 1864.²⁷⁴ Now that the British were closer, it quickly became apparent that Paterangi and its associated chain of pa were not just formidable but was perhaps the most ambitious chain of Maori fortifications ever established. It had taken a major investment of Kingitanga resources – up to 2000 men at peak strength – to construct and then garrison the Paterangi posts, consisting of at least four large pa covering an area of about six miles, reflecting the strategic and economic importance of the lands to the

²⁷⁰ D.J. Gamble, [?] February 1864, Journals of the Deputy Quartermaster General, p.87, WO 33/16, Archives NZ.

²⁷¹ *New Zealand Herald*, 11 January 1864.

²⁷² *ibid.*

²⁷³ *Daily Southern Cross*, 2 February 1864.

²⁷⁴ Belich, *New Zealand Wars*, p.160.

south.²⁷⁵ Even the normally gung-ho editorial writers for the major European newspapers were troubled. In a lengthy piece published in the *Daily Southern Cross* late in January the magnitude of the task confronting Cameron was fully outlined. The newspaper declared that:

We look upon the impending struggle as sealing the doom of Maoridom for ever; but we do not expect to hear that the Maori posts have been carried by assault. The Maoris have taught us a lesson in the construction of field fortifications which renders it necessary to calculate how far it would be justifiable to rush their works. They have the art of so constructing their defences as to give their strongest points the appearance of weakness; and to their credit be it spoken, they have likewise made it clear to our comprehension that they can defend their works with resolution. Opposed to such a foe, and approaching to attack extensive fortifications which they have spent months in strengthening, whilst the General was compelled to look on, without possessing the means of advancing and maintaining his ground after defeating them, it need not be expected that everything will be carried by a rush...It will be seen, therefore, that the work before General Cameron is the most serious he has yet encountered in this country.²⁷⁶

By early February 1864 Cameron had concluded that Paterangi was indeed a formidable defensive line which defied easy capture. As Pugsley notes, the line of fortifications at Paterangi far exceeded the engineering achievements previously admired by the British at Meremere and Rangiriri, and some officers refused to believe that such a complex and intricate series of defences could have been planned and developed by Maori alone without the assistance of renegade Pakeha professionals.²⁷⁷

²⁷⁵ *ibid.*, pp.160-161.

²⁷⁶ *Daily Southern Cross*, 27 January 1864.

²⁷⁷ Chris Pugsley, 'Walking the Waikato Wars: Bypassing the Maori Maginot Line at Paterangi', *New Zealand Defence Quarterly*, no.16, Autumn 1997, p.32. Cowan noted that 'It was difficult to convince some of the Regulars that, like Kawiti and Pene Tauhi in 1845, the men who drew the lines of the Paterangi redoubts and intricate trench-system, though none of them held a Royal Engineers commission or had gone through a staff college course, were military engineers of a high order.' Cowan, *New Zealand Wars*, vol.1, p.341.

Prospects for a rapid British advancement literally sank on 8 February 1864, when the steamer *Avon* snagged on some submerged branches in the Waipa River and went under.²⁷⁸ A replacement vessel, the *Koheroa*, was rushed into service in order to ferry essential supplies upstream but meanwhile orders for an advance were countermanded.²⁷⁹ Meanwhile, on the same evening that the sinking occurred, Grey arrived at the Te Rore camp to inspect proceedings. One correspondent noted that 'Grey had an opportunity of judging of the strength of Paterangi as far as appearances can guide him; and of the inveterate hostility of the Ngatimaniapoto'.²⁸⁰ The same reporter wondered whether, despite having 'only twelve times as many fighting men in the field as the Maoris', the British advance would 'not be till some remote period of history, when in the course of nature the Maori race shall have died out and there shall not be even one to face us and turn us back again.'²⁸¹

Cameron's cautious approach was perhaps understandable under the circumstances, however, and while he contemplated his options, an advance guard of 600 troops had established a post within 1500 yards of the Paterangi entrenchments.²⁸² Some long range and mostly ineffectual sniping followed, before a more significant engagement on 11 February 1864.²⁸³ Close to the advance camp was an old pa site of the Ngati Apakura at Waiari, on a bend on the south bank of the Mangapiko River. This position was about one mile south of Paterangi.²⁸⁴ From here about 100 Kingitanga fighters planned to hide themselves before launching an early morning attack on the British position with the assistance of reinforcements from the main defensive line. Instead, encountering a group of about 50 British soldiers bathing in the river with a covering party of just 20 men, the King party could not resist launching an unplanned ambush earlier in the afternoon. It appears that the decision to do so may have been

²⁷⁸ Foljambe, *Three Years on the Australian Station*, p.39.

²⁷⁹ D.J. Gamble, 4 March 1864, Journals of the Deputy Quartermaster General, p.93, WO 33/16, Archives NZ.

²⁸⁰ *New Zealand Herald*, 12 February 1864. The same article carried a report that Grey's party had been fired upon and baggage seized. It was later revealed that some of the Transport Corps responsible for conveying the governor's luggage had 'helped themselves to the creature comforts of Sir George and his friends, got drunk, and imagined the rest.' *New Zealand Herald*, 19 February 1864.

²⁸¹ *New Zealand Herald*, 12 February 1864.

²⁸² Featon, *Waikato War*, p.71.

²⁸³ Neville Ritchie, *The Waikato War of 1863-64: A Guide to the Main Events and Sites*, Hamilton, Department of Conservation, 2007, p.22.

²⁸⁴ *ibid.*, p.21; Malcolm McKinnon (ed.), *New Zealand Historical Atlas*, Auckland: David Bateman, 1997, (Plate 38: Te Raupatu o Waikato); Cowan, *New Zealand Wars*, vol.1, p.347.

made in response to fears that they had been discovered in their hiding places.²⁸⁵ Although having the benefit of surprise, the Kingitanga party were quickly outnumbered as more than 200 reinforcements arrived on the scene and engaged them in heavy fire. British casualties included six dead and a similar number wounded, while it was estimated that there were at least 35 killed and 30 wounded on the Maori side.²⁸⁶ Thus it would appear that Maori losses at Waiari may have been almost as great as those suffered at Rangiriri.

A note of caution is necessary, however: Belich does not even mention this engagement, and we know from his work that there was a more or less consistent British tendency to inflate Maori casualty figures. On the other hand, the British claimed to have counted 28 Maori bodies; others died later of their wounds or fell in the river and were not recovered.²⁸⁷ Contemporary estimates for the number of Maori killed at Waiari range between about 25 to more than 60, with most estimates in the region of between 35 and 41.²⁸⁸ The figure of 25 was reported in the *New Zealand Herald* a few days after the battle and was said to have come from an unnamed Kawhia Maori, though the figure of just ten wounded, some of them dangerously, was much lower than most other reports.²⁸⁹ Colonel Waddy, who was in command of the British forces at the camp, observed that in addition to the 28 Maori counted dead, from all reports received, it seemed likely that a further five or six had also been killed. There seems no reason to doubt that the Kingitanga tribes had suffered a very severe loss at Waiari, with a likely total of around 35 deaths resulting from the engagement.

The available evidence also suggests that Ngati Maniapoto and Ngati Hikairo suffered very substantially in the battle. Cowan states that many of those engaged in the battle 'were Kawhia men who had only recently arrived at Paterangi. One of their principal

²⁸⁵ R.C. Mainwaring to Colonial Secretary, 12 February 1864, AJHR, 1864, E-3, p.26.

²⁸⁶ Ritchie, *The Waikato War*, p.23; *New Zealand Gazette*, no.5, 15 February 1864, pp.51-53 (various reports); Featon, *Waikato War*, pp.73-74; Brigade Major John Bowdler to Colonel Waddy, 12 February 1864, *New Zealand Gazette*, no.7, pp.80-81.

²⁸⁷ Lieutenant-Colonel H.M. Lovelock to Colonel Waddy, 12 February 1864, AJHR, 1864, E-3, p.24.

²⁸⁸ D.J. Gamble, 4 March 1864, Journals of the Deputy Quartermaster General, p.94, WO 33/16, Archives NZ; Foljambe, *Three Years on the Australian Station*, p.40. One British soldier claimed to have counted 45 Maori bodies and added that 'other parties at different places about the scene, tell me that they saw between 50 and 60 bodies lying about.' Edward Tedder, 11 February 1864, Diary, MS-Papers-8104, ATL.

²⁸⁹ *New Zealand Herald*, 19 February 1864.

chiefs killed was Te Munu Waitai, of Ngati-Hikairo; others were Taati, Ta Kerei, Taare, Te Kariri, and Hone Ropiha (Ngati-Maniapoto).²⁹⁰ The *Herald* report cited above stated that among those killed were a son of Tikaokao and the nephew of Takerei. It added that ‘All belonged to Kawhia, with two exceptions to the Ngatimaniapoto tribe.’²⁹¹ Rewi Maniapoto many years later declared that he had taken part in the Waiari engagement.²⁹² The extent, if any, of involvement in the battle on the part of iwi other than Ngati Maniapoto and Ngati Hikairo is unclear from the available documentary record, though one report described a chief killed in the battle as coming from Te Urewera.²⁹³

The number of casualties at Waiari, although high in human terms, was low in terms of the estimated peak Kingitanga force at Paterangi of some 2000. Nor does the engagement appear to have had any particular strategic significance (this perhaps being the reason why Belich does not mention the battle). An opportunistic attack had gone badly wrong, but despite the relative success of the Waiari engagement from a British perspective, it had done little to alter the major dilemma confronting the British forces at this time – how to tackle Paterangi.

One report from a few days after the Waiari conflict stated that ‘white flags were flying all over Paterangi, and all sorts of wild rumours were going about that the natives were desirous of peace, and were going to send in their submission, and had written to the General and had said that they were starving, crowded with wounded, and unable to stir out of their pah without being exposed to destruction and their pah to capture, and peace, according to universal agreement, was to be on the *tapis* this morning [i.e., under consideration].’²⁹⁴ According to the same report, those rumours

²⁹⁰ Cowan, *New Zealand Wars*, vol.1, p.349. See also Frank Kingi Thorpe, Te Rohe Potae, Nga Korero Tuku Iho o Te Rohe Potae, 2nd Oral Traditions Hui, Waipapa Marae, Kawhia, 29-30 March 2010, p.243.

²⁹¹ *New Zealand Herald*, 19 February 1864. See also *New Zealand Herald*, 20 February 1864. This report also named a few of those killed, but in some cases gave different iwi affiliations to those employed by Cowan. Hone Ropiha, for example, described as Ngati Maniapoto by Cowan, was listed as Ngati Hikairo in the contemporary report.

²⁹² Mackay to McLean, 10 July 1873, AJHR, 1873, G-3, p.6.

²⁹³ *Te Waka Maori o Ahuriri*, 5 March 1864. Another report noted a Waikato (proper) casualty from the battle, Raniera, though he was described as Ngati Rora elsewhere. *New Zealand Herald*, 20 February 1864.

²⁹⁴ *New Zealand Herald*, 20 February 1864.

were soon scotched,²⁹⁵ and one Maori visitor to the Pikopiko pa (Te Ao-o-te-Rangi) returned to the British camp reporting that although Waikato proper were quiet, 'Ngatiraukawa and others who have not already suffered were excessively bouncible in their speeches, telling him that they were tired of waiting, intimating that they would commit murders, &c., if the General did not attack their pas.'²⁹⁶ British supply lines had been severely tested, and given that more than 1000 Maori had been gathered at Paterangi and elsewhere along the defensive line since at least early January 1864 (and probably in smaller numbers since the Rangiriri battle) it would not be surprising if pressure on Kingitanga resources had contributed to a desire to get on with what both sides believed would be the decisive battle of the war.

Firstly, though, Cameron had to work out how to take Paterangi without incurring massive casualties. His eventual answer was not to even attempt to do so, but rather to outflank the Paterangi defences thereby hoping to draw the Kingitanga forces into battle in less easily defended positions while securing the vital district of Rangiaowhia, from where much of the Kingitanga supplies had been sourced. Although he was successful in this objective, Cameron's subsequent target was a source of great controversy.

2.7. Rangiaowhia

At 11pm on the evening of 20 February a column of some 1230 lightly provisioned troops marched swiftly and in silence past the Paterangi defensive line, aided by two part-Maori guides (James Edwards and John Gage) with local knowledge of the terrain and followed by a lengthy supply column.²⁹⁷ The long line of troops marched in single file under an overcast sky, passing close enough to the Paterangi earthworks to hear the sentries calling to one another 'that all was well, and administering words

²⁹⁵ However, another account from this period suggests that at the very least there may have been a genuine debate among the defenders of Paterangi as to the merits of negotiating peace terms. According to this report, one of the reasons given for hoisting a flag of truce was that a letter was being prepared to send to the governor, subject to the final approval of Rewi, Tikaokao and 'the chiefs of other pas at present engaged in the king's cause.' *Daily Southern Cross*, 20 February 1864. No letter appears to have been sent to Grey from Kingitanga leaders at this time, suggesting either that no agreement was reached or (perhaps more likely) that subsequent events quickly overtook this proposal.

²⁹⁶ R.C. Mainwaring to Colonial Secretary, 12 February 1864, AJHR, 1864, E-3, p.26.

²⁹⁷ Belich, *New Zealand Wars*, p.163.

of caution to be on the alert.’²⁹⁸ Defensive fortifications blocked the main road from Te Rore to Te Awamutu and Rangiaowhia, as a result of which the line of march followed across the Mangapiko River at the site of the recent battle at Waiari and along a poorly defined cattle track over a fern ridge before coming out on a dray road used to convey goods between Rangiaowhia and the Puniu River.²⁹⁹ One of the reasons proffered for undertaking a difficult night march was the concern that if their movement was detected the church and settler homes at Te Awamutu and Rangiaowhia would be torched before they got to either place. But when the troops reached Te Awamutu at about 7am they found that ‘the church and settlers’ houses were fortunately...untouched; not even a pane of glass in the church having been broken.’³⁰⁰ While some of those on the march were pleasantly surprised by this discovery, it was wholly consistent with undertakings made by the Kingitanga force assembled at Paterangi.³⁰¹

Te Awamutu itself appears to have been largely deserted at the time British troops arrived, other than for a few ‘missionary Maori’ left behind to look after the church and mission property.³⁰² In any case, no resistance was offered to the British occupation and Cameron therefore decided to immediately push on to Rangiaowhia, some three miles further along the road. According to Cameron’s official report of what followed next he found the settlement ‘nearly deserted’, though:

The few natives who were in the place were completely taken by surprise, and refusing to lay down their arms, fired on the Mounted Royal Artillery and Colonial Defence Force, whom I sent on in advance of the column. The natives were quickly dispersed, and the greater part escaped, but a few of them taking shelter in a whare, made a desperate resistance, until the Forest Rangers

²⁹⁸ *Daily Southern Cross*, 25 February 1864.

²⁹⁹ D.J. Gamble, 4 March 1864, Journals of the Deputy Quartermaster General, p.95, WO 33/16, Archives NZ.

³⁰⁰ *Daily Southern Cross*, 25 February 1864.

³⁰¹ Neha Ngarua, who had acted as a Kingitanga spokesperson during the brief truce after Waiari, told the British that ‘the churches at Te Awamutu and Rangiaowhia [sic] would not be burned or injured. Neither would the houses of settlers formerly residing in that district be damaged by any of those at the present time engaged in the war.’ *Daily Southern Cross*, 20 February 1864.

³⁰² *Daily Southern Cross*, 25 February 1864; Gustavus Ferdinand Von Tempsky, Memoranda of the New Zealand Campaign, pp.103-104, qMS-2008, ATL; Chris Pugsley, ‘Walking the Waikato Wars: Farce and Tragedy at Rangiaowhia, 21-22 February 1864’, *New Zealand Defence Quarterly*, Winter 1997, p.32.

and a company of the 65th Regiment surrounded the whare, which was set on fire, and the defenders either killed or taken prisoner.³⁰³

Cameron reported twelve Maori killed at Rangiaowhia and a similar number wounded, with 33 inhabitants taken prisoner, including 21 women and children detained. Ironically Rangiaowhia was held for only a matter of hours, with Cameron ordering his troops back to Te Awamutu later that day.³⁰⁴

By the morning of 22 February Cameron's plan to draw the Kingitanga forces out of their virtually impregnable line of fortifications appeared to have worked, and more than 700 Maori were observed travelling along the road from Paterangi to Rangiaowhia, with others seen heading for Kihikihi.³⁰⁵ A party of British troops despatched to Paterangi found the place entirely deserted and proceeded to occupy the site themselves to ensure the Kingitanga forces would not be able to return.³⁰⁶ By noon that same day reports came through to Cameron that the former Paterangi contingent had begun entrenching the site of an old pa at Hairini, on the road between Rangiaowhia and Te Awamutu, 'a position extremely strong by nature' on account of its elevated position.³⁰⁷

Cameron determined to launch an immediate attack, before the Kingitanga party had the opportunity to properly fortify their position. As Cameron described it, small detached parties of Kingitanga fighters posted about a mile in front of Hairini were pushed back by skirmishers from the 50th and 70th regiments, allowing two 6-pound Armstrong guns to be positioned about 500 yards from the Maori position.³⁰⁸ After several rounds were discharged, Cameron then ordered a storming party to advance on the position with fixed bayonets. According to his report:

³⁰³ Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, p.29.

³⁰⁴ One report noted that Rangiaowhia was held for 'not more than a couple of hours, and little booty was secured as loot'. The same report went on to note that when the settlement was reoccupied by troops a few days later they returned to Te Awamutu 'bringing with them an exceedingly large number of pigs, poultry, rabbits, and esculent [edible] vegetables, spears, mats, long and short-handled tomahawks, greenstones, guns, cartouche boxes, cooking utensils, clothing, &c, - scarcely a soldier returning without some trophy of victory.' *Daily Southern Cross*, 25 February 1864.

³⁰⁵ Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, p.29; *Daily Southern Cross*, 25 February 1864

³⁰⁶ Colonel Waddy to Assistant Military Secretary, 22 February 1864, AJHR, 1864, E-3, pp.30-31

³⁰⁷ Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, p.29.

³⁰⁸ *ibid.*, p.30.

The natives fell hurriedly back before the leading files of the 50th could reach them with the bayonet, and retired through a swamp in the direction of the Mangatautari [sic] road. The cavalry had an opportunity of charging them as they retreated, and did some execution. They made no further stand, but fled precipitately towards Mangatautari, leaving almost everything but their arms behind them.³⁰⁹

The British lost just two men killed in this engagement, with a further 15 injured.³¹⁰ One official report noted that ‘considering the heavy fire at times delivered from the enemy’s line, it is marvellous they are so few.’³¹¹ The number of Maori casualties inflicted at Hairini is less clear. Cameron’s official account of the action noted that some 400 Maori had been present. He had not been able to ascertain the number, the general added, ‘but they must have had at least 30 killed.’³¹² Another official account stated that ‘The enemy’s loss is always most difficult to ascertain. For two or three days after the engagement dead bodies and wounded men were discovered hid in the thick fern and swamps.’³¹³ On the other hand Wiremu Tamihana asserted that no more than nine Maori had been ‘lost’ at Hairini. His letter to Maori on the East Coast suggested that many different iwi had been involved in the engagement. Tamihana wrote that:

On Sunday an attack was made on Rangiaohia, a stealthy assault (konihi) by the Pakehas. They fell (the Maoris), and six were killed in one place. Patene Poutama was taken prisoner. These men were attacked at night; the payment was eight, all officers. Enough of that.

On the night of Sunday, the pas of Paterangi, Puketoke, and Awheteki were evacuated. By the time the moon went down we had assembled at Te Raho; and when the morning star arose we were all at the Catholic Church. We

³⁰⁹ *ibid.*

³¹⁰ Cowan, *New Zealand Wars*, vol.1, p.360.

³¹¹ D.J. Gamble, 4 March 1864, Journals of the Deputy Quartermaster General, p.96, WO 33/16, Archives NZ.

³¹² Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, p.30.

³¹³ D.J. Gamble, 4 March 1864, Journals of the Deputy Quartermaster General, p.96, WO 33/16, Archives NZ.

cooked some food; and, when appetites were satisfied, had prayers. After prayers crossed over to Hairini to Tomo's pa. I proposed that I should lead the van with Ngatihaua, Ngatimaru, and Ngati Paua [sic]; that the Ngatiraukawa, Te Wharetoa [sic], and Urewera should have the flanks, and Ngatimaniapoto the rear. I preferred that there should be but few to advance in front, to be light, so as not to be eager to fight.

I spoke three times, but they would not listen; so Ngatiraukawa took the lead; after them Urewera; after them Tawharetoa [sic]; and after them Ngatimaniapoto. I called out, 'I shall not go with you; I shall stay and make entrenchments with Ngatimaru, Ngati Paou [sic], and Te Aua.' Those tribes then went on, and came to close quarters; the one with the bayonet, and the other with the tomahawk; 20 Pakehas fell. It was a fight hand to hand. Then came the cavalry, and Maori fled. In return Te Rangikaiwhirea, Pakira's son, was killed, also Amitai. The Ngatiraukawa lost two; Te Urewera two. Of Te Rangiwehewhi [Ngati Rangiwehewhi?], Taikatu was killed by a stray bullet. They now came on our party. I called out, 'Fire;' one volley was fired, and every horse was killed; none escaped. There was an end of them. The infantry then charged. Three volleys were poured on them, and that was finished. Another charge was then made, and Ngatimaniapoto, Ngatiraukawa, and Tawharetoa [sic] fled. My party then retired. Not one was taken, nor a single Ngatipaoa or Ngatimaru. Of Te Aua tribe, Keto Ki Waho was (taken or killed), and Paora Pipi of Ngatitahinga.

Ngatiraukawa lost three.

Urewera " " two.

Tuwharetoa " " one.

These were all our dead. As for the Pakehas, they had the bed of death to themselves. The General has proposed peace.³¹⁴

³¹⁴ Wiremu Tamihana to Rawiri and Tawaha, 28 February 1864, AJHR, 1864, E-3, p.40. The figure of nine 'lost' requires some close reading of the text. This was Belich's conclusion. Belich, *New Zealand Wars*, p.164.

Grey forwarded Tamihana's letter to the Secretary of State for the Colonies on the basis that it provided an interesting example of 'the efforts which are made, by describing imaginary successes, to induce distant tribes to join the rebels, and thus to keep the war alive.'³¹⁵ Undoubtedly there were some inaccuracies in the letter (there is no evidence that Cameron proposed peace at this time, for example).³¹⁶ But that does not mean that it should be dismissed as merely an amusing piece of war propaganda, as Grey sought to imply. Indeed, much of the information is confirmed by other sources. We know that a large body of Te Urewera fighters had reached Waikato by this time and were involved in the battle alongside other iwi from outside the district.³¹⁷ We also know that Kereopa Te Rau from the Te Arawa iwi Ngati Rangiwhewehi was also present at Hairini on the day and it is said witnessed the death of his sister (more than likely the Taikatu referred to as having been killed by a stray bullet).³¹⁸ His estimate of nine killed (or rather 'lost', which might also have included any captured by the British) cannot, therefore, be dismissed quite so simply, even if it stands in marked contrast to one Imperial soldier who estimated as many as 70 or 80 Maori killed in the action.³¹⁹

One contemporary newspaper report from a correspondent accompanying the troops noted that no accurate estimate of the losses sustained by the Kingitanga tribes at Hairini had been compiled, but that a figure of around 29 killed appear to be the most common, if possibly incomplete, guess.³²⁰

There is no way of knowing for sure whether Tamihana's estimate of around nine killed or the more common British one of around 30 dead on the Kingitanga side is more accurate. But if it was the latter then more Maori appear to have been killed at Hairini than Rangiaowhia, even though it is the latter which has dominated the historical record.

³¹⁵ Grey to Newcastle, 7 March 1864, AJHR, 1864, E-3, p.40.

³¹⁶ However, Cameron did give a copy of the proclamation outlining the terms of peace to a Maori who had visited the British camp, which might explain this reference. See *Daily Southern Cross*, 26 February 1864.

³¹⁷ Cowan, *New Zealand Wars*, vol.1, p.357. One contemporary report stated that 'This incipient redoubt appeared to have been fixed upon as the rallying point for all out-siders'. *Daily Southern Cross*, 25 February 1864.

³¹⁸ Steven Oliver, 'Te Rau, Kereopa ?- 1872', DNZB, vol.1, p.503.

³¹⁹ Edward Tedder, 21 February 1864 [sic], Diary, MS-Papers-8104, ATL. Tedder appears to have been a day behind the actual date in his diary entries.

³²⁰ *Daily Southern Cross*, 25 February 1864.

One of the reasons why Rangiaowhia has attracted so much attention and condemnation was that it was an attack on what was a peaceful, undefended village. Cameron reported that the inhabitants of the unfortified and ‘nearly deserted’ settlement of Rangiaowhia appeared much surprised by the early morning raid on their village.³²¹ Perhaps horror might be a better term for it, but in any case in Maori tradition the reason for that surprise is quite clear. Rangiaowhia was not a fighting pa, but a place of refuge for many women, children and elderly men. The Kingitanga had been given to understand that women and children would not be killed, and according to Wiremu Tamihana’s later petition to Parliament they had taken on board British criticism of the presence of both at Rangiriri. He declared:

O friends, I did have respect for the laws of England. Your word did come to me, saying that you were averse to ambuscades and killing those that were wounded ; whereupon I exhorted my tribes to give over committing such acts. They accordingly forsook such acts, and shaped their course by the laws of England, from Meremere right on to the time of the fall of Rangiriri. Then my wives and children fell there. Then again was I condemned by the laws of England because of the women and children who died with the men of strong hand that fell in the fighting pa. I then left that lesson (learnt there) in my mind...I divided off Rangiaohia to be a place of abode for the women and children, and I drafted off some men to carry food to Waipa – that is to say, to Paterangi. No sooner did the General see that we had all assembled there, than he turned round and commanded his soldiers to go to Rangiaohia, to fight with the women and children.

E hoa ma, i arohatia ano e ahau nga ture o Ingarangi i tae mai ano to koutou nei kupu ki a au, i mea, e kino ana koutou ki te konihi, ki te patu hoki i te kai-a-kiko, katahi au ka mea ki oku iwi, kia kati te mahi i aua mahi, na, mutu ake ta ratou mahi pera, riro ana i nga Ture o Ingarangi, no Meremere ano ka timata, tae noa ki Rangiriri, no reira ka mate aku wahine, tamariki, ki reira ka tae mai ano te ture o Ingarangi ki te whakahe i au, mo nga wahine, mo nga

³²¹ Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, p.29.

tamariki ano hoki, i mate tahi me nga tangata ringaringa kaha ki roto i te pa whawhai, heoi ka waiho i roto i toku ngakautaua ako...[K]atahi ka wehea e au ko Rangiaohia te kainga mo nga wahine, mo nga tamariki, ka wehea atu etehi tane ki reira hei hari kai mai ki konei ki Waipa nei, ara ki Paterangi. Te kitenga o te Tianara kua poto mai matou ki tera wahi, katahi ka tahuri ka whakahau i ana hoia kia haere atu ki Rangiaohia ki te whawhai ki nga wahine ki nga tamariki.³²²

After Rangiaowhia, Tamihana added, 'I discovered that this would be a very great war, because it was conducted in such a pitiless manner.'

As noted above, Tamihana had written to some East Coast Maori just a few days after the attack on Rangiaowhia, describing it as 'a stealthy assault (konihi)'.³²³ There is no doubt that from the time of the attack onwards, the Kingitanga tribes consistently regarded the whole affair as violating what they understood to be the mutually agreed rules of warfare, with those killed not the unfortunate casualties of war but rather the victims of kohuru (murder). It is this conviction which has helped to sustain a deep sense of grievance and sometimes anger at the events which took place at Rangiaowhia over many generations.³²⁴ The pain of those events was vividly recounted by Hazel Coromandel-Wander of Ngati Apakura at the first Nga Korero Tuku Iho hui at Otorohanga in March 2010.³²⁵

As Belich concludes, there is a body of evidence pointing to some kind of message having passed between Cameron and the Kingitanga leaders in the aftermath of the Rangiriri battle.³²⁶ Even Grey had dwelt at length on this subject in a private letter to Newcastle shortly after the Rangiriri battle, and it was widely deemed a deplorable aspect of Maori warfare that women and children were often brought into defensive pa for their own protection and became caught up in the subsequent British pursuit. Progressive leaders such as Wiremu Tamihana were sensitive to such criticisms and as well-known reformers were not likely to have hesitated to make alternative

³²² Petition of Wi Tamihana Te Waharoa, 24 July 1865, AJHR, 1866, G-2, pp.4, 6.

³²³ Wiremu Tamihana to Rawiri and Tawaha, 28 February 1864, AJHR, 1864, E-3, p.40.

³²⁴ See Cathy Asplin, 'Rangiaowhia Remembrance', *Footprints of History*, no.25, May 2001, p.24.

³²⁵ Te Rohe Potae, Nga Korero Tuku Iho o Te Rohe Potae, 1st Oral Traditions Hui, Te Kotahitanga Marae, Otorohanga, 1-2 March 2010, pp.27-30.

³²⁶ Belich, *New Zealand Wars*, p.164.

arrangements. Indeed, Tamihana informed Parliament in one 1865 petition that an arrangement had been entered with Cameron. He declared that:

When it came to the (time of the) murder at Rangiaohia, then I knew, for the first time, that this was a great war for New Zealand. Look also: Maories have been burnt alive in their sleeping houses. Because of this, I did not listen to the words of the Pakehas disapproving of the evils of the Maories' mode of warfare, which partook of the nature of murder. When the women were killed at the pa at Rangiriri, then, for the first time, the General advised that the women should be sent to live at the places where there was no fighting. Then the pa at Paterangi was set aside as a place for fighting, and Rangiaohia was left for the women and children. As soon as we had arranged this the war party of Bishop Selwyn and the General started to fight with the women and children. The children and women fell there. Before this time our desire was great to put away the customs of our fore-fathers – ambuscades and skirmishing, and other modes of warfare by which the enemy would be destroyed. Do not say that the words of advice are thrown away upon us. No! the words of advice are regarded by us; it was the affair at Rangiaohia that hardened the hearts of the people. The reason was the many instances of murder.

No te taenga ki te kohuru i Rangiaohia, katahi au ka mohio he tino pakanga nui tenei, no Niu Tirenī. Titiro hoki, kua tahuna oratia nga tangata Maori ki roto i to ratou whare moenga. No konei au i kore ai e whakarongo ki nga kupu whakahe o nga Pakeha ki te kino o te whawhai a nga tangata Maori, ki te ahua kohuru. No te matenga o nga Wahine ki te pa i Rangiriri, katahi ka puaki te kupu a Te Tianara kia wehea nga Wahine ki nga kainga whawhai kore noho ai; katahi ka wehea te pa hei whawhaitanga, ko Paterangi, ko waiho a Rangiaohia mo nga wahine mo nga tamariki. Ka oti tenei te whakarite e matou, katahi ka hapainga te Ope a Pihopa Herewini raua ko Te Tianara ki te whawhai ki te tamaiti ki te wahine. Ka hinga i reira nga tamarki nga wahine.

I mua ake o tenei takiwa, ka nui to matou hiahia kia mahuetia nga ritenga a o matou tupuna, te konihi, me to urumaranga, me era atu ritenga e mate ai te hoa

rii. Kei ki koutou kaore e mana ia matou nga kupu whakamohio, kao, e mana ana ano. No Rangiaohia i poturi i te ngakau o te tangata; ko te take he nui no nga putake kohuru...³²⁷

When J.C. Firth and Charles Davis met with several Kingitanga leaders in 1869 in an effort to broker a peace deal, the issue of Rangiaowhia remained fresh in the minds of many. Whitiora Te Kumete told the visitors:

...here are your foul murders: - General Cameron told us to send our women and children to Rangiaowhia, where they should remain unmolested; but he went away from Paterangi with his soldiers after them, and the women and children were killed and some of them burnt in the houses. You did not go to fight the men; you left them and went away to fight with the women and little children. These things you conceal because they are faults on your side, but anything on our side you set down against us, and open your mouths wide to proclaim it. That deed of yours was a foul murder, and yet there is nobody to proclaim it.³²⁸

Among the many notes drafted by James Cowan in the course of research for his history of the New Zealand Wars was one detailing an interview with Te Wairoa Piripi, a Ngati Maniapoto veteran of the wars, who told the historian that:

After we had all left Ngaruawahia and assembled in our pa at Paterangi, a letter was sent to us by Bishop Selwyn and General Cameron, saying that it had been agreed by the missionaries and the Catholic Catechists that the women and children should retire to Rangiaowhia. The messenger who brought this letter was Wiremu Patena and he returned to Ngaruawahia. The soldiers came and they fought with us outside our pa but could not capture the fort. Then Bishop Selwyn left Paterangi and went with the army of soldiers to attack the women and children at Te Awamutu and Rangiaowhia.³²⁹...The men

³²⁷ Petition of Wiremu Tamihana, AJHR, 1865, G-5, reproduced in Evelyn Stokes, *Wiremu Tamihana: Rangatira*, Wellington: Huia Publishers, 2002, pp.441, 445.

³²⁸ Mr. Firth's Visit to the King Party, Waikato, 2 June 1869, AJHR, 1869, A-12, p.12.

³²⁹ Cowan's own editorial statement follows here: 'This of course is a purely Maori view, coloured by the mistaken idea that the Bishop was assisting the troops against the natives.' Bishop Selwyn did

who guided the soldiers were Hone Ketī (John Gage), a half-caste, and Himi Manuwao, a member of the Ngāti-Hikairo tribe. In the middle of the night the army marched, accompanied by the Bishop, and they came out at Titiwha, thence went on to Otawhao, and turning then reached Te Awamutu. It was daylight by the time they reached Rangiaowhia. That village was captured and Hoani Paapita and Ihaia (these men were both Catholics) were burned in the house set fire to by the troops.³³⁰

Another account from Raureti Te Huia stated that:

When the tribes stayed at Paterangi the soldiers arrived at Ngaruawahia. From there was given to Wiremu Patena to take the message of the General and the Bishop. “Return the women and children and leave only those who wield weapons.”³³¹

According to Selwyn’s biographer, during a temporary truce at Paterangi on 12 February 1864, the Bishop crossed over to the Kingitanga lines in order to conduct a burial service (for those killed at Waiari one day earlier). It was while Selwyn was with the King party that he was ‘told of the situation at Rangiaohia a few miles away’:

...and the Maoris expected him to confer with General Cameron and make sure that the people there were left unmolested. Word was sent from Paterangi to inform them of what they had told the Bishop, and the old men were advised to keep the women and children indoors while the troops were on the march towards the Hairini pa.³³²

indeed ride into Rangiaowhia alongside General Cameron, contributing to a Maori perception of his involvement in the attack (as evidenced by Tamihana’s statement). However, what this had to do with the question of whether Cameron communicated some kind of message to the Kingitanga that Rangiaowhia should be regarded as a safe haven is not clear. Selwyn’s supporters published a pamphlet containing testimony from Maori who stated that the Bishop had cared for the wounded at Hairini. See *Nga Minita i Roto i Te Whawhai* (translated in John H. Evans, *Churchman Militant: George Augustus Selwyn, Bishop of New Zealand and Lichfield*, London: Allen & Unwin, 1964, Appendix III).

³³⁰ Rangiaowhia and Hairini notes, James Cowan, Papers, MS-Papers-0039-41C, ATL.

³³¹ Raureti Te Huia, ‘Te Pakanga ki Waikato’, Cowan Papers, MS-Papers-0039-11, ATL. (Translation by Racheal McGarvey).

³³² Evans, *Churchman Militant*, p.93.

If the Kingitanga leaders had been advised in the wake of the Rangiriri battle that it was wrong for them to take women and children into their fighting pa, then it would be understandable if they assumed that, having advised the British commanders via Selwyn as to the location of such non-combatants, that site would be spared full frontal military assault.

Selwyn's presumed role in passing on such a message, combined with his unfortunate presence at Rangiaowhia, made the missionaries obvious targets of Maori anger in the wake of Rangiaowhia. The events there were cited among the reasons for the killing of Carl Sylvius Volkner at Opotiki in March 1865.³³³ Fellow missionary, Thomas Samuel Grace, who somehow managed to escape a similar fate, later wrote that:

Twice...I have nearly lost my life on account of the burning of the women at Rangiaowhia [sic]. Often I have seen the Maoris as much excited at our cruelties as we are now at theirs. In these horrible doings it must be remembered that we have been the first to begin them.

Wherever we go now as Missionaries, whether among the Friendlies or Kingites, the burning of the women at Rangiaowhia meets us, and, because the Bishop was with the troops at that time, they fully believe that his advice and knowledge of the country had led to Rangiaowhia being surprised and old people, who had been sent there for safety, killed.³³⁴

Years later, the events at Rangiaowhia were still being thrown back at Grace. During an 1877 visit to the south Waikato settlement of Waotu:

One man became quite furious declaring that they had sent the old people and women to Rangiaowhia [sic] at our request; and that he himself saw the Bishop

³³³ The Committee of Ngatiawa, Whakatohea, Urewera and Taranaki to the Office of the Government, 6 March 1865, AJHR, 1865, E-5, pp.9-10.

³³⁴ Cited in Evans, *Churchman Militant*, pp.93-94. It was Volkner, in fact, who in January 1864 had forwarded Grey a carefully drawn plan of the Rangiaowhia pa. Paul Clark, *'Hauhau': The Pai Marire Search for Maori Identity*, Auckland: Auckland University Press/Oxford University Press, 1975, p.35.

leading the troops; that they rode off to Rangiaowhia, killed a great number and burnt the house, and that his own brother was burned!³³⁵

Although the evidence for some kind of message having been conveyed to the King party (most likely after Rangiriri) concerning women and children seems convincing, Belich doubts whether Cameron ‘would have committed himself to not attacking so important an economic target, the very hub of the Kingite supply system.’³³⁶ As he adds:

Further, if the Maoris genuinely believed that Rangiaowhia had been declared immune from attack, why did they go to such enormous trouble to block all major routes to it, building no less than four large *pa* for the purpose?³³⁷ The answer may be that Selwyn and Cameron, concerned at the killing of non-combatants at Rangiriri, intimated to the Maoris that women and children would be safeguarded where possible, and that they should be kept out of the firing lines – without specifying any sacrosanct ground. Subsequently, the Maoris misunderstood this, or raised the issue in response to one-sided aspersions cast on their own actions. Non-combatants may have been intentionally killed at Rangiaowhia, and some certainly were at the later engagement of Orakau, but accusations of British duplicity might be better directed at their conduct at Rangiriri.³³⁸

The fact remains, however, that Kingitanga leaders genuinely believed there had been some kind of undertaking made with respect to Rangiaowhia. As we saw earlier, Tamihana had raised the treacherous nature of the attack in a letter just a few days after the invasion, so Belich’s suggestion that the issue was later raised in response to British complaints about Maori conduct does not seem to stack up. Perhaps there was some misunderstanding over a more limited exchange of views (probably involving a British warning after Rangiriri that women and children should be kept out of fighting

³³⁵ Cited in Evans, *Churchman Militant*, pp.94-95.

³³⁶ Belich, *New Zealand Wars*, p.164.

³³⁷ On the other hand it should be noted that a Maori visitor to Rangiaowhia a few days after the attack declared that ‘There were no defences at this place, nevertheless a battle had been fought here’.

Account by Raniera Te Ihooterangi of his voyage from Wellington to Auckland, and his trip up the Waikato, as far as Mangatawhiri, 19 March 1864, IA 14/22, Archives NZ.

³³⁸ Belich, *New Zealand Wars*, pp.164-165.

pa, followed up by the message conveyed from Kingitanga leaders through Selwyn in February 1864 that Rangiaowhia had been set aside as their place of refuge, leading to a natural assumption that it would not be attacked).

On the other hand, the British actions at Rangiriri alluded to by Belich certainly highlighted the fact that even the highest-ranking British officers were fully capable of acts of duplicity when it suited their purposes. The British were desperate to capture Rangiaowhia. What chance they might have sought to lull Kingitanga leaders into a false sense of security or throw them off the trail by attempting to suggest otherwise? There is no hard evidence, of course, and the scenario is raised merely as a further one to be added to Belich's list of possibilities. But regardless of whether a specific undertaking was made, broader questions remain around the morality of launching an armed raid and cavalry charge on a largely defenceless village community of women, children and the elderly. And the great irony is that, in the wake of Rangiaowhia, Kingitanga leaders probably felt even more reason to revert to the practice of bringing their women and children into fighting pa for the sake of their defence.³³⁹ In this respect those women who were killed at Orakau would likely not have suffered such a fate if it were not for perceptions of British treachery following the invasion of Rangiaowhia a month earlier.

There are a number of further issues pertaining to the attack or raid on Rangiaowhia including the torching of a whare with a number of occupants inside, the charred remains of seven of whom were later removed from the hut, the killing of non-combatants who may have been attempting to surrender, and the actions of troops in firing upon residents of the village who had taken refuge in the Catholic church. A number of different accounts of these incidents have been located, though it is fair to say that most of these were written by those who took part in the attack on Rangiaowhia. There appear to be fewer written accounts from survivors of the attack. This should be borne in mind in any assessment of the available evidence.

³³⁹ The other great irony, of course, was that Maori were condemned for putting women and children in harm's way by this course of action, but the fact that Crown troops were responsible for their harm was somehow considered acceptable.

There seems general agreement, however, that the initial cavalry charge on the settlement provoked panic and alarm among the terrified residents, who were sent scurrying for cover wherever they could find it. Gustavus von Tempsky, referring to Bishop Selwyn, recalled that:

It must have been with a sore heart that he heard the peace of the morning shattered by the crack of carbines as Nixon's cavalry galloped into the village amongst his startled flock who – men, women and children – ran to escape the galloping horsemen. Some took refuge in the churches, while others dashed into their thatched houses and opened fire on the attackers, the women assisting their menfolk.³⁴⁰

At this point the settlement was a scene of chaos. As Chris Pugsley describes it, 'screaming women and children ran for shelter in the buildings or out into the fields and swamps surrounding the settlement.'³⁴¹ Thirty-three prisoners were rounded up and caught, 21 women and children and 12 (probably elderly)³⁴² men.³⁴³ Attention then turned to those where into which a number of the villagers had fled for cover. Six men and a boy were seen to enter one where in particular, and orders were given to a soldier from the 65th Regiment by the name of McHale to enter and take those inside prisoners.³⁴⁴ No sooner had the soldier approached the entrance to the where than he was shot and killed. According to the recollection of one of those who participated in the attack, other troops already gathered around the where proceeded to riddle it with steady gunfire:

The firing soon brought together the whole of the cavalry; and, after a while, the 65th and Forest Rangers, also the General and staff, came up. After General

³⁴⁰ Pugsley, 'Walking the Waikato Wars: Farce and Tragedy at Rangiaohia', p.33.

³⁴¹ *ibid.*

³⁴² One soldier later recalled that 'some 30 females were captured and a few old men'. William Race, *Under the Flag. Reminiscences of the Maori Land (Waikato) War*, by a Forest Ranger, p.96, qMS-1671, ATL.

³⁴³ Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, p.29; *Daily Southern Cross*, 25 February 1864.

³⁴⁴ 'The Fight at Rangiawhia, By One Who Was There', *Malborough Express*, 11 March 1882. McHale is variously described as either a private, a corporal or a sergeant in different sources. In some accounts he is said to have impulsively rushed towards the where. Some secondary sources suggest that those inside the hut had been firing at the troops prior to McHale being shot. However, most eye-witness accounts seem to agree that firing from inside the where only commenced as the soldier attempted to enter it.

Cameron's arrival Colonel Nixon was shot from the door of the whare...Then, as the Maoris did not surrender when challenged again, the infantry fired the house. I saw one Maori walk out of the blazing hut, his blanket singed on his back. Poor fellow! He fell within ten paces of the door whence he and his compatriots had so wantonly shot our colonel and many other good men.³⁴⁵

This veteran of the conflict, writing in 1882, observed that Wesleyan missionaries who had attended the large hui at Te Kopua just 12 months earlier had informed him that there was 'but one thing the natives were sore about, namely, the "kohuru" at Rangiawhia.' He took exception to this, arguing that McHale had been shot and killed before the troops returned fire (which rather ignored the broader point that they were in the act of invading a peaceful settlement of non-combatant women, children and the elderly) and added that:

It was a sad day, of course, for all concerned: but as they have asserted that we "kohuru" (murdered) them, I have endeavored to show how they brought about their own destruction by wantonly killing our men when they were surrounded and had no chance of escape.³⁴⁶

There are two specific issues that need to be considered in the context of the events described above. Firstly, was the whare deliberately or accidentally set on fire by British troops? Some contemporary accounts claimed that this was unclear.³⁴⁷ Cowan presents two contradictory first-hand accounts but opts in favour of a likely accidental ignition:

A veteran of the cavalry says that one of the troopers had run round to the rear of the hut and set it alight; but an old Forest Ranger considers that the thatch may have been ignited by the firing. "We put the muzzles of our carbines close to the *raupo* walls," he says, "and fired through the thatch. The Maoris

³⁴⁵ 'The Fight at Rangiawhia, By One Who Was There', *Malborough Express*, 11 March 1882.

³⁴⁶ *ibid.*

³⁴⁷ *Daily Southern Cross*, 25 February 1864.

inside were doing the same, and naturally the inflammable walls would soon catch fire from the flash and the burning wadding.”³⁴⁸

Another veteran of the attack, William Race, later wrote that, although he did not recall who came up with the plan, in the light of the casualties their soldiers had already suffered, someone among their ranks put forward a proposal:

...it was, to burn them out, or in – no sooner than it was agreed upon, the redoubtable black sailor was to the fore, and raupo roofs in hot weather did not take long to set on fire, and soon one after the other were in a blaze, I have not the slightest doubt that it was never thought for a moment, but that the Maories would come out, and thus be taken, but...the Maories are a brave race...³⁴⁹

A third possibility, and the version told by Von Tempsky, is that a number of ‘neighbouring whares had been set fire to, with the view of communicating the fire to the all-dreaded one.’³⁵⁰ Von Tempsky added that ‘somehow that seemed to me both, on account of the wind and uncertain process, and on account of my feelings, unfair.’³⁵¹ But despite this, a little while later ‘my men...were pointing significantly and triumphantly to the flames that now commenced to lap over from the nearest burning whare to the fatal and now fated house.’³⁵² But if this was, indeed, the way in which the whare in question was engulfed by flames, why was it that no other eye witness noticed? While Von Tempsky’s version should not be entirely ruled out, it also needs to be treated with some caution in the apparent absence of corroboration from other sources.

Logic would tend to suggest that those who were not party to any plan to torch the whare might naturally have assumed these had set fire accidentally. On the other hand, there seems no real reason why those who claimed to have been aware of a deliberate plan to torch the occupants out of their whare should have made up such a

³⁴⁸ Cowan, *New Zealand Wars*, vol.1, p.355.

³⁴⁹ William Race, *Under the Flag. Reminiscences of the Maori Land (Waikato) War*, by a Forest Ranger, pp.135-136, qMS-1671, ATL.

³⁵⁰ Von Tempsky, *Memoranda of the New Zealand Campaign*, p.108, qMS-2008, ATL.

³⁵¹ *ibid.*

³⁵² *ibid.*, p.109.

story. On this basis, and bearing in mind the eye witness testimony to this effect, it would appear more likely that the whare was deliberately torched.

Whether or not those who devised this plan truly believed the occupants of the whare would prefer to come out is impossible to verify. Yet William Race went on to note that:

...out of that mass of hunted humanity only one came out, I think I see him now, he had evidently been let out by the others from the fire whare as an ambassador to make terms, he had, and he was, a very big man, a very large white blanket wrapped round him, and was out before he was noticed, or an attempt would have been made to enter by the door for at this time only the roof was burning, but however there he stood, and evidently his purpose was to make terms for he commenced speaking and gesticulating very loudly above the din around, but poor fellow twas a short lived speech for in less than two minutes he was riddled so to speak, with bullets, & fell in front of the whare a corpse; just at this moment up rides Lt. St. Hill, one of Genls aidescamps [sic]...and stooping from his saddlebow seized hold of the collar of the jumper of a F.R. [Forest Ranger] and shaking him said 'you cowardly scoundrel how dare you shoot an unarmed man like that', he having seen the Ranger let fire [?] with his revolver at the Maori only a few yards from him; for answer the Ranger pulled up his sleeve & showed the officer a nasty jagged flesh wound in the arm received a few minutes before from one of the amazons before captured. Tit for tat said Von's man, the woman tried to kill me, and I tried to kill him that's all, The Lieut. rode away muttering about having him punished & there it ended.³⁵³

One contemporary report claimed that the man had died not from being shot at point blank range as he attempted to surrender or talk terms, but from the fire itself in an unsuccessful bid to escape. According to this account:

³⁵³ William Race, Under the Flag. Reminiscences of the Maori Land (Waikato) War, by a Forest Ranger, pp.136-138, qMS-1671, ATL.

The whare was about eight yards in length, but not until six yards at least had been burned, and a number of volleys fired into the place, did the last of the Maoris make a dart, for the purpose of escaping. He had not advanced two paces before he fell on his hands and knees, amidst the burning embers of the portion of the raupo roof already fallen in. From the intense heat of the flame it was impossible to extricate him, and he died and was burned where he fell.³⁵⁴

Was this version, as faithfully recounted by a journalist back at the Te Awamutu base camp, perhaps an attempt by the military to sweep the whole incident under the carpet? If so, the fact that Von Tempsky himself – who was hardly notable for his philo-Maori sympathies – witnessed the whole incident and faithfully recorded the details in his own account of the war, would tend to more or less confirm the whole ugly incident. As he later wrote:

What the feelings of the inmates of that doomed fortress must have been passes almost the power of imagination. They must have heard by that time the crackling of the approaching fire, they must have felt the heat already. Could human nature hold out any longer in resistance?

No! – behold one man, in a white blanket, quickly steps from the door and approaches the fatal circle at some distance from us.

He holds up his hands to show himself unarmed – he makes a gesture of surrender – he is an old looking man.

“Spare him, spare him!” is shouted by all the officers and most of my men – but – some ruffians – and some men, blinded by rage, at the loss of comrades perhaps – fired at the Maori!

The expression of that man’s face, his attitude on receiving the first bullets, is now as vivid before my mind’s eye as when my heart first sickened over that

³⁵⁴ *Daily Southern Cross*, 25 February 1864.

sight. When the first shots struck him he smiled a sort of sad and disappointed smile; then bowing his head, staggering already – he wrapped his blanket over his face, and, receiving his death bullets without a groan, dropped quietly on the ground.³⁵⁵

Cowan tells a similar story. As he writes it:

The flames at last drove one of the occupants out. A tall old man, clothed in a white blanket, which he was holding about his head, emerged from the doorway of the burning house. His upstretched arms showed that he had no weapon. He advanced towards the crescent of troops in surrender, facing a hundred levelled rifles. “Spare him, spare him!” shouted the nearest officers. But next moment there was a thunder of shots. Staggering from the bullets, the old hero recovered his poise for an instant, stood still with an expression of calm, sad dignity, then swayed slowly and fell to the ground dead. The episode enraged the chivalrous officers who had entreated quarter for him, and young St. Hill, of the General’s staff, pointed to a soldier of the 65th Regiment and shouted, “Arrest that man! I saw him fire!” But Leveson-Gower, the captain of the detachment, replied, “No, I’ll not arrest him; he was not the only one who fired.” The truth was that the troops clustered promiscuously about the burning houses were not under the immediate control of their officers at the moment of the Maori’s surrender; and there were many who burned to avenge the fall of their beloved Colonel Nixon.³⁵⁶

But this incident was more than simply about one man shot dead while in the apparent act of surrendering. Indeed, as Cowan notes, following this incident, none of the remaining men inside the whare were inclined to surrender.³⁵⁷ In this respect, the deaths of the five other men (and one boy) inside the whare could be seen as directly linked to this breach of military discipline (and arguably of the rules of war at the time) on the part of the British troops.

³⁵⁵ Von Tempsky, *Memoranda of the New Zealand Campaign*, p.109, qMS-2008, ATL.

³⁵⁶ Cowan, *New Zealand Wars*, vol.1, pp.355-356.

³⁵⁷ *ibid.*, p.356. Von Tempsky suggested that a second man, this time armed, did emerge from the burning whare, firing his last two shots before being struck down in a hail of bullets (followed by a third man, also killed upon exiting). It seems impossible to verify this on the basis of other sources. *Memoranda of the New Zealand Campaign*, p.109, qMS-2008, ATL.

The attack on the Rangiaowhia Catholic church of St Pauls (the only surviving building from the village's time as a thriving Maori settlement prior to its invasion and destruction by British troops in 1864) does not appear to be in quite the same category as the tragic incidents at the whare. Cowan notes that the occupants of other whare similarly on fire dispersed in several directions. Some headed for St Pauls, where about 20 or 30 'rushed into the church and fired through the windows, and it was thought at first that they intended standing a siege there, but they discovered that the weatherboards were not bullet-proof. The Rangers and some Regulars attacked, and the church-walls were soon perforated with bullets. At last the defenders dashed out through the door on the northern side, and fled to the swamps.'³⁵⁸ If this account is to be believed then those who had fled to the church, although in one sense seeking refuge from the conflict, were not unarmed. On the other hand, it seems at least possible that some of this group may have witnessed the killing of the man attempting to surrender from the other whare, and the deaths of his companions, and might therefore have concluded that to surrender meant certain death.

Interestingly, another account of the events at the church, written by a member of the Forest Rangers who had set off in pursuit of those huddled inside St Pauls, suggests that General Cameron had issued orders to call off the attack. William Race recalled that once it was discovered that 'the church...was full of Maories and dozens of horses seemed tethered outside' the decision was made to set off on the mile or so journey to St Pauls and attack those huddled inside. Von Tempsky reportedly reacted with disgust, and ignored these orders the first time, before eventually relenting when the orders from Cameron were relayed to him a second time less than a quarter of a mile from the church. According to this account, at this point those inside the church streamed out, some riding away on horse back and others footing it, many of them supposedly taunting the British troops as 'a cowardly lot of pakehas' as they departed.³⁵⁹ All of this does raise some interesting questions as to General Cameron's role at Rangiaowhia. He had ordered an armed raid on an undefended settlement and therefore must be deemed accountable for the brutal consequences of that decision.

³⁵⁸ Cowan, *New Zealand Wars*, vol.1, pp.356-357.

³⁵⁹ William Race, *Under the Flag. Reminiscences of the Maori Land (Waikato) War*, by a Forest Ranger, pp.139-143, qMS-1671, ATL.

The conclusion of military historian Chris Pugsley, though open to debate, might be apt here. 'Rangiaohia', he wrote, 'was never a deliberate massacre, but the inevitable consequence of soldiers attacking an unarmed settlement and finding nothing to fight but families.'³⁶⁰

There could, however, be more to Cameron's involvement than the issuing of the initial orders. A famous painting of the scene at the whare where seven Maori and a number of British soldiers were left dead shows Cameron on horseback, watching the scene unfold. Indeed, Pugsley suggests that Colonel Nixon's mad dash to the doorway of the whare had probably been influenced by the knowledge that Cameron was looking on.³⁶¹ Had he witnessed the man attempting to surrender being shot down by British troops and the deaths of its remaining occupants? Might this have influenced a possible decision to call off an attack on the church?³⁶² As with many of the most contentious incidents from the Waikato War, it is difficult to reach any firm conclusions on this, other than to raise the possibility.

One final aspect of the invasion of Rangiaowhia merits closer attention. If part of the reason for subsequent Maori outrage was the killing of women and children, what do we know about the victims of the British attack? Is it possible to confirm that women and children were among their number? Official British sources fairly consistently refer to 12 Maori killed in the invasion, but make no reference to their age or gender.³⁶³ Wiremu Tamihana, writing a few days after the attack, referred to 'six...killed in one place', which may possibly indicate that he was referring solely to those killed in the burning whare, rather than the total number of those killed during the invasion of Rangiaowhia.³⁶⁴ We know that there were seven people killed inside the whare, or attempting to escape from the fire inside it, who were described in one source as being six men and a 'youth'.³⁶⁵ Perhaps not surprisingly, official British military sources make no reference to the killing of women or children. If this did

³⁶⁰ Pugsley, 'Walking the Waikato Wars: Farce and Tragedy at Rangiaohia', p.35.

³⁶¹ *ibid.*, p.34.

³⁶² Another possibility is that Selwyn, who presumably remained at Cameron's side throughout these events, had requested that the place of worship not be attacked. However, given that it was a Catholic church, that seems unlikely.

³⁶³ Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, p.29.

³⁶⁴ Wiremu Tamihana to Rawiri and Tawaha, 28 February 1864, AJHR, 1864, E-3, p.40.

³⁶⁵ 'The Fight at Rangiaowhia, By One Who Was There', *Malborough Express*, 11 March 1882.

occur, it would hardly be a matter to which they would wish to draw attention, especially given the settlement was a dubious target for invasion in the first place, given the demographic makeup of its population (consisting of women, children and the elderly). One veteran later wrote that:

...in the pursuit, before the whare was attacked, the Maoris, men and women, were jumbled together, running away, and, being dressed much alike, the women were in great danger of being killed, and as I had command of the advance guard, I called to the women, telling them to sit down, “E kotou [sic], e nga wahine, e noho ki raro, kei mate kotou.” They all obeyed, and we passed them; they then got up and ran on.³⁶⁶

On the other hand the Maori sources cited earlier clearly refer to the killing of women and children at Rangiaowhia (and sometimes as having been burnt in the same whare that the six men and one youth died in).³⁶⁷ There are repeated references to this in later reports with Kingitanga representatives. To quote an additional source not cited previously, in 1868 the *Daily Southern Cross* published a letter said to have been penned by King Tawhiao’s ‘prime minister’, in which it was stated that:

Up till the arrival at Maungatautari, it was said by the General that the Maoris should concentrate themselves in one pa, where they were to fight. The women were to be left elsewhere. Then the following pas were deserted: - Te Tikii, Ohaupo, Ruakotare, Rangiaowhia. The women and children were left at the last-named place. The gathering of the men was at Paterangi. During the night the troops moved in to Rangiaowhia, where they burned the houses, and the children with their mothers, and the women were pierced by the bayonet.³⁶⁸

There are also references to particular women who were killed at Rangiaowhia. For example, Kereopa Te Rau, who was said to have witnessed the killing of his sister at

³⁶⁶ *ibid.*

³⁶⁷ See, for example, G.W. Rusden, *Aureretanga: Groans of the Maoris*, London: William Ridgway, 1888 (1974 reprint), pp.41-42; G.W. Rusden, *History of New Zealand*, 2nd ed., 3 vols, Melbourne:

Melville, Mullen & Slade, 1895, vol.2, p.283.

³⁶⁸ *Daily Southern Cross*, 22 July 1868.

Hairini on 22 February 1864, also in many accounts sought utu for the killing of his wife and two daughters at Rangiaowhia one day prior to this.³⁶⁹ All things considered, and given the depth of later Maori anger with respect to the invasion of Rangiaowhia, it seems safe to conclude that some women and children were likely to have been killed by British troops during the invasion of the settlement. The tribal affiliations of the victims is not disclosed in the documentary record. However, Ngati Apakura and Ngati Hinetu were the two groups recorded in F.D Fenton's 1858 census of Waikato as occupying Rangiaowhia at that time,³⁷⁰ and Cowan records that they remained there 'engaged in supplying food to the garrisons at the front' during the war.³⁷¹

2.8. *The sacking of Kihikihi*

One day after the conflict at Hairini, on 23 February 1864, an event occurred which is barely noticed in many published histories of the Waikato War. It was on this date that British troops entered, occupied, looted and destroyed the Ngati Paretekawa settlement of Kihikihi, the home of Kingitanga military leader Rewi Maniapoto. Official British accounts were remarkably restrained in their coverage of this event. Cameron's official communication with Grey, penned two days later, did not even mention the occupation of Kihikihi.³⁷² Gamble's report merely hinted at what took place in stating:

Colonel Waddy, C.B., 50th, marched this day in command of a force consisting of the 40th and 70th Regiments, to occupy Kihikihi, the head-quarters of Rewi, chief of the Ngatimaniapotos, a most turbulent tribe.

Kihikihi resembles Rangiaowhia in being rich in cultivation.

³⁶⁹ Steven Oliver, 'Te Rau, Kereopa ?-1872', DNZB, vol.1, p.503.

³⁷⁰ Fenton, *Observations on the State of the Aboriginal Inhabitants of New Zealand*, pp.xi-xvi. In the same source (p.3) Fenton declared that 'Ngatihinetu and Ngatiapakura are well known as the great wheat-producing tribes cultivating the fertile district around Rangiaowhia.' Ngati Hinetu are described in some sources as being a sub-tribe of Ngati Apakura. See, for example, Evelyn Stokes, 'Te Waharoa, Wiremu Tamihana Tarapipipi ?-1866', DNZB, vol.1, p.515; Tame (Tom) Roa, Te Rohe Potae, Nga Korero Tuku Iho o Te Rohe Potae, 1st Oral Traditions Hui, Te Kotahitanga Marae, Otorohanga, 1-2 March 2010, p.32.

³⁷¹ Cowan, *New Zealand Wars*, vol.1, p.353.

³⁷² Cameron to Grey, 25 February 1864, AJHR, 1864, E-3, pp.29-30.

The loss to the enemy of two such places, with their extensive cultivation, is and will be yet still more serious as winter advances.

The amount of potatoes alone will, it is estimated, be enough to provide a full ration of this vegetable for the whole of the field force during the coming winter.³⁷³

If this hinted perhaps at the scale of looting which had taken place, other accounts gave a more graphic description of what occurred. Edward Tedder, a member of the 40th Regiment which took part in the invasion, wrote in his diary that:

About 9 o'clock we fell in with the remainder of the force and marched off[f] to pay a visit to the village of Kihikihi about 4 miles from Te Awamutu, it being the native place of the celebrated Ngatemanapoto [sic] Chief Rewi. He is one of the most determined of our enemies. Arrived there all right saw a few Maories at a distance, but they skedaddled. It is the largest village we have yet seen. Plenty of Whares and acres of cultivations with thousands of peach and apple trees all loaded with fruit, while the potato pits were all full of fine potatoes, pumpkins, vegetable marrows kumeras [sic] etc. We halted for a short time for a feed [of] fruit and marched back to Te Awamutu, having seen nothing of the Natives with the exception of those just mentioned. We appeared a queer string going home, everyman being loaded with something. Kits of apples[,] peaches, potatoes, kumeras, pumpkins, marros, cabbages and every other succulent, while poultry, pigs, dead and alive, turkeys, crockery ware, tubs, buckets, paddles and a thousand other articles made up the selection. In fact it was a regular exodus. Back at the camp by 4 PM, when roasting boiling and baking was the order for the remainder of the evening.³⁷⁴

Rather than make a stand, Rewi and his followers had crossed over to the south side of the Puniu River, encamping at Tokanui, on the slopes overlooking their old homes, just in time to watch the sacking and destruction of a recently thriving and prosperous

³⁷³ D.J. Gamble, 4 March 1864, Journals of the Deputy Quartermaster General, p.97, WO 33/16, Archives NZ. The movement on Kihikihi is wrongly dated in the margin to this report as having occurred on 24 February 1864.

³⁷⁴ Edward Tedder, 22 February 1864 [sic – 23 February 1864], Diary, MS-Papers-8104, ATL.

settlement.³⁷⁵ The special correspondent for the *Daily Southern Cross* provided perhaps the most detailed account of the British advance on Kihikihi. He wrote that:

This morning, at ten o'clock, a large expedition started from this place for the purpose of visiting Kihikihi, the village residence of the chief Rewi and several of his sturdy followers, where a flagstaff was erected, and the King flag was flying over his Majesty's devoted subjects...Kihikihi is about four miles distant from Te Awamutu, and native cultivations extend along the whole line of route, and far up the country beyond. Hundreds of acres are laid down in wheat, maize, potatoes, kumeras [sic], peach and apple groves, &c., the land being of the richest quality, as testified by the surprisingly healthy and full crops found growing. This place (Kihikihi), taken in conjunction with Rangiwahia and neighbouring districts, may truly be called "the garden of New Zealand," from its highly productive character of ground. When the immense tract of country devoted to the growth of wheat, potatoes, and maize is taken into consideration, no wonder can be felt that the rebels have succeeded in keeping up a good commissariat supply, with abundance, so far, to spare. In many places along the line of road traversed the potato plots appeared to have yet remained untouched, while in most of the potato holes great quantities of the indispensable tuber were found ready for placing in kits, for transport to other quarters, where the rebel forces might be fighting for a local habitation, and a name to be handed down to posterity.³⁷⁶

Having noted the huge significance of this area to the Kingitanga war effort (and by implication its importance in the pre-war Maori economy of the local tribes), this reporter then went on to observe that:

Independently of the large stores left behind, the Maoris must have carried away a great quantity before retiring, on the approach of the General, who arrived at the settlement without having seen a single rebel. The flagstaff having been set fire to, a large whare opposite, which might be conceived to have been the assembly room of the Maori chieftains when discussing the

³⁷⁵ Cowan, *New Zealand Wars*, vol.1, p.362.

³⁷⁶ *Daily Southern Cross*, 25 February 1864.

auspicious prospects of the rebel side of the question regarding supremacy in this island, was also ignited. The flagstaff was burned through at the base, and fell with a loud crash to the ground. The soldiers were then ordered to break off for a short time – a very welcome intimation, and which was speedily availed of to gather apples, peaches, and other fruit, and to secure a few souvenirs of the visit to the renowned Rewi's country abode. Before the bugle sounded for the men to fall in for the homeward march, few were seen who had not made good use of their opportunity, and possessed themselves of pigs or poultry, various useful household articles, clothing, paddles, &c. The troops marched "at ease" homewards, and from the strange diversity of articles carried, presented a ludicrous appearance on arrival in camp.³⁷⁷

In the space of just a few short hours one of the most prosperous Maori settlements in all of pre-1864 New Zealand was thus destroyed. As Von Tempsky described it, 'Rewi's house and high flagstaff was given to the flames, and the village, to pillage.'³⁷⁸ And if the actions of the British with respect to seizing or destroying the settlement's food supplies at least made some sense from a strategic point of view, there was no military rationale for other actions. It is difficult, for example, to discern any compelling military reason for the torching and destruction of the famed meeting house *Hui Te Rangiora*.³⁷⁹ In this respect, it appears that Kihikihi may have come in for special treatment on two counts: firstly, as being the home to the supposedly 'obstinate' and 'notorious' rebels Ngati Maniapoto, and secondly on account of being the particular settlement of their most famous leader, Rewi Maniapoto. This is a matter of speculation, of course, but it would nevertheless seem a reasonable supposition to make under the circumstances.

³⁷⁷ *ibid.*

³⁷⁸ Von Tempsky, *Memoranda of the New Zealand Campaign*, p.118, qMS-2008, ATL.

³⁷⁹ Cowan, *New Zealand Wars*, vol.1, p.363; Rovina Maniapoto, Te Rohe Potae, Nga Korero Tuku Iho o Te Rohe Potae, 1st Oral Traditions Hui, Te Kotahitanga Marae, Otorohanga, 1-2 March 2010, p.13. According to Raureti Te Huia, important Kingitanga meetings were held in the house under the direction of Rewi Maniapoto. Raureti Te Huia, Kihikihi, 16 March 1914, Cowan Papers, MS-Papers-0039-11, ATL. (Translation by Rachel McGarvey). One 'loyalist' chief who visited Kihikihi a few months after the sacking 'found the soldiers repairing a large house named Huitangiora, to be used as a Military Barrack.' Noa Te Rauhihi's account of his trip to Auckland, and of his visits to Waikato, Maungatautari, and Hauraki, 13 April 1864, IA 14/22, Archives NZ.

After almost every major assault by the British on Maori settlements in the Waikato Kingitanga leaders made efforts to restore peace. It was same after the sacking of Kihikihi. According to one report from the *Daily Southern Cross*, Wiremu Toetoe, famed for his visit to Austria a few years before this, arrived in the Te Awamutu camp bearing a flag of truce when Cameron was still to return from Kihikihi. According to this report:

He was said to be an embassy from the rebels, who were anxiously desirous of making peace. They had profited by the lesson afforded on Sunday and Monday [21 and 22 February, ie., at Rangiaowhia and Hairini], and did not feel solicitous again to meet the soldiers on a field of battle. The General has sent a letter in reply to the ambassador's application, but, of course, its purport has not been made public.³⁸⁰

The government's response to these calls for peace was to set terms. Though much about these terms remains shrouded in uncertainty, large-scale confiscation remained a central government premise and objective. Indeed, there are indications that by this stage at least some in the government were seeking not just the confiscation of the Waikato district north of Raglan but all the lands of Ngati Maniapoto and other Rohe Potae hapu and iwi. However, unease was also beginning to grow within some circles that the war was being unnecessarily prolonged and extended further south than was necessary in order to maximise the area of land that could be seized and settled by Pakeha. A few days after reporting Toetoe's visit to the British camp, the same newspaper announced the rumoured terms that had been sent in response to the initial proposals for peace. These included:

That the Government shall take possession of the whole of the land as far as the Mokau on the West Coast and across the island, and which is about the boundary of this province, and about five-and-twenty miles beyond the farthest point which the General has advanced to. Every rebel is required to come in singly and lay down his arms and then retire to some part of the

³⁸⁰ *Daily Southern Cross*, 25 February 1864.

country which the Government shall appoint and remain there until certain land is defined and appropriated for his use.³⁸¹

If this account was at all reliable then the British would not be satisfied until all of the lands of Ngati Maniapoto and other Rohe Potae iwi had been conquered and claimed by the Crown.

It is possible, however, that terms conveyed to Kingitanga leaders were actually those contained in a government notice dated 2 February 1864. This document purported to contain 'regulations' in reference to Maori who had taken part in the war and in the King movement. Interestingly it distinguished between three different levels of involvement. The first was those who had been engaged in actual fighting. The applicable 'regulations' in this case were that:

If any of them be seen going about without permission in the Queen's Districts, they will be apprehended, and taken before a magistrate. But if any of those who have been in arms wish to forsake their evil work, and to be permitted to come again within the bounds of peace, they must come to a Magistrate, or to the Officer in command of any of the military posts, and give up their guns, cartouch [sic] boxes, and powder, and they must then declare that they will be Queen's men, and obey the Queen's law for ever thereafter; their names will then be written in a book, that there may be no mistake about them afterwards.

If they do not like this regulation, enough; they must not be allowed to come to the places of the Queen's Natives, lest blame alight on those who are living in quiet.³⁸²

The second category of terms were addressed 'to those who joined the enemy but did not fight, and now wish to return to their own tribes.' They were also required to give up their guns and ammunition:

³⁸¹ *Daily Southern Cross*, 1 March 1864.

³⁸² Government Notice, 2 February 1864, AJHR, 1864, E-2, p.33.

...and they must declare that they will ever be good subjects of the Queen. However, let not any man suppose that his offence is wholly condoned when his gun is given up. Rather when the war is over: then only will it be said that the Governor has made peace. All the peace that is conceded to them at the present time is this; - that they will be allowed to remain unmolested, and they will not hereafter be brought to trial unless they are found to have taken part in murders, plunder, or other evil acts.

Let this, however, be borne in mind, the disposal of their lands rests with the Governor.³⁸³

The third category addressed were 'the Maoris who have not personally gone to the disturbed districts, but have gone into the king movement, and have joined in strengthening that work, that is to say by giving money, by hoisting king flags, and by other acts tending to...disturb the peaceable and well disposed.' They were warned that such acts were 'a trampling on the law, and that those who commit such acts will be considered as aliens to the Queen, and that if not discontinued, but persisted in, the consequences will be trouble or disaster.'³⁸⁴

This proclamation raised more questions than it answered. Whether those who had fought against the Queen's forces were to be imprisoned or allowed to go free was not stated, and no explicit mention was made of the fate of the kingship. Even more remarkably perhaps, the statement declared that the lands of those who had joined the enemy but had not fought would be at the disposal of the governor but was silent on the lands of those who had taken up arms. Was this a mere oversight, left deliberately ambiguous perhaps, or followed up by some more detailed message of the kind suggested by the *Daily Southern Cross*? Unfortunately it seems impossible to say, as even the circumstances in which these terms of peace were published are unclear. A printed pamphlet was prepared,³⁸⁵ but the terms were not published in the *New Zealand Gazette*. In a memorandum from Frederick Whitaker dated 25 February 1864 he declared that 'Ministers have perused the terms of peace offered by General

³⁸³ *ibid.*

³⁸⁴ *ibid.*

³⁸⁵ New Zealand Government, *Ko nga tikanga mo nga tangata Maori kua pa ki te whawhai, ki te mahi kingi hoki* (Akarana, *Pepuere* 2, 1864), Auckland, 1864.

Cameron to the rebel Natives.’³⁸⁶ A later article from the *Daily Southern Cross*, encompassing a report from its Te Awamutu correspondent of the same date (25 February) noted, in reference to Wiremu Toetoe, that ‘The General sent by him copy of the proclamation respecting the terms of peace, and which was to be submitted to the runanga, but up to this hour (12 o’clock) there is no outward sign or visible token of a white flag coming over the ranges on the Rangiaowhia side of the camp.’³⁸⁷ Beyond that the proclamation appears to have drawn attention chiefly for a controversy over whether the use of the term ‘mate’ to translate ‘disaster’ might instead have been read to pronounce ‘death to be the penalty for hoisting the king flag, or otherwise contemplating the king movement.’³⁸⁸

It seems possible that the terms may have been followed up by discussions over some of the points that remained unclear, and Cameron possibly may have nominated Mokau during the course of these as the likely limit of the area to be taken by the Crown. Grey, though, it would seem, professed to hold a more limited view, writing to Cameron prior to the invasion of Rangiaowhia that:

My own impression now is that if judicious steps were taken large numbers of those who are in arms against us are prepared to come over and join the cause of good order, leaving the Ngatimaniapoto to themselves, and to be punished hereafter by the non recognition of their title to land. If I am correct in this view, and I firmly believe I am so, your occupation of Rangiaowhia would really terminate the war in this part of New Zealand, and leave us to fill up such lands as it may be determined to occupy, and peace and leisure to consolidate and render useful all that has been done and gained.³⁸⁹

Grey’s suggestion appears somewhat ambiguous, given on the one hand he appears to advocate halting the advance into the upper Waikato at Rangiaowhia but on the other believes that Ngati Maniapoto should be punished by being deprived of the titles to their land. Presumably Grey was confident that if the old suggestion of dividing off

³⁸⁶ Whitaker, Memorandum by Ministers as to the Terms of Peace, 25 February 1864, AJHR, 1864, E-2, p.31.

³⁸⁷ *Daily Southern Cross*, 31 March 1864.

³⁸⁸ William Fox to Dr. Shortland, 13 July 1864, AJHR, 1864, E-2, p.33.

³⁸⁹ Grey to Cameron, 13 February 1864, G 36/4, Archives NZ.

Ngati Maniapoto from the remaining Kingitanga supporters could be successfully achieved then the former could be brought to heel without the need for further military conquest.

John Morgan, writing to Thomas Gore Browne at the end of February, noted that some weeks earlier he had received a request from Grey to call upon him in relation to some unspecified questions he had in relation to Mokau. Morgan, who had been regularly supplying government and military officials with detailed logistical information throughout the war (including the best route to Otawhao and plans, personally prepared by him, of the district) noted that:

The questions about Mokau were soon answered and then the conversation turned on the war and the probable results of the movement at Rangiawhia [sic] etc. I said that I had long felt that the country could not enjoy solid peace until the Queens [sic] flag was hoisted at Otawhoa [sic], Rangiawhia [and] Kihikihi and that it was not a new opinion for I had been convinced of it for several years. But that when the General got position on Rangiawhia, I thought the Government would be in a position to offer the Waikatos terms of peace etc. etc. That I never expected that the maori [sic] difficulty could be settled by a battle at Rangiriri or Ngaruawahia, that it was necessary to take Rangiawhia and that perhaps then if terms were offered, they might accept them. Sir G. Grey said that it was very strange that my opinions agreed exactly with his present views, that when the war commenced he did not think that a battle on Lower Waikato could settle it etc. etc.³⁹⁰

Grey asked Morgan to set out his views on the question of peace terms in a letter to Whitaker. The missionary turned Crown informant agreed to do so, penning a long letter to the Premier just a few days before the attack on Rangiaowhia.³⁹¹ Subsequent to this the Colonial Secretary William Fox called upon Morgan:

He said that they [ministers] all agreed with my views and his point was to ask me how I thought it would be best to open communications. That at 10 p.m.

³⁹⁰ Morgan to Browne, 29 February 1864, Gore Browne 1/2d, Archives NZ.

³⁹¹ Morgan to Whitaker, 19 February 1864, Gore Browne 1/2d, Archives NZ.

the previous night the Government received a communication from the rebels asking what terms the Government would accept.³⁹²

Amongst other things, Morgan advised against committing to any particular boundary of the area of land to be confiscated. The government would need to inquire into which hapu had joined the war, and ‘would have to establish military settlements along Mokau inland to keep open the Taranaki roads etc.’ In response:

Mr. Fox said our terms are these, each man must give up his arms, 700 men, 700 guns, powder, etc. We take all the rebels [sic] land and in return give each adult male and each big boy, 100 acres with a crown title. They ought not to grumble, they played a game to get Auckland and if instead we have taken Waikato, they cannot complain. That the Government would allocate each tribe on a position of its own land and as near to their old settlement as the military settlements and the Colony would allow. In reference to the prisoners, he thought that if peace was once fairly made they might be set at liberty. Waikato once obtained, he did not think any other tribe would ever rise when the increased European population would prevent it. That his own opinion was that the Waikatos could not hold out many days longer.³⁹³

But the troops had already advanced several miles past Rangiaowhia towards Kihikihi, and on 27 February 1864 the governor wrote to his ministers to inform them that a letter had been received from Cameron, ‘requesting him to state what his views are as to the General’s future operations, and how much further it is proposed the force under his command should advance into the country.’ Grey added that:

The General states that, in as far as he can learn, it would be difficult, if not impossible, for him to occupy the line between Rangiaowhia and Mangatautari [sic], but that he could take possession of Ahuta where he believes the pah has been abandoned by the Natives, and of Kirikiriroa, where, in his opinion the Government would have more land than it can occupy with settlers for years to come.

³⁹² Morgan to Browne, 29 February 1864, Gore Browne 1/2d, Archives NZ.

³⁹³ *ibid.*

The General is at present having a redoubt constructed at Rangiawhia, as he believes it is wished that the troops should hold that place. The General also proposes to construct a redoubt at Kihikihi Rewi's village. He is also constructing a redoubt, of a large size, at Te Awamutu, as that place must be a depot of supply.³⁹⁴

Whitaker replied on behalf of ministers that same day. He informed the governor that:

Ministers do not propose that the force under the General's command should advance further into the country, with a view to keep possession of it. The Government may now have "more land than it can occupy with settlers for years to come," but the primary object to be attained by military operations is, not the acquisition of country, but to reduce the Natives to submission, and to take and keep possession of land so far only as it may be auxiliary to that object, and necessary to secure permanently the country from future rebellion, by the location of military settlers in convenient districts, - not to the exclusion of the native inhabitants, but in conjunction with them.³⁹⁵

As this rather defensive reply suggests, future war plans had become caught up in a broader debate about the purposes for which war was being levied. Try as they might, ministers could not shake off a widespread perception that the desire to conquer and confiscate Maori lands was a strong motivating factor and that the war was being unnecessarily prolonged and extended further south than was required from a military point of view in order to maximise the area of land that could be seized and settled by Pakeha. Cameron and Grey certainly seem to have come to this view by mid-February, and the governor indicated that materials for huts to house 3000 troops over the forthcoming winter had been ordered, implying that he did not envisage any significant further advance south for some time.³⁹⁶ One newspaper correspondent stationed with the troops at Te Awamutu reported in late February that 'Any advance

³⁹⁴ Grey, Memorandum by the Governor as to Future Operations, 27 February 1864, AJHR, 1864, E-2, p.26.

³⁹⁵ Whitaker, Memorandum by Ministers in Reply, 27 February 1864, AJHR, 1864, E-2, p.26.

³⁹⁶ Grey, Memorandum by the Governor as to Future Operations, 27 February 1864, AJHR, 1864, E-2, p.26.

further into the interior of the country is not likely to be carried out with the view of a lengthy tenancy of the ground occupied, but must partake more of the nature of exploring expeditions and flying columns to harass the natives'.³⁹⁷

Those who advocated or envisaged further fighting found it convenient, of course, to talk up the need to punish Ngati Maniapoto for their supposed role as the most 'obstinate' rebels. Ministers, though, on this occasion agreed with the proposal to hold possession of Te Awamutu, Rangiaowhia and Kihikihi but rather undermined their denial that confiscation was their driving motivation by adding that they proposed 'to commence without delay to establish military settlements in convenient localities, if there is no objection on military grounds to such a course.'³⁹⁸ They hinted that, having secured the lucrative lands around Rangiaowhia and Kihikihi their attention had perhaps begun to turn eastwards towards Maungatautari. It was, Whitaker wrote, 'of the first importance that a position as far up the Waikato as is conveniently navigable by steam-boats, should be taken and held.'³⁹⁹ They believed that 'the want of supplies, if nothing else, would eventually bring the Natives to terms' and therefore deemed it 'essential that every effort in that direction should be made to deprive them of the means of carrying on the war.' The main stocks of supplies, they understood, were now at Maungatautari, and ministers urged that these and other crops within reach of the General's position should be seized or destroyed wherever possible.⁴⁰⁰

Redoubts accommodating 200 men each were soon constructed at Kihikihi, Rangiaowhia and Te Awamutu, with a further force of 936 men under the command of Colonel Carey to be stationed at the latter place and ready to move on any point as was required.⁴⁰¹ Any further concerted push southwards down the Waipa Valley was complicated not just by the impending arrival of winter but also by renewed supply line difficulties. In particular, the water level in the Waipa River had become so low by March that the steamer could bring supplies up no further than Whatawhata.⁴⁰²

³⁹⁷ *Daily Southern Cross*, 31 March 1864 [report dated 26 February 1864].

³⁹⁸ Whitaker, Memorandum by Ministers in Reply, 27 February 1864, AJHR, 1864, E-2, p.26.

³⁹⁹ *ibid.*

⁴⁰⁰ *ibid.*

⁴⁰¹ D.J. Gamble, 4 April 1864, Journals of the Deputy Quartermaster General, p.100, WO 33/16, Archives NZ.

⁴⁰² *Daily Southern Cross*, 31 March 1864 [report dated 14 March 1864].

One of the troops stationed at the Te Awamutu camp wrote to his family about this time that:

...the natives have gone farther in the country and it is doubtful whether there will be another attack this Summer or not as their [sic] is a great difficulty experienced in Transporting rations up to us as the river is to [sic] low for the Steamers to come up and all the rations as [sic] to come up on pack horses [;] we are about 3 miles from a fine settlement called Rangiahia [sic] [;] the Troops will have to go to winter quarters shortly as nothing can be done here in winter but hold our positions.⁴⁰³

Cameron meanwhile, after travelling to Auckland on 6 March for talks with Grey and ministers over future war plans, moved on his return with the remainder of the troops in the direction of Maungatautari, where Wiremu Tamihana was now believed to be, in an effort to further undermine the Kingitanga supplies.

The break in offensive British operations gave Ngati Maniapoto and other Kingitanga tribes an opportunity to consider their own war strategies. According to James Cowan:

After the defeats at Rangiaowhia and Hairini, and the British occupation of Kihikihi, Ngati-Maniapoto with some of the other tribes gathered at Tokanui, below the group of terraced hills now called the “Three Sisters.” Thence they travelled southward to Otewa, on the Waipa, and from there they were called to a conference at Wharepapa, a large village about three miles south of the Puniu.⁴⁰⁴ The gathering discussed two questions: (1) Whether or not the war should be renewed; (2) whether a fortified position should be taken up on the northern side of the Puniu River or on the southern side. The decision to

⁴⁰³ George Tatler to ‘Dear Mother’, 23 March 1864, George Tatler Letters, MS-Papers-2076-2, ATL. That there would be no further advance had become accepted wisdom by this time, and was being commonly reported. One newspaper commented, for example, that ‘it does not seem likely that the army of the Waikato will make any further forward movement.’ *New Zealand Herald*, 11 March 1864.

⁴⁰⁴ A group of Forest Rangers had travelled as far south as Wharepapa on a ‘looting excursion’ a few weeks after Kihikihi had been occupied but turned back about 700 yards from the settlement, when the occupants of the village opened fire on them. *Daily Southern Cross*, 31 March 1864.

continue the war was unanimous. As to the site of the new fighting *pa*, it was resolved to confine the war, if possible, to the northern side of the Puniu.⁴⁰⁵

Cowan's narrative here draws unmistakably upon a history of the war prepared by Raureti Te Huia of Ngati Maniapoto. In a section describing events since the Rangiriri battle, Te Huia wrote that:

The first pa is Rangiatea because when this Pa was completed, Mangapukatea Pa was moved closer and built, when this pa was completed Paterangi Pa was built. Multitudes resided in these pa, these were strong pa. So because many tribes resided in these Pa, the Pakeha and Maori whom allied themselves with the Government lived in Ngaruawahia.

From there Wiremu Patena sent Pihopa Herewini (Bishop Selywn) of the Church of England and Tianara Kamerana (General Cameron) to observe Paterangi, when news reached them that Pakeha were unable to enter the pa. Wiremu immediately returned to the Pakeha, Paterangi is not available, from here the Pakeha turned to Waiari pa. This is a deserted Pa, very few inhabit the area.

The Pakeha continued to Whare-kau-hoka, they came on to Titiwha, descended upon Otawhao, ascended on to Te Awamutu the home of Mokena (Morgan) minister of the Church of England.

The guides for the Pakeha at that time were Hone Keeti and Himi Manuao. Before dawn on Sunday the Pakeha invaded Rangiaowhia, they burnt our houses whilst they were still inhabited. Hoani and Ihaia were present; their job was to take food to Paterangi Pa.

When the Pakeha were finished they returned to Te Awamutu then we came to Rangiaowhia because we had heard that there (Rangiaowhia) was under invasion. Maori resided at Hairini where there is a fence line that is also the

⁴⁰⁵ Cowan, *New Zealand Wars*, vol.1, p.367.

fortification for the Maori. We were killed here; we fled and dispersed and descended to Kihikihi, continued to Piraunui, crossed the Puniu River, turned to Puke-kawakawa and arrived at Tokanui. Furthermore we saw that the Pakeha had gone to Kihikihi, it wasn't long before smoke arose from the fire. The Pakeha had scorched Hui-te-Rangiora.

However we headed to Otewa, a meeting was called to Whare-papa and immediately we discussed these issues:

1. Return to the battle or not?
2. Build a Pa on that side of the Puniu River or this side?

All the tribes finished deliberating on things related to the war, the decision on the area to establish the Pa was settled for that side of the river, the area of battle, Waikato.⁴⁰⁶

Belying the suggestion that there was somehow bad blood between the pair, Rewi Maniapoto then proposed that he should set out to consult Wiremu Tamihana, believed to be at Te Tiki i Te Ihingarangi, on the future conduct of the war. Rewi never made it as far as this, however, instead encountering an Urewera war party en route to Waikato to lend support to the tribes. At their urging, Rewi would agree to perhaps the worst strategic error of the Waikato War on the part of the Kingitanga forces.

2.9. Orakau

Orakau has gone down in New Zealand history as perhaps the most famous battle ever to have taken place on these shores. It followed what had been, from a British strategic point of view, a disappointing campaign to date. Despite a brief engagement at Hairini, Cameron had not succeeded in his objective of drawing the Kingitanga forces into a decisive battle. Instead, they had continued to elude the British troops

⁴⁰⁶ Raureti Te Huia, 'Ko Nga Pa i Muri o Rangiriri', [1914], Cowan Papers, MS-Papers-0039-11, ATL. (Translation by Racheal McGarvey).

even as Cameron and his men continued to press further south. As discussed above, on 23 February 1864 British troops had even entered Rewi Maniapoto's own settlement at Kihikihi unopposed, torching and destroying the famed meeting house *Hui Te Rangiora*, toppling a defiant flagstaff, and looting and pillaging the remainder of the village. For the former residents of Kihikihi looking on this spectacle from the other side of the Puniu River, this was surely a bitter experience. And yet, from the Kingitanga's strategic perspective, it was a necessary course to follow. Much as Rewi might have wished to stand and fight for his village, he knew, and the other military leaders of the Kingitanga knew, that such a stance would prove futile. Their best chance to avoid being struck a crippling blow was to shun open warfare in vulnerable and exposed locations, in favour of more fleet-footed and flexible tactics, combined with the use of fortifications and other earthworks to slow the British advance. In fact when British troops marched on Kihikihi for a second time a few days after their original occupation of the settlement, they encountered a small group of Maori on the road in front of them, shouting loud cries of defiance at the approaching troops and firing a few long range and ineffectual shots before taking to their heels. A number of the British troops set off in chase, but quickly abandoned this when the Kingitanga fighters took to the bush, in a position that would have required the British to cross a large fallen tree in single file over a swamp in order to continue the pursuit. The British were familiar enough with Kingitanga tactics by this stage of the war to recognise an almost certain attempt to lure them into an ambush when they saw one, thus avoiding what might otherwise have been a humiliating blow against them.⁴⁰⁷

But stepping around potential disaster in such a manner was hardly the same thing as winning the war on one's own terms. As Belich writes:

As far as the military results are concerned, Cameron did not achieve his primary objective of destroying the Kingite army. The Maoris, though apparently with considerable reluctance, had come to the hard-headed decision to abandon the Paterangi Line and the rich district it protected. By doing so, they saved their army. It was less a question of exchanging the district for the army than of losing one rather than both. An all-out pitched battle was almost

⁴⁰⁷ *Daily Southern Cross*, 31 March 1864 [report dated 28 February 1864].

certain to result in a crushing Maori defeat at the hands of the large British force. The Rangiaowhia district would then have fallen anyway.⁴⁰⁸

Though unable to draw the Kingitanga forces into decisive battle, the British had taken possession of a large swath of the rich Waikato district, including the lands of Rangiaowhia, Te Awamutu and Kihikihi immediately to the north of the Puniu River. The loss of these lands was, as Belich suggests, a permanent blow for the Kingitanga.⁴⁰⁹ It was also clearly a major blow for the customary owners of these lands, including hapu and iwi from within the Rohe Potae inquiry district. The Kingitanga fighting force now broke up in order to protect the remaining territory, with Rewi's force beyond the Puniu seeking to defend the core tribal lands of Ngati Maniapoto and other iwi (bolstered by support from a few war parties from outside the region), and Wiremu Tamihana and followers retreating to Maungatautari with a view to guarding the territory of Ngati Haua and Ngati Raukawa.⁴¹⁰ One newspaper correspondent commented at this time that:

Proportionately as their extent of territory becomes gradually reduced by the pressure onward of the invading forces and the consequent recession of the natives, every yard of ground would appear to become more and more dearly prized, and to be hotly contested for.⁴¹¹

Rewi Maniapoto and Wiremu Tamihana were no longer fighting in defence of the lands of their lower Waikato relatives, but directly seeking to defend what remained of their own peoples' territory and resources. That did not mean that they, or their allies, including those who had arrived from beyond the Waikato to assist, had abandoned any larger commitment to a unified Kingitanga approach, and the fact that Rewi set out to consult his Ngati Haua ally as to the future course of operations suggested that both appreciated the need for a coordinated plan of defence.

As noted above, however, en route to consult with Tamihana, Rewi encountered an Urewera war party, some of whom had fought in the engagement at Hairini or had

⁴⁰⁸ Belich, *New Zealand Wars*, p.165.

⁴⁰⁹ *ibid.*

⁴¹⁰ *ibid.*, p.164.

⁴¹¹ *Daily Southern Cross*, 31 March 1864 [report dated 28 February 1864].

earlier helped to garrison the Paterangi defences.⁴¹² They had come to the assistance of the Kingitanga in response to a specific request from Rewi, who had travelled to the Rangitaiki district and further into the heartland of the Urewera country late in 1863 or early 1864 in order to personally appeal to Ngati Whare, Tuhoe and other local iwi for support. As Cowan tells the story:

Rewi visited Tauaroa, Ahikereru, and Ruatahuna, accompanied by Te Winitana Tupotahi and Hapi te Hikonga-uira, and aroused the fighting blood of the mountain tribes by his appeal for assistance and his chanting of two thrilling war-songs. The first was the Taranaki patriotic chant beginning “*Kohea tera maunga e tu mai rara?*” (“what is that mountain standing yonder?”) referring to Mount Egmont. The second was the song that began “*Puhi kura, puhi kura, puhi kaka*” (“Red plumes, red plumes, plumes of the *kaka*”),⁴¹³ his favourite battle-chant. These impassioned war-calls intensely excited the young warriors of Tuhoe, and in spite of the advice of some of the old chiefs they raised a company for the assistance of the Maori King.⁴¹⁴

Much as Cowan sought to attribute this support to a youthful sense of adventure or a ready inclination to join a fight, regardless of the cause, Rewi Maniapoto had travelled to the district to seek support because of close whakapapa and other connections with the Urewera tribes dating back many generations. Tuhoe-Potiki, the eponymous ancestor of Tuhoe, for example, had married Hine Te Ata from Waikato and had later gone to Kawhia, where he died.⁴¹⁵ Rewi Maniapoto was later recalled by Te Urewera rangatira as being a descendant of Tuhoe-Potiki.⁴¹⁶ A ‘pact of equals’ entered into following fighting at Te Whaiti and Ruatahuna in the 1820s between Te Purewa of Maungapohatu and Peehi Tukorehu of Ngati Maniapoto, when the latter agreed to peace and both men pledged to assist one another if help was required in

⁴¹² Cowan, *New Zealand Wars*, vol.1, p.367.

⁴¹³ The same *ngeri* was used in a letter addressed to tribes in the Wellington region shortly before the British invasion in July 1863: ‘Red plume, red plume/Plume of the Kaka/Rehearse it at Kawhia/Cartridge, one, three, four, O Matamata/Lay hold and bring the strong eight/Stranded cord/That cannot be unfastened/Grasp firm your weapons, strike! fire!’ Porokuru Titipa and Taati Te Waru to Heremia Te Tihi and Wi Tako Ngatata, 29 June 1863, AJHR, 1863, E-3A, p.12.

⁴¹⁴ Cowan, *New Zealand Wars*, vol.1, p.368. See also the account of Harehare of Ngati Manawa, James Cowan, Papers, MS-Papers-0039-41D, ATL.

⁴¹⁵ Judith Binney, ‘Encircled Lands: Part One: A History of the Urewera from European Contact Until 1878’, report commissioned by the Crown Forestry Rental Trust, April 2002, p.79.

⁴¹⁶ *ibid.*

future, was also said to have been recalled. These kinds of existing ties, some affinity with the aims and aspirations of the Kingitanga, and a concern that their own district might also be invaded if the Crown was not repelled in the Waikato were more likely factors in the support offered by Tuhoe and other Te Urewera groups than any kind of supposed blood lust.⁴¹⁷

The party that was sent early in 1864 was led by Piripi Te Heuheu. It joined up with those who had earlier travelled to the Waikato before abandoning the Paterangi defences in mid-February, rendezvousing at Aratitaha, on the southern spur of Maungatautari.⁴¹⁸ In total the Urewera contingent numbered about 140, including 50 from Tuhoe, another 50 from Ngati Whare and Patuheuheu, and 20 members of the Ngati Kahungunu tribe from upper Wairoa under the leadership of Te Waru Tamatea.⁴¹⁹

Supported by a party of Ngati Raukawa headed by Te Paerata, the Urewera chiefs urged the construction of a pa at Orakau, some three miles from the British position at Kihikihi. According to the account later given by his own son, Hitiri Te Paerata, the Ngati Raukawa rangatira, grieving for the young men of his tribe already killed in the war, had said of the land at Orakau ‘Me mate au kikonei [sic] (Let us make the pa here, let me die here on the land).’⁴²⁰ The Tuhoe chief Te Whenuanui was also said to have stated ‘give us O-rakau as a place for us to use our guns and ammunition’, at the same time prophesying the defeat of the Pakeha and the reconquest of the land.⁴²¹

As the well-known story goes, Rewi Maniapoto argued strongly against such a move. In contrast to Te Whenuanui, he predicted a disaster for the Urewera people should

⁴¹⁷ *ibid.*, pp.79-80; Rovina Maniapoto, Te Rohe Potae, Nga Korero Tuku Iho o Te Rohe Potae, 1st Oral Traditions Hui, Te Kotahitanga Marae, Otorohanga, 1-2 March 2010, p.200.

⁴¹⁸ Binney, ‘Encircled Lands’, p.81.

⁴¹⁹ Cowan, *New Zealand Wars*, vol.1, p.367. Some accounts described a larger war party. The government clerk Isaac Shepherd, who was based at Taupo, reported on 1 March 1864 that ‘200 of the Urewera are shortly to go through’ to Waikato, along with a further 200 Ngati Kahungunu. The latter figure is certainly wrong and may be an incorrect transcription of 20. Shepherd, 1 March 1864, NZMS 1064, Auckland City Library.

⁴²⁰ Te Paerata, *Description of the Battle of Orakau*, p.3; Robert Joseph, Te Rohe Potae, Nga Korero Tuku Iho o Te Rohe Potae, 1st Oral Traditions Hui, Te Kotahitanga Marae, Otorohanga, 1-2 March 2010, pp.161-162.

⁴²¹ Elsdon Best, *Tuhoe: The Children of the Mist*, 2nd. edition, Wellington: A.H. & A.W. Reed, 1972, vol.1, p.570; Binney, ‘Encircled Lands’, p.81; Cowan, *New Zealand Wars*, vol.1, p.368.

they persist in their plans, reciting a chant in which he warned that he alone would survive such a battle:

Tokotokona na te hau tawaho
Koi toko atu
I kite ai au i Remu-taka ra
I kite ai au ma taku kui ki Wai-matā-e
Tohungia mai e te kokoreke ra
Katahi nei hoki ka kitea te karoro tu a wai
I tu awaawa ra
Ma te kahore anake e noho toku whenua
Kai tua te ra e whiti ana
E noho ana ko te koko koroki
I ata kiki tau.

Compelled (are we) by outside winds (to fight)
Oppose them not.
In spirit-land I saw the ancient burial place
With my mother visited the place of flesh-cutting flints.
It was the kokoreke bird that pointed out,
And then I saw the sea-gull of the waters
Standing in the valley (an evil omen),
Nothing shall my lands occupy
Hereafter will be the sunshine (peace)
And the song of the koko will be heard,
But I alone will live to tell of it.⁴²²

Rewi urged that the chiefs instead consult with Tamihana and again repeated his prophecy of doom. Nevertheless, worn down by the persistence of the Urewera and Ngati Raukawa chiefs he abandoned his intended visit to consult with Tamihana and 'reluctantly and against his better judgment...acceded to the general wish.'⁴²³

⁴²² Elsdon Best, 'Notes on the Art of War, As Conducted by the Maori of New Zealand, with Accounts of Various Customs, Rites, Superstitions, &c., Pertaining to War, as Practised and Believed in by the Ancient Maori', *Journal of the Polynesian Society*, vol.11, no.2, 1902, pp.60-61

⁴²³ Cowan, *New Zealand Wars*, vol.1, p.370.

It is little wonder that Rewi was reluctant to make a stand at Orakau. As Hitiri Te Paerata later told a parliamentary gathering, Orakau ‘was not a suitable place at all’ to select for a fighting pa.⁴²⁴ It had evidently been chosen in part because it was close enough to be supplied with food from behind the Puniu River, and offered the prospect of a near certain confrontation with the British given its proximity to them. Yet crucially, the site eventually chosen for the pa was not only exposed, but also lacked a continuous water supply and was easily encircled. Once the decision to make a stand was agreed upon, Rewi argued for it to be sited further to the north than the original spot selected at Rangataua, in the middle of a peach grove on a gentle hillside. He saw straight away the folly of making a stand at such an exposed spot and suggested an improved location near to a kahikatea forest which might at least afford a means of escape.⁴²⁵ But Rewi was overruled in his suggestion, and the fate of the forthcoming battle was largely decided there and then in consequence.

In fact, Orakau was so exposed that British troops had already entered and occupied the village more than a month prior to the siege that took place in the same location. According to a report from the *Daily Southern Cross* dated 28 February 1864, ‘To ascertain the strength of the rebels and the nature of their works, Colonel Waddy was directed to proceed yesterday to the village of Orakau, and at about half-past one o’clock a force consisting of about 550 soldiers were paraded for that purpose.’⁴²⁶ When the party had marched some three-quarters of a mile, it became apparent that their movements were being closely observed by the Kingitanga, as ‘a Maori gun was fired as a signal, by natives evidently on the look-out’.⁴²⁷ Two further shots followed, and after passing a burning whare, the troops then encountered a strong fence thrown up as a barrier across the road, ‘to prevent further encroachment into Maori territory’. The fence was soon torn down, but the troops discovered rifle-pits in the course of construction less than 20 paces further on along, with signs that the place had been hastily abandoned. A report noted that:

⁴²⁴ Te Paerata, *Description of the Battle of Orakau*, p.3.

⁴²⁵ Cowan, *New Zealand Wars*, vol.1, pp.370-371.

⁴²⁶ *Daily Southern Cross*, 31 March 1864 [report dated 28 February 1864]. Cowan dates the expedition as having occurred on 29 February 1864. Cowan, *New Zealand Wars*, vol.1, p.366.

⁴²⁷ *Daily Southern Cross*, 31 March 1864 [report dated 28 February 1864].

It may be considered fortunate that the rebels did not deem it advisable to man the pits, as the troops came upon them so unexpectedly and in such a mass, that had a volley been fired into their midst, a very great sacrifice of life must have resulted. The troops, however, pushed on unmolested, and passed several whares and cultivations of wheat, maize, potatoes, &c, finally coming to a halt near a two-roomed wooden building, which, to all appearance, had been built for European occupation. It was now totally deserted, and the windows all broken. On the march, about fifty or sixty natives were seen hurrying towards a hill to the right of the village, and on which, it was said, a redoubt had been erected and a King flag was flying.⁴²⁸

Several shots were fired from those on the hillside, but at a range of two or three miles proved ineffectual. After a stay of some 15 minutes in the village of Orakau, during which the troops looted what they could and set fire to some whare, the British party returned to base camp at Te Awamutu.⁴²⁹

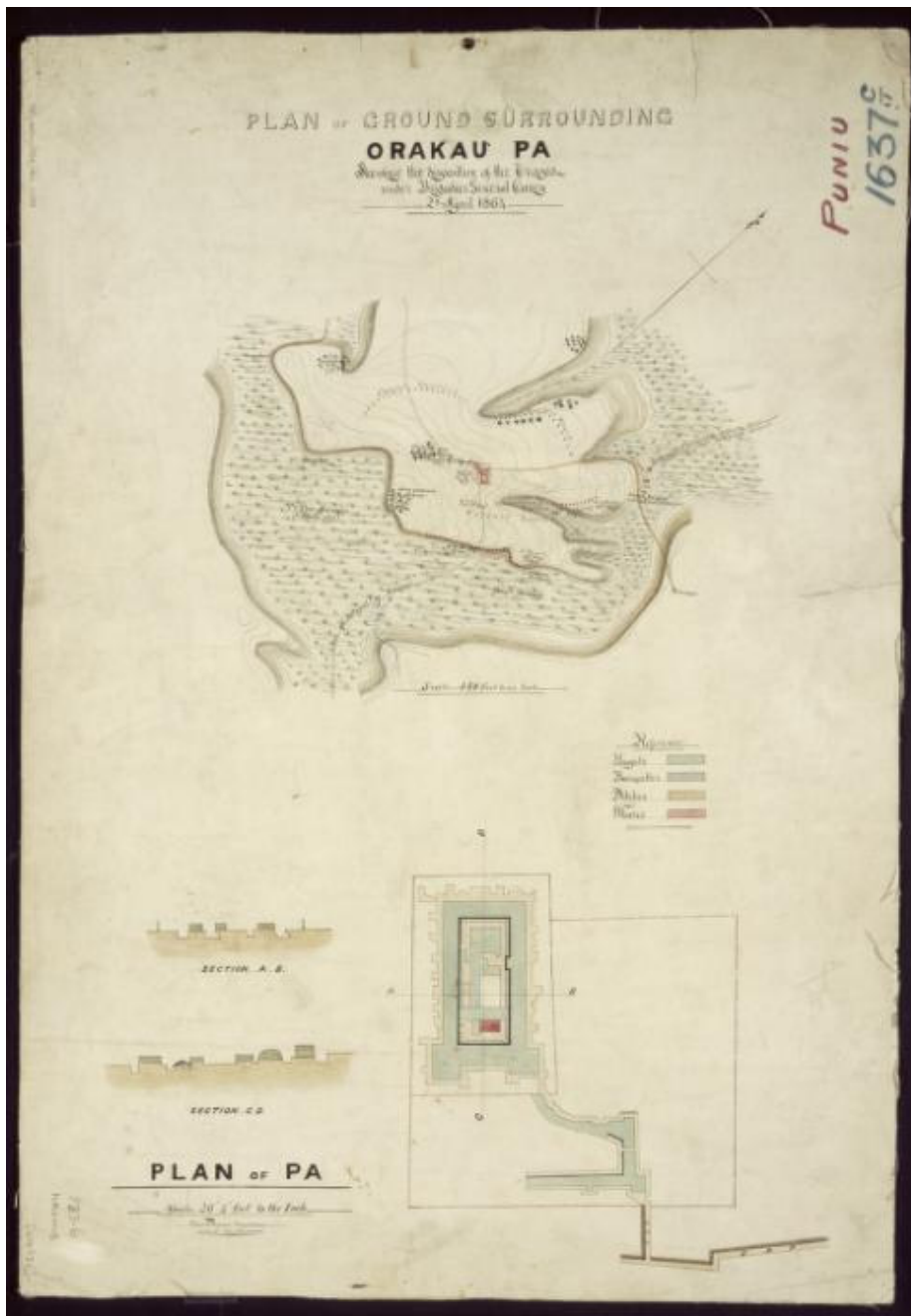
It is unclear whether the fortification at Orakau seen by British troops late in February 1864 was the same one at which the famous stand was eventually made, though it seems most unlikely. For one thing the pa at which the siege occurred was still in the course of construction when encountered by the British on 30 March. Given the numbers involved in building the pa at the time, it is impossible to believe that this would have taken more than a month to fully complete. Indeed, according to the government interpreter W.G. Mair, Orakau was not even occupied until 28 March 1864.⁴³⁰ A number of fundamental elements of the successful modern fighting pa had been ignored in opting for the particular site at Orakau as the scene for the latest engagement. A hastily constructed and incomplete pa on an exposed site with no clear line of retreat and no access to a water supply was always going to prove impossible to hold against superior numbers and artillery. Despite this, the defenders of the pa did their best to maximise their position, working around the clock in shifts to construct a credible, though far from impregnable, fortification.⁴³¹

⁴²⁸ *ibid.*

⁴²⁹ *ibid.*; Cowan, *New Zealand Wars*, vol.1, p.367; Von Tempsky, *Memoranda of the New Zealand Campaign*, pp.125-126, qMS-2008, ATL.

⁴³⁰ W.G. Mair to the Colonial Secretary, 29 April 1864, AJHR, 1864, E-1, Part II, p.14.

⁴³¹ Belich, *New Zealand Wars*, p.167.



(Source: Robert S. Anderson, draughtsman, 1864, MapColl-832.14hkm/1864Acc.36888, ATL)

Figure 6 Plan of Ground Surrounding Orakau Pa

The party included about 100 Urewera from the Tuhoe, Ngati Whare and other tribes, between 20 and 40 Ngati Kahungunu from Upper Wairoa, along with others from Ngati Raukawa, Ngati Te Kohera, Ngati Tuwharetoa to the number of about 100 all together, with about 50 Ngati Paretekawa and some other Ngati Maniapoto hapu and

20 Waikato proper. A few other Maori from other East Coast or Bay of Plenty iwi may also have been present, though not in sufficient numbers to operate as tribal blocs.⁴³² According to James Cowan, who grew up on a farm that included at least part of the battlefield site and who later interviewed many of the veterans of the conflict, among the 310 builders and defenders of the pa were about 20 women and some children, many of the former taking a full share in the work.⁴³³ Other estimates have suggested that as many as one-third of the 300 or so occupants of the pa may have been women.⁴³⁴ Although the Kingitanga forces had excluded women and children from their fighting pa after the battle at Rangiriri, it seems significant that the practice of bringing families into the fortifications for their own security was resumed in the wake of the British attacks on Hairini and Rangiaowhia in February 1864. Maori male fighters no longer trusted the British, it would seem, not to attack and kill their women and children.⁴³⁵

Despite its obvious deficiencies, Orakau pa proved surprisingly difficult to take by main charge, but rapidly dwindling supplies of food, water and ammunition, which were already low from the outset, instead eventually forced out the occupants. It did not help that the pa was still in the course of construction when it was first discovered by the British, though given its proximity to their nearest redoubt at Kihikihi that should hardly have come as a surprise.

On the morning of 30 March two surveyors, Gundry and G.T. Wilkinson, observed through a theodolite telescope a large number of Maori busily fortifying the Orakau site. Their discovery was reported to Brigadier General Carey, who having confirmed the construction of a pa by riding over to inspect the scene himself shortly after

⁴³² Cowan, *New Zealand Wars*, vol.1, p.373; Belich, *New Zealand Wars*, pp.167-168; W.G. Mair to the Colonial Secretary, 29 April 1864, AJHR, 1864, E-1, Part II, p.14.

⁴³³ Cowan, *New Zealand Wars*, vol.1, p.373.

⁴³⁴ Belich, *New Zealand Wars*, p.168.

⁴³⁵ Besides evidently having other concerns. On 30 March Grey informed Cameron that Wiremu Nera Te Awaitaia had heard from the Kingitanga leaders that 'they are weary of the war, and desire peace and begging him to get permission from me to go to them.' Wiremu Tamihana and Matutaera, he added, 'believe that they would be ultimately seized and hanged', but were prepared to join the peace party if assurances could be given that such would not be the case. Grey to Cameron, 30 March 1864, G 36/3, Archives NZ. Grey subsequently authorised Nera to promise the pair that 'if they will give up their arms they will not be executed or imprisoned, as they appear to apprehend, and that no one but murderers will be brought to trial.' Grey to Cameron, 1 April 1864, G 36/3, Archives NZ.

midday, determined to attack as soon as possible.⁴³⁶ He assembled a force of over 1100 troops in three separate columns, all of which were to march on Orakau during the night and time their arrival for dawn. While Carey was to advance with the main body of troops along the dray road to Orakau, a force of 250 men under Major Blyth were to take a circuitous route, crossing and re-crossing the Puniu River and skirting a nearby swamp, in order to take a position to the rear of the pa. Meanwhile, a smaller party of 100 men were to take up a position on the left flank of Carey's column, effectively ensuring Orakau pa was surrounded.⁴³⁷ The different columns set off on their respective marches between 10pm on 30 March 1864 and 3am the following morning, timing their arrival well.⁴³⁸

Although the King party were taken by surprise,⁴³⁹ they quickly regrouped, opening fire on the advance guard and assuming their positions inside the pa. An immediate British assault on the pa was easily repelled, resulting in a number of casualties, it being found to be considerably stronger than the British had at first thought, and several subsequent rushes on the main line of entrenchments met with a no better fate. Despite the apparent hopelessness of their position, morale among the King party swelled as a result of these early successes.⁴⁴⁰ Those inside the pa even began to debate whether they ought to seize the initiative. According to Hitiri Te Paerata:

We had worked all night, but the pa was not completed when the troops attacked us. They attempted to take the pa by a rush; but my father had placed the men, some in the ditch and others leaning over the earthworks, so when the attacking party got within a short distance we fired tremendous volleys, which made them fall back, leaving their dead and wounded. They then attacked on another side, and were again repulsed. My father and other brave men urged that we should take advantage of the confusion the Europeans were in and attack them.

⁴³⁶ G.J. Carey to Assistant Military Secretary, Head Quarters, 3 April 1864, *New Zealand Gazette*, no.12, 9 April 1864, pp.153-154.

⁴³⁷ *ibid.*; D.J. Gamble, 4 April 1864, Journals of the Deputy Quartermaster General, p.104, WO 33/16, Archives NZ.

⁴³⁸ Edward Tedder, 30 March 1864, Diary, MS-Papers-8104, ATL.

⁴³⁹ According to Raureti Te Huia, news of the arrival of the Pakeha troops was conveyed by means of the cry, 'A swamp-hen has reached the kawakawa.' Raureti Te Huia, 'Ko Te Kiteatanga o te Pa e Te Pakeha', Cowan Papers, MS-Papers-39-11, ATL. (Translation by Racheal McGarvey).

⁴⁴⁰ Belich, *New Zealand Wars*, p.169.

It is an old saying of our fighting men, “*Taka mua, taka muri* (Quick to strike and quick to retire).” Rewi would not consent, and the supreme lucky moment was lost. The Europeans again attacked, and were repulsed for the third time. They then appeared to lose all hope of talking [sic – taking] the place by assault, and determined to take it by first surrounding us and then saving [sic – sapping] up to the pa. Our retreat was now quite cut off. We had no water nor anything to eat except potatoes, which we ate raw to quench our thirst, which was very severe.⁴⁴¹

Given that the British parties which had attempted to rush the pa represented a small fraction of the total force available to Carey at the site, Rewi Maniapoto had been very wise to resist the urge to counter-attack, and suggestions that the defenders should hold their fire until the British were just a few yards short of the pa’s outer defences were also rejected as constituting too much of a risk.

After three unsuccessful efforts to breach its defences, Carey had meanwhile concluded that there was ‘no chance of taking the pa in this manner from the immense strength’ of the fortifications.⁴⁴² He therefore ‘determined to desist from this mode of attack’ and instead ‘decided on surrounding the place, and adopting the more slow but sure method of approaching the position by sap’.⁴⁴³ An unsuccessful effort was also made in the interim to breach the works by artillery fire, and for these purposes two 6-pounder Armstrong guns were brought up and fired from the elevated Karaponia ridge in the direction of the pa, but being fired from a distance of some 350 yards made little impression upon the defences.⁴⁴⁴

Carey now dispersed the force at his command evenly around the pa to prevent possible escape and ordered the engineers to commence a sap. The former act was perhaps timely from the British perspective as they soon discovered that there were reinforcements seeking to get into the pa as well. Carey reported that:

⁴⁴¹ Te Paerata, *Description of the Battle of Orakau*, p.4.

⁴⁴² G.J. Carey to Assistant Military Secretary, Head Quarters, 3 April 1864, *New Zealand Gazette*, no.12, 9 April 1864, p.154.

⁴⁴³ *ibid.*

⁴⁴⁴ *ibid.*; Cowan, *New Zealand Wars*, vol.1, p.381.

During the afternoon, a reinforcement of some 150 or 200 of the enemy from the direction of Maungatautari appeared in sight, evidently determined on relieving the place. They advanced to a bush situated about 900 yards in rear of our outposts, but, seeing that it was scarcely possible to break through the line formed by our troops, they halted and commenced firing volleys, at the same time exciting the men in the pa to increased energy, by dancing the war dance, shouting, &c.⁴⁴⁵

According to Cowan's Maori informants, those inside the pa had recited familiar chants in an effort to guide their potential reinforcements towards them, including a Kingitanga haka composition which likened the government and its land-hunger to a bullock devouring the leaves of the raurekau shrub.⁴⁴⁶ The reinforcements, consisting of Ngati Haua, Ngati Raukawa and others, responded in kind but remained reluctant spectators for the duration of the siege.

Food, ammunition and water supplies within the pa quickly became depleted, and its formerly jubilant defenders quickly had to reassess their situation. Some advocated an attempted break out on the first night, though Rewi Maniapoto and others appear to have rightly guessed that the British would be anticipating such a move.⁴⁴⁷ Meanwhile, some of the Urewera chiefs, perhaps remembering the British actions at Rangiriri, advocated hoisting a white flag and firing on the troops as they advanced towards the pa, but were overruled by others who declared that they 'would not agree to such treachery, because this was not after the manner of chiefs.'⁴⁴⁸ Rewi had previously intervened to prevent one of his men from cutting out the heart of a dead young soldier who had fallen just outside the pa's defences in the early attempts to storm it, even though it was customary to make a sacrificial offering of the first fallen in this way, reportedly insisting that 'we are fighting under the religion of Christ.'⁴⁴⁹ For all of the attempts on the part of the British to portray Rewi as a man of violent

⁴⁴⁵ G.J. Carey to Assistant Military Secretary, Head Quarters, 3 April 1864, *New Zealand Gazette*, no.12, 9 April 1864, p.154.

⁴⁴⁶ Cowan, *New Zealand Wars*, vol.1, p.382.

⁴⁴⁷ Belich, *New Zealand Wars*, p.170.

⁴⁴⁸ Te Paerata, *Description of the Battle of Orakau*, p.5.

⁴⁴⁹ Cowan, *New Zealand Wars*, vol.1, p.381.

and savage temperament, he appears to have been more of a stickler for appropriate military etiquette than were some of the British commanders.

Nevertheless, contemporary reports written during the course of the battle, besides confidently asserting that ‘The natives are completely surrounded, and have not the slightest chance of escape’, also noted that Rewi Maniapoto was believed to be inside the pa.⁴⁵⁰ One British soldier who took part in the Orakau siege even claimed that a price had been put on his head. According to William Race:

...it was known that Rewi the great fighting chief was in that Pah, and 500 £ was the reward for his head, dead or alive. He was considered the most blood thirsty rebel of them all, and this was what his sanguinary threat was. Known as Rewi’s “bloody threat”, translated “I will swim my canoes down to Auckland in the Pakehas blood, and give each of my men a white woman for [a] wife”.⁴⁵¹

For the record, it should be stated that there appears to be no further documentary record of ‘Rewi’s curse’, or indeed of a price being placed upon his head, dead or alive. Certainly, the British did later resort to such a tactic after 1868 with respect to the Turanga prophet and military leader Te Kooti and it is possible that the discrete promise of a reward had been made to the troops at some point during the Waikato War.⁴⁵² In any case, as with so much of history, perception was everything. The British were desperate to catch Rewi, believing this would deal a devastating blow to the Kingitanga war effort. For these purposes reinforcements were rushed to the scene on the first day of the siege, and Cameron himself arrived on the final morning.⁴⁵³

As the newspaper quoted above suggested, the British believed that such a result (the capture or killing of all those inside the pa, including Rewi) was virtually guaranteed

⁴⁵⁰ *Daily Southern Cross*, 4 April 1864 [report dated 1 April 1864]. Some later works wrongly claim that Rewi’s presence was not known until after the battle. Fox, *The War in New Zealand*, p.98.

⁴⁵¹ William Race, *Under the Flag. Reminiscences of the Maori Land (Waikato) War*, by a Forest Ranger, pp.195-196, qMS-1671, ATL.

⁴⁵² Vincent O’Malley, “‘An Entangled Web’: Te Aitanga-a-Mahaki Land and Politics, 1840-1873, and their Aftermath”, report commissioned by the Te Aitanga-a-Mahaki Claims Committee, September 2000, pp.322-333.

⁴⁵³ G.J. Carey to Assistant Military Secretary, Head Quarters, 3 April 1864, *New Zealand Gazette*, no.12, 9 April 1864, pp.154-155.

given the lack of any escape route and the shortage of supplies among the defenders, making it just a matter of time before the sap broke the defences and the inevitable crushing victory was achieved. Once the sapping operation was discovered, however, the inhabitants of the pa concentrated their limited firepower on the head of it, inflicting a number of casualties among the British, and according to at least one account they also commenced their own counter-sap which was judged to perfection and which might have caused panic in the ranks of the troops were it not for the orders of their officer to hold their position.⁴⁵⁴

According to Cowan's informant, Te Huia Raureti, when the second morning dawned, the pa was completely enveloped in a thick fog. Te Winitana Tupotahi of Ngati Maniapoto, one of Rewi's lieutenants and relatives (a cousin) by this time:

...discovered that the greater part of our ammunition had been fired away, and that there was no reserve of powder and bullets; also that there was no water, and that the people were eating raw *kamokamo* and *kumara* to relieve their thirst. Tupotahi therefore made request of the council of chiefs that the *pa* should be abandoned, in order to save the lives of the garrison, under cover of the fog. The *runanga* considered the question, but resolved not to abandon the *pa*. This was the announcement made by Rewi Maniapoto: 'Listen to me, chiefs of the council and all the tribes! It was we who sought this battle, wherefore, then, should we retreat? This is my thought: Let us abide by the fortune of war; if we are to die, let us die in battle; if we are to live, let us survive on the field of battle.'⁴⁵⁵

In a gesture of defiance, as the fog lifted from the battlefield, many of the pa's defenders sallied out towards the British troops surrounding them, some charging as far as 200 yards before returning inside the earthworks. Te Huia Raureti recalled that:

We were in better spirits after our fight in the open; nevertheless we realized that our position was hopeless, short of food and water, short of lead, and

⁴⁵⁴ William Race, *Under the Flag. Reminiscences of the Maori Land (Waikato) War*, by a Forest Ranger, pp.174-175, qMS-1671, ATL.

⁴⁵⁵ Cowan, *New Zealand Wars*, vol.1, p.384. See also the account of Te Wairoa Piripi, James Cowan Papers, MS-Papers-0039-41B, ATL.

surrounded by soldiers many times outnumbering our garrison, and with big guns throwing shells into our defences.⁴⁵⁶

Following their initially ineffectual use from Karaponia ridge, the Armstrong guns were brought forward and began to inflict gradual if sustained damage on the pa and its occupants.⁴⁵⁷ Meanwhile, those inside the pa were reduced to using peach stones, bits of wood or iron pots deliberately broken up for the purpose as bullets.⁴⁵⁸ Water supplies were now fully exhausted though one or two individuals did manage to creep under cover of darkness to a nearby spring in order to bring back a small supply for the wounded inside the pa. That evening (1 April), Tupotahi proposed to Rewi that they should attempt to fight their way out during the night. Rewi declared in favour of such a plan, stating that if they did not evacuate the pa that night they would all perish. But some of the Ngati Raukawa and Te Urewera leaders argued strongly against such a proposal, as a result of which dawn arrived without any attempt to escape.⁴⁵⁹

At an early morning runanga of the assembled tribes, it was again urged that a bid be made to break through the British lines before the light improved, but this was once more rejected. British sappers had worked throughout the night and were now close enough to lobby hand grenades over the parapet.⁴⁶⁰ Later that morning Carey ordered one of the Armstrong guns to be hauled into the sap, which was now just eight to fifteen yards from breaking through the outer defences.⁴⁶¹ Cameron arrived on the scene at around the same time (around 9am in most primary sources, but as late as Midday in others). According to W.G. Mair, Cameron had the previous day threatened to come and take command of the troops himself if Carey did not 'get the

⁴⁵⁶ Cowan, *New Zealand Wars*, vol.1, p.385.

⁴⁵⁷ Featon, *The Waikato War*, pp.80-81.

⁴⁵⁸ J.W. Ellis, 'Orakau' (reprinted from *Waikato Times*, 28 March 1914), in Ormsby Family Papers, MS-Papers-6889-2, ATL.

⁴⁵⁹ Cowan, *New Zealand Wars*, vol.1, p.386.

⁴⁶⁰ *ibid.*, p.388; G.J. Carey to Assistant Military Secretary, Head Quarters, 3 April 1864, *New Zealand Gazette*, no.12, 9 April 1864, p.154.

⁴⁶¹ G.J. Carey to Assistant Military Secretary, Head Quarters, 3 April 1864, *New Zealand Gazette*, no.12, 9 April 1864, p.154; D.J. Gamble, 4 April 1864, Journals of the Deputy Quartermaster General, p.104, WO 33/16, Archives NZ; William Mair to Colonial Secretary, 29 April 1864, AJHR, 1864, E-1, Part II, p.14.

affair over with soon'.⁴⁶² However, it seems most unlikely that Cameron would have advocated a further attempt to take the pa by main force given his experience of this at Rangiriri and the failed attempts already made so far at Orakau, especially given the sap was now so close. In fact, some versions have it that Carey, perhaps hoping to impress his superior, was preparing plans for an all-out assault on the pa, only to have this ambitious plan of attack overruled by Cameron, though again the evidence for this is slim.⁴⁶³

Instead, Cameron issued orders for terms to be offered the occupants of the pa before any further action was taken. W.G. Mair reported a few weeks after the battle that:

On the third day, April 2nd, when the sap had approached to within fifteen yards of the outer works, General Cameron sent myself and Mr. Mainwaring to them to say that he admired their bravery exceedingly, but that they had better yield and thus save their lives, for they were completely surrounded by troops, and their escape was impossible. The answer returned was, that they “were all of one determination, to fight against the Pakeha for ever, and ever, and ever.” They were then requested to send out their women and children that they at least might be saved, to which they replied that if “the men died, the women would die with them.” These answers came from the Uriwera [sic] who occupied that side of the works, but a discussion was held in the inner redoubt as to what course they should adopt; upon some one suggesting that they should accept the terms offered, it was answered, no! or we shall be all “taken to Auckland, as those were from Rangiriri, and never perhaps be liberated.” Rewi himself proposed that this should be their last fight, and that they should request the General to “march all his troops back to the Awamutu, and that they should pledge their word to follow and lay their guns at his feet, and hereafter trust to the white people for protection.” To this the Uriwera [sic] (who were evidently the toa’s of this fight) answered that “they would

⁴⁶² W.G. Mair, 6 April 1864, Gilbert Mair, Papers relating to the New Zealand Wars, MS-Papers-4862, ATL.

⁴⁶³ Belich, *New Zealand Wars*, p.171.

not listen to such terms, and if any one came from the General again they would do their best to shoot him.”⁴⁶⁴

The undeniably brave sentiments expressed by the occupants of the pa contributed greatly to the romanticised version of Orakau as a heroic yet futile final stand passed down to later generations. This and debate over whether Rewi Maniapoto personally uttered the immortal words ‘Ka whawhai tonu matou, ake, ake, ake!’ have tended to obscure some perhaps even more important points regarding this incident.⁴⁶⁵ Firstly, the events at Rangiriri obviously continued to weigh heavily on Maori minds, more or less directly contributing to a reluctance to surrender at Orakau for fear that the British might also take them prisoner. In this sense, those who subsequently died at Orakau could be seen as in some ways victims of the perceived breach of faith on the part of the British at Rangiriri. Secondly, and perhaps more speculatively, it seems quite possible, if not likely, that the events at Rangiaowhia and Hairini, where women and children were killed, may have been a factor in women and children refusing to leave the pa when invited to by the British. Thirdly, the British were not (at least at this time) given to portraying Rewi Maniapoto in a sympathetic light. But the war-crazed fanatic popularly depicted at this time was surely a long way from the far more thoughtful figure depicted by Mair. Indeed, throughout the Orakau engagement Rewi sought to minimise casualties and was clearly anxious to restore peace given the opportunity. Unlike other Kingitanga leaders, he was even prepared to enter into a gentlemanly agreement with Cameron, rangatira to rangatira. The mythical Rewi once again fails to hold up in the light when contrasted with the figure who emerges from the historical evidence.

However, the view that Tuhoe were solely responsible for vetoing acceptance of the offer to surrender at this time was not shared by Peita Kotuku, who later recalled that ‘certain of the chiefs of Ngati-Maniapoto, Waikato and Tuhoe would not consent’.⁴⁶⁶

⁴⁶⁴ W.G. Mair to the Colonial Secretary, 29 April 1864, AJHR, 1864, E-1, part II, p.14. Mair’s unofficial account of the same incident, although differing in some respects (such as the actual words used in response to the offer to surrender and to allow the women and children to leave) is largely consistent with the official version as quoted here. W.G. Mair, 6 April 1864, Gilbert Mair, Papers relating to the New Zealand Wars, MS-Papers-4862, ATL.

⁴⁶⁵ On the debate about what was said and by whom see Cowan, *New Zealand Wars*, vol.1, pp.390-394.

⁴⁶⁶ Quoted in Binney, ‘Encircled Lands’, p.82. Kotuku was described by Cowan as a member of the Urewera contingent who was ‘part Ngati-Maniapoto and part Patuheuheu’. Cowan, *New Zealand Wars*, vol.1, p.404.

Without food, water or ammunition and under a steady bombardment of grenades and artillery fire, the already dire situation of those inside the pa became untenable as the sappers, having broken through the outer defences, reached the main entrenchment by late in the afternoon of 2 April. An official British report noted that, just as the sappers were on the verge of breaking through this final line of defence:

At 3.30 the enemy suddenly came out of their entrenchment on the open, and in a silent and compact body moved without precipitation. There was something mysterious in their appearance, as they advanced towards the cordon of troops, without fear, without firing a shot, or a single cry being heard even from the women, of whom there were several among them.

They had been already more than two days without water; they had no food but some raw potatoes; and overwhelming force surrounded them, and all hope of relief failed; but still, with an extraordinary devotion to their cause, calmly, in the face of death, abandoned their position without yielding.⁴⁶⁷

Rifles were loaded with what remained of any ammunition and women and children placed in the centre of the group (along with Rewi Maniapoto and other principal chiefs, by some accounts).⁴⁶⁸ Rewi, according to some versions, had advocated scattering in order to maximise the chances of causing confusion in the ranks of British troops surrounding the pa, but (not for the first time) was overruled by several Tuhoe and other chiefs, who insisted that they should go in a body.⁴⁶⁹ The party departed the pa in the south-eastern corner, opposite to where the British were focused on the final stages of their sapping operation. Their audacious action initially took the British by surprise, allowing the group to reach a ridge perhaps 200 yards away. But they still had to break through a cordon of soldiers from the 40th Regiment immediately beyond this and below the ridge. The escaping party had chosen their preferred route well, as the line of sentries at this location had been removed to enable the Armstrong gun directly opposite the spot to be fired in this direction. Many of the

⁴⁶⁷ D.J. Gamble, 4 April 1864, Journals of the Deputy Quartermaster General, p.105, WO 33/16, Archives NZ.

⁴⁶⁸ W.G. Mair to Colonial Secretary, 29 April 1864, AJHR, 1864, E-1, part II, p.14; Te Paerata, *Description of the Battle of Orakau*, p.5.

⁴⁶⁹ J.W. Ellis, 'Orakau' (reprinted from *Waikato Times*, 28 March 1914, in Ormsby Family Papers, MS-Papers-6889-2, ATL).

men of the 40th had instead been re-directed to cutting manuka shrub on the edge of a nearby swamp, even if claims that only three or four men were left to block the potential escape route are contradicted by other evidence suggesting as many as 150 troops defending the line.⁴⁷⁰ According to Cowan's informants, a man named Puhipi near the front of the group was killed as he broke the British line, causing those behind him to momentarily hesitate. They soon re-gathered their momentum, dashing at the soldiers and breaking through, causing the British to turn and give chase.⁴⁷¹

It was at this point that an heroic bid for freedom turned into a bloody ordeal. By far the greatest number of casualties throughout the whole battle of Orakau were endured in the subsequent lengthy pursuit through bush, swamp and scrub as survivors scrambled their way to the Puniu River, chased by a small but effective force of cavalry and other troops. Gamble wrote in his official report that 'The troops now converged to the direction in which the Maoris retired, and after they had passed the cordon, through which they succeeded in breaking, poured a murderous fire on them as they went through and beyond the thick ti-tree in rear of the position.'⁴⁷² Hitiri Te Paerata later wrote that:

As we fled before them they tried, by outmarching on our flanks, to cut off our retreat, and poured a storm of bullets which seemed to encircle us like hail. It became as a forlorn hope with us; none expected to escape, nor did we desire to; were we not all the children of one parent? therefore we all wished to die together. My father and many of my people died in breaking away from the pa. When we cut through the troops further on my brother, Hone Teri, who was with Rewi, died in endeavouring to shield him. The whole of my tribe were slain; my father, brothers, and uncle all died. My sister Ahumai, she who said the men and women would all die together, was wounded in four places. She was shot in the right side, the bullet going through her body and coming out on the left, she was shot right through the shoulder, the bullet coming out

⁴⁷⁰ Featon, *The Waikato War*, p.82; Belich, *New Zealand Wars*, p.172.

⁴⁷¹ Cowan, *New Zealand Wars*, vol.1, p.396.

⁴⁷² D.J. Gamble, 4 April 1864, Journals of the Deputy Quartermaster General, p.105, WO 33/16, Archives NZ.

at her back; she was also shot through the waist; and her left thumb was shot away.⁴⁷³

The battle of Orakau would later enter legend as a heroic if ultimately doomed last stand. Indeed, it was difficult not to be impressed by the bravery displayed. As Gilbert Mair, writing to his brother four days after the battle had ended, noted:

The courage of the Maoris filled everyone with admiration. No European troops would have held out as long as they did, and even when hunted through swamp and scrub they fought like tigers, killing and wounding both horses and men, though they had been living on raw potatoes mostly for three days without tasting even a drop of water.⁴⁷⁴

But if Orakau was the chivalrous and noble affair the British later sought to portray it as, how was it possible for one young woman, presumably unarmed, to be struck by British bullets no less than four times? Just how noble was it exactly to shoot fleeing females, especially when they and their children may have only been present inside the pa at Orakau because of earlier British lapses of a similar kind at Rangiaowhia and Hairini?

Carey's official report on the battle sought to anticipate any allegations of wrongdoing, stating that:

I regret to say that in the pa and in the pursuit some three or four women were killed unavoidably, probably owing to the similarity of dress of both men and women, and their hair being cut equally short, rendering it impossible to distinguish one from the other at any distance.⁴⁷⁵

Belich, though, writes that, in striking contrast to the legend of a chivalrous and heroic engagement, the high proportion of Maori killed at Orakau and during the

⁴⁷³ Te Paerata, *Description of the Battle of Orakau*, pp.5-6.

⁴⁷⁴ Gilbert Mair, *Jubilee Souvenir of the Battle of Orakau*, Hamilton: Waikato Times, 1914, no pagination.

⁴⁷⁵ G.J. Carey to Assistant Military Secretary, Head Quarters, 3 April 1864, *New Zealand Gazette*, no.12, 9 April 1864, p.155.

subsequent pursuit compared with the figures for those wounded suggests ‘a large-scale massacre of wounded non-combatants’, including some women and possibly children among those slain.⁴⁷⁶ There is considerable evidence in support of such a conclusion. Interpreter W.G. Mair wrote a few days after the battle ended that:

I saw 8 or 10 women killed and one of the wounded is dead, and 5 or 6 of the men, the entire loss cannot be less than 150, the wounded prisoners are three men, one boy, and a woman...the prisoners say that they think that none got away at all, I have had my fill of fighting, and do not care to see any more, these poor killed and wounded women have horrified me, and I am filled with disgust, at the generally obscene and profane behaviour of the troops, as well as their vaunting, yet almost cowardly behaviour...⁴⁷⁷

One incident in particular may have played a large part in Mair’s disgust with the behaviour of British troops at Orakau. According to Hitiri Te Paerata:

...when the pa was carried Major Mair went in with the stormers to look after the wounded. He found some soldiers trying to kill a wounded woman named Hineiturama, belonging to Rotorua. They did not know, perhaps that she was a woman, but they were enraged at the death of their officer, Captain Ring. Major Mair carried the woman to a corner of the pa, and ran off to save another woman called Ariana, who was also badly wounded, but when he returned Hineiturama had been killed.⁴⁷⁸

Te Paerata stated that he mentioned this incident simply to show that some Europeans acted in a kind manner. But he might also have referred to it as evidence that at least some British troops had deliberately killed in cold blood those already too wounded to even leave the pa.

Other sources also indicate that the troops were angered by the death of Captain Ring, who had been killed during the initial assault on the pa on 31 March, as well as

⁴⁷⁶ Belich, *New Zealand Wars*, p.173.

⁴⁷⁷ W.G. Mair, 6 April 1865, Gilbert Mair, Papers relating to the New Zealand Wars, MS-Papers-4862, ATL.

⁴⁷⁸ Te Paerata, *Description of the Battle of Orakau*, p.6.

stinging from the humiliating manner in which their own lines had been breached during the escape. William Race wrote that ‘the troops were so enraged at the loss of Capt. Ring and others, together with the peculiar manner these Maories had escaped that they shot at them whilst they could, and having myself witnessed such playing fast and loose with these rebels so often, considered, strange as it may appear this disregard of discipline by the soldiers justifiable.’⁴⁷⁹ If Race was less than forthcoming as to what these breaches of discipline or ‘fast and loose’ acts were, others were evidently more forthcoming. One correspondent for the *New Zealander* reported that:

*Women – many women – slaughtered, and many children slain, are amongst the trophies of Orakau, and “civilization” in pursuit, or as it returned from the chase, amused itself by shooting the wounded “barbarians,” as they lay upon the ground where they had fallen.*⁴⁸⁰

According to a private letter later quoted in one of the London newspapers, ‘The brave Maori defenders, in a most gallant manner, cut their way through our lines, and escaped, though not without leaving 100 killed, including all the women and children.’⁴⁸¹ That was clearly an exaggeration, since Grey’s official account of the battle forwarded to the Colonial Office referred to the ‘unfortunate’ fact that nearly one-quarter of the wounded prisoners were females.⁴⁸² Yet even Featon’s otherwise quite sanitised history of the war records an incident in which a woman who had already been shot through the breast and was carrying a young child under her arm had to be rescued from a drunken soldier who was about to bayonet her.⁴⁸³ No doubt Featon’s intention was to highlight the kindness of her rescuer, but when women and

⁴⁷⁹ William Race, *Under the Flag. Reminiscences of the Maori Land (Waikato) War*, by a Forest Ranger, pp.204-205, qMS-1671, ATL.

⁴⁸⁰ *New Zealander*, cited in *New Zealand Herald*, 15 April 1864 [emphasis in original] Note: The *Herald* denounced this allegation as an unfounded ‘calumny’. The *Daily Southern Cross* (12 April 1864) was similarly outraged by the article.

⁴⁸¹ Aborigines Protection Society, *The New Zealand Government and the Maori War of 1863-64, With Especial Reference to the Confiscation of Native Lands, and the Colonial Ministry’s Defence of their War Policy*, London: William Tweedie for the Aborigines Protection Society, 1864, p.13.

⁴⁸² *ibid.*, p.14.

⁴⁸³ Featon, *The Waikato War*, p.83. Von Tempsky described a similar incident, noting that ‘a half-caste girl, shot already through the arm was pursued by a ruffianly soldier who was upon the point of bayonetting her when one of the Forest Rangers saved her.’ *Memoranda of the New Zealand Campaign*, p.152, qMS-2008, ATL.

children had to be saved from other British troops that surely highlighted something altogether more disturbing.

Total British casualties during the Orakau engagement came to 16 killed and 52 wounded.⁴⁸⁴ Losses on the Maori side were clearly the most severe of the entire war, even if the precise number is more difficult to establish. Mair, as quoted above, believed that 150 Maori had been killed in the battle, as did General Cameron,⁴⁸⁵ and others such as John Morgan.⁴⁸⁶ This figure was the most common estimate given in later sources, including some Maori ones.⁴⁸⁷ Hitiri Te Paerata, for example, commented that 'Not half of the defenders of the Orakau Pa escaped.'⁴⁸⁸ Some estimates were as high as 200 killed, however, while Belich observes that 'a surprising number of earlier British reports gave fifty for the number of Maori bodies counted.'⁴⁸⁹ Gamble's report, prepared just a few days after the battle, gave a much higher tally, however, listing 101 killed, 'besides 18 to 20 reported by native prisoners as buried inside the pah.'⁴⁹⁰ He explained that this figure represented the bodies found in searching in and around the pa and over the line of pursuit through the manuka scrub extending over some five or six miles. However, it is clear that many of those killed in the pursuit died in the nearby swamp, where their bodies lay uncounted and uncollected long after the battle had ended. In a particularly gruesome description William Race wrote that 'some fortnight after [the battle] when reconnoitring the locality of that swamp the foetid smell too truly told that many bodies were rotting there'.⁴⁹¹

⁴⁸⁴ D.J. Gamble, 4 April 1864, Journals of the Deputy Quartermaster General, p.105, WO 33/16, Archives NZ.

⁴⁸⁵ Cameron to Grey, 7 April 1864, *New Zealand Gazette*, no.12, 9 April 1864, p.153.

⁴⁸⁶ 'The natives got fearfully cut up retreating from Orakau. They lost about 150. Only 60-80 escaped.' Morgan to Browne, 29 April 1864, Gore Browne 1/2d, Archives NZ.

⁴⁸⁷ However, a group of 'loyalist' Muriwhenua chiefs who were visiting Waikato at the time (with Grey's permission) claimed to have witnessed the battle and later gave the very precise figure of 133 killed and 28 wounded. 'Translation of Account of a Journey up Waikato, by Reihana Kiriwi, A Chief of the Rarawas', IA 14/22, Archives NZ.

⁴⁸⁸ Te Paerata, *Description of the Battle of Orakau*, p.6.

⁴⁸⁹ Fox, *The War in New Zealand*, p.102; Belich, *New Zealand Wars*, p.172; *New Zealand Herald*, 4 April 1864.

⁴⁹⁰ D.J. Gamble, 4 April 1864, Journals of the Deputy Quartermaster General, p.105, WO 33/16, Archives NZ.

⁴⁹¹ William Race, *Under the Flag. Reminiscences of the Maori Land (Waikato) War*, by a Forest Ranger, p.206, qMS-1671, ATL.

Mair wrote to the Colonial Secretary at the end of the month, stating (among other things) that:

Rewi sent a message by Hone te One to Brigadier General Carey to furnish him with a list of the killed and prisoners; he said he thought that about eighty had been killed and one hundred and twenty wounded, taken prisoners, or missing; of his own party of about fifteen, only three or four escaped; his half-brother, Te Raore, was wounded, and is a prisoner.⁴⁹²

Belich concludes that Rewi's estimate of 80 killed 'appears to be a reasonable figure.'⁴⁹³ But this would appear to overlook some important facts. Official reports gave the number of Maori prisoners captured at 33, of whom 26 were injured.⁴⁹⁴ The implication of Rewi's message would seem to be that about 200 of the Maori assembled at Orakau remained unaccounted for, with 80 of those assumed to have been killed. But if just 33 people were taken prisoner what happened to the remaining 87 or so souls. Surely they cannot all have got lost on their way south to the Puniu River? And how would Rewi have known that 80 had been killed? Did he go back and count the bodies? All things considered, then, the case for a much higher number of Maori killed at Orakau than 80 would seem strong, and perhaps the reason that the figure of around 150 to 160 killed is so often cited is that this falls within the most realistic range as to the total number of casualties.

What is particularly striking if we accept such an estimate is the very low proportion of wounded as compared with those killed – less than one-fifth. Perhaps even more staggering is the remarkably high proportion of prisoners who were wounded. As noted above, out of a total of 33 prisoners captured, just seven of this number were not wounded. It is also clear that many of the wounded suffered severe and in a number of cases mortal injuries. Mair reported at the end of April 1864 that 11

⁴⁹² Mair to Colonial Secretary, 29 April 1864, AJHR, 1864, E-1, part II, p.15.

⁴⁹³ Belich, *New Zealand Wars*, p.172. Another contemporary report also suggested that 80 or 90 had been killed on the Maori side. However, the same edition of the newspaper which suggested this carried separate reports also giving estimates of 50 killed in one case and 109 in another. *New Zealand Herald*, 6 April 1864. In a report carried a few day's later, the *Herald's* correspondent wrote that '112 I have seen dead! and a great number must still be lying in the swamp.' *New Zealand Herald*, 9 April 1864.

⁴⁹⁴ D.J. Gamble, 4 April 1864, Journals of the Deputy Quartermaster General, p.105, WO 33/16, Archives NZ.

wounded prisoners had died, nearly half of the total number.⁴⁹⁵ Combined with the evidence cited earlier, this does tend to bear out descriptions of a pursuit in which little quarter was shown by the British towards those people they hunted down. In many cases that would appear to have applied regardless of whether those Maori encountered were male or female. Beneath the romantic sheen of Orakau would appear to lie an altogether more gruesome and disturbing reality. The scale of the atrocities committed by British troops is almost impossible to gauge, but that some were seems beyond reasonable doubt. Following on from earlier controversies at Rangiriri and Rangiaowhia, the events at Orakau once again cast grave shadows over the overall conduct of British troops throughout the Waikato War.

Nor could such conduct even be deemed regrettable if necessary by the old maxim that the ends justify the means, since Orakau was hardly the decisive blow initially hoped for by the British. It is true that there were any number of optimistic contemporary reports describing Orakau as the decisive battle the British had been searching for since July 1863. It is also true that some current-day writers, rejecting what they see as the dubious revisionism of Belich, have sought to uphold such an interpretation. The military historian Chris Pugsley, for example, writes that ‘Despite what Maori and various historians would like to believe today, Orakau was the decisive victory that Cameron sought.’⁴⁹⁶

Yet at least one some contemporary report, far from describing Orakau as a decisive victory, instead termed it ‘a humiliating defeat’.⁴⁹⁷ As the *Daily Southern Cross* noted, ‘to all appearance the natives had got themselves into a trap from which escape was impossible.’⁴⁹⁸ And yet, at least half of those inside the pa had achieved the impossible, showing up the British troops in the process. Indeed, the prized trophy of Rewi Maniapoto eluded the British in large part thanks to a concerted effort to protect him during the retreat to the Puniu River,⁴⁹⁹ while many of those killed were from the

⁴⁹⁵ Mair to Colonial Secretary, 29 April 1864, AJHR, 1864, E-1, part II, p.15.

⁴⁹⁶ Chris Pugsley, ‘Walking the Waikato Wars: The Siege of Orakau, 31 March – 2 April 1864’, *New Zealand Defence Quarterly*, no.18, Spring 1997, p.36. For a similar view, see Michael Wynd, ‘Cameron’s Asymmetrical Victory: A Reinterpretation of the Waikato Campaign’, BA (Hons) research essay, Massey University, 2005, ch.4.

⁴⁹⁷ *Daily Southern Cross*, 6 April 1864.

⁴⁹⁸ *ibid.*

⁴⁹⁹ According to one of Cowan’s sources, Rewi Maniapoto had been wearing a large hat, like the kind worn ‘by an admiral...on a big ship’, but had been told to ditch this when fleeing the pa as an obvious

Urewera contingent, including at least 30 Tuhoe.⁵⁰⁰ Orakau, according to Belich, was the 'cruellest disappointment of the entire war' for the British forces. From the moment they had first surrounded the pa, it appeared a crushing victory was merely a matter of time. Instead, many occupants of the pa had manage to escape from what ought to have been a virtually impossible situation. Moreover, as Belich adds:

Bitter defeat though it was for the Maoris, Orakau had virtually no strategic results. The core tribes of the King Movement lost fewer men there than at Koheroa. Casualties among other tribes were fairly evenly distributed, so Orakau did not compare even to Rangiriri in terms of crippling a single tribe's warrior force. The battle cost the Kingites no land, and...it did not affect their will to resist further invasion. Orakau was the lost chance of decisive British victory in the Waikato War. It was not that victory itself.⁵⁰¹

2.10 The Aftermath of Orakau

Nor was there any great rush to surrender in the wake of Orakau. On 11 April 1864, some nine days after the escape from Orakau, a party of 20 former 'rebels' arrived at the British base at Camp Pukerimu under escort from Wiremu Nera and other members of Ngati Mahanga. One correspondent noted that the four rangatira in this group were immediately ushered into Cameron's tent, where it was reported that the chiefs requested 'some arrangement relative to their land should be come to before they laid down their arms.'⁵⁰² Cameron, according to this report, declared that he was not able to agree any terms with them and that any submission would have to be unconditional. He allowed the group half an hour to decide, following which, if they declined to make their submission, they would be free to leave the camp. Instead, the party (whose tribal affiliations are unclear from the sources) agreed to submit, handing over 12 stand of arms and ammunition before being invited to partake of a

symbol that he was of high rank. Te Putere Umanga to Captain Mair, 8 June 1895, Cowan Papers, MS-Papers-0039-03, ATL. (Translation by Racheal McGarvey). Grey wrote to Cameron (at a time when Rewi's fate was still unknown) that his death at Orakau 'would inflict a great blow upon the native confederacy.' Grey to Cameron, 5 April 1864, G 36/3, Archives NZ.

⁵⁰⁰ Binney, 'Encircled Lands', p.82.

⁵⁰¹ Belich, *New Zealand Wars*, p.175.

⁵⁰² *New Zealand Herald*, 15 April 1864.

meal. Another Maori appeared near the camp with a white flag later that day, and there was talk that a further 100 or more Kingitanga followers would be coming in to tender their submission imminently. But despite much speculation, no such group ever came in to tender their submission. The *Herald's* correspondent believed that there might be a split in the 'rebel camp' without offering any reasons for such a view, but added that 'I think they are under the impression that we will not occupy the land beyond Ngaruawahia, and that they will have the whole run of the Rangiawahia [sic] and this district'.⁵⁰³

Indeed, to judge from the reported discussions between Cameron and the four chiefs, the latter may have been encouraged to come in on the basis that some kind of arrangement along these lines may have been possible. A second report from a few days later noted that 'those who have come in have been led by Naylor's representations to expect milder terms than unconditional surrender.'⁵⁰⁴ Had Wiremu Nera led his Kingitanga relatives to believe that the return of lands south of Ngaruawahia might be possible if they came in and made terms? And if so, was there any connection between this and reports that appeared later the following month that Nera was claiming 'the greater part of the Waikato district belongs to him; he lays claim to the whole of "Rangiawhia," [sic] and goodness only knows how many thousand acres to the east, west, north, and south of that place'?⁵⁰⁵ Was there any truth to the suggestion that this 'monstrous piece of humbug' may have been a scheme devised by Nera to 'retain the land for his "Waikato friends" who are now in rebellion'?⁵⁰⁶

While much about the part played by Nera at this time remains uncertain, a more obvious factor was coming into play. By May 1864 the already strained relations between Grey and his ministers had spilled over into open acrimony. Arguments over the implementation of confiscation in the Waikato will be discussed in a later chapter. More pertinent here is the dispute over why the Kingitanga would not lay down their arms. Grey claimed to have compelling evidence that the treatment of those taken prisoner at Rangiriri was a decisive factor, a point hotly disputed by his ministers. On

⁵⁰³ *ibid.*

⁵⁰⁴ *New Zealand Herald*, 18 April 1864.

⁵⁰⁵ *New Zealand Herald*, 27 May 1864.

⁵⁰⁶ *ibid.*

3 May 1864 Grey forwarded a despatch to the Secretary of State for the Colonies in which he stated that:

The survivors of the Natives who refused to surrender at Orakau fled after the slaughter in the direction of Hangatiki, in Rewi's country. Brigadier-General Carey allowed a friendly Native to proceed there to communicate with the Natives still in arms.

This Native returned upon the 27th of April, and reports that Rewi states that he and all his people are very anxious to make peace and live quietly by the side of the white people, but that he is afraid that he would place himself too much at the General's mercy by giving up his arms; that the Natives captured at Rangiriri had been dealt with treacherously, they having been led to believe that, upon giving up their arms, they would be permitted to go free and live within the lines of the troops; he did not believe that they, the prisoners, were so well treated, or that their lives were to be spared, but if some of them, Tioriori or Takerei for instance, were allowed to come and see them, they would attach great importance to anything they proposed. He also added, that if the Governor should write to him as he had done to Thompson and his people, and be a little more lenient in his offers, he would be inclined to listen; but in the meantime, if any of his people accepted the terms offered, and attempted to pass out of his country, they would, if arrested, be put to death.⁵⁰⁷

The governor added a postscript to this despatch, stating that he had since received a further communication which made it clear that 'the Natives distinctly state, that the reason they would not accept the terms offered to them by General Cameron at Orakau was, because they found "they would all be taken to Auckland, as the prisoners were from Rangiriri, and never perhaps be liberated."'⁵⁰⁸

Two letters from W.G. Mair were appended to the despatch. In the first of these, dated 28 April 1864, Mair stated that Pumipi Moke, who had been sent to visit Rewi Maniapoto in the Hangatiki district by the 'loyalist' Kawhia chief Hone Te One, had

⁵⁰⁷ Grey to Newcastle, 3 May 1864, GBPP, 1864 [3386], p.26.

⁵⁰⁸ *ibid.*

returned the previous evening. He had not been permitted to see Rewi or any of the other Ngati Maniapoto chiefs, the path south being guarded by a sentry party from Whanganui with orders to shoot any one who attempted to pass that way. However, he had been allowed to exchange messages with Rewi and had urged him to accept the terms offered by the governor and Cameron. Rewi, it was added, had replied that:

...“he and all his people were very anxious to make peace and live quietly by the side of the white people, but he was afraid that he would place himself too much at the General’s mercy by giving up his arms,” that the natives captured at Rangiri [sic] “had been dealt treacherously with, they having been led to believe that upon giving up their arms they would be permitted to go free and live within the lines of the troops.” He did not believe “that they (the prisoners) were so well treated or that their lives were to be spared, but if some of them, Ti-ori-ori or Takerei for instance, were allowed to come and see them, they would attach great importance to anything they proposed.”⁵⁰⁹

Mair’s second letter, a day later, provided more information on the mission to Rewi. Pumipi Moke, he noted, had been hopeful of using his influence with portions of the Ngati Hikairo and Ngati Hinetu at Hangatiki. Rewi, Tikaokao, Wetini and Hikaka had all declared ‘that they were both anxious and willing to make peace, and live quietly by the side of the pakeha, but they must be allowed to “retain their guns, the muzzles of which they would plug tightly, for they were afraid that if once disarmed they would be completely at the mercy of the General.”’⁵¹⁰ The remainder of the letter repeated the complaints about the ‘treacherous’ behaviour of the British at Rangiriri and provided further details of what had taken place at Orakau (as quoted earlier).

William Fox took exception on behalf of ministers to Grey’s despatch to the British government. Referring to the allegation that Maori had been dealt with in a treacherous fashion at Rangiriri, he declared:

This allegation of Rewi, if true, would establish a most dishonorable breach of faith on the part of the Military Authorities, to whom the prisoners

⁵⁰⁹ W.G. Mair to Brigadier-General Carey, 28 April 1864, GBPP, 1864 [3386], p.26.

⁵¹⁰ W.G. Mair to Colonial Secretary, 29 April 1864, GBPP, 1864 [3386], p.27.

surrendered, or on the part of the Colonial Government, or of both, and Ministers respectfully express their regret that His Excellency should have forwarded the statement in which such imputation is made to the Secretary of State without a denial of its truth.

General Cameron's account of the surrender of the prisoners at Rangiriri, in his official Despatch of the 24th November, 1863, is in these words: "Shortly after daylight on the 21st, the white flag was hoisted by the enemy, of whom 183 surrendered unconditionally, gave up their arms, and became prisoners of war."

Ministers have never, officially or unofficially, heard any other account of the transaction. Nor is it possible that it should have been otherwise. Hostilities had commenced in the afternoon, continued during the night, and no communication whatever took place between the natives and the military till the white flag was hoisted, the soldiers had entered the redoubt, and the rebels were actually prisoners. There could have been no opportunity for any treaty as to their surrendering on terms, and it is placed beyond all doubt by General Cameron's official report that none took place, but that the surrender was altogether unconditional.⁵¹¹

Fox then disputed the claim that Rewi had requested that either Tioriori or Takerei should be released in order to come and visit him, appending a statement of Pumipi Moke in which the chief (Rewi) was said to have dismissed the pair as 'belong[ing] to the Government' and instead requested Te Tapihana as a go-between in any negotiations with the government. Moke set out in some detail the nature of his discussions with the Kingitanga leaders. He stated that:

Myself, Hone Haora, and Hira Kerei went to Ramarama-po on the Waipa, and saw Hone Te One there. We all went to the General at the Awamutu. The General's successor would not send us to make peace, but he desired Hone Te One to do as he thought proper, seeing that he (Hone Te One) knew what his

⁵¹¹ Fox, Memorandum of Ministers as to alleged Statement of Rewi Respecting Native Prisoners, 22 May 1864, AJHR, 1864, E-1, part II, pp.19-20.

Excellency had said on the [sic] When we returned to Kawhia we started to Hangatiki. We slept at Orahiri (Mr. Louis Hetet's place), about 15 miles from Te Kapua. We found ten men of the Ngatipo tribe there, who said they were afraid to give up their guns lest they should be imprisoned afterwards. I told them that the Governor dare not deceive them, lest, as he said himself, "he should be taken to London and beheaded; and he had too much affection for his head to wish to have it taken off his shoulders."⁵¹²

The following day a messenger went to the pa at Hangatiki, where they found Ngati Maniapoto, Waikato and some Whanganui people, the latter of whom were sent out to block the party's entrance. Moke added that:

I wrote a letter to the Ngatimaniapoto as soon as we met the messengers sent to turn us back. I told them that I only came for their good, to persuade them to accept the Governor's terms of peace. When they got my letter, they sent to ask why I came. I said I came to tell them the conditions of peace. 1st. That all munitions of war must be given up; 2nd. His Excellency's promise of amenity to the king people; 3rd. the Queen's message to put a stop to the punishment of her (Maori) children; 4th. That, if peace is made, the boundaries (utmost extent) of the Queen's land will be, commencing at Te Rore, Paterangi, Te Awamutu, Rangiaohia, Kihikihi, Orakau, and Maungatautari; Te Wetini and Hikaka (Ngatimaniapoto chiefs) both approved. Rewi Maniapoto wanted to see a letter from the Governor. He also wanted to make peace with his gun in his hand, the muzzle of it being stopped (plugged). He desired us to go back and communicate with the heads of the law. He said that if the Government wanted a messenger the best one they could send to them would be Te Tapihana. Te Oriori and Takerei belong to the Government.⁵¹³

This statement would appear to bear out suggestions that Kingitanga leaders were being offered terms by Grey but in an indirect manner which made it possible for him

⁵¹² Statement of Pumipi Moke, 16 May 1864, AJHR, 1864, E-1, part II, p.20. Note that the chief's name is variously spelt as Moke, Moka and Moko. For the sake of consistency the former has been employed here. Grey had visited the Waikato front on 16 April 1864. D.J. Gamble, [?] May 1864, Journals of the Deputy Quartermaster General, p.107, WO 33/16, Archives NZ.

⁵¹³ Statement of Pumipi Moke, 16 May 1864, AJHR, 1864, E-1, part II, p.20.

to deny or repudiate any agreement entered into with the 'loyalist' chiefs acting as intermediaries.⁵¹⁴ Little wonder that the *New Zealand Herald* correspondent quoted earlier believed that those who had come in had been misled as to the terms of their submission. Fox had made nothing of the terms offered by Moke and nor did Grey mention it in his reply, suggesting that ministers may have previously been aware of the strategy.

In fact a lengthy argument had been waged between Grey and his ministers throughout May 1864 as to the terms that should officially be offered the tribes (as opposed to those that might be suggested through intermediaries), and those drafted were rather less reassuring, especially with respect to the extent of land that might be confiscated, declaring that those who had fought against the Queen's troops had 'justly forfeited all their lands' but would be provided with specific areas under Crown grant once they had complied with the terms of peace. In contrast to Moke's message to Rewi and the other chiefs, there was no mention of any defined limit as to the boundaries of the area to be confiscated.⁵¹⁵ At this point (as shall be discussed in a later chapter) the dispute between Grey and his ministers came to focus very much on whether any Waikato confiscation should be a blanket one as ministers sought or the more limited raupatu advocated by Grey. Even though that debate was still being played out, some undertakings were evidently being made in an effort to induce the Kingitanga force to surrender. Those terms (as conveyed by Pumipi Moke) were far from attractive, especially given the loss of prime lands around Rangiaowhia, Kihikihi and Te Awamutu, and did not alter the state of affairs which had existed since Orakau, with neither side anxious to resume fighting in the Waikato again in the near future but no progress made towards a lasting peace or even an agreed truce.

⁵¹⁴ However, according to a 1948 petition from Te Tata Wahanui and Hori Tana, Grey had met privately with Rewi Maniapoto soon after the Orakau battle, when the governor asked Rewi to make peace. The chief refused for a long time and Grey was said to have stated that 'there would not have been war' if he had been present (presumably referring to the outbreak of the first Taranaki War), as well as admitting that 'We will never be able to repay you the damage we have done.' Rewi reportedly replied 'You were in the wrong. My blood was spilt on my homeland. Give me my land back', to which Grey was said to have declared that he would tell the government to do so. But Rewi also wanted assurances that he would not be attacked again, in consequence of which Grey, it was said, had promised that no white people would be allowed to trespass on the lands south of the Puniu River. The same petition also stated that a peacemaking feast was held at Waitara in about 1864, during which a photograph of Grey and Rewi shaking hands was taken. As will be seen in chapter 9, the pair did meet at Waitara in 1878 for the purposes of peace-making, though whether they were photographed together on this occasion is not known. New Zealand Alliance, Records, 77-206-03-19, ATL.

⁵¹⁵ Draft Proclamation, 22 April 1864, AJHR, 1864, E-2, 1864, pp.35-36.

It is all too easy, with the benefit of hindsight, to describe Orakau as the final act of the Waikato War. Yet neither the British nor Kingitanga forces knew that at the time, which surely highlighted that it was not the decisive battle some liked to imagine (did anyone in 1815 seriously doubt that Waterloo marked the end for Napoleon?). British forces were, even before Orakau, looking to bed themselves down for the winter, while the Kingitanga were hardly likely to take the offensive given the casualties they had suffered and their strategic approach of seeking to minimise losses. In the wake of Orakau, Rewi and others firmly re-established their position beyond the Puniu River. A large pa was established on rising ground at the head of the Hangatiki Valley, the entrance to which was guarded by a garrison with orders to kill anybody who attempted to pass.⁵¹⁶ This was at Haurua, a short distance to the south of the current-day settlement of Otorohanga.⁵¹⁷ Several further defensive posts were established behind this point, near to the Hangatiki township, and the whole strength of local hapu concentrated in constructing and holding these positions.⁵¹⁸ The Puniu River had become the widely understood boundary of the territory taken forcible possession of by the British.

Meanwhile, both Rewi Maniapoto and Wiremu Tamihana had informed two former Maori prisoners released to act as British envoys to the Kingitanga tribes in mid-May 1864 that:

...they would give up the whole of the land between Waikato and Waipa to us and to the soldiers, and that there should be no fighting within that space; but that if the pakehas at any time carried the war beyond the boundaries, they would consider that the truce (or peace) had been broken, and that they would then be at liberty to renew the war. Wiremu Tamihana said that if the General went to Tauranga that he also should go there; and that so long as the Government demanded their arms they would never make peace, lest, on losing their arms they should afterwards be hung; the affair at Rangiriri had

⁵¹⁶ W.G. Mair to Colonial Secretary, 29 April 1864, GBPP, vol.13, 1864 [3386], p.27.

⁵¹⁷ Cowan, *New Zealand Wars*, vol.1, p.408.

⁵¹⁸ *ibid.*

been a warning to them; the Maoris there who surrendered their arms were all made prisoners.⁵¹⁹

One contemporary report speculated that Rewi had agreed to the construction of the pa at Orakau despite his better judgment after being taunted for having given up Kihikihi without resistance.⁵²⁰ Clearly, however, any effort to press further south beyond the Puniu would be strongly resisted, and the Kingitanga was far from a spent force. In this respect, Grey had not achieved his overriding objective to destroy the King movement. It had been greatly damaged, for certain, and the area over which its sway held had been severely reined in. But the Kingitanga survived to literally fight another day, if needs be, and that had never been contemplated when British troops first crossed the Mangatawhiri River on 12 July 1863.

In the event, Cameron briefly turned his attentions eastwards towards Maungatautari, which had been abandoned by the Kingitanga soon after Orakau, before withdrawing to Auckland. From there, the main theatre of operations shifted to Tauranga, where on 29 April 1864 British forces suffered a humiliating defeat at Gate Pa, before reversing this at Te Ranga on 21 June. Despite the urgings of ministers eager to resume operations in the Waikato and thereby extend the territory available for confiscation, Cameron would not be drawn. He had become disillusioned by the quest for a decisive blow in the Waikato and was unwilling to lose more troops in the pursuit of this vain goal.⁵²¹ Some 4000 troops remained posted at Te Awamutu and the other redoubts along the front in order to defend what had already been conquered, but there were no further offensive operations in the Waikato.⁵²² As debate raged between Grey and his ministers as to confiscation policy, Cameron was drawn in on the fringes, and in August 1864 denied that military operations in the Waikato had been carried on with the object of establishing a frontier line from Raglan or Kawhia across to Tauranga. The General now claimed that:

⁵¹⁹ Statement made by the two Maori Prisoners on their return from Waikato, in presence of Messrs. Whitaker, Fox, and Russell, n.d. [c. June 1864], AJHR, 1864, E-2, p.49.

⁵²⁰ W.G. Mair to Colonial Secretary, 29 April 1864, GBPP, vol.13, 1864 [3386], p.27.

⁵²¹ Belich, *New Zealand Wars*, pp.175-176.

⁵²² Cowan, *New Zealand Wars*, vol.1, p.409.

...the principal objects which those operations were intended by me to accomplish were, to drive the rebels back from the vicinity of our settlements, to inflict as much loss upon them as possible, to plant the Queen's flag at Ngaruawahia, and to take possession of their cultivations, of which those at Rangiawhia [sic] and Kihikihi were considered the most valuable. I knew that it would be impossible to follow the rebels much beyond Rangiawhia, and that it would be necessary to occupy a position between the Waipa and Horotiu Rivers, which position might afterwards, if considered desirable, form part of the proposed frontier line; but whether I had had any knowledge or not of the views of Ministers regarding a frontier line, my operations would have been precisely the same, as being, in my opinion, those best calculated to attain the objects I have mentioned.⁵²³

Yet even Grey believed that Ngati Maniapoto, in particular, had 'escaped untouched in every engagement – they never fight, and do nothing but murder and pillage, having escaped hitherto without punishment, they are as unsubdued as ever'.⁵²⁴ Cameron could not, however, be persuaded to resume operations south of the Puniu River – in effect the new Mangatawhiri – and thus the Waikato War came to an end almost by default, and with few at the time silly enough to mistake the absence of fighting with peace. The latter would take the better part of two decades to achieve. In the meantime, however, the government had at least managed to take forcible possession of a substantial portion of the Waikato district, clearing the way for confiscation and European settlement. Only the strength of their own right arm spared the King's supporters south of the Puniu River from sharing a similar fate with respect to their own lands.

2.11 Conclusion

In July 1863 the Waikato tribes were forced into a defensive war when British troops invaded the district south of the Mangatawhiri River. Members of Ngati Maniapoto, Ngati Raukawa, Ngati Hikairo and other Rohe Potae groups were inevitably drawn

⁵²³ Cameron to Grey, 26 August 1864, Selections from Despatches and Letters Relative to the Conduct of Military Operations in New Zealand, p.279, WO 33/16, Archives NZ.

⁵²⁴ Grey to Biddulph, 8 March 1864, cited in Belich, *New Zealand Wars*, p.198.

into the ensuing conflict in significant ways. Many Maori resident within the inquiry district fought in defence of their King, their lands and lives, and those of their kin further north. A much smaller group of rangatira and their followers, including Wiremu Nera Te Awaitaia and other members of Ngati Mahanga at Whaingaroa, instead opted to provide a more limited form of assistance to the government, offering logistical support which appears to have stopped short of actual combat duties against their neighbours, while also acting as important intermediaries in subsequent negotiations between Kingitanga and Crown representatives. Members of Te Rohe Potae iwi do not appear to have been involved in the very earliest conflicts with Crown forces at Koheroa and elsewhere, but took a prominent role in the defence of the Meremere line and associated raids on British positions at Camerontown and elsewhere between August and October 1863. A largely distinct force subsequently defended the Rangiriri position in November, though members of Ngati Hikairo and some other Rohe Potae groups were among the defenders when the British attacked the pa that same month. While the British eventually captured Rangiriri, they did so only after heavy losses were sustained by both sides and under the most contentious of circumstances. The capture of more than 180 Maori prisoners under a white flag of truce that the British interpreted as a surrender constituted a heavy blow for the King's supporters.

In the wake of Rangiriri, Kingitanga leaders made concerted efforts to negotiate an end to the war, even complying with British demands that Ngaruawahia should be given up before peace talks could commence. But no talks followed, and some officials expressed a determination to carry the war deep into Ngati Maniapoto territory. While colonial ministers were widely believed to have their eyes on the rich agricultural lands around Rangiaowhia and Kihikihi, Grey appears to have doubted that the King's supporters had been sufficiently crushed or humiliated. Despite further Maori efforts to talk peace, British forces therefore pushed on southwards, bypassing Paterangi but inflicting a sharp defeat on a force containing many Ngati Hikairo and Ngati Maniapoto at Waiari in February 1864. Thereafter the British made a surprise raid on the settlement of Rangiaowhia, which had been widely understood by Maori to be a place of refuge for women, children and the elderly. The deaths which followed, including those of a number of occupants of a pa torched by the British, were consequently remembered with great bitterness.

Further heavy losses followed at Hairini a day later, before the Ngati Paretekawa settlement of Kihikihi was sacked by British troops. Though the settlement had been evacuated by its residents shortly before troops descended upon it, in the space of a few short hours soldiers managed to pillage, loot or destroy much of what had stood in the formerly prosperous community. Members of Ngati Raukawa, Ngati Maniapoto and other Rohe Potae iwi, with significant assistance from other iwi such as Tuhoe, Ngati Kahungunu and Ngati Tuwharetoa, were subsequently attacked by British forces at the partially constructed Orakau pa in March 1864. Here the King's supporters suffered their heaviest losses of the war, with most of those killed losing their lives in a British pursuit of fleeing Maori that turned into a bloody ordeal. Others, including some women and possibly children as well, appear to have been the victims of atrocities committed by the British, being killed in cold blood. While Ngati Maniapoto and other groups once again expressed a willingness to agree peace terms in the wake of Orakau, British demands for unconditional submission proved more troubling, especially given fears that the British would once again act in a 'treacherous' manner the moment the tribes were disarmed. The Crown had not succeeded in destroying the King movement but through its actions it had caused an immense amount of pain, suffering and bitterness for the people of Te Rohe Potae and the wider Waikato region.

3. The Impact of the War on Hapu and Iwi of the Rohe Potae District

3.1. Introduction

At the end of the Waikato War, the King movement had been defeated, but not destroyed. It had survived the war, Belich suggests, ‘not because the British had acquired as much land as they wished to, nor because the Movement was so crippled that the British were unconcerned about the remnant. It survived because the British were militarily unable to destroy it.’⁵²⁵ Likewise, the British had ‘confiscated what they conquered – no more, and no less.’⁵²⁶ That happened to include virtually all of the lands of Waikato proper, but only some of the lands of the wider collective of Waikato tribes which formed the backbone of the Kingitanga. But the impact of conquest and confiscation was more complex than this might at first suggest, with the surviving population forced to support themselves on a much smaller land base and the loss of especially productive areas such as Kihikihi and Rangiaowhia felt sharply. Moreover, although the focus of this chapter is very much on Waikato, it should not be forgotten that war and confiscation at Taranaki also impacted on Rohe Potae hapu and iwi in various ways. Besides the loss of lands in that district in which such groups may have claimed an interest (discussed in a later chapter), there were likely to have been other impacts, such as major disruption to the previously important trading exchanges between Mokau and other areas with New Plymouth.

This chapter does not purport to provide a comprehensive socio-economic history of the Rohe Potae region in the wake of the Waikato War. As Ann Parsonson has noted, there are obvious difficulties around writing the history of a people who lived in an area from which Europeans were generally excluded and whose inhabitants were not in the habit of corresponding with government officials or settlers on a regular basis.⁵²⁷

⁵²⁵ Belich, *New Zealand Wars*, p.200.

⁵²⁶ *ibid.*

⁵²⁷ Ann R. Parsonson, ‘Te Mana o te Kingitanga Maori: A Study of Waikato-Ngatimaniapoto Relations During the Struggle for the King Country, 1878-84’, MA thesis, University of Canterbury, 1972, p.v.

Even so, contrary to what is sometimes imagined, the Rohe Potae district was not completely cut off from the outside world, and it is possible to gain some insight into life beyond the Puniu River. Extreme deprivation and disease in the early years after 1864 is perhaps not surprising but the extent to which Rohe Potae communities managed to recover from such a grim situation would seem quite remarkable. The Kingitanga endures today not merely because the British failed to totally destroy the movement during the invasion of the Waikato district, but also as a result of the concerted efforts of King supporters in the post-war period to avoid total disintegration.

3.2 War Casualties

There was, of course, a much grimmer side to the story, including by Belich's estimate some 500 killed or wounded and many more than this if the much higher figures given by contemporary British observers are instead relied upon.⁵²⁸ James Cowan's list of casualties may be taken as a fair representation of the higher estimates usually cited prior to Belich's work being first published in 1986. Cowan gives a total figure of 410 Maori killed during the Waikato War (excluding the Gate Pa and Te Ranga battles at Tauranga, which are often regarded as an extension of the Waikato conflict and which appear to be included in Belich's figure of 500 casualties), along with an incomplete total of 100 wounded, the latter figure based on just three engagements. By contrast, British losses are listed at 111 killed and 200 wounded, and if this kind of ratio (two wounded for every one killed) is adopted as any kind of guide, we might expect the total number of wounded on the Kingitanga side to be something in excess of 800, giving overall casualty figures in excess of 1200.⁵²⁹

However, it should be borne in mind that in some of the major engagements such as Orakau the ratio of those killed actually greatly exceeded the figure for wounded (in that case by about five to one if the most commonly cited figure of around 150 to 160 killed is accepted). It might therefore be necessary to adopt a more conservative ratio

⁵²⁸ Belich, *New Zealand Wars*, p.197.

⁵²⁹ Cowan, *New Zealand Wars*, vol.1, p.466.

of one wounded for each person killed, which would result in just over 400 wounded and total casualty figures of around 800 on the Maori side based on Cowan's estimates. That is significantly higher than Belich's estimate of 500 killed or wounded, of course, and in fact is almost exactly double this number if we exclude the 100 casualties estimated by Belich to have been suffered at Te Ranga and which appear to be included in his overall total. There is, of course, no reliable way to reach any kind of definitive conclusion on this, and the numbers of wounded are especially difficult to calculate. The British were able to calculate the numbers of wounded Maori prisoners but not those who had escaped. On the other hand, it was seen in the previous chapter that in some cases there was clearly a very high mortality rate for Maori wounded in battle.

It should be noted that some historians have suggested much higher casualty rates than even those suggested by Cowan. B.J. Dalton, for example, though not providing a separate estimate for the Waikato War, posits total Maori casualties in the wars fought over the period between 1860 and 1866 at somewhere in the order of 4000 killed or wounded.⁵³⁰ That would suggest a figure of anywhere up to around 2000 casualties in the Waikato War alone.

Dalton's estimate appears somewhat on the high side, even if he does make the entirely legitimate point that official figures were usually provided in the immediate aftermath of battle and failed to take into account those who died subsequently or others buried by Maori during the course of the fighting. Analysis of some of the major battles featured in the previous chapter also suggests that the casualty figures for the number killed are likely to have been closer to Cowan's estimates than to the ballpark figure provided by Belich. It was noted in the previous chapter that Fenton's 1858 census had estimated the population of the Waikato district (including what is today the Rohe Potae inquiry district) at 10,319.⁵³¹ If we assume for the sake of argument that the population had not declined in the intervening period then casualties of around 800 would constitute about 7.7% of the total population, with just under 4% of the population killed. By way of contrast with the greatest blood bath in New

⁵³⁰ B.J. Dalton, 'A New Look at the Maori Wars of the Sixties', *Historical Studies Australia and New Zealand*, vol.12, no.46, April 1966, p.236.

⁵³¹ Table Showing (as far as can be ascertained) the Aboriginal Native Population of New Zealand, in Fenton, *Observations on the State of the Aboriginal Inhabitants of New Zealand*.

Zealand history – World War One – in 1914 the total population of the country was just over one million, and out of the nearly one-tenth of this number who saw active service overseas nearly 17,000 were killed in battle and a further 41,000 wounded.⁵³² In percentage terms this constituted approximately 5.8% of the entire population of New Zealand, of whom around 1.7% were killed and 4.1% wounded. This staggering level of sacrifice is rightly remembered today but is likely to have been eclipsed by the casualty rate inflicted on the various Waikato and Rohe Potae iwi during the British invasion of their district in 1863-1864, even allowing for the participation of some Maori from outside the district.⁵³³

Such a comparison, although not exact, perhaps serves to counter suggestions that Maori had somehow managed to escape with a relatively light casualty rate during the wars. That would only be true to a limited extent if the calculation was based on the entire Maori population, but of course the war was largely fought by the core tribes of the broader Waikato district and with relatively limited support from outside. Those core tribes clearly suffered very heavily (and, as we saw in the political engagement report for the period to 1863, had previously incurred heavy losses during some of the battles fought during the first Taranaki War between 1860-1861) and that was likely to have been reflected in a range of demographic indicators, including a steep decline in child-women ratios for the Waikato district between 1857 and 1874 and a fall in the relative percentage of the total Maori population between 1840 and 1874.⁵³⁴

Regardless of the actual figures, the very many tragic deaths resulting from the Crown's invasion of the Waikato district undoubtedly had profoundly negative impacts for many groups in many different ways. For one thing, some hapu and iwi lost their leading rangatira at a time when experienced leadership was above all else required.

⁵³² Michael King, *The Penguin History of New Zealand*, Auckland: Penguin Books, 2003, p.302.

⁵³³ This latter factor is arguably likely to have been more than balanced by the significant number of Waikato Maori who either took no part in the war or became 'loyalists'.

⁵³⁴ Ian Pool, *Te Iwi Maori: A New Zealand Population Past, Present and Projected*, Auckland: Auckland University Press, 1991, pp.52, 97, 245.

3.3 Socio-Economic Impacts

But it was not just in the loss of rangatira that the impact of the war was felt. There was clearly also an economic dimension to this loss of life as well, with the reduction in the numbers of those who had formerly contributed to the thriving tribal economies of the region. And for the hapu and iwi of the Rohe Potae district the loss of valuable lands just to the north of the Puniu River in which they had interests was another serious economic blow. The looting and destruction of such villages and their crops, combined with the disruption to trade caused by the war, had in any event brought much economic activity to a virtual standstill. The missionary John Morgan claimed in 1862 that farming and agriculture had already been abandoned in favour of politics, informing the Church Missionary Society that:

Politics have occupied the time and attention of the kingites, while the plough, and the cultivation of wheat has been neglected. The consequence is that the fields once covered with the golden grain are now beds of docks and other noxious weeds, while the people themselves are reduced to poverty.⁵³⁵

Uncertainty in the pre-war period and contributions towards the Taranaki War over 1860-61 are likely to have had some impact on the Waikato Maori economy. On the other hand, the Kingitanga army did not feed itself, and it is evident from the contemporary descriptions of Rangiaowhia and Kihikihi at the time of their invasion in February 1864 that these remained highly fertile and productive areas under extensive cultivation – precisely the reason why Cameron had identified the district as an important target in order to cut off supplies to the Kingitanga forces. As Von Tempsky described it, with the seizure of this district, ‘We had...our knee upon the stomach of our enemy, by holding the whole breadth of cultivated country between the Waipa and the Horotiu.’⁵³⁶ And indeed, as was seen in the previous chapter, a staggering level of food resources were seized or destroyed and much of the district’s economic infrastructure (including some flour mills)⁵³⁷ deliberately torched during the invasion. Tribes which in the 1840s and 1850s had striven to raise the capital

⁵³⁵ Morgan to CMS, 1 July 1862, John Morgan, Letters and Journals, qMS-1392, p.729.

⁵³⁶ Von Tempsky, Memoranda of the New Zealand Campaign, p.118, qMS-2008, ATL.

⁵³⁷ Hazel Petrie, *Chiefs of Industry: Maori Tribal Enterprise in Early Colonial New Zealand*, Auckland: Auckland University Press, 2006, p.270.

necessary for heavy investments in flour mills, agricultural equipment, horses, cattle and so on, saw this almost literally taken from them overnight.

This economic impact of the war was the focus of a paper drafted by former Waikato official John Gorst. In May 1864 he forwarded the Secretary of State for the Colonies a paper entitled 'Observations on the Native Inhabitants of Rangiaowhia and Kihikihi'. In the paper Gorst wrote that:

The land around Rangiaowhia and Te Awamutu, extending to and including part of Kihikihi, belongs to natives of the great Waikato tribe. The territory of Ngatimaniapoto begins at Kihikihi, and extends thence to the South-west.

This country is not a barren waste. Besides the great villages at Rangiaowhia, Kihikihi, and Ruakotari, numerous little hamlets are dotted about the country, consisting of three or four native houses surrounded by their patches of cultivated land. Even those parts of the country which appear to be only a barren waste of heavy fern land, would be found on enquiry to have been once under cultivation, and to be now used as a pasturage for horses, cattle, or pigs. In a few years these parts would be again brought under cultivation in their turn, according to the sort of nomadic agriculture practised by the Maoris. The whole district is occupied and used; it bears marks of having been enriched and improved by the labour of the inhabitants. Good fences have been erected. Rangiaowhia, for instance, is surrounded by a fence many miles in circuit; roads are made in various directions; bridges have been thrown over impassable swamps, and a good many mill-dams have been constructed. A considerable part of the land was covered a generation ago with ancient forest, which the industry of the Waikatos has cleared.⁵³⁸

Gorst went on to explain that the inhabitants of the district had been adherents of the Maori King since 1857 and had opposed his own posting as magistrate for the region in 1861, in consequence of which he was withdrawn in March 1863. During this period, he added, he had been 'frequently indebted to the friendship and support of the

⁵³⁸ J.E. Gorst, *Observations on the Native Inhabitants of Rangiaowhia and Kihikihi*, 21 May 1864, AJHR, 1864, D-5, p.6.

Waikatos for protection against the hostility of Rewi and Maniapoto [sic].'⁵³⁹ The leading chiefs of Rangiaowhia, Gorst believed, would have fallen in with Grey's runanga system proposals but 'dared not risk a quarrel with Maniapoto, against whose hostility the English Government could have afforded them no protection.' Short of actually joining the government side those tribes had, he continued, acted as a restraint on the actions of Ngati Maniapoto. According to Gorst, Rewi alone had been responsible for the Oakura ambush of British troops, and Waikato proper and Ngati Haua had prevented Rewi from carrying out his plan to attack the Queen's Redoubt and Auckland. He added that:

There is no evidence of their having joined in any hostile schemes until the dread of an invasion drove Waikato and Ngatihana [sic] once more into an alliance with Maniapoto. I believe that in resisting the progress of General Cameron, the two former tribes imagined themselves to be carrying on a defensive war.

A considerable portion of the inhabitants of the Rangiaowhia district were industrious, inoffensive men, whose desires were directed more to the acquisition of wealth by agriculture and commerce than to the pleasures of political excitement. The tribe generally was less wild than Maniapoto, and less patriotic than Ngatihana [sic], and would not, but for the mischievous nature of the former and the national aspirations of the latter, have given much trouble to the English Government. While the character of these people is in itself much less admirable than that of the Ngatihana [sic], it must be confessed that they are likely to make better and quieter subjects of a foreign power. I believe that most of them would be only too glad to submit to any Government that would treat them justly and protect them against molestation from others in the enjoyment of their property. It is only their position and circumstances that has made them rebels and warriors, and I believe nothing but the desperation which the entire confiscation of their territory would produce, can keep them permanently in arms against the British troops.⁵⁴⁰

⁵³⁹ *ibid.*, p.7.

⁵⁴⁰ *ibid.*

Gorst must surely have been aware from his own time in the district as civil commissioner that Ngati Maniapoto claimed interests beyond Kihikihi, as he certainly notes elsewhere their disputed claims around Otawhao (Te Awamutu).⁵⁴¹ But beyond the familiar pointing of fingers at Ngati Maniapoto as being responsible for getting the rest of the Waikato tribes into a serious amount of trouble, Gorst's paper had a more troubling message. An essentially peaceful people, more concerned with maintaining their thriving economy than with wider political matters, had been drawn into a defensive war, which might be prolonged only out of desperate concern to prevent the wholesale confiscation of their lands, and to the detriment of agriculture and commerce.

When this paper was received at the Colonial Office Permanent Under Secretary Sir Frederick Rogers penned an initial draft response in which it was stated that 'If Mr. Gorst's representation is correct I should very much regret that the Natives should be driven from a district which appears to have derived no small part of its value from their labour, and in which with proper treatment they are ~~were~~ likely to become useful and peaceable subjects.'⁵⁴² This revealing statement was omitted when Gorst's paper was referred to Grey for comment, in favour of a more bland hope that 'the present war will not be made the occasion of throwing back into savage life any portions of tribes which appeared likely to emerge from it, and to attain that material prosperity which is the best guarantee against turbulent innovation'.⁵⁴³ William Fox, though, somehow managed to take exception to this statement on behalf of ministers. He declared that although Gorst might have been expected to at least accurately report the situation in the one district in which he was based:

It is, however, exactly the reverse. The Natives of Rangiaohia, Awamutu, and Kihikihi, so far from being less implicated in the rebellion, or having gone into it with less zeal than others, are perhaps those who have been the longest

⁵⁴¹ J.E. Gorst, *The Maori King, or The Story of Our Quarrel with the Natives of New Zealand*, London: Macmillan & Co., 1864, pp.29-30.

⁵⁴² Rogers, minute on J.E. Gorst, Observations on the Native Inhabitants of Rangiaowhia and Kihikihi, 21 May 1864, p.190, CO 209/187, Archives NZ. Strikethrough in original.

⁵⁴³ Cardwell to Grey, 26 May 1864, AJHR, 1864, D-5, p.6.

engaged in the promotion of the King movement, and have taken the most active part in maintaining it.⁵⁴⁴

Fox then pointed to four local chiefs – Porokoru, Hoani Papita, Taati Te Waru and Rewi Maniapoto, ‘for years the representative of the “physical force” section, the great fighting general of the King party, and the leader of that Ngatimaniapoto Tribe which has been and is the backbone of the rebellion’ – as indicating the ‘determined Kingite’ stance of the local tribes and the extent to which they had ‘freely and willingly [gone] into rebellion’. The district around Rangiaowhia and Kihikihi had long been an obvious target in terms of British military action and subsequent confiscation. Fox did not seek to deny that it had previously been the site of prosperous Maori commerce and agriculture, or the impact of the war on such endeavour, but merely sought to justify conquest and confiscation with reference to the actions of the local tribes. Even government ministers could hardly dare to refute the obvious socio-economic impact of the war.

Yet while the lands available to the tribes for cultivation of crops and other economic activities had shrunk considerably with the forcible British taking of all of the territory to the north of the Punui River, in effect the number of those who had to be fed did not decrease in the same proportion. Instead, effectively the lands south of the Punui now had to sustain not just those who had formerly resided and relied upon them but also all of the King party from Kihikihi through to South Auckland who had survived the war in one piece. As Belich suggests, under the circumstances, food shortages coupled with disease were not surprising.⁵⁴⁵ In June 1864 the *New Zealand Herald*’s Raglan correspondent reported that:

Rewi and his compatriots in their stronghold at Hangitiki are, by all accounts, getting desperately “hard up.” Their supplies are nearly exhausted, and they have no secret hoards of potatoes or corn upon which they can fall back in their need. There cannot be the shadow of a doubt that the rebel Maoris, before the winter commenced, with food in galore, and any amount of glory in prospect, will be a very different sort of animals [sic] before it has passed. The

⁵⁴⁴ Fox to Grey, 29 August 1864, GBPP, 1865 [3425], p.107.

⁵⁴⁵ Belich, *New Zealand Wars*, p.197.

food has vanished, and so has the prospective part, and there seems no means of acquiring the one or the other. We hold all their food depots by force of arms.⁵⁴⁶

A few months later the same newspaper reported rumours that a large consignment of agricultural tools had been smuggled into the port of Kawhia, for use by the ‘rebel’ tribes. It declared ‘The greatest ally we have is starvation.’⁵⁴⁷ With the Kingitanga tribes clearly taking steps to cultivate and grow the crops now desperately required, some believed it was a mistake not to renew the attack upon them while they were largely bereft of reliable food supplies. The *Herald* observed in January 1865 that ‘The Maori now would not be in a position to carry on another summer’s campaign, but for the mistaken leniency which, instead of following him up, instead of harassing him by day and night, allowed him time, and even furnished him with the seed to grow his present harvest, on the strength of which he is again prepared to enter upon another year’s contest.’⁵⁴⁸

In May 1865, Wiremu Tamihana and other members of Ngati Haua made their submission to Brigadier General Carey at Tamahere. This act prompted much speculation as to whether remaining members of the Kingitanga would similarly come in and in this respect it was assumed that ‘the horrors of starvation are the motives which impel Thompson and the other chiefs to come to terms.’⁵⁴⁹ Poor diet and crowded living conditions made Maori living behind what would soon become known as the King Country vulnerable to poor health and disease.⁵⁵⁰ In July 1865 the Raglan correspondent noted that:

A species of “low fever” is reported to have broken out amongst the Maoris at Kawhia, and to be playing sad havoc with them. The place is just now I hear very full of Kingites, Hau Haus, &c, so that the epidemic will have fitting

⁵⁴⁶ *New Zealand Herald*, 25 June 1864. One British military report also noted that ‘Reliable reports are received from the country beyond our frontier that the natives are suffering severely from want of supplies and clothing. Sickness, too, it is said, has been rife amongst them.’ D.J. Gamble, 7 July 1864, Journals of the Deputy Quartermaster General, p.123, WO 33/16, Archives NZ.

⁵⁴⁷ *New Zealand Herald*, 1 August 1864.

⁵⁴⁸ *New Zealand Herald*, 10 January 1865.

⁵⁴⁹ *New Zealand Herald*, 1 June 1865.

⁵⁵⁰ See on this theme James Taitoko, *Te Rohe Potae, Nga Korero Tuku Iho o Te Rohe Potae*, 6th Oral Traditions Hui, Te Tokanganui-a-Noho Marae, Te Kuiti, 9-11 June 2010, pp.72-74.

subjects to work on, as in any large community of Maoris the elements of any such disease are always rife, in the shape of general filth, and nastiness in person and dwellings.⁵⁵¹

The following year 'low fever' – a generic symptom often associated with typhoid – struck again and it was reported that 'Since the commencement of the present year low fever has carried off no less than 300 natives in the Raglan district, and this, too, despite the unremitting attention and care of Dr. Harsant, the medical man specially appointed by the Government to afford them professional relief.'⁵⁵² As with the earlier report, although typhoid is today widely understood to be a leading disease of poverty, generally resulting from poor housing and sanitation,⁵⁵³ the finger was quickly pointed at Maori for the huge mortality. The report went on to state that:

The cause of this mortality is beyond the cure of medicine. It lies in their filthy habits, their utter abandonment to the use of ardent spirits, in the purchase of which they spend all their money. The habit of gambling has taken such a hold upon them, as to have become almost now their "karakia" itself – and the work of demoralisation is fast going on. They have no money to buy proper food and clothing, and they become an easy prey to the disease which the filthy habits of the pa are too much calculated to engender. Miserable, and diseased, and dejected they may be, but, they are neither violently disaffected, nor menacing.⁵⁵⁴

This report might almost have been taken as evidence that, as the story once went, the defeated Waikato 'rebels' had retreated into a 'sullen isolation' in the aftermath of the war, suffering a wretched and demoralising existence until they eventually agreed to open their territory up to the outside world in order to end such misery. The only problem is that it actually appears to refer to 'loyal' Maori living north of the King

⁵⁵¹ *New Zealand Herald*, 22 July 1865.

⁵⁵² *New Zealand Herald*, 29 May 1866.

⁵⁵³ Derek A. Dow, *Maori Health and Government Policy, 1840-1940*, Wellington: Victoria University Press, 1999, p.140; Raeburn Lange, *May the People Live: A History of Maori Health Development, 1900-1920*, Auckland: Auckland University Press, 1999, p.29.

⁵⁵⁴ *New Zealand Herald*, 29 May 1866.

Country.⁵⁵⁵ However, later reports also make it clear that the disease was also hitting areas to the south of Whaingaroa. Late in June 1866 it was reported that ‘fever continues to make sad havoc with the Raglan and Kawhia natives’, with many of the principal chiefs dying.⁵⁵⁶ Among those who had succumbed to the illness in recent times were Te Ao-o-te-Rangi and leading Ngati Mahanga rangatira Wiremu Nera Te Awaitaia; and some attributed the heavy death toll to a curse placed on the ‘loyalist’ chiefs by Pai Marire prophet and founder Te Ua Haumene when paraded through Raglan by Governor Grey earlier that year (part of a trip around selected North Island coastal settlements designed to break the religious leader’s hold over his followers). Maori at Kawhia and Aotea had meanwhile applied to the government for a supply of medical comforts, of which they were ‘in much need.’⁵⁵⁷

As will be further discussed below, it does not appear that any formal aukati had yet been imposed over the King Country, as a result of which some supplies probably did manage to get through. Indeed, just a month earlier Grey had issued orders for medicines to be sent to some of the leading Kingitanga representatives. The governor had stopped at Kawhia, en route to Raglan and met with a number of chiefs. Although there would subsequently be some effort made to expel ‘loyalist’ communities from the area, at the time of Grey’s visit the southern shores of the harbour were occupied by the Kingitanga tribes, while those deemed well-disposed to the government resided to the north. He subsequently informed the Secretary of State for the Colonies that:

The Natives on the north shore of Kawhia Harbour all manifested the greatest pleasure at our visit. I found there Hori Te Waru, the Chief of Rangiaohia, who, having joined the rebels, had lost all his property and the larger portion of his land. The poor man was in great poverty, having been formerly one of the wealthiest Natives, but he was very cheerful and admitted fully that his sufferings were the result of his folly in having yielded to the wishes of his

⁵⁵⁵ A Raglan settler, Henry Falwaser, wrote a letter to the editor denying that excessive drinking had been responsible for many deaths in the district. He stated that out of 127 Maori who had died there recently only three or four were given to drinking

⁵⁵⁶ *New Zealand Herald*, 21 June 1866.

⁵⁵⁷ *ibid.* Another report noted that ‘the great mortality among the friendly natives’ had been turned to account by the King party, who had asserted that ‘the reason why they were dying away so fast was because the king’s curse was upon them for their fidelity to the pakeha’. The report also noted that the state of the ‘loyalists’ was being contrasted with that of the Kingites ‘among whom there is no sickness at present, although some time ago they lost over 300’. *Wanganui Chronicle*, 11 July 1866.

people, and thus engaged in the rebellion. I assisted him on the part of the Government with the articles necessary to re-establish himself in life on the landed property he has at Kawhia, and left him quite happy and contented.⁵⁵⁸

If only all of those left homeless and destitute as a consequence of Crown conquest and confiscation could have received some measure of relief as the Ngati Apakura chief evidently did then perhaps their plight might have been alleviated somewhat. Grey, though, dared not even venture near southern Kawhia, fearing the hostile reception he would receive. He did, however, receive a message via Hone Wetere stating that King Tawhiao's sister, Te Paea Tiaho, whom Grey had met previously, was at that time lying ill at Hangatiki (as were some of the King's own sons) and unable to travel to meet the governor.⁵⁵⁹ Grey, upon receiving this news at Hamilton, despatched a messenger to Te Paea with some medicines, but was forced to leave the package to be forwarded on when preventing from travelling any further when about a quarter of a mile from the Hangatiki settlement.⁵⁶⁰ In the interim, the first steps towards imposition of a formal aukati had been taken. Grey informed the Secretary of State for the Colonies that:

Rewi with his immediate followers were at Hangatiki, about which place, and the country in its immediate vicinity, they had placed posts marking out boundaries, within which limits they intended to keep themselves in a state of complete isolation, Rewi having stated that he would never again look upon an European face. William Thompson added that his fear was lest some European, or friendly Native, who attempted to cross this line, might be murdered, and thus a recommencement of disturbances might be brought about.⁵⁶¹

But a further factor was mentioned in some reports, especially in relation to the imposition of greater restrictions on outwards journeys across the river to Alexandra. This was said to have been decided upon 'on account of their bringing up so much

⁵⁵⁸ Grey to Cardwell, 3 May 1866, GBPP, 1866 [3750], pp.2-3.

⁵⁵⁹ Hone Wetere to Grey, 23 April 1866, GBPP, 1866 [3750], pp.3-4.

⁵⁶⁰ Grey to Cardwell, 3 May 1866, GBPP, 1866 [3750], p.3.

⁵⁶¹ *ibid.*

spirits from Alexandra; and retailing on their return, thereby causing continual fighting and quarrelling in their villages'.⁵⁶²

It will be seen in the political engagement report for the 1840 to 1863 period that the imposition of restrictions on the introduction of spirits had long been a live issue for Waikato Maori leaders, and the failure of Crown officials to take seriously their requests for local by-laws on this issue when requested to was widely seen to have contributed to a deterioration in relations in the late 1850s, combined with subsequent scepticism of Grey's runanga system. Now, for the first time it seemed, King Country leaders had the opportunity to impose their own restrictions without fear of these being undermined by outside visitors or rival centres of authority.

Over the remaining months of 1866 a number of King Country leaders, including King Tawhiao, either took to wearing the blue ribbon of the temperance movement or signed pledges of total abstinence.⁵⁶³ It seems unlikely that the King Country ever became totally 'dry', of course, though the sober and industrious habits of its residents became a prevailing theme in many subsequent reports on the district, and was sometimes contrasted with the supposedly more dissipated lifestyles of those Maori who remained north of the aukati.⁵⁶⁴ As one *Daily Southern Cross* editorial noted:

The great body of natives in the south and interior have resolved, in obedience to their King, to keep themselves apart from the Europeans. They decline opening their land for depasturing purposes, or settlement and occupation. They are prepared to forfeit all profit to themselves to maintain their political and social independence, and for that end reduce anarchy to something approaching order. Shut up in this way from the encroachments and strong contrasts of civilization, tending infallibly to the extinction of the race, free from the distraction of war, the King natives are thriving wonderfully. They are reported to be healthier, and the increase in the number of children is noteworthy. They are cultivating more extensively than formerly; and amongst

⁵⁶² *New Zealand Herald*, 2 November 1866.

⁵⁶³ Marten Hutt, *Te Iwi Maori me te Inu Waipiro: He Tuhituhinga Hitori/Maori and Alcohol: A History*, Wellington: Health Services Research Centre, 1999, p.30.

⁵⁶⁴ Though the critique of this viewpoint should also be noted: Keith Sinclair, *Kinds of Peace: Maori People After the Wars, 1870-85*, Auckland: Auckland University Press, 1991, pp.29-30.

other articles, produce tobacco of a superior description in considerable quantity. Their men and women likewise live longer than those natives who frequent our towns, and conform occasionally to European custom; and they frequently point to that circumstance, and to the death of the leading chiefs who attached themselves to the Government, as an argument in favour of King Tawhiao's jurisdiction.⁵⁶⁵

Although Keith Sinclair queried the evidence for a demographic recovery in the wake of the Waikato War ('which hardy soul crossed the aukati and counted the women and children', he asked), he did highlight one obvious factor that might have contributed to such a pattern. As Sinclair noted, to the extent that Kingitanga supporters were relatively more isolated from Europeans compared with their relatives living north of the Puniu River, then they were also less exposed to infectious diseases to which Maori as a whole continued to have limited immunity.⁵⁶⁶ In this respect the imposition of an aukati after 1866 may have literally been a lifesaver for some.

A decade after the 1868 report had painted a picture of a society which, after perhaps a year of two or extreme suffering and deprivation and the ever-present threat of starvation and disease, had found its feet again, a further reporter once more described what appeared to be a thriving society. He wrote that things were very quiet, perhaps owing to the 'prohibition of liquor' and that:

The difference between the Kingites and the Maoris that Europeans are accustomed to see is very marked. The men and women are healthy looking, while the number of children playing about, and of fine stout infants to be seen in the arms of their mothers, is remarkable. It is sad to think that those natives who have least to do with Europeans are in every respect the best of their race;

⁵⁶⁵ *Daily Southern Cross*, 22 February 1868.

⁵⁶⁶ Sinclair, *Kinds of Peace*, p.31. Though this did not, of course, mean that Rohe Potae Maori were free from all disease or illnesses. Periodic outbreaks of illness and disease continued to be reported throughout the 1870s. In 1876, for example, it was reported that 'The general health of the people during the past twelve months has not been good. In addition to lung disease, so common among them, there has been a great deal of fever of a typhoid character, ending in most cases fatally. Measles, too, carried, off a considerable number during the winter of 1875.' W.G. Mair to Native Under Secretary, 20 May 1876, AJHR, 1876, G-1, p.22.

but it is so. It is sad for them, because the separation which at present exists cannot continue for ever; and how will it end?⁵⁶⁷

The imposition of a formal aukati in 1866 had perhaps been crucial in demographic terms,⁵⁶⁸ though also crucial in this respect was probably the limited recovery in food supplies by this time after several seasons of scarcity. In fact, that recovery had progressed to the point by 1868 that those living beyond the Puniu River were not only able to feed themselves but were also producing surplus produce for cross-border trade. M.P.K. Sorrenson wrote that:

King supporters frequently crossed the border to Alexandra to sell produce, or attend the European race meetings and agricultural shows. An extensive border trade started in 1868 and continued unabated throughout the seventies. The King party cleared large areas of bush: one clearing was said to be 'miles in extent' in 1868; and on another occasion, in 1875, 600 Maoris were seen felling bush. Wheat, potatoes, tobacco and other European crops were sown and the surplus produce sold in Alexandra in return for ploughs, other implements and clothing. Cattle and pigs also were raised for sale in the European markets. The amount of produce sold was considerable: in 1875 Lamb's mill at Ngaruawahia purchased 7,000 bushels of wheat and it was said that the total harvest would be 30,000-40,000 bushels. Many more examples could be quoted, but it should already be obvious that, instead of living in 'sullen isolation' or 'degenerate exclusiveness', the King party was making an agricultural and commercial effort comparable to that in the Waikato in the early fifties, and in much less favourable circumstances.⁵⁶⁹

⁵⁶⁷ *New Zealand Herald*, 9 May 1878; M.P.K. Sorrenson, 'Land Purchase Methods and their Effect on Maori Population, 1865-1901', *Journal of the Polynesian Society*, vol.65, no.3, September 1956, pp.183-199. See also *New Zealand Herald*, 7 July 1875: 'the [King Country] Maoris possessed abundance of food, and were looking very healthy, the children in particular.'

⁵⁶⁸ As well as in stemming the import of spirits into the district. W.G. Mair reported in 1872 that 'the craving for spirits manifested by the Kingites is something very serious; were they placed in a position to obtain it in quantities, I believe that they would indulge to an alarming extent.' W.G. Mair to Native Under Secretary, 2 July 1872, AJHR, 1872, F-3, p.8. Later reports also noted attempts to prevent the traffic in imported spirits. W.G. Mair to Native Under Secretary, 25 May 1874, AJHR, G-2, p.9; W.G. Mair to Native Under Secretary, 20 May 1876, AJHR, 1876, G-1, p.22; R.S. Bush to Native Minister, 25 May 1878, AJHR, 1878, G-1, p.8.

⁵⁶⁹ M.P.K. Sorrenson, 'The Maori King Movement, 1858-1885', in Robert Chapman and Keith Sinclair (eds), *Studies of a Small Democracy: Essays in Honour of Willis Airey*, [Hamilton]: Paul's Book Arcade for University of Auckland, 1963, pp.51-52.

W.G. Mair similarly noted the heavy emphasis placed on economic activity by the early 1870s. In 1872 he reported that it was merely a matter of time before the King party came to terms with the government:

In the meantime, although there has not been any actual peace-making, intercourse with the lately hostile Natives is increasing rapidly, last month, for instance, several hundred bushels of maize with numbers of pigs and some cattle, were brought from the immediate vicinity of Te Kuiti, and offered for sale in the various European settlements, and there is an increasing desire to cultivate for market. Seed wheat, ploughs, and other agricultural implements are eagerly sought for, and there is some probability of a move down to Te Kopua and its neighbourhood as being more convenient, besides possessing a flour mill and a large breadth of land famous for producing wheat. Wiremu Kumeti (now called Whitiora) has declared that he will open the harbour of Kawhia to European trade; some opposition will no doubt be offered by Tapihana and the violent section...but the bare fact of Kumeti having stated openly that he will do so, is sufficient to show the change that is taking place. Another noticeable fact is the increasing desire on the part of the King Natives for employment by the settlers, last summer and autumn a very considerable number found work about Rangiaowhia, Kihikihi, and Orakau in harvesting and other field work, and I have been informed gave general satisfaction.⁵⁷⁰

Two years later Mair again noted the strong cross border trade that was now taking place. He reported that:

Another strong proof of an improved state of feeling is the increasing desire to grow wheat, and to come as near our boundary as possible for that purpose. Several thousand bushels were harvested at Kopua and other settlements on the Waipa last summer, and sold in Alexandra. Preparations are now being

⁵⁷⁰ W.G. Mair to Native Under Secretary, 2 July 1872, AJHR, 1872, F-3, p.8. In the same report (pp.8-9) Mair went on to stated that 'Of the Kupapa natives...there is little to be said. Their condition has not, I think, changed in any marked degree during the last few years: taken altogether they are not very prosperous. Unlike other tribes, they have no revenue arising from kauri timber, gum, pastoral lands, fisheries, &c., but have to depend solely on what they grow.'

made on a much larger scale. A number of Rewi's people have come from Kawhia to form a kainga not more than two miles beyond the confiscated line, and he informs me that if things go on smoothly he will next year live there permanently. Each year shows an increasing trade with the interior.⁵⁷¹

Although opportunities for commerce were eagerly seized, the hapu and iwi of Te Rohe Potae remained vulnerable to crop failure and other disasters, as a further report from 1875 indicated. Mair reported that:

Each year the trade with the interior is increasing and there is a general tendency to plant as near as possible to our settlements and save transport. In the valley of Kopua alone many thousand bushels of wheat and oats have been harvested during the late autumn, and two more threshing machines have been introduced. Owing to unfavourable weather in the spring, the potato crop was small and very late: this fact, coupled with the prodigality attending their political meetings during the year, brought them, in December and January, to the verge of starvation, and perhaps greater privations were endured than have been experienced since the close of the Waikato war.⁵⁷²

While Mair may have attributed this outcome at least in part to attendance at political meetings, it is worth remembering that King Country Maori had been deprived of some of the most fertile and productive lands in the whole of Waikato as a consequence of Crown conquest and confiscation. There were no reports of actual or near starvation when Rangiaowhia, Te Awamutu and Kihikihi were in Maori possession. And the consequences of that dispossession could be severe. Mair went on to note that 'A large proportion of deaths have occurred during the year, induced probably by the scarcity of food, and latterly by measles, which is still prevalent.'⁵⁷³

Notwithstanding such setbacks, cross-border trade continued to flourish. Mair reported in 1876 that:

⁵⁷¹ W.G. Mair to Native Under Secretary, 25 May 1874, AJHR, 1874, G-2, p.9.

⁵⁷² W.G. Mair to Native Under Secretary, 29 May 1875, AJHR, 1875, G-1A, p.1.

⁵⁷³ *ibid.*

A more industrious spirit prevails, and grain-growing has largely increased; unfortunately, the prices now ruling are unusually low, and the producers are somewhat discouraged. The desire to live nearer to European settlements is increasing; numbers, both of Waikato and Ngatimaniapoto, having moved down to Puniu, Kopua and other places in the vicinity of the Confiscation line, that they may be nearer to the market, and thus save carriage. Agricultural implements and machinery, and also flour mills, are much sought after.⁵⁷⁴

It was not just Waikato and Ngati Maniapoto who had embraced commerce. A year earlier Mair had noted that:

Influenced by Manga, a portion of the Hauhau section of Ngatiraukawa are about to establish themselves at Otautahanga, just beyond the confiscation line at Orakau; their object being to grow grain nearer to a market than their own settlements of Aotearoa and Wharepapa, and perhaps to prevent occupation of the land by others, it having been sold some years since by Ngatihaua, who, there is good reason to believe, had no right to it whatever.⁵⁷⁵

The main body of Ngati Raukawa had, in fact, physically split along political lines, with those still adhering to the King movement occupying the left bank of the Waikato River around Maungatautari and those of a more 'loyal' disposition on the right bank. Mair's 1876 report noted that the former group had also embraced trade and commerce with great enthusiasm:

The Hau-Hau section of Ngatiraukawa, living on the left bank of the Waikato River, between Taupo and Mangatautari [sic], a country which a few years ago was considered the very hotbed of disaffection, have become very friendly and industrious; to my own knowledge they have, during the last eight months expended more than £60 in the purchase of hand-mills for grinding their wheat. They have also commenced cattle-keeping on a larger scale than usual

⁵⁷⁴ W.G. Mair to Native Under Secretary, 20 May 1876, AJHR, 1876, G-1, p.22.

⁵⁷⁵ W.G. Mair to Native Under Secretary, 29 May 1875, AJHR, 1875, G-1A, p.2. See also R.S. Bush to Native Minister, 25 April 1876, AJHR, 1876, G-1, p.25.

in these parts – Te Puke, one of their young chiefs, having got together not less than 180 head, which he tends with the greatest care.⁵⁷⁶

Later reports also noted an ongoing trend towards increased focus on commercial activity, along with a continuation of the movement to settle closer to the northern border in order to maximise opportunities for cultivation and trade.⁵⁷⁷ By contrast, Mair declared in his 1878 report that ‘The “Kupapa,” or “Friendlies,” are still a long way behind the Hauhaus in prosperity; they do not appear to be any better circumstanced than they were ten years ago.’⁵⁷⁸

Despite the undoubted burdens and initial years of dislocation and deprivation, the post-Waikato War communities of the Rohe Potae thus clearly did not live in the kind of ‘sullen’ and miserable isolation at one time imagined by historians. This is not to trivialise or dismiss the heavy burdens and sacrifices endured as a result of war and confiscation but rather points to the extraordinary lengths the communities of the King Country went to in order to ensure the Kingitanga endured. Defeat in war might have all too easily led to disintegration and disaster in peace time but was not allowed to due to the conscious choices made at this time.

Other factors may also have contributed to such an outcome. Some contemporary observers suggested that the exclusion of the Native Land Court and associated land selling from the region had contributed not only to a strong local economy, but also resulted in a healthier and more cohesive population.⁵⁷⁹ As one *New Zealand Herald* report from 1877 stated, ‘Only the Kingites, who are not gradually selling land and drinking the proceeds, are not rapidly declining in numbers.’⁵⁸⁰ It was not just European observers who drew such comparisons. Indeed, as Sorrenson notes, many

⁵⁷⁶ W.G. Mair to Native Under Secretary, 20 May 1876, AJHR, 1876, G-1, p.22.

⁵⁷⁷ W.G. Mair to Native Under Secretary, 25 May 1877, AJHR, 1877, G-1, p.5; W.G. Mair to Native Under Secretary, 4 May 1878, AJHR, 1878, G-1, p.7.

⁵⁷⁸ W.G. Mair to Native Under Secretary, 4 May 1878, AJHR, 1878, G-1, p.7.

⁵⁷⁹ A viewpoint later essentially endorsed in the so-called ‘Sorrenson-Pool’ thesis. Since this thesis essentially uses Rohe Potae Maori living behind their aukati as a control group against which to assess the impact of the Native Land Court on Maori elsewhere, it does not seem necessary to further discuss the merits of such a comparison here. Instead, the focus is on the accuracy of the information with respect to Te Rohe Potae. See Sorrenson, ‘Land Purchase Methods and their Effect on Maori Population’, pp.183-199; Pool, *Te Iwi Maori*, pp.62-64.

⁵⁸⁰ *New Zealand Herald*, 8 May 1877, quoted in Sorrenson, ‘Land Purchase Methods and their Effect on Maori Population’, p.195.

Maori visitors to the Rohe Potae described the communities they encountered there in glowing, and sometimes almost envious, terms.⁵⁸¹ Yet Land Court activity on the fringes of the Rohe Potae district, and the determined efforts of Crown officials to open the area up to European settlement, meant this situation would prove not to be sustainable in the longer term.

A note of caution is also necessary here. Keith Sinclair, for example, while agreeing with Sorrenson's view that the majority of the Maori population of the Rohe Potae did not live in 'sullen isolation', nevertheless points to other evidence suggesting ongoing poverty in at least some parts of the region throughout the 1870s. As alluded to previously, he also notes the inherent problems in attempting to reach firm conclusions on its population given the exclusion of census enumerators prior to 1886.⁵⁸² Although these are matters more properly addressed in socio-economic evidence, what this does highlight is the difficulty involved in fully documenting the impact of war and raupatu on the hapu and iwi of the Rohe Potae district. Reliable socio-economic and demographic data is notoriously hard to find for nineteenth century Maori at the best of times, but the task is made doubly hard under these circumstances. Anecdotal evidence combined with estimates of uncertain accuracy is frequently the best we have to go on.

What seems reasonably clear, though, is that after a period of great suffering in the first year or two after the Waikato War, there had been a recovery and by the late 1860s the capacity to support the very large population now sheltering in the district had been greatly strengthened. That recovery was a fragile and perilous one, however, and as was seen above suffered a significant setback between 1875 and 1876, when a small harvest led to widespread food shortages, resulting in much sickness and a number of deaths according to official Crown reports. And although it is impossible to measure the full impact of war and confiscation in socio-economic terms, what is clear is that the loss of some of the most valuable lands of all to the north of the aukati did leave Maori in the Rohe Potae district more vulnerable to the vicissitudes of crop failure and other variables. A concerted and remarkable effort to reconstruct the

⁵⁸¹ Sorrenson, 'Maori King Movement', p.52.

⁵⁸² Sinclair, *Kinds of Peace*, pp.28-31.

economy south of the border in order to ensure the survival of the Kingitanga and the tribes supporting it could do little to alter this new reality.

The area north of Te Rohe Potae, and especially in the vicinity of Rangiaowhia and Kihikihi and further north along the banks of the Waikato River, had once supported what was probably one of the most densely concentrated Maori populations in the country.⁵⁸³ By contrast, post-war European visitors to the Waikato district were sometimes struck by just how few Maori they encountered north of the Puniu River. Lieutenant-Colonel St. John, for example, wrote of a trip down the Waikato River that:

During the whole of this trip of about ninety miles we had not come upon a single native on our side of the river. On the other bank an occasional hamlet was seen, and now and then a canoe darted from under the bushes, going against the stream in apparently the easiest possible manner. They were, however, but few and far between, the whilom possessors of the land all around us, and chiefly belonged to *hapus* (sub-tribes), which took the European side during the war, and have been located on part of the confiscated lands to the west of the Waikato River.⁵⁸⁴

South of the Puniu River it was a different story. According to estimates supplied by W.G. Mair as part of the 1874 census of the Maori population, some 850 Ngati Maniapoto living in the area within a 30-mile radius of Te Kuiti were joined by 2200 Waikato – that is, three times their own population.⁵⁸⁵ There are obvious difficulties in obtaining accurate numbers in a district in which census enumerators were not welcomed. It is also impossible to say that all of those described as ‘Waikato’ were necessarily refugees. Both Ngati Apakura and Ngati Hinetu were listed as hapu under this heading, for example, while many other individuals considered part of Waikato proper would also have had affiliations to local Ngati Maniapoto hapu – though having an affiliation was not, of course, the same thing as calling Te Kuiti home. It

⁵⁸³ See the various tables in Fenton, *Observations on the State of the Aboriginal Inhabitants of New Zealand*.

⁵⁸⁴ J.H.H. St. John, *Pakeha Rambles Through Maori Lands*, Christchurch: Kiwi Publishers, [1998] (original ed. 1873), p.48.

⁵⁸⁵ AJHR, 1874, G-7, p.6; Parsonson, ‘Te Mana o te Kingitanga Maori’, p.12.

did not necessarily make these people hau kainga. It is impossible, then, to state with any confidence the precise number of refugees – those people forced to take up residence behind the aukati as a consequence of war and confiscation, though it is clear that at Te Kuiti, where the largest number was concentrated, their Ngati Maniapoto hosts were outnumbered by a considerable margin.

There were members of other Waikato proper hapu living elsewhere in the King Country at this time, though similar considerations to those noted above again make it impossible to distinguish between refugees and residents on the basis of some kind of right. Ngati Mahuta, for example, had long claimed interests in the Kawhia district. Harsant's return (described as covering 'Raglan and Kawhia' but in fact stretching south as far as Mokau) gave a total population for the area of 2163, of whom 1290 were Ngati Maniapoto, 223 Ngati Hikairo, and 130 Tainui (Ngati Koata). Thereafter it becomes more difficult to distinguish between resident hapu and others, though Ann Parsonson estimates the Waikato proper population in the coastal settlements at around 400.⁵⁸⁶ If we combine the figures for Te Kuiti and Raglan to Kawhia then something in the order of 2600 Waikato were living within the Rohe Potae, alongside approximately 2140 Ngati Maniapoto and smaller numbers of other local iwi. Assuming, for the sake of argument, that all of those counted among the Waikato proper population were refugees, then the ratio for the district as a whole was roughly one refugee for each permanent resident.

To put these figures into some kind of perspective, if New Zealand today was to accept a similar ratio of refugees the population would double overnight to something in excess of 8.6 million. But, of course, the distribution of refugees into the Rohe Potae was uneven, with most initially basing themselves in the area around Te Kuiti, where there may have been as many as three refugees for every permanent resident.⁵⁸⁷ One can barely begin to imagine the problems and stresses that would create, even with a modern infrastructure. Indeed, massive systemic failure would be a possible and even probable outcome of such an influx of people.

⁵⁸⁶ AJHR, 1874, G-7, p.6; Parsonson, 'Te Mana o te Kingitanga Maori', p.12. It is unclear whether 59 Ngati Haua living at Aotea North and 37 Ngati Te Ata at Kawhia South were included in this estimate.

⁵⁸⁷ The heavy burden placed upon Ngati Rora in particular was noted by Roy Matengaro Haar, Te Rohe Potae, 6th Oral Traditions Hui, Te Tokanganui-a-Noho Marae, Te Kuiti, 9-11 June 2010 (draft), p.31.

Whichever way it is considered, then, the burden of hosting large numbers of refugees was clearly a very heavy one for the hapu and iwi of Te Rohe Potae. Indeed, it may have been even heavier than suggested by the 1874 estimates, since the census which followed in 1878 indicated that the total population of Ngati Maniapoto had been significantly overestimated four years earlier. W.G. Mair, in forwarding his report for the upper Waikato district, noted the inherent difficulties in attempting to accurately record the population behind the aukati, writing that:

As in 1874, I have only been able to estimate the number; indeed I am satisfied that any attempt to procure accurate information would at the present time be viewed with great suspicion by the King Natives, and might possibly have a bad effect upon the negotiations now pending.⁵⁸⁸

Mair recorded his belief that the Maori population of the district was not increasing, but at the same time declared:

I fancy that the percentage of decrease is not large. Measles found a good many victims in 1875-76, and whooping-cough has carried off a few children during the past six months, but no other epidemics have been known, and I should say that the general health is perhaps above the average of Maori districts.⁵⁸⁹

In Mair's return, which covered the interior Rohe Potae between upper Mokau and Puniu, he actually estimated a higher number of Ngati Maniapoto living in this area than in 1874, giving a total of 1070 and recording in the margin 'I am of opinion that my estimate of 1874, viz., 850, was under the mark by at least 220.'⁵⁹⁰ He retained the same estimate for Waikato used in the earlier census (2200), but the number of Ngati Raukawa increased from 435 to 495, something Mair attributed to inwards migration from Otaki, Manawatu and Rotorua.

⁵⁸⁸ W.G. Mair to Native Under Secretary, 7 May 1878, AJHR, 1878, G-2, p.4.

⁵⁸⁹ *ibid.*

⁵⁹⁰ Upper Waikato return, AJHR, 1878, G-2, p.17.

The most dramatic change, however, came in the numbers given for the coastal district from Mokau north to Whaingaroa. R.S. Bush, in reporting on this district, stated that nearly the whole of the tribes had this time been recorded by name, with the exception of those people at Mokau and Marokopa. He further stated that:

When the last census was taken no European was allowed to visit Kawhia, hence the estimate of many of the tribes much exceeded their actual numbers, particularly in the case of Ngatimaniapoto, who were returned as 1,290 strong; whereas there are really only 176, plus about 20 for omissions at Marokopa and Mokau, residing in the Kawhia district.⁵⁹¹

The 1878 census thus estimated the Ngati Maniapoto population in the coastal settlements at 176, less than one-fifth of the previous estimate four years earlier. A further 1145 Maori were recorded as living in this district, all of them described as belonging to 'Waikato', though this time the label was clearly used more broadly than merely applying to Waikato proper, since it included members of Ngati Hikairo, Ngati Haua and other iwi. Nevertheless, given that the combined figure for Ngati Maniapoto across the two districts was now a mere 1246, down from the 2140 estimated in 1874, if the 1878 census was accurate then it would seem likely that Waikato proper, many or most of whom were likely to have been refugees, may have actually exceeded the total numbers for the host tribes. Other historians have concluded that the 1874 estimates for Ngati Maniapoto were almost certainly too high, and this is borne out by comparison with later census figures, especially once enumerators were allowed into the district for the first time from the 1880s onwards.⁵⁹²

What is more, the 1881 census of the Maori population actually indicated that there had been an increase in the number of refugees since 1878. Mair, though, urged caution in relying on the estimates provided, declaring that:

⁵⁹¹ R.S. Bush to Native Under Secretary, 22 May 1878, AJHR, 1878, G-2, pp.4-5.

⁵⁹² Sorrenson, 'Land Purchase Methods and their Effect on Maori Population', p.193. Sorrenson gives the following figures for Ngati Maniapoto as a whole: 2210 (1874); 1390 (1878); 1528 (1881); 1685 (1886); 1531 (1891); 1263 (1896); 1570 (1901). Note that the higher figures given by Sorrenson for 1874 and 1878 than so far discussed in the present report can be explained by the fact that he is giving the total population regardless of residence, whereas the discussion here has been confined to the upper Waikato and coastal Rohe Potae districts. Small numbers of Ngati Maniapoto were also living in lower Waikato, Taranaki and elsewhere.

I do not think that the return will prove to be an accurate one for the reason that during the month of April, when it was in the course of preparation, the Natives in this part of the colony were all on the move to attend the Native Land Court at Cambridge and Tawhiao's meeting at Hikurangi, and added to this the growing disinclination on the part of the Maoris to have their numbers recorded. I think, therefore, that in all probability there are instances where a double return has been made, and others where travelling parties have altogether escaped enumeration. Under these circumstances it will be almost impossible to institute comparisons for the purpose of ascertaining whether there is an increase or a decrease in any one hapu or tribe. Speaking generally, I should say that there is a steady decrease, but that it is slower in the case of the Upper Waikato or Kingite Natives than in the other portion of the district. Unfortunately the numbers of these people can only be estimated, as free access to all parts of their country is not permitted.⁵⁹³

Mair's return gave a figure for Ngati Maniapoto of 1200, though unlike the 1874 and 1878 estimates this was not confined to the interior settlements only, but also included the coastal region as far south as Awakino River. A further 23 Ngati Maniapoto were listed as residing at Awakino, with 20 more between Mokau and Tongaporutu. Meanwhile, another significant concentration of Ngati Maniapoto featured for the first time: 116 members of the iwi were listed as living at the Taranaki settlement of Parihaka.⁵⁹⁴ Large numbers of Ngati Maniapoto were among those gathered at Parihaka when the settlement was brutally invaded by the Armed Constabulary, headed by Native Minister John Bryce, on 5 November 1881. Among this group of Ngati Maniapoto followers of the Taranaki prophets Te Whiti-o-Rongomai and Tohu Kakahi was Te Mahuki of Ngati Kinohaku.⁵⁹⁵ The Tekau-ma-Rua movement he led, which was responsible for the 1883 seizure of surveyor Charles Hursthouse, clearly drew on those earlier experiences in Taranaki, even if Te Mahuki did not always adopt the pacifist approach of Te Whiti.⁵⁹⁶

⁵⁹³ W.G. Mair to Native Under Secretary, 13 May 1881, AJHR, 1881, G-3, p.3.

⁵⁹⁴ AJHR, 1881, G-3, pp.15-16.

⁵⁹⁵ G.T. Wilkinson to Native Under Secretary, 11 June 1883, AJHR, 1883, G-1, p.5.

⁵⁹⁶ Chris Koroheke, 'Te Mahuki, ?-1899', DNZB, vol.2, pp.519-520; Hazel Riseborough, *Days of Darkness: Taranaki, 1878-1884*, Wellington: Allen & Unwin, 1989, p.202.

By 1886, there were reports of a marked decrease in the Maori population of the Rohe Potae. Because the 1886 census was conducted on a different basis to earlier ones, the districts being defined according to county boundaries, comparison with previous figures is difficult.⁵⁹⁷ However, G.T. Wilkinson, who was responsible for overseeing the 1886 count for Waikato and adjacent districts was in no doubt of the trend, noting that ‘the Native population...has decreased considerably since the census was taken in 1881, especially in the district known as the “King country.”’⁵⁹⁸ That was perhaps consistent with an 1883 report in which it was stated that ‘The social condition of the Natives in the Waikato District is at a very low ebb. They are poor in pocket, poor in possessions, and, worse than all, they are poor in health.’⁵⁹⁹ Between the time of the 1881 census and that of 1886 there had, of course, been major upheaval in the King Country, whose borders were finally opened, allowing in the Native Land Court, surveyors, would-be land buyers, and others. The extent to which these factors contributed to a reversal in the population is beyond the brief of the present report. But another obvious factor directly resulted in a net outflow of population. Late in 1881 King Tawhiao and his followers relocated to Whatiwhatihoe, near Alexandra, just to the north of the Rohe Potae district.⁶⁰⁰ Later, in 1889, after a period spent travelling around the North Island and even to England, Tawhiao and his followers relocated to Pukekawa, near Mercer, even further from the district that had sheltered them for so long.⁶⁰¹ The long period of refuge was over, and the intolerable strains which had built up over the period between 1864 and 1881 were in large part responsible for this outcome, creating opportunities for Crown agents to play off the host tribes against those who had come to live with them in the wake of war and confiscation.

⁵⁹⁷ G.T. Wilkinson to Native Under Secretary, 30 April 1886, AJHR, 1886, G-12, p.5.

⁵⁹⁸ G.T. Wilkinson to Native Under Secretary, 25 May 1886, AJHR, 1886, G-1, p.6.

⁵⁹⁹ G.T. Wilkinson to Native Under Secretary, 11 June 1883, AJHR, 1883, G-1, p.6.

⁶⁰⁰ *Waikato Times*, 8 October 1881; David McCan, *Whatiwhatihoe: The Waikato Raupatu Claim*, Wellington: Huia Publishers, 2001, pp.122-123.

⁶⁰¹ G.T. Wilkinson to Native Under Secretary, 20 June 1889, AJHR, 1889, G-3, p.3.

3.4 Life Beyond the Aukati

In her study of King Tawhiao, Carmen Kirkwood notes that the refugees from the Waikato War took up residence between Te Kuiti and Paratui, but disputes the use of the term 'exile' as applied to Tawhiao and his followers, more especially since the Maori King had in fact been born at Orongokoekoea, within the rohe of Ngati Maniapoto.⁶⁰² For Rewi Maniapoto and his people, she adds, the idea of seclusion beyond the Puniu River was to protect the King and separate him from the clutches of Crown agents and Pakeha values that would corrupt the people. Assimilation would lead to the extinction of their tribal identities, and it was believed that before facing the outside world, the Waikato tribes first needed to secure their own world. These were difficult and turbulent times, however, and while Tawhiao and his people yearned to return to their homelands and were therefore amenable to negotiating with the government, the people of the Rohe Potae wanted no part of this and saw it as inevitably leading to the loss of their own tribal estate.⁶⁰³ Not all of those who had fought in the war took refuge behind the Puniu River. For example, some Ngati Apakura from Rangiaowhia settled with Ngati Tuwharetoa at Waihi and Tokaanu.⁶⁰⁴ Their time in exile is captured in the famous 'He Tangi mo Te Wano/A Lament for Te Wano':

Gently blows the wind from the north
Bringing loving memories
Which cause me here to weep;
'Tis sorrow for the tribe,
Departed afar off to Paerau.
Who is it can see,
Where are my friends of yesteryear,
Who all dwelt together?
Comes now this parting
And I am quite bereft.

⁶⁰² Carmen Kirkwood, *Tawhiao: King or Prophet*, Huntly: MAI Systems, 2000, pp.71-72.

⁶⁰³ *ibid.*, pp.71-73.

⁶⁰⁴ *ibid.*, p.74. Others, though, took up home at Kawhia. Koro Wetere, Te Rohe Potae, Nga Korero Tuku Iho, 1st Oral Traditions Hui, Te Kotahitanga Marae, Otorohanga, 1-2 March 2010, p.35.

Come then, O rain, pour down,
 Steadily from above;
 Whilst I here below pour forth
 A Deluge from mine eyes.
 Sleep on, O Wano, on Tirau,
 The barrier to the land,
 Stretching forth to that home
 Which is now forsaken.
 Here we now are cast upon
 The rocky shores of Taupo,
 Stranded upon the sands at Waihi,
 Where dwelt my noble sire,
 Now placed in the charnel-house on Tongariro.
 Like unto the abode wherein we sleep.
 Return, O my spirit, to the thermal pool
 Of renown, at Tokaanu,
 To the healing-waters of the tribe
 For whom I mourn.⁶⁰⁵

From the time of the battle of Orakau the Puniu River was generally understood and accepted as the boundary of the land taken possession of by the British. Contrary to popular perceptions, however, it does not appear to have been made the subject of a formal aukati until about the middle of 1866.⁶⁰⁶ There had been earlier reports of attempts to impose some kind of aukati. In September 1865, for example, the *New Zealand Herald* reported that:

the loyal and friendly natives are even more hated by the Pai Marires than are the Pakehas. A notice has been received from the Kawhia natives by the friendly natives about Raglan, warning them that a line has been drawn,

⁶⁰⁵ Apirana Ngata, *Nga Moteatea: Part I*, Wellington: Polynesian Society, 1958, p.237.

⁶⁰⁶ Alan Ward, *A Show of Justice: Racial 'Amalgamation' in Nineteenth Century New Zealand*, Auckland: Auckland University Press/Oxford University Press, 1973, p.201; *New Zealand Herald*, 29 May 1866; Captain Tisdall to Staff Adjutant, Waikato Force, Hamilton, 21 May 1866, AD 1/1866/2276, Archives NZ.

probably the confiscated boundary line itself, over which if the Raglan natives pass they will be shot. This intimation has naturally caused a considerable amount of excitement amongst the loyal natives at Raglan, and, taken as a declaration of hostilities may lead to an internecine war between the tribes – the course by which the Weld Fitzgerald Ministry evidently intend to overcome the native difficulty.⁶⁰⁷

On this occasion, however, a localised dispute at Whaingaroa regarding the capture by Wiremu Nera of a Ngati Maniapoto man who was subsequently arrested on suspicion of thieving (but have evidently been targeted by Nera for consorting with a young woman from his tribe) had prompted not just the warning about movements but also led to many rumours of an intended attack on the settlement from the direction of Kawhia.⁶⁰⁸ In December 1865 Auckland Civil Commissioner James Mackay travelled deep into the King Country in the company of ‘loyalist’ chief Wiremu Paratene. Mackay’s efforts to meet with Rewi Maniapoto at Kawhia were rebuffed, with the Ngati Maniapoto rangatira reportedly conveying the message that if peace was the intended object of the visit ‘he (Rewi) would listen to him when all the white men had evacuated the Waikato, but not till then’.⁶⁰⁹ Although Rewi was reportedly ‘very indignant at that Pakeha coming’, and had issued orders that he should not be permitted to travel beyond Aotea, a later report suggested that the ban on Mackay’s further travel through the district had been prompted by the Civil Commissioner’s own behaviour. He had reportedly lost his temper upon learning that Rewi and all of the leading Ngati Maniapoto chiefs had left Kawhia in order to avoid meeting with him, causing offence to those present and resulting in a line being drawn beyond which he would not be permitted to travel further.⁶¹⁰

Mackay was unlikely to have been the first Crown official to travel through the area that would soon become known as the Rohe Potae (or King Country) in the period between the end of the Waikato War and the opening up of the district to outsiders from the 1880s. Even after the imposition of a formal aukati, further Crown agents continued to journey into the district in the wake of Mackay, though the difference

⁶⁰⁷ *New Zealand Herald*, 11 September 1865.

⁶⁰⁸ *New Zealand Herald*, 13 September 1865.

⁶⁰⁹ *New Zealand Herald*, 16 December 1865.

⁶¹⁰ *New Zealand Herald*, 28 December 1865.

was that entry first had to be negotiated and was usually restricted to particular locations. Governor Grey had personally visited Kawhia in April 1866 in an effort to meet with Rewi and other King party leaders but subsequently ‘thought it best to leave them to themselves, and not for the present to try to force an interview upon them, more especially as I had then already heard that Rewi had expressed himself as desiring never to see a European face again.’⁶¹¹ As noted previously, upon his return to Hamilton he received a message from Te Paea Tiaho requesting medicines for the sick, but his messenger was blocked ‘within a quarter of a mile of Hangatiki’ and ‘prevented from crossing the line laid down by Rewi’.

The location is significant because Hangatiki is approximately 20 kilometres south of the Puniu River, which later came to be regarded as the boundary of Te Rohe Potae. This initial aukati was therefore clearly more limited in extent, and evidently designed to prevent intrusions into the core area south of Hangatiki and extending to Te Kuiti where most Ngati Maniapoto and their Waikato guests were then living. The precise point at which a second aukati was enforced extending north to the Puniu River is not clear from the available sources, though it was certainly in place by the early 1870s. One report from early 1868 referred to two separate aukati lines, one described as the ‘King’s boundary line’ evidently corresponding with the southern boundaries of the Waikato confiscation district, and a second ‘inner boundary line’, located close to Otorohanga.⁶¹² This second line may have corresponded with the Hangatiki line described above.

Over time, therefore, the aukati came to mark the limits of the area conquered and confiscated by the Crown. And although the aukati served many purposes, a key intention was clearly to prevent the further loss of land and political authority in the area beyond Crown control. Similar considerations applied to the south, especially along the coast, where (as is explored in more detail in a later chapter) Pukearuhe came to be understood as the effective boundary of the area under Crown control. But those boundaries were not always clearly delineated or understood from the outset, and hence perhaps at least part of the reason for some of the initial fluidity in the exact course of the aukati.

⁶¹¹ Grey to Cardwell, 3 May 1866, GBPP, 1866 [3750], p.3.

⁶¹² *Daily Southern Cross*, 25 January 1868.

The notion of a forbidden zone would come to both fascinate and infuriate many Pakeha over time. Grey, though, did not appear overly concerned by news of the aukati in place by May 1866, informing the Secretary of State for the Colonies that:

I hope that Rewi will not long continue to maintain this line between Hamilton and his own place, forbidding all Europeans and Natives to pass it, as I fear if he does it will involve him in disputes with other tribes. I have no fear of any general disturbance growing out of this circumstance, but it is clearly most desirable that even local quarrels and contests should not again break out in the North Island.⁶¹³

The *Herald* also reported in May 1866 that ‘The attitude of the hostile natives...when the Governor was in the Waikato, was anything but satisfactory. A line was drawn from coast to coast, over which neither European nor “friendly native” would be allowed to cross that boundary on pain of being shot.’⁶¹⁴

Although this aukati appears to have been in place by the time of Grey’s visit in April 1866, there are also indications that it was discussed at a large meeting held at Hangatiki later in May. According to one report the meeting, attended by over 1000 Maori from Waikato, Taranaki, Hauraki and elsewhere (but mostly dominated by Ngati Maniapoto) had been convened for the purpose of deciding what was to be done in the face of the confiscation of Maori lands. Rewi and the Maori King, it was said, had both urged that confiscation should in no way be recognised but the meeting had also resolved to take no direct measures in the immediate future.⁶¹⁵

A second account of the meeting, apparently derived from information supplied by one of the Maori attendees, described things somewhat differently. According to Captain Tisdall of the Waikato Militia:

⁶¹³ *ibid.*

⁶¹⁴ *New Zealand Herald*, 29 May 1866.

⁶¹⁵ *Daily Southern Cross*, 24 May 1866.

The principal matter discussed was Religion, Te Ua their prophet has been deposed, as a captive, & a new prophet, a Ngatiruanui Native has been elected. Peace or war were but little spoken of however this entire district is to be left in peace – even Rewi consenting and allowing the Natives to pass here to trade – any fighting is ordered to take place as before, in Taranaki, for which place some 50 natives left.

An Aukati Line has been established, near Hangitiki [sic], beyond which no white man is to pass.⁶¹⁶

This report suggests that ‘loyalist’ or Kupapa Maori were not excluded from the district and that the intention was not to block trade but simply to prevent the intrusion of unwanted visitors to their district. Kirkwood writes with reference to the Kupapa that:

...they were part of the tribe, the wider family of Waikato, and were never cut from whakapapa ties. In fact the many who had stayed neutral during the war crossed the line, and there were many instances where those who had fought with the troops were admitted.⁶¹⁷

It appears that there was no clear and consistent approach to the admission of ‘loyalists’. In September 1866, for example, the *New Zealand Herald* reported that ‘some friendly natives...who crossed the boundary into the “King country,” were warned off by the subjects of Matutaera, the King, and had to return Northward.’⁶¹⁸

The Rohe Potae district was, however, never the exclusive reserve of the King party. Along the coast, especially, the picture was more mixed. Some Europeans and ‘loyalist’ chiefs such as Hone Te One continued to reside at Kawhia, and had

⁶¹⁶ Captain Tisdall to Staff Adjutant, Waikato Force, Hamilton, 21 May 1866, AD 1/1866/2276, Archives NZ.

⁶¹⁷ Kirkwood, *Tawhiao*, p.71.

⁶¹⁸ *New Zealand Herald*, 5 September 1866. This may well be one of the earliest recorded uses of the term ‘King Country’.

apparently done so throughout the Waikato War.⁶¹⁹ In November 1863 the General Assembly ordered that a return should be tabled of:

...any information in the possession of Government relating to the continued residence in the midst of the rebel Tribes of Waikato, of several Europeans with their families, and the terms upon which they have been permitted to retain their property and to remain where they are.⁶²⁰

The return called for does not appear to have been published and nor can it be readily located within the archives of the Legislative Department. Clearly, however, there was a belief amongst at least some politicians that Europeans had indeed remained behind Kingitanga lines throughout the period of hostilities. That is confirmed in a number of other sources. One Kawhia settler, for example, wrote in 1866 that:

...the conduct of the Natives of Kawhia, both loyal and Kingites has been most exemplary towards the settlers who remained during the war, they have not only protected the Europeans themselves, but also their property and no resident, or non-resident settler of Kawhia, who left any person in charge of the house and to live therein, have either had their houses or premises damaged, or any property stolen or destroyed by the Kingite Maories during the late war or since, with the exception of a few pigs which were killed and eaten by natives who returned here from the war in a starving condition.⁶²¹

It was only in 1867 that an effort was made to expel at least some of the Kawhia settlers and 'loyalists', and to tighten up trade with and visits to nearby Raglan, as a consequence of unfounded rumours about the King and more general concerns about the encroaching influence of colonisation on their borders.⁶²² This followed reports from late in 1866 that kupapa living at Kawhia had been warned to join the King party or else leave the place and desist from all future communications.⁶²³ However, one Kawhia settler sought to refute claims that overland entry to the harbour was now

⁶¹⁹ Ward, *Show of Justice*, p.201.

⁶²⁰ Extract from *Journals of the House of Representatives*, 9 November 1863, in IA 1/1863/3082, Archives NZ.

⁶²¹ *New Zealand Herald*, 6 December 1866.

⁶²² *Daily Southern Cross*, 28 February 1867, 13 March 1867, 21 March 1867.

⁶²³ *New Zealand Herald*, 6 December 1866.

blocked in the case of European travellers, informing readers of the *Herald*, in response to an earlier story, that ‘You need not trouble yourself to print a warning in large type in your journal cautioning any person from the Waipa district against attempting to pass by the road on the south side of Pirongia towards Aotea, as the said road from Alexandra on the south side of Pirongia to Kawhia has always been and is still open to European travellers, who have always met with the greatest civility and best treatment from the Oparau natives.’⁶²⁴

On 8 February 1867 the *Daily Southern Cross* carried a brief report from its Raglan correspondent, who stated that an aukati was rumoured to have been put in place at Aotea. No King Maori were allowed to pass the line and all goods brought by them from Raglan were to be destroyed.⁶²⁵ Confirmation came later that month, when the same correspondent stated that:

...the report of an aukati being established at Aotea is correct. The reason given to me was that so many false reports have been of late carried between Raglan and Kawhia of a nature to disturb the serenity of the imperial temper of King Matutaera that it has been deemed necessary, for the present at least, to place this port under a sort of interdict – all intercourse therewith being forbidden. This has, to some extent, had a depressing influence on the state of trade in Raglan, the natives being compelled, in consequence of the aukati, to obtain their supplies from other sources.⁶²⁶

One later report noted that the King’s domain at Kawhia, previously restricted to the north side, had lately extended to the southern shores as well. Meanwhile, it was added, ‘The aukati is so strict that passes are rarely granted to the King’s subjects to visit their friends living on Government land, and the ostensible reason put forward, that the King’s mind is disturbed by his subjects carrying reports, such as the change of the royal name, is not without foundation.’⁶²⁷ A second correspondent’s report, carried in the same newspaper, noted that some settlers at Kawhia had already been expelled, and that further notices to leave were expected to be issued under the King’s

⁶²⁴ *ibid.*

⁶²⁵ *Daily Southern Cross*, 8 February 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34332.

⁶²⁶ *Daily Southern Cross*, 28 February 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34345.

⁶²⁷ *Daily Southern Cross*, 13 March 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34351.

orders, while other settlers had merely been told that they were not allowed any other Europeans at their place, not even servants.⁶²⁸

Attention later shifted to some of the 'loyalists', and according to one report Hone Te One received notice from the King movement to either join them on the south side of the harbour or quit Kawhia altogether.⁶²⁹ It is unclear precisely how Hone Te One responded to this notice or how many settlers were forced to leave Kawhia at this time.⁶³⁰ However, another report suggests that some forms of interaction continued to be welcomed. Kati, described as the King's cousin, was reported to have said that people coming to the district for trade would continue to be allowed, but that government representatives were not welcome.⁶³¹

Senior Ngati Mahuta and Kingitanga rangatira Tamati Ngapora told the settler Louis Hetet that 'the Aukati line proclaimed at Hangitikei [sic] was entirely caused by a desire to preserve peace by preventing lawless Natives from coming down to drive off Settlers' Cattle'.⁶³² One report from September 1867 stated that:

About the beginning of this year some of the friendly natives and a half-caste named Hetet stole a number of cattle from the Kingites, in the neighbourhood of Hangitiki. Some of the king's constabulary came down and made inquiries, and found that two of the said cattle were purchased by the mess contractor for £80. The natives asked the contractor not to kill the cattle, which request was acceded to. Shortly afterwards the natives sent back the purchase money and to prevent any disturbance the contractor handed back the two stolen bullocks.

⁶²⁸ *ibid.* This report noted that Mr. and Mrs. Falwasser had been expelled from Kawhia. In an earlier report Falwasser was described as a clerk of the Court – a fact perhaps not unrelated to the decision to expel him. *Daily Southern Cross*, 28 February 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34345.

⁶²⁹ *Daily Southern Cross*, 21 March 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34363.

⁶³⁰ A later report declared that Hone Te One had received three days notice to leave Kawhia (having presumably earlier refused to join the King side) but had determined to resist any attempt at expelling him from Kawhia. *New Zealand Herald*, 1 May 1867. For their part, the Kingitanga had reportedly vowed to 'drive Hone te Hone [sic] to Raglan and over the other side of that harbour, that being the boundary of the Queen's land.' *New Zealand Herald*, 14 May 1867. A later report suggested that the orders to leave, issued by local chief Tapihana, may have been opposed by Tawhiao and many other Kingitanga leaders. *New Zealand Herald*, 28 May 1867.

⁶³¹ *New Zealand Herald*, 14 March 1867.

⁶³² William St. Clair Tisdall, Commanding Officer, 2nd Regiment Waikato Militia and Forest Rangers, to the Officer Commanding the Waikato Force, 8 April 1867, AGG-A 1/277/67 (box 2), Archives NZ (Akl).

How the natives arranged the matter amongst them, I never heard, but this was the origin of the said aukati, which is nothing more than an order from his majesty to prevent the natives from selling any cattle &c. and as a natural result are without the means of purchasing any of our commodities.⁶³³

While this report runs counter to suggestions that Kingitanga leaders were anxious not to hinder cross-border trade, later reports also suggested that the aukati had been set in order to preserve the peace and reduce the potential for conflict, as was the customary function of such boundary lines.⁶³⁴

Pacific intentions counted for little, however: frequent false rumours of preparations behind the aukati for an attack on settlers were published in the Auckland newspapers, much to the exasperation of officials better placed to receive more accurate intelligence of events. In this respect the existence of the aukati helped to sustain widespread fears of the Kingitanga's intentions based on little more than hearsay.

Yet the aukati was never absolute and its terms are likely to have been subject to modification over time. One report from November 1867, for example, stated that:

We learn from good authority that there is great distress, and even starvation, amongst the King natives at Raglan and Aotea; that the King has removed the aukati and has permitted his followers and the Europeans to mix together and trade. Both races prospered before the late unhappy strife, and they will do so again when the natives return to their old habits of industry.⁶³⁵

A few months later it was reported that strict observance of the aukati was being temporarily relaxed in order to allow a number of 'loyalists' to attend a large meeting at Tokangamutu.⁶³⁶ Exceptions of this kind became increasingly common over subsequent years, though at other times the aukati was more strictly enforced.

⁶³³ *New Zealand Herald*, 19 September 1867.

⁶³⁴ See, for example, Waitangi Tribunal, *The Ngati Awa Raupatu Report*, Wellington: Legislation Direct, 1999, ch.7.

⁶³⁵ *New Zealand Herald*, 2 November 1867. A later report declared that 'far from the aukati boundary having been withdrawn, the King natives at Hangatiki are strictly prohibited from coming down to the Waikato settlements to trade with the settlers.' *New Zealand Herald*, 12 November 1867.

⁶³⁶ *New Zealand Herald*, 11 February 1868.

Waikato Resident Magistrate William Searancke, having reported that “‘Te aukati” is still maintained. No Europeans or friendly natives are allowed to pass it unless in the case of the latter their sympathies are known to be favourable to the King’,⁶³⁷ noted a change just a few months later. In October 1868 he reported that ‘The rules of the Aukati are...now greatly relaxed, and Natives from Tokangamutu and its neighbourhood are constantly visiting their friends amongst the kupapas’.⁶³⁸ He also noted a significant expansion in the area of land under cultivation beyond the confiscation line, which may have been linked with some relaxation in the enforcement of the aukati.

Incidents such as the 1873 killing of a labourer named Timothy Sullivan, who was working on land on the Kingitanga side of the boundary, were, however, timely reminders that the aukati could not be taken lightly.⁶³⁹ Purukutu, who was believed responsible for the act, was also reportedly ‘one of the principal keepers of the aukati established by Tawhiao and Manuwhiri’s party’.⁶⁴⁰ Increasing interaction and movement across the boundary line was said to have been a source of annoyance to some, including Tawhiao, who was rumoured to have indirectly and somewhat cryptically authorised intruders who were working on the land to be killed, but added that mere travellers should be sent back across to the nearest European settlement.⁶⁴¹

Settlers’ cattle running across the aukati were an ongoing source of potential trouble, prompting a warning from Rewi Maniapoto in 1874 that in future they would be driven to Te Kuiti.⁶⁴² Reported attempts by ‘loyalist’ chiefs to deal in lands owned by Kingitanga supporters living beyond the aukati further inflamed matters. In 1868 William St. Clair Tisdall of the Waikato Militia advised his commanding officer of:

⁶³⁷ *Daily Southern Cross*, 23 July 1868.

⁶³⁸ W.N. Searancke to J.C. Richmond, 10 October 1868, AJHR, 1869, A-10, p.8.

⁶³⁹ Richard Todd, a government surveyor, was also killed on the slopes of Mount Pirongia in 1870, though this was just beyond the aukati according to most sources. *New Zealand Herald*, 16 December 1870, 26 April 1873; Ward, *Show of Justice*, p.234. However, when Taranaki Civil Commissioner Robert Parris visited the settlement of Mokau in May 1871, he was informed by Te Wetere that ‘At Pirongia, Manukau, (Todd) was thirty-six yards outside your boundary line: he was warned twice to stop but would not.’ *Taranaki Herald*, 13 May 1871.

⁶⁴⁰ *Daily Southern Cross*, 20 May 1873.

⁶⁴¹ *ibid.*

⁶⁴² W.G. Mair to Native Under Secretary, 22 May 1874, AJHR, 1874, G-2B, p.3; *New Zealand Herald*, 25 January 1874.

...the dissatisfaction & ill-feeling that is being elicited among the Natives at Tokangamutu & the principal Chiefs around the Native King, who have behaved in so upright & honourable a manner in many instances, by certain half-castes & Natives of no rank in the employment of surveyors – selling land, really the property of Rewi & Tawhiao, & situate beyond the confiscated line on the left bank of the Puniu to Europeans who have sent surveyors to chain & peg out the Lots. The Chiefs & owners are naturally much aggrieved at such trespass on their property, beyond our own lines, and state that we are breaking the peace that they have carefully observed.⁶⁴³

Rewi Maniapoto had even gone so far as to send a messenger to him, who mentioned several cases, including one involving Rewi's own land near Kakepuku, which had supposedly been sold on the basis of forged letters purporting to be from Rewi. Surveyors busying cutting lines on the land had been warned off by the messenger, who added that the chief was about to send down a party to remove the pegs and erase the lines but was anxious to let it be known that 'they were not coming with hostile intent – nor would they come into our territory.'⁶⁴⁴ The author of the letter added that:

Rewi & Tamati Ngapora have lately had many horses & cattle restored to settlers...and naturally expect honorable conduct in return from Europeans, and I should think it unwise to permit Natives to believe that such sales or surveys as I have described are made with sanction of the Government or that any protection would be given to persons trespassing thus on Native territory contrary to the wish of the proprietors – especially at the present time, when reprisals on part of the Natives may easily be provoked, when they learn that almost the whole male population of these Districts capable of bearing arms are leaving for the Rangiriri & Thames Gold fields, and the violent Hau hau party would gain many adherents, if they can prove that the Europeans are pressing beyond their own allotted boundary.⁶⁴⁵

⁶⁴³ St. Clair Tisdall to Officer Commanding Waikato Districts, 29 June 1868, AD 1/1868/2311, Archives NZ.

⁶⁴⁴ *ibid.*

⁶⁴⁵ *ibid.*

That warning was sufficiently stark as to prompt de facto Native Minister J.C. Richmond into suggesting that the operations of the Native Lands Act might be suspended within the aukati and all licensed surveyors informed that if they were found to have undertaken any work within the suspended area their licenses would be cancelled.⁶⁴⁶ While the government wrote to Rewi Maniapoto to assure him that the government deplored the actions of those involved, it also took the opportunity to inform the chief that unless he agreed to give evidence in a European Court, no further action could be taken against the alleged offenders.⁶⁴⁷

But there were also attempts to reassure settlers and Crown officials. One 1874 newspaper report informed readers that the Kingitanga ‘have no objection to Europeans crossing the boundary line without loaded guns.’⁶⁴⁸ R.S. Bush reported from Raglan in the same year that:

With respect to the aukati, the principal chiefs here are of opinion that the promoters of it will not be able to enforce it for any length of time in this or any other district. The object of the aukati is not stated (further than that it is an aukati). Some chiefs who consider themselves authorities, - amongst them Wetini Mahikai, one of the assessors lately returned from Kawhia – say it is a temporary one, to enable Tawhia [sic] to erect his new house, prior to his being conducted to Waikato (I presume Ngaruawahia), by all the friendly tribes of Waikato, who, it is reported, intend to proceed to Kuiti [sic] shortly for this purpose.⁶⁴⁹

W.G. Mair reported soon after that ‘In course of a long conversation with Rewi he informed me that the *puru* (“stoppage,” used in the same sense as *aukati*) was a harmless affair; its object being to keep Waikato together pending a *hui* of Tawhiao at

⁶⁴⁶ J.C. Richmond, marginal note, 18 July 1868, on W. Moule to Defence Under Secretary, 4 July 1868, AD 1/1868/2311, Archives NZ. A subsequent marginal note from Richmond (7 August 1868) suggests he subsequently had a change of mind on the issue, opting instead to write to Chief Judge Fenton ‘asking him to see that due caution is observed and to suspend judgment in cases affecting property claimed by King natives.’

⁶⁴⁷ G.S. Cooper to Rewi Maniapoto, 20 July 1868, MA 4/75, Archives NZ. (Working translation by Mark Derby).

⁶⁴⁸ *New Zealand Herald*, 25 June 1874.

⁶⁴⁹ R.S. Bush to Native Minister, 12 May 1874, AJHR, 1874, G-2, p.11.

Waitomo, where a house was building [sic] for the reception of the Kupapa chiefs who might attend.’⁶⁵⁰

It seems clear, then, that the aukati served different purposes at different times – sometimes it was intended primarily to keep people out, and at other times to keep people in. Sometimes the focus of attention was Pakeha and at others it was Maori, whether King supporters or ‘loyalists’. In general unauthorised intrusions by casual visitors were regarded less seriously than more enduring attempts to stake a claim in the district through surveying, running cattle or other similar assertions of right. In other instances the permissibility of specific activities varied over time. Trade, for example, was mostly encouraged but sometimes blocked, while specific kinds of trade, such as attempts to import spirits into the King Country, were also for the most part discouraged. The aukati was, in short, a flexible device that served many different uses.

Older depictions of the aukati as merely a crude device to keep Pakeha out of the King Country therefore cannot be sustained. The picture was a great deal more complex than that. Although the few cases of Europeans who breached the line and were killed as a consequence attracted most attention from contemporary observers, officials were from the late 1860s sometimes allowed to attend Kingitanga meetings beyond the Puniu River. In 1875 a member of the Armed Constabulary was even permitted to ride the length of the King Country, travelling through it from Waikato to Taranaki.⁶⁵¹ Some Europeans were also permitted to lease lands behind the aukati,⁶⁵² though a disputed lease was said to have been behind Sullivan’s murder.⁶⁵³ By 1875 there were reportedly seven Europeans living at Te Kuiti.⁶⁵⁴ Others evidently continued to reside at Kawhia, notwithstanding the supposed attempt to expel them in 1867.⁶⁵⁵

⁶⁵⁰ W.G. Mair to Native Under Secretary, 22 May 1874, AJHR, 1874, G-2B, p.3.

⁶⁵¹ W.G. Mair to Native Under Secretary, 29 May 1875, AJHR, 1875, G-1A, p.2.

⁶⁵² St. John, *Pakeha Rambles*, p.54.

⁶⁵³ *Daily Southern Cross*, 20 May 1873. A later report stated that ‘It is owing to Europeans leasing and trespassing on Maori lands after being warned by the natives that murders have been committed in the Waikato.’ *New Zealand Herald*, 25 June 1874.

⁶⁵⁴ Sorrenson, ‘Maori King Movement’, p.51.

⁶⁵⁵ *New Zealand Herald*, 4 April 1868.

The presence of such Europeans did, however, sometimes give rise to precisely the kinds of tensions Tamati Ngapora had feared. In 1869, for example, a European surveyor employed at Aotea ‘with a guard of 20 armed Kupapas’ was prevented from working by:

...two Chiefs of the King party who threaten that if it [the survey] is persisted in they the King party will drive the Kupapas and Whites beyond the boundary line which means to the north side of this Harbour [Raglan] they laying claim to all the territory outside of the confiscated line.⁶⁵⁶

Herbert Brabant, a clerk and interpreter to the Resident Magistrate at Raglan proceeded to Aotea, where he was informed directly by those who had interrupted the survey that they had done so not because they claimed the land in question, ‘but because they considered that the Governor’s “rohe” only extended to Raglan’.⁶⁵⁷ Clearly the Kingitanga continued to assert a strong veto over land dealings within the Rohe Potae district for a considerable period after 1864, though the ongoing presence of some ‘loyalist’ communities, combined with a handful of Europeans scattered throughout the area south of the Puniu River, had the potential to result in significant tensions and disputes from time to time.

There was also an ongoing missionary presence in the district. Indeed, the Wesleyan Cort Henry Schnackenberg had remained at Kawhia and then Raglan until the end of September 1863 – well after most Europeans had fled the district – and returned to his Aotea mission in December of the same year.⁶⁵⁸ He was at pains to emphasise that he had not been driven out of the Waikato, informing a fellow missionary that:

Though not in the least compromising my loyalty to the Queen’s Government (I was Postmaster) or conniving at Kingism, which I always represented as a revival of heathenism, with the addition of a kind of Popery, I was not expelled but promised protection against robbers and murderers. The natives kept their word. I’ve remained unmolested some months after most others had

⁶⁵⁶ J. McDonald to Pollen, 31 March-1 April 1869, AGG-A 1/261/69 (box 4), Archives NZ (Akl).

⁶⁵⁷ Brabant to W. Searancke, 31 March 1869, AGG A 1/4, Archives NZ (Akl).

⁶⁵⁸ G.E.J. Hammer, *A Pioneer Missionary: Raglan to Mokau, 1844-1880: Cort Henry Schnackenberg*, Auckland: Wesley Historical Society, 1991, pp.55-61.

been either expelled, or left the Maori Kingdom of their own accord. On leaving, I parted on the most friendly terms with all, except a chief who once robbed me and now wished to be left in charge of my station.⁶⁵⁹

Upon his return to the district, Schnackenberg discovered that ships were continuing to enter Kawhia Harbour, apparently bringing supplies for a European trader whom the missionary believed was supplying the ‘rebel’ forces.⁶⁶⁰ Government-salaried Assessors also remained in the district, and Schnackenberg was able to hold his ground with the support of those who had remained outside the Kingitanga.⁶⁶¹ His 1864 circuit report for the Kawhia district also noted some interactions with members of the King movement. The missionary reported that:

The king natives are numerous in the neighbourhood, including many who have been expelled from the Waikato districts. Some of them associate with the Queenites & also come to see me. Others come down the rivers & mountains for the purpose of fishing. When I speak to them on the advantages of peace, and the duties of religion, they either make no reply at all, or say “you are right” & then walk away. They never insult or rob anyone, nor do they find fault with Europeans, though there are no Queen’s forces within a distance of 25 miles.⁶⁶²

Writing with reference to the tribal mix of those at Kawhia and their various political allegiances, he further noted that:

The Natives who live in the Kawhia harbour and its neighbourhood are chiefly of the following three tribes. First a portion of the Ngatimaniapoto, which is perhaps the *boldest* of all the tribes in kingism, because its lands are the most inaccessible to the Queen’s. It is not true that they are at this time [a] ‘wandering tribe’. They are *at home*. Secondly a portion of the Ngatimahuta – which are perhaps the *most earnest* in the establishment of kingism, because

⁶⁵⁹ Schnackenberg to ‘Rev and dear sir’ [unnamed], 16 November 1863, Schnackenberg Papers, 82-174, Series E – Extracts from Letterbook 2, ATL.

⁶⁶⁰ Hammer, *Pioneer Missionary*, p.61.

⁶⁶¹ *ibid.*, p.62.

⁶⁶² Kawhia Circuit Report, 1864, Schnackenberg Papers, 82-174, Series A, Folder 11, ATL.

the king is of this tribe. Thirdly, the Ngatihikairo which has become notorious for its large cash contributions to Kingism, for their great agitation, which procured for its chief the name of Kingi. A portion of this latter tribe left kingism some 3 years ago, as did also several Ngatimaniapotos and many among all the three tribes have never approved or taken part in the war. As the latter never held any appointments under H.M. Government their loyalty has remained unnoticed, though it is perhaps mainly owing to these men that I have been able to hold my ground, and that the Mission Station has been preserved.⁶⁶³

Schnackenberg subsequently settled permanently at Raglan but continued to visit Kawhia and Aotea from time to time. Although such visits were not possible for long periods of time due to opposition from the Kingitanga, this often appears to have been grounded in particular circumstances. In 1870, for example, his position at Aotea was jeopardised when a pair of European traders began leasing land less than 100 yards from the mission station, despite the objections of Kingitanga owners. Schnackenberg informed the Native Minister, Donald McLean, that ‘Some of the Natives spoke of “tupato-aukati” [warning boundaries] and Pahs, and even sought the removal of all Aotea pakehas.’⁶⁶⁴ The missionary appeared unperturbed by this suggestion, however, adding that this was ‘nothing new: they always talk in this strain when there is any excitement’.⁶⁶⁵

A consistent theme in Schnackenberg’s letters was the way in which war and confiscation was an ongoing cause for resentment not merely among King supporters but also for those described as loyalists or ‘Queenites’. In 1871, for example, he noted that:

The war has very much destroyed their love and regard for the pakehas in general and the Missionaries in particular. Even Queenites – with few exceptions have forsaken their English names and are called by ancient Maori names, and when children are presented for Baptism they generally give them

⁶⁶³ *ibid.*

⁶⁶⁴ Schnackenberg to McLean, 5 July 1870, Schnackenberg Papers, 82-174, Series A, Folder 13, ATL.

⁶⁶⁵ *ibid.*

names of their progenitor. I have also met with persons, who will not even return a friendly salutation. The sulkiness and moroseness of many is caused, I think, by a consciousness, that they have lost their place in the land – that they have not even now the pleasure of relating their superior prowess in fighting – that their proud spirits are broken by the conviction that the white man is his superior, not only in knowledge, wealth, and the possessor of worldly comforts, but also in actual warfare – that the foreigner is not as he supposed a mere squatter whom he might expel from the soil at pleasure – but that he is a real settler, whose posterity will probably occupy the soil, which they would gladly leave to their own race. And it is perhaps quite natural that the Natives, as a race, should lose energy and spirit, when they behold the pakehas in comparative prosperity keeping their hold wherever they have obtained a footing, and in spite of kingites [sic] opposition and many other difficulties are quietly but surely spreading over the land, while they themselves are rapidly decreasing both in influence and also in numbers.⁶⁶⁶

‘Those who are not with the rebels in their camp’, the missionary added, ‘are there in spirit; all sympathise, not with Hauhauism or heathenism, but with kingism – they hate european [sic] superiority and all restraint except that which they themselves inflict upon their slaves, and think themselves justified in putting upon all foreigners.’⁶⁶⁷

In 1872 Schnackenberg reported a ‘considerable change in the attitude of kingites, I am told I may go and preach anywhere.’⁶⁶⁸ Yet in a further twist of events, the missionary attributed an 1875 attack on the Aotea mission station as being driven by a desire to keep him away from the area and to regain possession of the land. One of the local Assessors had striven in vain to protect the mission’s property.⁶⁶⁹

Clearly daily life beyond the Puniu River after 1864 was altogether more complex than the complete isolation from European influences sometimes imagined. Yet

⁶⁶⁶ Raglan Circuit Report, 1871, Schnackenberg Papers, 82-174, Folder 14, ATL.

⁶⁶⁷ *ibid.*

⁶⁶⁸ Schnackenberg to ‘My dear Brother’, 2 January 1872, Schnackenberg Papers, 82-174, Series A, Folder 14, ATL.

⁶⁶⁹ Schnackenberg to ‘Rev and dear sir’ [unnamed], 11 January 1876; Schnackenberg to Reid, 3 December 1875, Schnackenberg Papers, 82-174, Series A, Folder 18, ATL.

observers remained fascinated by the notion of a boundary against European encroachment. St. John, who rode across the line with a companion without permission in the early 1870s, feeling ‘very much like schoolboys out of bounds’, wrote that:

Still, the line answers somewhat to the system of the “Pale” in force in Ireland centuries ago, the exact Maori translation of which is *aukati*. An *aukati* is an imaginary line, defined by localities, across which the tribes or persons on whose account it [is] declared must not pass; should they do so, it is at their own risk. In this case the confiscation line is not treated exactly as an *Aukati* by the natives, because they still harp upon the idea...that the Mangatawhiri creek, near Mercer, is the real northern boundary of their territories; or by the Europeans, as it is not quite in accordance with English customs of the present day to shoot a man, simply because he goes beyond a particular spot. Yet it has acquired a sort of importance, and a tacit acknowledgement that to the southward of it we have no business.⁶⁷⁰

Sir George Bowen, who had succeeded Grey as governor of New Zealand in 1868, also drew comparisons with the Pale of Irish history, while noting the important difference that ‘in Ireland the “pale” was set up by the Colonists against the Natives, whereas, in New Zealand, it is set up by the Natives against the Colonists.’⁶⁷¹ It was seen previously that the *aukati* was not simply an instrument designed to exclude Pakeha from the King Country, but at times was also used to exclude ‘loyal’ Maori, and, in a few instances, to prevent Kingitanga supporters from travelling outside the district. However, this latter function had more or less disappeared by the mid-1870s, as even Rewi Maniapoto and King Tawhiao had travelled outside Te Rohe Potae.⁶⁷² Indeed, in this respect the apparent attempt to regulate and limit the movements of King supporters to European settlements beyond the *aukati* reported at Kawhia in 1867 ran against the prevailing trend. For most of its history, members of the Kingitanga freely crossed the border for a wide variety of reasons, whether it was to

⁶⁷⁰ St. John, *Pakeha Rambles*, pp.54-55.

⁶⁷¹ Bowen to Buckingham, 30 June 1868, AJHR, 1868, A-1, p.74.

⁶⁷² Ward, *Show of Justice*, pp.234-235.

sell their produce in the nearby European townships, or to attend race meetings or agricultural shows.⁶⁷³

For Europeans who considered the existence of the aukati and the self-governing community sheltered behind its lines ‘a disgrace to the Government of the colony, and a stain upon the British name’,⁶⁷⁴ the fact that Maori could travel across the line in whichever direction they cared with impunity only added insult to injury. Such, indeed, was the degree of indignation and resentment this produced that in 1871 some 167 Waikato settlers signed a petition calling upon the government to establish its own aukati to prevent Maori entering the district. They informed the governor that:

For years past, your petitioners have been subject to constantly recurring threats of attack by the rebel Natives outside the confiscation line, which threats have been the means of driving many of our settlers out of the district, and have kept away hundreds of useful men, who, but for this uncertain state of things, would have settled here, and has in numberless ways grievously retarded the advancement of this part of the country.

Your petitioners beg to inform your Excellency, that it is their firm conviction that their liability to these threats of attack arises in a great measure from the rebel Natives maintaining what they call an *Aukati* line, which they forbid Europeans from crossing, but which they themselves cross at pleasure, and from their being allowed, without fear of being challenged in any way, to come into our settlements; this allowing them unlimited opportunities of spying our weakness, and of obtaining information which would be of great advantage to them in the event of an outbreak, and which it is of the utmost importance, for the security of the district, that they should not possess.⁶⁷⁵

Although the response to this petition is unclear, the Native Minister Donald McLean wrote in March 1871, following a recent tour of the Waikato, that:

⁶⁷³ Sorrenson, ‘Maori King Movement’, p.51.

⁶⁷⁴ *Daily Southern Cross*, 28 February 1867.

⁶⁷⁵ Petitioner of Settlers in the Waikato District, AJHR, 1871, A-9.

Their grounds for this application have some justice in them; as it is no doubt a source of irritation to see natives, avowedly hostile, within the boundaries; in two cases coming into actual conflict with Europeans, and in most returning to their own country laden with property and information. It appears, however, that the majority of the petitioners repudiate the idea of “shooting” trespassers across the frontier, as originally proposed, and contemplate restricting to imprisonment the penalty to be incurred.⁶⁷⁶

McLean believed that even this proposal would prove impracticable. For one thing it was likely to run directly contrary to the Native Rights Act of 1865 by which Maori were declared natural-born subjects of the British Crown. And on a practical level it would require a much heavier military presence on the frontier than the colony could afford, besides being likely to prove unworkable since ‘as long as any trade is to be had with the natives, some individuals will take advantage of it, and Europeans would in all probability be the first to break an “Aukati” proclaimed at their instance.’⁶⁷⁷

These concerns among government officials do not seem to have proved any check to direct action by at least some of the settlers. One newspaper report from the same month suggested that a ‘pakeha “aukati”’ had been put in place at Alexandra in response to the Maori one, evidently in an attempt to prevent Kingitanga supporters from crossing to the township.⁶⁷⁸

Rumours and reports of militant Kingitanga actions north of the Puniu River continued to be received long after the New Zealand Wars as a whole had supposedly ended in 1872. What these incidents frequently pointed to were ongoing assertions of right to the confiscated lands. The journals of Alexandra member of the Armed Constabulary, Neil McLeod, report one small incident in January 1877. He recorded that:

⁶⁷⁶ McLean to the Premier (William Fox) and Ministry, n.d. [c.March 1871], McLean Papers, MS-Papers-0032-033, ATL.

⁶⁷⁷ *ibid.*

⁶⁷⁸ *Daily Southern Cross*, 10 March 1871. Other reports suggested that ‘loyalist’ rangatira such as Hone Te One supported the imposition of such an aukati. *Daily Southern Cross*, 2 June 1871, 16 June 1871. It would seem that the intention was not merely to prevent King party Maori from travelling outside the Rohe Potae but also to prevent Europeans from entering it. *Daily Southern Cross*, 27 August 1872.

Mrs. Morgan sold her land a short time since to a gentleman who sent an overseer and surveyor to mark it off. about 12 noon the Rebel King sent an emissary called Ngakau to stop the surveyors which he did...and drive them clean off the ground. The land joins the town belt and about a mile inside the confiscated boundary.⁶⁷⁹

Later that year McLeod reported rumours of a joint Kingitanga-Irish nationalist uprising in the Waikato. Although the language he employed to report this includes terminology which would today be considered extremely offensive, this nevertheless provides some insight into the attitudes of at least some of those Europeans who had occupied the rich confiscated lands of the Waikato. McLeod recorded in his journal that:

Michael O'Connor the great Fenian, came here about the 1st Sept last and went to the King County. It is reported that he is to place some Fenians at the disposal of the Niggers all ready armed to fight against the Govt.⁶⁸⁰

Some months later McLeod observed that the intention was 'to form a Fenian Colony among the Natives'.⁶⁸¹ While this supposed colony does not appear to have gone ahead, it was perhaps not as far-fetched as it sounded. There was more to the Irish and Maori comparisons than merely the Pale/aukati one. Indeed, both peoples had suffered extensive land confiscations, in the case of the Irish beginning several centuries before but still very much not forgotten by the 1870s, and for Waikato tribes painfully fresh. The parallels did not end there either. As the next chapter discusses, the legislation used to confiscate the Waikato district drew heavily from that earlier employed in England's first offshore colony – Ireland.

⁶⁷⁹ 'Life in the Armed Constabulary: Diary of Constable Neil McLeod', 16 January 1877, *Journal of the Te Awamutu Historical Society*, vol.2, no.3, September 1967, p.71.

⁶⁸⁰ 'Life in the Armed Constabulary: Diary of Constable Neil McLeod', 12 October 1877, *Journal of the Te Awamutu Historical Society*, vol.4, no.1, June 1969, p.17. O'Connor's various movements beyond the aukati, and rumoured gun-running in aid of the Kingitanga, had been a source of concern for Crown officials since the late 1860s. See, for example, William Searancke to McLean, 19 September 1869, McLean Papers, MS-Papers-0032-0566, ATL.

⁶⁸¹ 12 November 1877, *ibid.*, p.18.

3.5 Conclusion

While the Waikato War took place north of the Puniu River, its impact was felt south of this in a number of ways. As we saw in the previous chapter, members of Ngati Maniapoto, Ngati Raukawa, Ngati Hikairo and other groups took a prominent part in the defence of the Waikato, and although it is not possible to provide a detailed breakdown of overall casualties by iwi affiliation, what information is available to us suggests that the total number of Maori killed or wounded may have been on a per capita par with, if not in excess of, New Zealand's losses during the bloodbath that was World War One.

The seizure and confiscation of highly productive agricultural lands in the area around Rangiaowhia and Kihikihi was another serious blow for Rohe Potae iwi, especially given that in the wake of the war the tribes provided shelter to a large number of refugees from the Waikato conflict. For many years thereafter Ngati Maniapoto and the other host tribes were required to support a large number of dispossessed Waikato Maori without access to former crops or other economic infrastructure looted or destroyed during the war. Initially cramped and unsanitary conditions, along with food shortages and other problems, appear to have led to a period of significant deprivation and disease. The first few years after Orakau were grim ones indeed for the people of Te Rohe Potae, before what seems to have been a gradual recovery from around the late 1860s. But even then, the tribes remained vulnerable to occasional food shortages or outbreaks of disease.

The imposition of an aukati from about 1866 onwards may have actually helped to limit exposure to some diseases to which Maori continued to have limited immunity. And yet, as we have seen above, the aukati itself was never hard and fast. Even its boundaries were subject to ambiguity or movement over time, though they eventually appear to have coalesced around the outer limits of the lands under effective Crown confiscation and control. At a fundamental level the aukati was intended both to prevent fresh conflict as well as acting as a barrier to the loss of further land and authority. Beyond this, the aukati served different purposes at different times, mostly blocking the movements of unauthorised Pakeha (or sometimes 'loyal' Maori) into the Rohe Potae and more rarely operating as a check on the outwards movements of

King supporters. In all, it would seem, life beyond the Puniu River after 1864 was considerably more complex than the picture of complete isolation from European influences sometimes imagined.

4. The Development of Confiscation Proposals

4.1 Introduction

This chapter explores the development of confiscation proposals in New Zealand in the 1860s, the background to (and precedent for) this, and the responses engendered by such policies, both locally and in London. It begins with a brief comparison between customary Maori raupatu and the later Crown policies of confiscation that some officials sought to justify by reference back to Maori custom. The chapter next explores both local and wider British Imperial and worldwide precedents for confiscation, which is revealed to have a long lineage as a policy towards rebellious or treasonous subjects. Its application locally began to be seriously mooted towards the end of the first Taranaki War in the early months of 1861, though concrete proposals were not developed for a further two years. Those proposals, developed in advance of the invasion of Waikato in July 1863, sought to rationalise confiscation as a form of punishment, a deterrent against future supposed acts of ‘rebellion’, a basis upon which to establish military posts in order to strengthen British defences against attack from the interior, but also as means by which to pay for the costs of the war. As we shall see below, some critics, both in London and New Zealand, were inclined to suspect that war and confiscation had been deliberately pursued as part of a crude settler land grab. Yet those concerns did little to deter proponents of the New Zealand Settlements Act 1863 and related measures passed to give effect to confiscation.

4.2 Raupatu and Confiscation: Maori Custom

Although the term ‘raupatu’ is often used interchangeably today with the word ‘confiscation’, the former in fact has a broader meaning. Rau refers to one hundred and patu means to hit, attack, strike or kill or (in noun form) to a particular weapon. As Dean Mahuta explains, the meaning of ‘raupatu’ therefore ‘refers to the hundreds of people that were killed (by the blade of the patu) in the confiscation of land.’⁶⁸² Seen in these terms raupatu embraces both war and confiscation, though this chapter focuses solely on the second part of this equation.

⁶⁸² Dean P.S. Mahuta, ‘Raupatu: A Waikato Perspective’, *Te Kaharoa*, vol.1, 2008, p.178.

As will be seen later in this chapter, some colonial officials sought to justify the confiscation of Maori lands on the basis that this was consistent with customary Maori practice. William Fox, for example, declared that ‘The idea of confiscation is not new to the Maori race, nor in any way abhorrent to their moral sense. It has for centuries been the law of the victor among themselves’.⁶⁸³ Customary *raupatu* was, however, a rather different process to that adopted by the Crown in the 1860s. For one thing, as Angela Ballara notes, it provided a particularly insecure form of land tenure so long as members of the defeated and dispossessed tribes remained to challenge such claims. Undisturbed possession would usually be dependent on the complete extirpation of the earlier occupants – a relatively rare phenomenon. For this reason, intermarriage with the original owners was often adopted in order to build up claims through ancestry over subsequent generations. And claims to the land based on ‘*ringa kaha*’ (the strong hand) were equally liable to be overturned at any time.⁶⁸⁴ As will be seen in later chapters, Crown confiscation under the New Zealand Settlements Act would in many instances have failed the test of continuous and undisturbed possession required under *take raupatu*. Moreover, as contemporary critics noted, in many instances victorious *hapu* and *iwi* made no attempt to claim the lands supposedly conquered in inter-tribal warfare. One only needed to point to Hongi Hika’s various expeditions for an example of why it was quite misleading to suggest that Maori warfare inevitably led to land seizures. No one accused Hongi of being weak when he failed to follow up victories in the field with land takings. And yet this lame and palpably misleading justification (that Maori expected land to be taken following military defeat and would view the government as weak if it failed to carry out such a measure) was rolled out for Crown confiscations in the 1860s.

Finally, the comments of Otaki missionary Octavius Hadfield with respect to confiscation and its supposed precedents in Maori custom are worth considering. His response to Fox’s statements on this question, originally penned in a private letter, were subsequently published in an Aborigines Protection Society pamphlet. Hadfield wrote that:

⁶⁸³ Memorandum by the Colonial Secretary on Sir W. Martin’s ‘Observations on Proposal to take Native Lands’, AJHR, 1864, E-2, p.18.

⁶⁸⁴ Angela Ballara, ‘The Origins of Ngati Kahungunu’, PhD thesis, Victoria University of Wellington, 1991, pp.322-326.

Confiscation is the act of the sovereign power in reference to the property of its rebellious subjects. Now I have no hesitation in saying that no Maori ruler ever so acted in regard to the property of their own people; that confiscation of the property of any so-called rebels was unknown to Maori custom.

It is possible that (through a confusion of ideas very common with our colonial statesmen) Mr. Fox is referring to the annexation of the lands of conquered enemies. But if so, it seems a strange mistake of Mr. Fox to make, inasmuch as he, on assuming office, brought prominently forward, as an essential part of his policy, that the Maories were *not* to be treated as foreign enemies, but as rebels.

It is true that Maories did *annex* portions of the territory of opposing tribes whenever victory gave them an opportunity of doing so; but it is equally true that the conquered tribe did not acquiesce in the spoliation, but considered itself bound in honour to recover its lost possessions whenever an opportunity offered...Rangiheata [sic], whom Mr. Fox cites as an authority, once said that he was the undisputed owner of some conquered lands, for – he had *eaten* the original occupants. If Mr. Fox were prepared to follow his example in this also, future occupants of the Waikato and other confiscated districts might reside in security on their acquisitions.⁶⁸⁵

In summary, then, the seizure of lands did not necessarily follow customary forms of conquest and even where it did provided an insecure (and usually incomplete) form of tenure, in the absence of the complete extermination of the original owners. Moreover, if Maori were already subjects of the Crown at the time of the invasion of the Waikato, as government officials maintained, then there was no precedent in Maori custom at all for confiscation since it was not standard practice to seize the lands of those within one's own kin community or body politic in this way. Conversely, if Maori were viewed as not being subjects of the Queen (or as being very lightly touched by effective Crown control) then they could hardly have

⁶⁸⁵ Aborigines Protection Society, *The New Zealand Government and the Maori War of 1863-64*, pp.18-19.

committed acts of ‘rebellion’. Sir William Martin’s comments to Fox on this issue are perhaps pertinent here. As the retired Chief Justice wrote:

Much is said and written about re-establishing the Queen’s authority or the authority of the law throughout this island; whereas, the truth is that, in the greater part of this island, the Queen’s authority has never at any time been established in any real or practical sense.⁶⁸⁶

Or to quote from a 1905 petition from Karika Paehu (a nephew of Wiremu Tamihana), calling for the return of the Waikato confiscated lands:

Many words are included in that Treaty. There are no words commanding the conquering of the lands of the Maori...If the conquest of the Government touches the land it is then said [by the petitioner] to be a conquest of the Treaty of Waitangi and the words contained therein.⁶⁸⁷

Attempts to find a precedent for confiscation in Maori custom only served to highlight the extent to which Crown officials struggled to justify the imposition of such a policy, though as we will see in the section below, there were other precedents that could also be cited.

4.3 Precedents for Confiscation

Land confiscations did not emerge from a vacuum in 1860s colonial New Zealand but had a long lineage in world history, especially within the context of imperial expansion. The doctrine of forfeiture for treason or rebellion can be traced back at least as far as classical Rome.⁶⁸⁸ Indeed, the word confiscation also comes from the Romans, deriving from the Latin word *confiscare*, the latter part of which derives

⁶⁸⁶ Martin to Fox, 16 November 1863, AJHR, 1864, E-2 (appendix), p.11.

⁶⁸⁷ Petition of Karika Paehu, 1905, in MA 1/1910/4369 1021, Archives NZ.

⁶⁸⁸ Kieren Barry, ‘Waitangi Tribunal Research Report Concerning the Treaty of Waitangi and the Taranaki Claims’, n.d. [1992], Wai-143, #H19, p.1.

from the term *fiscus*, meaning treasury and implying a joining of some object with the state's property.⁶⁸⁹

Forfeiture entered English common law doctrines from very early times. It was founded on the notion that all estates were granted by and held from the Crown.⁶⁹⁰ Feudal English society was steeped in the mutual obligations of lords and their subjects. Those who broke their bonds of obligation could expect to forfeit their estates. Even the Norman invasion of England in 1066, although typically viewed as a conquest, was also justified in terms of forfeiture for rebellion. William the Conqueror claimed to be the lawful king of England, and confiscated the lands of the 'rebel' owners who had supported the claims of the supposed 'pretender' King Harold.⁶⁹¹

Doctrines of forfeiture for high treason were further refined during the medieval era in the face of repeated attempts to overthrow reigning monarchs. In particular, Edward III's 1352 Statute of Treasons sought to clarify the definitions of treason justifying forfeiture.⁶⁹² A later version of this legislation, Henry VII's Treason Act of 1495, remained on the New Zealand statute books until repealed by the Crimes Act of 1961.⁶⁹³ Confiscation and death were the standard punishment for treason across Europe throughout the medieval and early modern periods. Kieren Barry notes that 'Death in the case of traitors was accompanied by the hall-mark of being drawn to the gallows behind a horse's tail, and sometimes cumulative physical barbarities were added depending on the degree of the treason, including disembowelment, burning of the entrails, beheading, and quartering.'⁶⁹⁴ The gruesome punishment of hanging, drawing and quartering for treason remained on the statute books in the 1860s, when a number of Maori were actually sentenced to this punishment. Judges required to pass this sentence usually went to some lengths to explain that the punishment was unlikely to be carried out in full. Those Maori who did not have their sentences

⁶⁸⁹ *Concise Oxford Dictionary of Current English*, 9th edition, Oxford: Clarendon Press, 1995, p.279.

⁶⁹⁰ R.P. Boast, "'An Expensive Mistake': Law, Courts, and Confiscation on the New Zealand Colonial Frontier", unpublished conference paper, Coming to Terms? Raupatu/Confiscation and New Zealand History, Victoria University of Wellington, 27-28 June 2008, p.7.

⁶⁹¹ Barry, 'Treaty of Waitangi and the Taranaki Claims', p.2.

⁶⁹² Bryan D. Gilling, 'The Policy and Practice of Raupatu in New Zealand: Part A', 1996, Wai-201, #J27, p.10.

⁶⁹³ F.M. Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation*, Auckland: Auckland University Press, 1999, pp.28-29.

⁶⁹⁴ Barry, 'Treaty of Waitangi and the Taranaki Claims', p.4.

commuted and suffered execution were at least spared the prolonged period of torture and disembowelment technically required if the letter of the law was applied. But in at least one respect English law was somewhat less harsh than applied elsewhere in Europe. In France, for example, the offspring of the traitor might also be put to death on the basis that treason constituted a 'corruption of the blood'.⁶⁹⁵ In many cases those subject to death and confiscation were able to avoid such an outcome by paying a sum based on the annual value of the land, though this was solely at the discretion of the Crown and was not based on any established right.⁶⁹⁶ Famous Scottish rebel and resistance leader William Wallace was not so fortunate, while his contemporary Robert Bruce managed to evade capture and a grisly death but had his lands seized in his absence and re-granted to loyal subjects of the Crown.⁶⁹⁷

Further refinements in the fifteenth century saw the introduction of Acts of Attainder which provided a statutory means for Parliament to impose specific penalties for treason without recourse to normal legal procedures.⁶⁹⁸ Although heavily deployed during the dynastic conflicts known as the War of the Roses, attainders later came to be looked upon as an abuse of parliamentary and monarchical powers, and had fallen out of use by the beginning of the nineteenth century. However, Acts of Attainder were deployed during the American Revolution to confiscate the property of 'loyalists' to the British Crown. Acts of Attainder were subsequently specifically barred under the United States constitution.⁶⁹⁹

It was, however, Ireland which provided the most important precedent for later confiscation in New Zealand. English attempts to conquer and colonise Ireland had commenced in earnest in the twelfth century, and according to one early twentieth century writer:

The History of Irish Confiscations may almost be said to be the history of Ireland from the first coming of the Anglo-Norman invaders until five

⁶⁹⁵ *ibid.*

⁶⁹⁶ *ibid.*, pp.4-5.

⁶⁹⁷ *ibid.*, pp.5-6.

⁶⁹⁸ Gilling, 'Policy and Practice of Raupatu', p.10.

⁶⁹⁹ Daniel W. Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy during the Civil War*, Chicago: University of Chicago Press, 2007, pp.14-19.

centuries later, when confiscation ceased, apparently for much the same reason as a fire burns itself out, because there was nothing more left to confiscate.⁷⁰⁰

From the outset Irish people living within the conquered territories were treated as enemies and aliens or (like later African slaves) as chattel and were unable to legally hold lands. For centuries Irish people were unable to bring any action in the English courts established in their country 'and it was a sufficient defence to any charge of trespass, theft, rape, or murder, to say that the victim was of the Irish nation.'⁷⁰¹ However, if an Englishman killed the Irish servant of one of his compatriots monetary compensation would be demanded for the loss of property.⁷⁰² A range of severe punishments were over time introduced for those who adopted Irish customs, including death and property confiscation for those who took an Irish mistress or wife.⁷⁰³ These laws, though, did little to deter the Old English (descendants of the first Norman settlers in Ireland), who increasingly adopted Irish customs, laws and wives in defiance of such threats.

Beyond that part of eastern Ireland controlled by the English (known as the Pale) Irish Brehon law continued to prevail, in fact, and it was not until the time of Henry VIII in the early sixteenth century that more concerted efforts began to be made to seize control of the remainder of the country. The policy of surrender and regrant implemented during Henry's reign (1509-1547) saw clans which agreed to surrender up their lands to the Crown re-granted them on the usual feudal terms. But less land was re-granted than was surrendered, and the policy made those estates which were returned on such a basis vulnerable to confiscation for rebellion. Moreover, under Brehon law clan chiefs (similarly to Maori rangatira) did not own the lands of the clan outright, but were expected to carry out certain duties on behalf of the community of owners. Yet lands were frequently re-granted outright to the chiefs, dispossessing the remaining owners and helping to drive a wedge between chieftain and clan. This was precisely the same strategy, incidentally, later applied to New Zealand and elsewhere.

⁷⁰⁰ W.F.T. Butler, *Confiscation in Irish History*, Port Washington, NY: Kennikat Press, 1970 (orig. ed. 1917), p.1.

⁷⁰¹ Barry, 'The Treaty of Waitangi and the Taranaki Claims', p.13.

⁷⁰² *ibid.*

⁷⁰³ *ibid.*, p.14.

England's first overseas colony thus proved a useful testing ground for Imperial strategies of conquest and subjugation.⁷⁰⁴

Such policies prompted repeated rebellions, which in turn provided the basis for even more sweeping acts of confiscation. During the reign of Elizabeth I (1558-1603) extensive confiscations were proclaimed, though the actual area of land seized was usually much less in the absence of any definite scheme to 'plant' settlers on the lands. It was during the reign of James I (1603-1625) that the entire six counties of Ulster were confiscated for plantation by English and Scottish families. Brehon law was also finally outlawed at this time and more aggressive measures adopted to subjugate and assimilate the Irish. Customary Irish land tenure was also deemed to be not recognised under English law.⁷⁰⁵

The Ulster Plantation was later dwarfed by confiscations implemented under the Commonwealth of Oliver Cromwell. Following the latest Irish uprising in 1641, the English Parliament had the following year passed an Adventurer's Act promising 2,500,000 acres in land (calculated in 1000-acre units) as payment to 'adventurers' prepared to advance the money necessary to raise an army to crush the rebellion. It has been said that the New Zealand Loan Act of 1863, which was intended to finance the costs of war and confiscation through the raising of a £3,000,000 loan from London financiers, was modelled on the Adventurer's Act.⁷⁰⁶ But although the Loan Act adopted the similar principal of funding conquest and colonisation through the security of lands to be seized as a consequence, there is no evidence of a more direct connection. In textual terms the Loan Act does not in any way follow the Adventurer's Act and there is no evidence that the 1642 legislation was turned to for inspiration. Self-funded colonisation and conquest was hardly a novel premise by the mid-nineteenth century. Indeed, it could be said to have formed the bedrock of British and European imperialism at this time. The Adventurer's Act was a precedent for the Loan Act, but not the model for it.

⁷⁰⁴ Barry, 'Treaty of Waitangi and the Taranaki Claims', pp.15-16.

⁷⁰⁵ *ibid.*, pp.19-20.

⁷⁰⁶ Brigid Kelly, 'The Alienation of Land in Ireland and in Aotearoa/New Zealand under English Colonization', *Auckland University Law Review*, vol.9, no.4, 2003, p.1357.

Owing to the outbreak of the English Civil War it was not until 1649, when the Commonwealth of England was proclaimed, that Cromwell raised an army and commenced to quash the Irish uprising in the most brutal of fashions.⁷⁰⁷ By 1652 the rebellion had been put down, and a new Adventurer's Act was passed the following year confirming the payment of arrears to the soldiers from the lands to be taken, with the remainder going to the so-called 'adventurers' who had advanced the costs of the war, mostly consisting of City of London speculators.⁷⁰⁸ Between 1641 and the reign of William of Orange at the end of the seventeenth century Irish Catholic landholdings were reduced from something in the order of 60% of the country to just under 5%, even though some lands were returned to Catholics and Royalists following the Restoration of Charles II as king in 1660.⁷⁰⁹ The Old English, having in a sense become indigenised after centuries in Ireland and most of whom stubbornly refused to renounce their Catholic faith following the English Reformation, suffered confiscation alongside other Irish people.

The wholesale seizure of Irish lands had been made possible by an Act for Settling Ireland ('the Act of Settlement'), passed by Parliament in 1652 which, though declaring that it was not the intention to 'extirpate' the Irish and claiming to extend 'Mercy and Pardon, both as to Life and Estate', nevertheless confiscated land from almost every Catholic in Ireland, besides others such as Anglican royalists who had not actively fought for the Parliamentarians. It also effectively made around 10,000 persons liable to the death penalty.⁷¹⁰ A sliding scale of penalties was outlined, ranging from death or exile and total seizure of property for those believed most implicated in 'rebellion' (besides all Jesuits and Catholic priests) down to two-thirds, one-third and one-fifth seizure of a person's property. As Gilling states, the

⁷⁰⁷ Although Cromwell is regarded as something of a heroic figure in Britain today, he is almost universally despised in the Republic of Ireland. Given estimates that as many as 40% of the Irish population may have died during the Cromwellian conquest, some massacred as in the infamous Drogheda siege, but most dying of famine or disease as a consequence of the deliberate destruction of their homes and crops, that is perhaps an understandable response.

⁷⁰⁸ Richard Boast, *Buying the Land, Selling the Land: Governments and Maori Lands in the North Island 1865-1921*, Wellington: Victoria University Press, 2008, p.53.

⁷⁰⁹ Kelly, 'The Alienation of Land in Ireland and in Aotearoa/New Zealand', p.1356. James II passed Acts in 1689 repealing the Act of Settlement and restoring all lands to their owners as at 1641 but was toppled by William of Orange in the Glorious Revolution just days later. Rather than restoring lands to their former owners, some further seizures were made of those who had supported James II. Barry, 'The Treaty of Waitangi and the Taranaki Claims', p.28.

⁷¹⁰ Boast, *Buying the Land, Selling the Land*, p.52; Barry, 'Treaty of Waitangi and the Taranaki Claims', pp.23-24.

‘pecuniary motivation’ behind the legislation was revealed by a further provision that exempted all those whose estate was worth less than £10 from these provisions.⁷¹¹ Confiscating property from the poorest simply did not pay.

Those allowed to keep part of their property were, moreover, not at liberty to continue living where they always had but were required to relocate to wherever they were ordered to go, under pain of death if they failed to comply. Cromwell had memorably vowed that the Irish could go ‘to Hell or Connacht’, and the forcible relocation of many Irish to this western province followed. Connacht became a kind of reservation into which the Irish were herded while their former lands were seized and planted with settlers. However, the difficulties in attracting an English yeomanry to replace evicted Irish peasants meant this process was less than total.⁷¹² Many more Irish Catholics were transported to the West Indies at this time as indentured servants.

This period of mass land seizures, upheaval, famine, starvation and death reverberated across generations and left a lasting legacy. That less that positive legacy was one which retired Chief Justice Sir William Martin pointed to when he argued against implementing a policy of confiscation in New Zealand by declaring that:

The example of Ireland may satisfy us how little is to be effected towards the quieting of a country by the confiscation of private land; how the claim of the dispossessed owner is remembered from generation to generation, and how the brooding sense of wrong breaks out from time to time in fresh disturbance and crime.⁷¹³

It is the Irish Act of Settlement from 1652 which has most commonly been cited as the major precedent for the New Zealand Settlements Act, though as Richard Boast has pointed out there is, as yet, no evidence of a direct connection in the sense that the Act of Settlement was consciously employed as a model for the New Zealand legislation.⁷¹⁴ That stands in contrast with the Suppression of Rebellion Act, the majority of which was reproduced verbatim from legislation passed following the

⁷¹¹ Gilling, ‘The Policy and Practice of Raupatu’, p.12.

⁷¹² Roy Foster, *Modern Ireland, 1600-1972*, London: Penguin Books, 1988, p.110.

⁷¹³ Martin to Fox, 16 November 1863, AJHR, 1864, E-2, p.14.

⁷¹⁴ Boast, ‘Law, Courts, and Confiscation’, p.9.

Irish rebellion of 1798.⁷¹⁵ As Sir Frederick Rogers of the Colonial Office declared (with considerable understatement) upon reading the 1863 Act from New Zealand, 'It is passed in the model of the Irish Acts of 1798, which I apprehend are hardly to be taken as desirable precedents at the present time.'⁷¹⁶

Later New Zealand governor Sir George Grey had, of course, as a young man spent six years serving in the army in Ireland in the 1830s. Ireland was said to have left a profound impression on Grey, helping to give shape to the liberal and even radical convictions that would eventually triumph over his aristocratic instincts.⁷¹⁷ In particular, Grey was said to have been 'indignant when he read in the history books of "princely properties" worthily conferred upon eminent English lords and gentlemen, and concluded that the dispossession of the Irish peasants was an unjustifiable act.'⁷¹⁸ It was all the more ironic, then, that Grey would later bear personal responsibility for implementing similar policies of dispossession as a colonial governor. Nor was New Zealand his first example of this. As governor of the Cape Colony between 1854 and 1861, Grey had overseen the expropriation of British Kaffraria from the Xhosa people. They were left devastated not just by the wholesale land confiscations and brutal scorched earth military tactics directed against them by the British, but also by a cattle-killing movement which alone resulted in over 40,000 Xhosa dying of starvation.⁷¹⁹ As his biographer wrote, in Africa Grey 'came to accept the necessity for a military solution involving coercion, the humiliation of supposedly "warlike and treacherous" chiefs, the dismemberment and dispersal of the tribes, the confiscation of their land, and an almost Roman policy of colonisation.'⁷²⁰ Grey himself later declared that the plan of military settlements adopted in New Zealand in 1863 in

⁷¹⁵ Barry, 'Treaty of Waitangi and the Taranaki Claims', p.32. According to Barry, six of the ten substantive clauses in the 1863 Act were adopted verbatim from legislation passed in 1799 in response to the Irish uprising of the previous year, while a further three were modelled on later legislation from 1833, which was also framed in terms of suppressing disturbances in Ireland.

⁷¹⁶ Rogers, minute on Grey to Newcastle, 6 January 1864, no.10, p.238, CO 209/178, Archives NZ.

⁷¹⁷ Rutherford, *Sir George Grey*, p.5.

⁷¹⁸ *ibid.*, p.6.

⁷¹⁹ James O. Gump, 'A Spirit of Resistance: Sioux, Xhosa, and Maori Responses to Western Dominance, 1840-1920', *Pacific Historical Review*, vol.66, no.1, 1997, pp.21-52; Gilling, 'Policy and Practice of Raupatu', pp.14-17; Rutherford, *Sir George Grey*, part III; W.P. Morrell, *British Colonial Policy in the Mid-Victorian Age*, Oxford: Clarendon Press, 1969, ch.3; Hazel Riseborough, 'Background Papers for the Taranaki Raupatu Claim', 1989, Wai-143, #A2, pp.13-15.

⁷²⁰ Rutherford, *Sir George Grey*, p.365.

consultation with the government of Alfred Domett was 'based upon that which I adopted in British Kaffraria'.⁷²¹

Grey arrived in the Cape Colony in 1854 convinced that the same mixture of an uncompromising military stance combined with flour and sugar policies aimed at promoting rapid assimilation which had been a feature of his first governorship in New Zealand could be applied with equal success in Africa.⁷²² But his efforts to win the confidence of the Xhosa people had a limited success, despite significant improvements in the medical and educational facilities available.⁷²³ He soon advocated importing up to 5000 military pensioners, along with their families, making in all up to 25,000 immigrants, upon the same terms as those settled at Howick during his first governorship of New Zealand in order to bolster the defence of British Kaffraria.⁷²⁴ But the latter district was much more intensively settled to begin with, and for all Grey's talk of integrating Xhosa into the settler community, he quickly came to the conclusion that large numbers of Africans would need to be driven out of the region in order to make way for the intended newcomers. No doubt this contributed largely to his 1856 statement that 'throughout British Kaffraria, the native has no recognised right or interest in the soil'.⁷²⁵ What the Xhosa did not own could be taken from them without injustice. That semantic sleight of hand was harder to perform in the New Zealand context, where the Treaty of Waitangi explicitly guaranteed Maori rights to their customary lands.

But Grey's approach to this question ran counter to established Colonial Office policy. The cattle-killing movement and subsequent widespread starvation and dispersal of the Xhosa population was therefore timely from Grey's perspective, emptying British Kaffraria and giving him 'providential opportunity to carry out the improbable design he had drawn up much earlier'.⁷²⁶ As Grey himself wrote to one of his officials, 'I am very anxious that the crisis which has recently taken place in Kaffraria should in as far as possible be made a source of advantage to our

⁷²¹ Grey to Newcastle, 29 August 1863, AJHR, 1863, A-8, p.1.

⁷²² Rutherford, *Sir George Grey*, pp.304-305; Gilling, 'The Policy and Practice of Raupatu', p.15.

⁷²³ Morrell, *British Colonial Policy in the Mid-Victorian Age*, p.63.

⁷²⁴ *ibid.*, p.66; Rutherford, *Sir George Grey*, p.314.

⁷²⁵ Grey, 18 October 1856, quoted in Rutherford, *Sir George Grey*, p.329.

⁷²⁶ Rutherford, *Sir George Grey*, p.329.

interests.’⁷²⁷ More than 6000 German settlers and their families were placed on the land between 1856 and 1859. Those Xhosa who had survived and remained in the district now found that indirect rule was replaced by a more coercive and harder-edged attempt at direct control through a network of magistrates. Large tribal blocs were broken up into smaller and more manageable village units and herded into designated sites, where they were required to hold their land ‘on the same terms on which land is held in the Colony by the white Man.’⁷²⁸ To this end occupants of the villages were required to pay an annual livestock tax, along with a tax on huts and a quit-rent of 10 shillings. Local ‘headmen’, intended to supplant the customary authority of the chiefs, and ‘sub-headmen’ (essentially a kind of police force) were also appointed to assist the European magistrates in the collection of these fees and other duties.⁷²⁹ Although the official allocation was just two acres of land per family (later increased to four acres), friendly chiefs who agreed to the system might expect to receive much larger allocations.⁷³⁰

Grey’s village scheme might be seen as a rather more uncompromising template for the runanga system subsequently adopted in New Zealand (the greater emphasis on more direct and coercive forms of control perhaps reflecting the state of the Xhosa population in the wake of the cattle-killing prophecy). His proposed scheme of military settlements in British Kaffraria had met with resistance in the Colonial Office, and negligible interest from eligible military pensioners, as a consequence of which attention had turned to the men of a German Legion which had recently served in the Crimean War. Grey leapt at the offer with alacrity, as did the Cape Colony Parliament, which voted £40,000 towards the cost of the scheme, predicting that not only would the new settlements permanently secure the frontier but that it would also generate a handsome profit for the government within the space of the next five years.⁷³¹ Grey must surely have had some sense of déjà vu in New Zealand in 1863 as

⁷²⁷ Grey to John Maclean, 28 August 1856, quoted in James Gump, ‘The Imperialism of Cultural Assimilation: Sir George Grey’s Encounter with the Maori and the Xhosa, 1845-1868’, *Journal of World History*, vol.9, no.1, 1998, p.100.

⁷²⁸ Clifton C. Crais, *White Supremacy and Black Resistance in Pre-Industrial South Africa: The Making of the Colonial Order in the Eastern Cape, 1770-1865*, Cambridge: Cambridge University Press, 1992, p.200.

⁷²⁹ Rutherford, *Sir George Grey*, pp.380-381.

⁷³⁰ Crais, *White Supremacy and Black Resistance*, p.200; Morrell, *British Colonial Policy in the Mid-Victorian Age*, p.87; Rutherford, *Sir George Grey*, p.380.

⁷³¹ Rutherford, *Sir George Grey*, p.361.

the same grand predictions were made with respect to the plan of confiscation and military settlements.

As Rutherford states with reference to the South African scheme, 'Rarely has optimism been so misplaced.'⁷³² Many of the Legion had been recruited in various European seaports and, as the Secretary of State for the Colonies declared with much understatement, were 'not the most orderly and well conducted men in the world'.⁷³³ Although Grey had initially hoped to attract 8000 men and their families, just 2300 men initially enlisted, all but 300 of whom were unmarried, raising the prospect that many would be unlikely to settle down to a life of farming.⁷³⁴ Partly in order to maintain some semblance of order among this potentially unruly mob of single sailor-soldiers, Grey had been forced to keep them under arms on full pay on their arrival in January and February 1857, contrary to Colonial Office expectations that they would be demobilised. While Grey was relieved of about 1000 of the men and their officers who later volunteered for service in India, he was forced to introduce a supplementary scheme of immigration by civilian Germans, earning the wrath of the Colonial Office for financial undertakings entered into without prior authorisation. A scheme originally intended to generate a profit of upwards of £200,000 instead cost the Imperial government nearly £250,000, while generating a paltry £1600 in income.⁷³⁵ It had been an unmitigated disaster from a financial point of view.

Grey happened to be in southern Africa during one of the most dramatic uprisings against British rule, the Indian Mutiny of 1857,⁷³⁶ diverting six regiments of troops from the Cape Colony in order to aid in its suppression. During the course of this uprising threats of confiscation were made against those who took part, combined with offers to deal liberally with all those who agreed to give up their weapons and pledge allegiance to the government. In the event, relatively few owners had their lands confiscated, and those lands which were taken were transferred to other

⁷³² *ibid.*

⁷³³ Labouchere to Grey, 26 March 1856, quoted in Morrell, *British Colonial Policy in the Mid-Victorian Age*, p.79.

⁷³⁴ Rutherford, *Sir George Grey*, p.362.

⁷³⁵ *ibid.*, p.393.

⁷³⁶ Also referred to in India as the First War of Independence.

Indians.⁷³⁷ India, of course, was an extractive colony rather than a settler one, as a result of which the land itself was hardly coveted by the British, though the limited threat and occasional application of confiscation were deemed useful instruments for re-establishing control over the vast country.⁷³⁸

But if the Indian Mutiny was not an especially important precedent in terms of later land confiscation policies as applied in New Zealand, then the broader significance of the 1857-1858 events in India do at least need to be briefly mentioned. The Mutiny, and especially the bloody British reprisals which followed its suppression, marked the end of the two-decade period in which humanitarian ideals were a prominent, and perhaps even dominant, feature of the Imperial project. The British empire thereafter took on a harsher, more militaristic and racial tone.⁷³⁹ In this context military confrontations with recalcitrant subjects became that much more permissible and likely. This shift in thinking inevitably influenced Colonial Office attitudes towards war in New Zealand.

Finally, in terms of international precedents one further set of confiscations from the English-speaking world, though not from the British empire, perhaps warrants some attention. Although no historian of the New Zealand confiscations has previously pointed to it, both the Union and Confederate Congresses passed legislation during the American Civil War (1861-65) providing for the confiscation of the lands of those within their respective jurisdictions who gave support to the enemy. The United States Congress passed legislation in both 1861 and 1862 (known as the First and Second Confiscation Acts respectively) authorising the confiscation of the property of those who had participated in the 'rebellion', or had even recognised the legitimacy of the Confederacy, while the Confederates also passed a Sequestration Act in 1861 providing for the permanent seizure of the property of 'alien enemies'.⁷⁴⁰

⁷³⁷ Parsonson, 'Tainui Claims', pp.124-125; Thomas R. Metcalf, 'The Influence of the Mutiny of 1857 on Land Policy in India', *The Historical Journal*, vol.4, no.2, 1961, pp.152-163.

⁷³⁸ Parsonson, 'Tainui Claims', p.125.

⁷³⁹ John M. MacKenzie, 'Empire and Metropolitan Cultures', in Andrew Porter (ed.), *The Oxford History of the British Empire: Volume III: The Nineteenth Century*, Oxford: Oxford University Press, 1999, pp.280-282.

⁷⁴⁰ Hamilton, *The Limits of Sovereignty*.

In general terms, while the Confederacy pursued confiscation (or sequestration) with great vigour, 'Union confiscation was marked by an agonized, intractable, ideological impasse'.⁷⁴¹ Debates around individual property rights versus the power of the state to confiscate split the Congress, and although the Second Confiscation Act provided for sweeping confiscation of 'rebel' interests on paper, President Abraham Lincoln showed little interest in implementing the legislation. An interesting feature of both Union Acts was that they deemed slaves to be among the 'property' liable to confiscation (and subsequent emancipation). Although some property was confiscated under these Acts, it was nowhere near the extent that was theoretically available. This owed much not merely to the reluctance of Lincoln towards such measures, but also to the amendments of his moderate allies in Congress, who successfully ensured the Second Confiscation Act limited confiscation solely to the lifetime interest of the owner. The estate, in other words, would revert to the heirs upon the death of the original owner, more or less ensuring that it was of negligible value to the government.⁷⁴² More radical voices had hoped to see a permanent and more sweeping confiscation of 'rebel' lands that might provide the basis for redistribution to emancipated slaves in the Reconstruction era. However, those hopes were for the most part dashed.⁷⁴³

By contrast, one legal historian has recently concluded that the Confederacy embraced confiscation with much more rigour and enthusiasm. According to Daniel Hamilton:

Southern confiscation succeeded. During the war a remarkably demanding property confiscation regime was imposed on a mostly willing citizenry by the Confederate courts. Within the Confederacy, families were required to offer up to court officers property belonging to children and siblings living in the North. Lawyers, bankers, brokers, and businesses were made to open their books to reveal any property located in the South belonging to Northern clients or partners. The contents of wills were scrutinized by court officers who duly seized property that would have passed to Northern heirs. All citizens were required to inform the government of any enemy property of

⁷⁴¹ *ibid.*, p.2.

⁷⁴² *ibid.*, p.75.

⁷⁴³ *ibid.*, pp.78-81.

which they were aware, whether in their possession or anyone else's, imposing a clear legal obligation to inform on one's neighbors. Most importantly, in terms of the sheer amount of money involved, the Sequestration Act made the Confederate government the new creditor for any debt owed by a Confederate citizen to an alien enemy. Those in debt to Northerners now owed money to the Confederacy instead.⁷⁴⁴

In part, this difference owed something to the contrasting conceptions as to the nature of the war. Whereas Lincoln and the Union steadfastly refused to recognise the legitimacy of the Confederacy, instead deeming its supporters to be 'rebels' subverting democratic processes, the Confederate government deemed the Union a foreign power. This meant that whereas the legal regime for confiscation in the north required courts to inquire into the loyalty of individual owners before confiscating their property, in the south all assets belonging to alien enemies were automatically deemed subject to confiscation. It was merely a matter of proving that the property belonged to such persons.⁷⁴⁵

It would appear remarkable if key New Zealand figures such as Grey, Whitaker and others were not aware of these developments, especially given that the Civil War was being fought at the same time as many of the key conflicts waged in the colony. It was also a conflict in which Britain was vitally interested, despite maintaining an official stance of neutrality, and as such was reported extensively in the London and colonial press. Officials in New Zealand might also have been aware of other more direct comparisons involving the US government's treatment of Native Americans, including, for example, a Florida military settlements scheme of 1842-1849 aimed at subduing the formidable Seminole nation.⁷⁴⁶ Early American influence on developments within the colony is a gaping hole in New Zealand historiography, however, so although it is possible to say officials here would have been aware of the events in North America, the extent to which they would have taken anything from these is impossible to say.

⁷⁴⁴ *ibid.*, pp.6-7.

⁷⁴⁵ *ibid.*, p.83.

⁷⁴⁶ James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World, 1783-1939*, Oxford: Oxford University Press, 2009, pp.242-243.

4.4 Local Precedents

Within New Zealand confiscation in response to ‘rebellion’ had first been mooted by Governor Browne in 1861, though there were also some earlier precedents. These were directed less at ‘rebellion’ than at other acts deemed deserving of a land penalty. Indeed, the first of these occurred some years before British claims to sovereignty over New Zealand were advanced. James Busby became official British Resident when he settled at Waitangi in the Bay of Islands in May 1833. His role between 1833 and 1840 has infamously been described as that of a ‘man of war without guns’, expected to successfully mediate between Maori and Pakeha to prevent serious disturbances but provided with no military or other assistance to achieve such an outcome. Such was his position that at various times Busby found himself at the mercy of the northern tribes.

In April 1834, for example, a group of Maori broke into Busby’s storehouse, firing muskets at him and causing a minor facial wound from a splinter which had struck him in the cheek. With the offenders still to be found, Busby reported some three months later that Maori at the Bay of Islands were ‘in a high state of excitement and agitation – mutual accusations and recriminations having passed between the most powerful rival Tribes’.⁷⁴⁷ One of the parties initially accused of the act was suspected of taking utu from Busby for the desecration of an urupa belonging to one of his relations on the part of the Waitangi hapu; others accused of committing the attack had threatened to seek payment for the false allegations made against them; and meanwhile other hapu upon whom suspicion had also fallen were contemplating attacking settlers in their district in retaliation. Tensions remained high until finally, in October 1834, some six months after the attack on Busby the true culprit was finally unearthed, and eventually confessed to having fired the shot at Busby. While Busby somewhat ludicrously insisted that Rete, a local chief, and two of his slaves who had also joined in the attack, should be executed, the missionaries Henry Williams and Alfred Nesbitt Brown instead proposed a compromise punishment involving the confiscation of the chief’s land at Puketona (which would go either to the British

⁷⁴⁷ Busby to Colonial Secretary, 2 July 1834, qMS-0344, ATL.

government or directly to Busby in compensation for the attack) and his banishment from that part of the island.⁷⁴⁸

A small group of chiefs assembled to determine Rete's fate and, somewhat reluctantly it would seem, confirmed the proposals. Rete, though, now denied involvement in the attack and declared his intention to ignore any order to leave. Despite the northern chiefs now demonstrating a distinct reluctance to enforce their earlier decision, Busby remained adamant that the land, consisting of an area of some 200 or 300 acres, should be handed over to him.⁷⁴⁹ Yet even he was required to overlook likely reoccupation of the site by Rete and his followers, only taking further positive steps to advance his claims over the land following the signing of the Treaty in February 1840. At that time he forwarded Lieutenant-Governor Hobson a deed of cession for the land, at the same time advising that the land 'was offered by the chiefs *to me* as a compensation, and only confiscated in His late Majesty's name to give more solemnity to the transaction'.⁷⁵⁰

Hobson forwarded Busby's documents to Governor Gipps of New South Wales, describing his claim as being to 'certain land belonging to a chief named Reti which was confiscated to the Crown in consequence of a robbery committed upon Mr. Busby, while British Resident here.'⁷⁵¹ Gipps, though, was of the view that the land had been forfeited to the Crown, as a consequence of which Busby had no valid private claim to it. The question for Crown officials therefore merely became one of identifying and laying off the confiscated block to be retained by the Crown. Instructions to this effect were issued to the Surveyor General in 1843. Not unsurprisingly, perhaps, Rete proved reluctant to assist in this process by pointing out the boundaries of the block but it was eventually marked off on the ground. Given the generally appalling state of the records relating to early land transactions in the north, it is perhaps not surprising that it is today almost impossible to identify the precise

⁷⁴⁸ Bruce Stirling and Richard Towers, "'Not With the Sword But With the Pen': The Taking of the Northland Old Land Claims", report commissioned by the Crown Forestry Rental Trust, July 2007, part 2, pp.1431-1432.

⁷⁴⁹ *ibid.*, pp.1433-1434.

⁷⁵⁰ Busby to Hobson, 19 February 1840, IA 1/1842/747, Archives NZ, quoted in Stirling and Towers, "'Not With the Sword But With the Pen'", p.1438.

⁷⁵¹ Hobson to Gipps, 9 March 1840, quoted in Stirling and Towers, "'Not With the Sword But With the Pen'", p.1438.

area confiscated, though there is no doubt that the first Crown confiscation was effectively initiated six years before the Crown gained any legal standing in New Zealand.

Other similarly opportunistic acts of confiscation were implemented in the north in the years after 1840. The most well-known of these perhaps occurred in the Kaipara district in relation to an incident known as the Forsaith muru. While the full details of what led to this need not be traversed here, early in 1842 Thomas Forsaith's trading store at Mangawhare was raided by local Maori and what could not be carried away destroyed in retaliation for the removal of a skull from a nearby urupa. Protector of Aborigines George Clarke Senior travelled to the district in March 1842 and convened a meeting of interested parties. Although there were various explanations as to how a human skull (or up to three, according to some accounts) had ended up in Forsaith's store, Clarke chose to accept evidence that it had washed up the river accidentally and concluded that there had been no justification for the muru. He suggested that 'the best and quietest mode of adjusting all differences' would be to give up a piece of land in payment for their actions.⁷⁵² The assembled chiefs angrily denied that they had done anything wrong and rejected the demand for land.

A veiled threat of war from Clarke if they failed to comply, and the desire of local Maori to stay on good terms with the government, appear to have been behind subsequent agreement to cede an area of land to the Crown. But when the block, known as Te Kopuru, was surveyed many years later the boundaries were not in accordance with those pointed out at the time of the original taking, as a result of which the Crown gained title to an area containing somewhere between 9000 and 10,000 acres.⁷⁵³ Although technically a cession, it was clear that local Maori had been left with minimal choice in the matter. It was closer perhaps to the agreement reached at Te Papa in August 1864 whereby some 'rebel' Maori at Tauranga agreed to cede a quarter of their lands to the Crown in return for retaining the remainder following their recent defeat in the Te Ranga battle.⁷⁵⁴

⁷⁵² Clarke to Hobson, 15 March 1842, CO 209/14, Archives NZ, quoted in Waitangi Tribunal, *The Kaipara Report*, Wellington: Legislation Direct, 2006, p.87.

⁷⁵³ Waitangi Tribunal, *Kaipara Report*, pp.88-93.

⁷⁵⁴ See Waitangi Tribunal, *Te Rauapatu o Tauranga Moana*, ch.5.

A few years later a similar cession of land, at Takahiwai, in the Whangarei district, was inflicted as the penalty for another muru, this time apparently provoked by the occupation of disputed lands by various settlers further south at Matakana.⁷⁵⁵ In January 1845 the Matakana settlers were raided and much of their property stripped from them. Although many Europeans linked these events with growing unrest further north at the Bay of Islands, where war with Hone Heke was looming on the horizon as a realistic prospect, other evidence indicates that this was a more localised land dispute. One report noted that those who had participated in the muru ‘now say, that the reason why they proceeded to these extremities was, that they had not received payment for some land which had been sold’.⁷⁵⁶ According to Arthur Thomson, the settlers had had their property destroyed ‘for occupying lands which the natives considered their own’.⁷⁵⁷

Rather than inquire into the land grievances of those who had taken part in the muru, Governor FitzRoy issued a proclamation a few days after the raid, demanding ‘sufficient compensation’ and the surrender of the alleged offenders.⁷⁵⁸ Mate, who was one of the three chiefs openly accused of the act, was subsequently cleared of involvement when he presented himself to the governor. He was exempted from a reward offered for the supposed offenders but required to travel with Henry Tacy Clarke, Sub-Protector of Aborigines, and the translator Edward Meurant to Whangarei to make arrangements for the return of the goods taken. Clarke was also advised that ‘Mate has engaged that a piece of land of sufficient extent to compensate for the injury sustained by the parties shall be given up to the Government’.⁷⁵⁹

In the wake of the Forsaith muru the Colonial Office had warned that the policy of imposing a land penalty on Maori deemed guilty of committing supposed ‘outrages’ was ‘of too questionable a propriety to be often repeated’.⁷⁶⁰ FitzRoy, though, was undeterred. A deed of cession dated 8 February 1845 formalised the surrender of an

⁷⁵⁵ Vincent O’Malley, ‘Northland Crown Purchases, 1840-1865’, report commissioned by the Crown Forestry Rental Trust, July 2006, pp.71-80.

⁷⁵⁶ *Southern Cross*, 11 January 1845.

⁷⁵⁷ Arthur S. Thomson, *The Story of New Zealand: Past and Present – Savage and Civilized*, 2 vols, London: John Murray, 1859, vol.2, p.101.

⁷⁵⁸ O’Malley, ‘Northland Crown Purchases’, p.72.

⁷⁵⁹ George Clarke to H.T. Clarke, 4 February 1845, MA 4/1, Archives NZ, quoted in O’Malley, ‘Northland Crown Purchases’, p.75.

⁷⁶⁰ Waitangi Tribunal, *Kaipara Report*, pp.91-92.

area of approximately 1000 acres of valuable land bordering the entrance to Whangarei harbour, including the area known today as Marsden Point.⁷⁶¹ It was later described variously as having been ‘ceded’, ‘surrendered’, or ‘conveyed’ to the government in compensation or payment for the ‘robbery’ or ‘outrage’ committed at Matakana.⁷⁶² Whatever terminology was used to clothe these dealings could not hide the fact that in all three cases land had been surrendered to the Crown without compensation in punishment for acts deemed unacceptable by European standards.

These proto-confiscations in the north were, however, dwarfed by the cession to the Crown of an estimated 40,000 to 80,000 acres located near to Cape Palliser in south-eastern Wairarapa in punishment for yet another act of *murū*. Runholder Richard Barton’s station at Whawhanui or White Rock in this area was attacked in February 1845, an act once more provoked by disputed land dealings.⁷⁶³ Ironically, Thomas Forsaith was once more involved, this time not as the supposed victim of the attack, but rather as the Crown agent responsible for demanding a payment in land. Forsaith, who was by this time the local Protector of Aborigines, was despatched to the district in March 1845 to investigate the incidents at White Rock. He quickly concluded that Te Wereta Kawekairangi, the chief responsible for committing the raid in retaliation for being ignored in Barton’s land dealings, had (as he warned the chief) ‘not only acted unwisely, but...outraged the laws of the Queen, and...must make such reparation as I shall demand or abide by the consequences of a refusal.’⁷⁶⁴ That reparation, Forsaith went on to explain, would be that the area of land included in Barton’s disputed lease would be conveyed permanently to the Crown.

Although Te Wereta angrily rejected this, and consistently asserted that he had only been endeavouring to seek payment for his interests in the run, further thinly-veiled threats saw the assembled Maori eventually capitulate and sign a deed conveying the land to the Crown as payment for having ‘trampled on the law of the Queen’.⁷⁶⁵

⁷⁶¹ Barry Rigby, ‘The Crown, Maori and Mahurangi, 1840-1881’, report commissioned by the Waitangi Tribunal, August 1998, p.33.

⁷⁶² O’Malley, ‘Northland Crown Purchases’, pp.77-80.

⁷⁶³ Bruce Stirling, ‘Ngati Hinewaka Lands, 1840-2000’, report commissioned by the Crown Forestry Rental Trust, January 2003, pp.17-18.

⁷⁶⁴ Forsaith to Superintendent of Southern Division, 28 March 1845, NM 8/1852/1323, Archives NZ, quoted in Stirling, ‘Ngati Hinewaka Lands’, p.31.

⁷⁶⁵ Turton’s Deed, Wellington Deed No.84, quoted in Stirling, ‘Ngati Hinewaka Lands’, p.36.

Questions remained over the extent to which the Maori signatories understood the cession to involve a permanent loss of the land, though Te Wereta remained deeply embittered, and Crown officials subsequently queried 'how far the principle of accepting land from the Natives in compensation for robbery is satisfactory.'⁷⁶⁶ In fact, Crown officials later appear to have become somewhat embarrassed by the whole affair. Donald McLean, who initiated land purchasing in the southern Wairarapa in 1853, wrote, after looking into the whole affair, that:

I am 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. In fact, it had the appearance and in some measure the effect that the government were assisting an illegal occupant on native lands, a private adventurer, for his personal aggrandisement in his illegal and, I feel, unjust occupation of native lands...⁷⁶⁷

McLean subsequently repurchased the entire area subject to the earlier cession on behalf of the Crown. It has been suggested that this effectively converted the original confiscation into a forced sale.⁷⁶⁸

There do not appear to have been any other instances between 1845 and 1863 in which the Crown took Maori lands without compensation explicitly in punishment for perceived transgressions of the Queen's laws, though there were some transactions where past actions were used to place pressure on particular groups to consent to land sales.⁷⁶⁹ Within the Te Tau Ihu district, for example, Governor Grey was said to have cynically exploited the deaths of a number of Europeans at Wairau in 1843 in order to obtain agreement to the massive Wairau purchase in 1847.⁷⁷⁰ But although the

⁷⁶⁶ Richmond to Colonial Secretary, 5 April 1845, NM 8/1852/1323, Archives NZ, quoted in Stirling, 'Ngati Hinewaka Lands', p.49.

⁷⁶⁷ McLean to Grey, n.d. [c.September 1853], McLean Papers, MS-Papers-0032, folder 4, ATL, quoted in Stirling, 'Ngati Hinewaka Lands', p.64.

⁷⁶⁸ Stirling, 'Ngati Hinewaka Lands', p.67.

⁷⁶⁹ In addition, during the Northern War of 1845-1846 FitzRoy had initially demanded that land be given up by Heke and Kawiti, but Grey subsequently abandoned the land penalty and issued an almost unconditional pardon (other than stipulating that all stolen horses should be returned to their original owners). Ian Wards, *The Shadow of the Land: A Study of British Policy and Racial Conflict in New Zealand, 1832-1852*, Wellington: Government Printer, 1968, pp.203-206.

⁷⁷⁰ Waitangi Tribunal, *Te Tau Ihu o Te Waka Maori: Report on Northern South Island Claims*, 3 vols, Wellington: Legislation Direct, 2008, vol.1, p.322.

coercive context in which this and some other land purchases took place could certainly be said to have shared some similarities with the four transactions described above, ultimately there was a qualitative difference between the two types of transaction. Wairau, for all its failings, was framed in terms of a purchase, with a sum of money handed over to the presumed owners in consideration for the land, whereas in the case of these other transactions no consideration changed hands. The land was given, or rather taken, without compensation as an unambiguous form of punishment. The closer comparison was thus to the confiscations of the 1860s, and in this respect those later takings had long-established precedents, not just internationally but also within the New Zealand context.

4.5 Early Proposals

Although there had been some earlier efforts to impose forced cessions on Maori in punishment for various acts, nothing on the scale of what was proposed in the 1860s had previously been seen in New Zealand. From the outset of the Taranaki War various parties had advocated a policy of confiscation.⁷⁷¹ By March 1861 the question of whether a land penalty should be imposed as one of the terms of peace in Taranaki was being hotly debated by Crown officials behind closed doors. Harriet Browne noted that, although there was general agreement on pursuing peace with Wiremu Kingi first ('then the King question could be fought out afterwards'), other issues remained unresolved:

All yesterday was passed in discussing the terms of peace. The question is whether land should be demanded in compensation or not. For demanding lands is 1st the necessity of punishing rebellion. 2nd compensating ruined settlers. Against it is 1st the belief among the Natives that the object of the Government is to seize their lands which fills them with distrust & 2nd the imputation which is cast in England on the motives of the settlers in desiring a

⁷⁷¹ Including Otawhao missionary John Morgan. Morgan to Browne, 1 January 1861, Gore Browne 1/2d, Archives NZ.

war by which they would acquire land. Gore [Browne] & Mr. Weld are inclined to take land, the others are against it.⁷⁷²

But it was not until May 1861 that the prospect of such a policy was raised in any official communication with Maori. It was in that month that Governor Gore Browne issued a notice to the tribes assembled at Ngaruawahia, in which he outlined the terms upon which a lasting peace could be achieved. These events will be discussed in some detail in the political engagement, 1840-1863, report. Suffice it to state here that the governor demanded the unconditional submission of the tribes to the Queen's sovereignty. Beyond that he declared that:

The Governor has been falsely accused of desiring to introduce a new system in dealing with Native Lands. This he has never attempted, nor has he the power to do so. The Queen's promise in the Treaty of Waitangi cannot be set aside by the Governor. By that Treaty, the Queen's name has become a protecting shade for the Maoris' land, and will remain such, so long as the Maoris yield allegiance to Her Majesty and live under Her Sovereignty, but no longer. Whenever the Maoris forfeit this protection, by setting aside the authority of the Queen and the Law, the land will remain their own so long only as they are strong enough to keep it: - might and not right will become their sole Title to possession.⁷⁷³

Given that large numbers of Maori were at that time not living under the effective sovereignty of the Queen, and in fact had never done so, this was patently misleading. But combined with the remainder of the notice, the point was clear enough: if the Waikato tribes persisted in giving their allegiance to the King movement they could inevitably expect to one day be confronted with the power of the Crown. When that day finally came, all land guarantees under the Treaty of Waitangi would be deemed to have been forfeited in the case of tribes deemed to be acting contrary to the Queen's sovereignty. The might is right principle dictated that what the Crown could seize it would confiscate and keep. Waikato had been warned.

⁷⁷² Harriet Browne, Diary, 24 March 1861, ADCZ 17006, W5431/7, Archives NZ.

⁷⁷³ Copy of a Declaration by the Governor to the Natives Assembled at Ngaruawahia, 21 May 1861, AJHR, 1861, E-1B, p.12.

Gore Browne's gung-ho talk coincided with a period when he contemplated directly invading Waikato if the tribes there refused to comply with his terms. As was seen previously, Grey, upon his arrival in New Zealand later in the year, more or less immediately concluded that the Crown was not capable of successfully confronting the Kingitanga with the resources at its disposal. Talk of confiscation in the near future therefore subsided for a time, though that did not deter various figures from exploring the legal basis for pursuing such a course. This debate was framed in terms of the right of the Crown to compulsorily acquire customary Maori lands for roads, 'permanent military positions, or other purposes of defence.'⁷⁷⁴ While the right of the Crown to take lands held under Crown grant was by this time assumed to apply to titles held by Maori,⁷⁷⁵ most of the Maori estate remained under customary and tribal title. The right of colonial authorities to interfere with such lands was much more problematic, and the line between compulsory acquisitions for 'public works' and outright confiscation was an especially blurred one at this time. Grey informed the Secretary of State for the Colonies in December 1862 that:

Very serious questions may arise in this Colony on the subject of attempting to carry roads through lands over which the Native Title has not been extinguished, as I fear, however necessary such roads might be for the safety and welfare of Her Majesty's subjects, that the Natives may in some instances resist their construction by force of arms.⁷⁷⁶

The question of the right to construct such roads where 'absolutely required' had therefore been referred to the Attorney-General Henry Sewell for an opinion. Sewell drew an important distinction between the right to take the land outright and a lesser right to use the land to construct roads or for military purposes. With respect to the former, he concluded that:

By the Treaty of Waitangi the Crown guaranteed to the Natives their territorial possessions; the Natives on their part ceding to the Crown the Sovereignty.

⁷⁷⁴ Alfred Domett, memorandum, 22 November 1863, AJHR, 1863, E-3, Sec.I, p.6.

⁷⁷⁵ Cathy Marr, 'Public Works Takings of Maori Land, 1840-1981', Waitangi Tribunal Rangahaua Whanui series, May 1997, p.49.

⁷⁷⁶ Grey to Newcastle, 18 December 1862, AJHR, 1863, E-3, Sec.I, p.5.

The power of the General Assembly under the Constitution Act to legislate in respect of the Waste Lands does not arise, until the land has been ceded to the Crown by the Natives.⁷⁷⁷

Sewell thus effectively declared that the lands could not be taken but added that ‘the right of passage through a country, and *ex necessitate*, the right of using and constructing all the ordinary means of passage, such as Roads, Bridges, &c., is an essential condition of Sovereignty.’ Accordingly, the Crown, by virtue of its right of eminent domain had the right of making roads through such lands, ‘in order to enable it to exercise its functions of Sovereignty.’

Colonial Office officials were less concerned with abstract rights than with the very real prospect that the application of these might precipitate further conflict with Maori at a time when fighting had ceased in Taranaki and there seemed some prospect for peace.⁷⁷⁸ Newcastle declared in March 1863 that:

I should hesitate to admit, as a matter of strict Law, that Her Majesty had the power without any Legislative sanction, of appropriating for any purpose the acknowledged property of any of her subjects.

But even if it were true that the peculiar legal condition of New Zealand authorized the application of this arbitrary principle, I am of opinion that the question cannot be dealt with as one of strict Law.

With a large proportion of the Native Population either already in arms or prepared to take them up in defence of their supposed rights, and most especially of rights to land, policy not less than justice, requires that the course of the Government should be regulated with a view to the expectations which the Maories have been allowed to base on the Treaty of Waitangi, and the apprehensions which they have been led to entertain respecting the observance of that Treaty.

⁷⁷⁷ Henry Sewell, Opinion of the Attorney-General, 22 November 1862, AJHR, 1863, E-3, Sec.I, p.6.

⁷⁷⁸ Ann Parsonson, ‘The New Zealand Settlements Act 1863’, 1993, Wai-143, #I22, pp.6-7.

I cannot doubt that the proposed appropriation of land, if effected contrary to the Will of the owner, and justified on principles which, whether technically correct or not, are alike contrary to the principles of English and Native Law, would be considered as a violation of Native Rights, would be resisted on the spot, and would provoke throughout the Islands warm resentment and general distrust of British good faith. It will be very fortunate if, under these circumstances the Colony escapes the revival of the War, now happily dormant, in more than its original intensity.⁷⁷⁹

Clever legal opinions which dug around the Treaty's unambiguous land guarantee to Maori were all very well, in other words, but not 'at the risk of reimposing on Her Majesty's subjects in the United Kingdom the cost, and on the Colonists the cost and dangers of a Native War.'⁷⁸⁰ As Ann Parsonson has noted, this emphasis on the importance of taking into account the Maori understanding of the Treaty stands in stark contrast with views later expressed following the invasion of Waikato and the formulation of comprehensive confiscation proposals.⁷⁸¹

Subsequent to Grey's original despatch to London but prior to receiving Newcastle's less than enthusiastic response, Sewell had been replaced as Attorney-General by Frederick Whitaker, whose legal opinion was also solicited. He delivered an even stronger opinion than Sewell previously had, given the former had appeared to declare that while roads could be constructed the right to take the land did not exist. According to Whitaker, who would subsequently feature largely in the story of land confiscations at Waikato and elsewhere:

From the year 1840 to the present time I am not aware of an instance in which either the Crown or Legislature, Imperial or Colonial, has recognised a title in the Aborigines cognisable in a Court of Law. But, on the contrary, it has throughout been assumed both on the part of the Crown and by the Legislatures, and in some instances distinctly declared that Native lands are in law Demesne Lands of the Crown. The Ordinance of the Legislative Council

⁷⁷⁹ Newcastle to Grey, 22 March 1863, AJHR, 1863, E-3, Sec.I, p.72.

⁷⁸⁰ *ibid.*

⁷⁸¹ Parsonson, 'New Zealand Settlements Act', pp.7-8.

of New Zealand...which declares and enacts that all unappropriated lands within the colony, subject to the rightful and necessary occupation and use thereof by the Aborigines, are, and remain Crown or Demesne Lands, especially may be referred to.

Assuming then the land over which the Native title has not been extinguished to be Crown lands, subject to the above mentioned qualification, it follows of course that the Crown has a right in law, so long as there is no interference with *the rightful and necessary occupation and use thereof by the Aborigines*, to use the land for the above purposes.

It may be objected that this would be contrary to the Treaty of Waitangi.

To this I would answer that a positive enactment of the Legislature would prevail over the terms of the treaty of there were any conflict, but, without discussing the precise meaning of the second article, it appears to me that such is not the case.

Under the first article all the rights and powers of sovereignty which the ceding parties then exercised or possessed, or may be supposed to exercise or possess over their territories, were ceded to Her Majesty; and it appears to me that a right of road through those territories, and of constructing the necessary conveniences for the exercise of that right, as well as a right of constructing works necessary for Military defence, are essential and necessary incidents to the Sovereignty, and were therefore ceded to Her Majesty.⁷⁸²

Skipping over the 'second article' arguably formed a key component of Whitaker's entire approach to Maori lands, while any conception of how Maori may have interpreted the nature of their land rights was also absent.

It was left to F.D. Fenton, writing in his capacity as Assistant Law Officer, to espouse a different view. Although he had commented upon Sewell's original opinion well

⁷⁸² Frederick Whitaker, Opinion of the Attorney-General, 21 February 1863, AJHR, 1863, E-3, Sec.I, p.16.

before Grey had despatched this to London, for reasons which are not clear his letter was not enclosed, and was only forwarded to the Colonial Office several months later in February 1863. In it, Fenton declared his view that Sewell's opinion was erroneous in law but without developing his reasoning.⁷⁸³ That reasoning appeared in a lengthy legal opinion drafted by Fenton, which according to Ann Parsonson may not have been sent to the Colonial Office until 1864, raising the question as to whether it may have been deliberately concealed prior to that point.⁷⁸⁴

Contrary to Whitaker's subsequent opinion, Fenton pointed out that the 'views of the Imperial Parliament and of the Crown appear to have constantly varied with respect to the nature and extent of the rights or interests possessed by the Aborigines in the wild land of New Zealand.'⁷⁸⁵ To begin with, he noted, the Maori people had been 'regarded by the Crown as an independent and organised state' and a treaty signed with them in consequence, with its various guarantees with respect to 'full, exclusive and undisturbed possession' of their lands and other resources. Despite this, in Fenton's view 'the nature of the rights of the Chiefs or the amount of territory over which they extended was not dealt with in this compact.'⁷⁸⁶ Following the Treaty, the Royal Charter of 1840 declared all waste lands within the colony to belong to the Crown, while further providing that the 'rights of any Aboriginal Natives of the colony to the actual occupation or enjoyment in their own persons of any lands now actually occupied or enjoyed by such Natives' should remain unaffected.⁷⁸⁷ Royal Instructions issued in 1846 required all Maori with proprietary or possessory claims to the land to submit these for registration, and all lands not so claimed or registered were to form the Demesne lands of the Crown. No Maori claim to land was to be recognised except that to land occupied or used 'by means of labour expended thereon.' These so-called 'waste lands' instructions were never put into practice, Fenton added, owing to objections from Maori.

After 1846 authorities had inched away from such a contentious and provocative construction of Maori land rights, towards a view which excluded all those lands in

⁷⁸³ Fenton to Under Secretary, 28 November 1862, AJHR, 1863, E-3, Sec.I, pp.12-13.

⁷⁸⁴ Parsonson, 'New Zealand Settlements Act', pp.8-9.

⁷⁸⁵ F.D. Fenton, Memorandum on the Right of Government to Take Lands in New Zealand Compulsorily from Aboriginal Natives, 28 November 1862, AJHR, 1863, E-3, Sec.I, p.13.

⁷⁸⁶ *ibid.*

⁷⁸⁷ *ibid.*

which Maori claimed an interest from the category of ‘waste lands’ vested in the Crown and this latter view had been enshrined in the 1852 Constitution Act. As Fenton noted:

An interest in land of this nature must be considered of a high character, although not cognizable by an English Court of Law in such a way as to confer a valid title to the Elective franchise as averred by the Law Officers of the Crown in England. An interest in land may be, and in this case is, valuable, although unknown to the ordinary law of England, and in fact all that can be said on this subject may be summed in this: that if the Crown having entered into a treaty to acknowledge and protect this interest, whatever be its exact character, finds the existing law does not enable it to carry out its treaty and guarantee, it is absolutely necessary that the requisite power should be conferred by Legislation, so that the Crown may fulfil its obligations.⁷⁸⁸

Fenton as the defender of Maori land rights and valiant upholder of the Treaty of Waitangi – that is not a role we are accustomed to seeing him perform, notwithstanding some recent revisionist attempts to rehabilitate his reputation. But although Fenton’s conception of the nature of the Treaty was very much of its times, his emphasis was rather different from that of Whitaker. Fenton wrote that the consideration for the cession of sovereignty in Article One of the Treaty was the guarantee of ‘territorial rights’ under the Second Article and the ‘rights and privileges’ bestowed on Maori under Article Three. One of those rights was the right to private property, something which could only be interfered with through Parliament. As Fenton noted, the principle of English law was that ‘a subject may not be disseized of his land...except by operation of the law, or under the authority of an Act of Parliament specially made.’⁷⁸⁹ There was no question of the Crown having a prerogative right to take Maori lands urgently required for works of public necessity since ‘the exercise of such a power would in this case be in derogation of the honor of the Crown and in contravention of its own promises, contained in the treaty’.⁷⁹⁰ The question, then, was whether the New Zealand General Assembly had received the

⁷⁸⁸ *ibid.*, p.14.

⁷⁸⁹ *ibid.*

⁷⁹⁰ *ibid.*, p.15.

power from the Imperial Parliament to make laws affecting lands not yet surrendered by Maori to the Crown.

Fenton concluded that there was no restriction placed on the General Assembly with respect to legislating on Maori lands, provided that the pre-emptive right not be interfered with, as a consequence of which he argued that the power must be assumed to be included in the general delegation of legislative functions to make laws for the peace, order and good government of New Zealand, provided these were not repugnant to the laws of England. He believed that the fact that the Provincial Assemblies had been specifically restricted to passing laws and ordinances with respect to lands not belonging to the Crown or which were still held under native title (a specific stipulation not included in the description of the powers of the General Assembly) further served to prove this point. As he concluded:

No such reservation having been made with respect to the General Assembly, the power has undoubtedly passed to that body, and must be exercised by them before the Executive Government of the Colony can legally take compulsory possession of any person's land, or, without consent, interrupt any person in his enjoyment or occupation of land.⁷⁹¹

Fenton's view that customary Maori lands could be taken compulsory possession of, but only in accordance with specific legislative authority from the General Assembly, would be an influential one in prompting the later move towards the passage of the New Zealand Settlements Act. But as Ann Parsonson notes, despite his more expansive view of the Treaty, Fenton failed to make any reference to the highly influential judgments of Chief Justice Marshall in the United States Supreme Court or the important local case, *R v Symonds* (1847). It was in this case that Chief Justice William Martin and Chapman J upheld aboriginal title, the latter declaring that:

Whatever may be the opinion of jurists as to the strength or weakness of the native title, whatsoever may have been the past vague notions of the natives of this country, whatever may be their present clearer and still growing

⁷⁹¹ *ibid.*, p.16.

conception of their own dominion over land, it cannot be too solemnly stated that it is entitled to be respected; that it cannot be extinguished (at least in time of peace) otherwise than by the free consent of the native occupiers. But for their protection, and for the sake of humanity, the Government is bound to maintain, and the courts to assert, the Queen's exclusive right to extinguish it.⁷⁹²

The implication of Chapman's statement that native title could not be extinguished other than with the consent of the owners, at least in times of peace, was to leave open the question of whether such title could be extinguished without such consent during periods of war. Moreover, as Ann Parsonson has suggested, for all Fenton's supposed support for Maori lands rights, we should not lose sight of the fact that his viewpoint 'laid the groundwork...for parliament's assumption of the right to legislate to destroy those rights.'⁷⁹³ Ultimately the distinction was that whereas Sewell believed Maori land could be taken without consent on the basis of a decision by the executive, Fenton had argued that legislative sanction was first required from Parliament.⁷⁹⁴ Fenton's view prevailed and crucially by the time the Colonial Office were put in receipt of his detailed arguments early in 1864, Waikato had been invaded and confiscatory legislation was already a fait accompli.

4.6 Developing the Scheme of Military Settlements

Evidence of the first concrete confiscation proposal came in a memorandum from Premier Alfred Domett to Grey dated 5 May 1863, in which he confirmed the agreement reached between ministers and the governor the previous evening for lands at Taranaki between Omata and Tataraimaka belonging to the those implicated in the Oakura ambush to be 'forfeited to Her Majesty, and a Military Settlement formed there'.⁷⁹⁵ There had been earlier proposals for military settlements contemplated by both the central and provincial governments, it would appear, though the details of

⁷⁹² *New Zealander*, 12 June 1847.

⁷⁹³ Parsonson, 'New Zealand Settlements Act', p.15.

⁷⁹⁴ *ibid.*

⁷⁹⁵ Domett, memorandum, 5 May 1863, AJHR, 1863, E-2, pp.20-21; Riseborough, 'Taranaki Raupatu Claim', p.16.

most of these is sketchy.⁷⁹⁶ What is clear is that these were not premised on the confiscation of Maori lands but involved grants of Crown waste lands to military pensioners in return for performing specified duties – the Howick model from the 1840s, in other words. The best developed of these proposals, it would seem, involved a military settlement on the Tataraimaka block itself – which had been occupied by British troops without incident on 4 April 1863.⁷⁹⁷ In this case at least some of the land, previously held by Te Atiawa in retaliation for the seizure of Waitara, was held under Crown grant by about 20 settlers, and Domett wrote to the Provincial Superintendent on 16 April 1863 seeking support for a scheme of military settlement premised on the compulsory purchase of such interests.⁷⁹⁸ The subsequent Oakura ambush on 4 May 1863, during which nine British soldiers were killed, provided the pretext for extending the military settlement to adjacent Maori-held land and this was done with remarkable alacrity. Following the ambush in the morning, the confiscation proposals noted above were adopted that same evening. Just days later, on 10 May 1863, Domett wrote to the Superintendent of Otago Province, where thousands of gold miners had followed the rushes, to solicit support for the recruitment of volunteers for the new military settlement. Domett explained that the intention was to grant each settler 50 acres, with a one-acre section to be allocated them within the villages, on condition that they hold the land on a system of military tenure.⁷⁹⁹

The transition from a scheme of military settlements on Crown or European land to one premised on the confiscation of Maori territory was therefore a swift one, which merely required Oakura to trigger an almost immediate adoption and development of confiscation proposals. And given that a showdown with the Kingitanga was widely assumed to be almost inevitable in the wake of the Oakura attack, license was now given to more broad-ranging confiscation schemes that might be applied to the Waikato district. If previously these might have been seen as rather too revealing of possible Crown motives for an invasion of the district (or at least, likely to confirm Maori suspicions on this point), following Oakura these could be framed in terms of prudent planning under the circumstances.

⁷⁹⁶ See, for example, *Southern Cross*, 14 February 1862; *Taranaki Herald*, 22 November 1862; *Daily Southern Cross*, 30 April 1863.

⁷⁹⁷ Dalton, *War and Politics in New Zealand*, p.167.

⁷⁹⁸ *Daily Southern Cross*, 6 May 1863.

⁷⁹⁹ *Otago Witness*, 23 May 1863.

Sections of the colonial press were more than happy to promote the concept of confiscation and dismiss its opponents in advance of the invasion of Waikato. The *Daily Southern Cross*, in particular, was quick to pour scorn on Treaty-based arguments against raupatu. In June 1863, for example, one editorial declared that:

We have several times lately referred to this course, not as a panacea for the ills from which New Zealand is now suffering, but as a first step towards a better state of things. It is well that our readers should have a perfect comprehension of our meaning when we use the term confiscation. By confiscation we mean the deprivation of native owners of their lands, upon the ground of their obstinate rebellion. That anyone should be found silly enough, as well as untruthful enough, to deny our right to this, must seem almost incredible to Englishmen – yet we hear that such is the case. We hear that men pretending to be acquainted with the minds of the Governor and the Ministry on this point, scout as unprincipled and impossible the project of making the natives of New Zealand pay for their own subjugation to law and order. The reasons, if we may so far misuse the term, advanced in favour of this new view, are based, by some remarkable perversion of facts, upon the “Treaty of Waitangi” sometimes called by the same party the “so-called treaty of Waitangi.” The view is, that as the Queen has guaranteed the people of New Zealand in possession of all their land and rights, as she has moreover acknowledged them in their tribal relations, therefore she is bound to support them in these rights. It may not unnaturally be asked, what is the meaning of a treaty? Can a treaty exist which is altogether one-sided? Common sense must answer no, whatever absurd theories may be started by would-be Maori sympathizers. Certainly there were stipulations on both sides in the Waitangi Treaty. The guarantee of the Queen’s protection was given in return for the sovereignty entire and undivided of the island; in so far as this part of the treaty is resisted, in so far does the other part become clearly invalid.⁸⁰⁰

⁸⁰⁰ *Daily Southern Cross*, 26 June 1863.

If, on the other hand, it was argued that Maori were not fully subject to the Treaty, then all bets were off, and a ‘glance at our mode of dealing with native tribes in other parts of the world’ would clearly highlight the fact. It came down to this:

Are the Maoris British subjects? Our authorities say so, on the strength of the Treaty of Waitangi; let them then be treated in *all* respects as other British subjects are treated. Let their rebellion against constituted authority be held to deprive them of every privilege which depends upon the treaty by which they became subjects. Are the Maoris not British subjects? as we many learn from the same authorities, because the *so called treaty* of Waitangi was a delusion; let them be treated in all respects as foreigners, and, seeing they so desire it, as enemies. In this case the difficulty of confiscation will be still less, as it will resolve itself simply into conquest.⁸⁰¹

Editorials such as this appear likely to have been aimed at those humanitarian figures within the political elite who, it was feared, might publicly vent their opposition to confiscation. In this respect, it would appear that proponents of the scheme of confiscation were carefully attempting to clear the way ahead for even more ambitious proposals than those recently announced with regards to Taranaki.

On 24 June 1863 Domett drafted a memorandum outlining discussions held with Grey at a recent meeting of the Executive Council. It was at that meeting, held sometime in the few days before 24 June,⁸⁰² that the decision was made to invade the Waikato. The same meeting also determined to seize the lands of those who resisted. This was no coincidence. From the outset the two had been closely linked. As Native Minister F.D. Bell wrote privately to his friend and colleague Walter Mantell in early July:

It is now settled and will be thoroughly understood by the natives, that if they choose to make war upon us, we shall take their land, fill it up with military settlers, & perpetually advance our frontier...The governor has quite made up his mind to turn out all the hostile natives on the Auckland frontier allotting their land on conditions similar to those which are in the gazette for Taranaki.

⁸⁰¹ *ibid.*

⁸⁰² There is no record of the meeting in the minutes of the Executive Council. EC 1/2, Archives NZ.

The general therefore describes his plan of operations as being that of an advanced guard constantly taking up fresh ground which should be filled up by civilians so as to make conquest & colonization simultaneous. This has never been done before, since the time of the Romans, & we may preserve the remnant of the New Zealand race by forcing upon them a civilization which they will not accept as a peaceful offer.⁸⁰³

What was conquered from Maori would thus rapidly be occupied by military settlers, ensuring that the military frontier was never greatly in advance of the frontier of European settlement. Those Maori who survived and remained in the district would find themselves virtually overnight overwhelmed by a much greater European population, resulting in a kind of enforced assimilation and ensuring that 'rebellions' of the same kind would be virtually impossible in the future. Confiscation quickly followed conquest and assimilation followed both, combining to ensure European control of New Zealand was unlikely to ever again be challenged.

Domett's memorandum proceeded to outline the nature of the discussions and agreement reached at the vital June 1863 meeting of the Executive Council. According to the Premier:

The Governor, at a late meeting of the Executive Council, stated that it was impossible to settle the Taranaki question so long as the Waikato was the centre of disaffection, and the wealthy and prosperous settlement of Auckland was constantly threatened with invasion and destruction from that quarter; that he had arranged with the Lieut.-General when he went to Taranaki, only to try if the Waikato tribes would allow the difficulties in that Province to be settled without their interference, and that if they would not, then not to run the risk of the destruction of the Auckland settlement, but immediately to return there, and after bringing the Waikato tribes to terms, then conclusively to settle the difficulties at Taranaki. His Excellency then proceeded to explain in detail to Ministers the plan he would recommend for the defence of the Southern frontier of the settled districts of the Province of Auckland, and the

⁸⁰³ F.D. Bell to Walter Mantell, 7 July 1863, Mantell Family Papers, MS-Papers-0083-245, ATL.

establishment of a basis for further military operations in the interior of the enemy's country.

The plan, briefly stated, is to make the Waikato river, from the sea on the West Coast to its Southern bend in the middle of the island, a temporary line of defence, by placing armed steamers on the river, and by establishing posts on its northern bank. Then from the bend of the river to establish a line of fortified posts, extending to the Hauraki Gulf – the intervals to be defended by cavalry – the Gulf and its shores to be looked after by another steamer. Next, to throw forward military posts from the central bend of the river up to Paetai and Ngaruawahia, taking permanent possession of these places, the latter of which will be the point where one steamer will usually be stationed. At the same time to clear out all hostile Natives at present residing between the Auckland isthmus, and the line of the River and fortified posts first above mentioned, which together cross the island. Lastly to confiscate the lands of the hostile Natives, part of which lands would be given away and settled on military tenure to provide for the future security of the districts nearer Auckland, and the remainder sold to defray the expenses of the War.⁸⁰⁴

The confiscation proposals were thus developed in tandem with those for the invasion of the Waikato district. Never mind that there had been no overt acts of 'rebellion' within the Waikato which might justify such a course. There was always the involvement of King party supporters from the district in the first Taranaki War, the alleged incitement of the Oakura ambushers by Rewi Maniapoto, and the obstinate refusal of so many Waikato Maori to renounce their King. Added to all this, once the invasion actually commenced there were bound to be Maori who resisted and therefore necessarily committed 'rebellion'. Moreover, this latter factor tended to be a self-perpetuating one. As Domett added, 'Measures for the defence of the other settlements of the Northern Island would necessarily have to be taken at the same time. And the lands of the Natives in their neighbourhood, who should take up arms against us, would have to be similarly confiscated and dealt with.'⁸⁰⁵ Attack could expect to be met with defence, which, redefined as 'rebellion', would justify further

⁸⁰⁴ Domett, memorandum, 24 June 1863, AJHR, 1863, E-7, p.8.

⁸⁰⁵ *ibid.*

confiscation. Finding a pretext for confiscation was never going to be difficult for those who looked hard enough.

Domett commented in relation to the proposals Grey had advanced that 'Ministers cordially concur in these plans of His Excellency, and they are willing to take upon themselves the responsibility for their adoption, on the understanding that they will be carried out as a whole'.⁸⁰⁶ Grey and his ministers were singing from the same hymn sheet when it came to confiscation, though the speed with which raupatu proposals were put together hardly assuaged the suspicions of those who believed land was the primary motive for going to war in the first place.

Early in July, prior to any public announcement of an intention to implement confiscation, conditions for the granting of lands to military settlers in Taranaki were gazetted.⁸⁰⁷ This was followed by notices published on 5 August 1863, which, though not referring to confiscation at all, outlined the terms upon which volunteer militiamen and military and naval settlers would be granted land 'situated in the Waikato District'.⁸⁰⁸ Some prospective military settlers had accepted the terms outlined in these notices and entered into agreements for service prior to the passage of the New Zealand Settlements Act in December 1863, and that legislation included a clause retrospectively validating contracts earlier entered into.⁸⁰⁹ The confiscation of the Waikato district may therefore be said to have begun in earnest within weeks of British troops crossing the Mangatawhiri River on 12 July 1863.

Domett provided the fullest outline of these early plans, though Grey later declared that he had conceived of the proposals, which had then been adopted by ministers as their own. It was thus Grey who can claim the dubious distinction of being the architect of the original confiscation proposals, even though Domett was their author.⁸¹⁰ In a memorandum to Grey dated 31 July 1863, the Premier declared that:

⁸⁰⁶ *ibid.*

⁸⁰⁷ *New Zealand Gazette*, 6 July 1863, no.27, p.265.

⁸⁰⁸ *New Zealand Gazette*, no.35, 5 August 1863, pp.303-305.

⁸⁰⁹ Riseborough, 'Taranaki Raupatu Claim', p.16.

⁸¹⁰ Dalton, *War and Politics in New Zealand*, p.193.

It is now beyond all question that the Native Tribes of Waikato the most powerful in New Zealand are resolved to drive out or destroy the Europeans of the Northern Island, and to establish a Native kingdom under a Native king. They are determined to try their strength with us, and to allow us no peace until we have inflicted upon them the punishment their acts of aggression deserve.⁸¹¹

No 'temporary submission or laying down of their arms' on the part of the Waikato tribes would be sufficient to provide a basis for lasting peace. Instead, Domett wrote, there 'must be a material guarantee that the settlers shall not in future be disturbed in their peaceful occupations by turbulent Natives. The present war must be conclusive.' In this respect Domett noted the 'the paucity of European as compared with the Native population' in the disaffected areas. It was notable, he believed, that:

In the Middle Island, where the Natives are a handful compared with the settlers, we hear of no war, no quarrels, and few complaints, while the Natives are in quiet possession of property worth £150,000. A similar relation between the two races in this Island would produce a similar result, namely, the peace, the welfare, and safety of both Natives and Europeans. We have hitherto been contented to hope that the gradual and peaceful increase of the European population by the ordinary processes of immigration hitherto carried on would have effected all that could be desired in this particular; but the determined hostility of the Waikato tribes, and the strain upon the colonists required to raise a force sufficient for their own Protection merely, make it absolutely necessary to provide the means of adding to our numbers without a moment's delay.⁸¹²

Rarely has the underlying importance of raw numbers in deciding the outcome of colonial struggles been so clearly enunciated in the New Zealand context. Domett believed that a substantial injection of settlers into the North Island was desperately required, and would provide the key to lasting Pakeha hegemony.

⁸¹¹ Domett, memorandum, 31 July 1863, AJHR, 1863, A-8, p.2.

⁸¹² *ibid.*

Fortunately, the Premier added, the many diggers on the gold fields of Australia and Otago provided an obvious source of hardy, self-reliant men, accustomed to bush life and expert in the use of firearms. Many were now tiring of the digger lifestyle and looking to establish a permanent home for themselves somewhere and Domett believed that 'The rebellion of the Waikato tribes places within the power of the Government the locality required'.⁸¹³ At the same time the district of Auckland could not bear the strain of supplying the troops and providing additional military support for an indefinite period. Domett added that:

Another important consideration is the danger that exists that the insurrection, at present confined to the Waikato and the Taranaki tribes, may extend to other tribes whose loyalty or friendship is of a doubtful character, if some decisive success over the Waikato be not speedily obtained. If the war should drag itself over months, with a chequered success, there is a strong probability that the other wavering tribes may be drawn into it. On the other hand, nothing will tend so much to confirm the allegiance of the doubtful, and prevent their latent disaffection from taking the form of open hostility, as some sharp punishment speedily inflicted upon the Waikato.⁸¹⁴

Domett went on to outline a number of presumed military and other advantages which would accrue from adopting a scheme of significant military settlement in the Waikato. In addition, he believed that the 'civilization and improvement' of Maori would be enhanced through any scheme which taught them that European tenure was no longer dependent on Maori consent. Maori had to be taught that the settlers were here to stay, whether the chiefs liked it or not, and in this respect Domett believed it fortunate that the 'inevitable' struggle for control would take place with 'the most warlike, powerful, and influential native tribes'.⁸¹⁵ As the Premier claimed:

It is now indispensable that an example should be made; both justice and policy require that Waikato should afford it; justice, because they have been the heart of the insurrection, the abettors and perpetrators of barbarous

⁸¹³ *ibid.*

⁸¹⁴ *ibid.*, p.3.

⁸¹⁵ *ibid.*

murders and desolation, without a shadow or even pretence of an excuse; policy, because no tribe will venture to hope that resistance can be effectual against the power that has humbled Waikato. Their punishment will eventually command peace throughout New Zealand.

A march into the Waikato district, however successfully accomplished, and the winning of battles there, would not do all that is needed to secure a permanent peace. The natives are fond of war, and have but little to risk besides their land, and as the practice has hitherto been to give up that, and allow them to keep all the plunder they could get, a feeling has sprung up that by war they have everything to gain and but little or nothing to lose. The only real punishment we could inflict has been hitherto scrupulously withheld.⁸¹⁶

It was now ‘absolutely necessary’ that Waikato be taught a salutary lesson and the warlike feelings of the tribes forever removed. To this end, it was proposed to raise a force of 5000 military settlers to occupy the lands of the Waikato tribes who had risen up in arms against the Crown. At the same time, the Premier was quick to add that:

It must not be supposed, however just such a measure might be, that it is proposed to deprive the Waikato tribes of all their lands. There will be amply sufficient land left them for all useful purposes. The settlements contemplated might all be established and the required barrier be formed, and hundreds of thousands of acres still be left for their occupation.

Those natives in the frontier between Auckland and the frontier who shall not have implicated themselves in the rebellion would be entitled to, and must receive, kind and considerate treatment. It will be essential that they should be placed on precisely the same footing as Europeans, and their lives and property protected by the same laws.⁸¹⁷

Precisely why similar guarantees should not also have been extended to those beyond the Mangatawhiri ‘frontier’ who were similarly not implicated in the rebellion is not

⁸¹⁶ *ibid.*
⁸¹⁷ *ibid.*

clear, though presumably Domett believed there were none. In any event, as we will see in the political engagement report, Maori communities living in the area between the Mangatawhiri and Auckland had already been treated in what could only be described as a disgraceful manner by the time of Domett's memorandum. His faint words of reassurance rang especially hollow.

Following the confiscation and settlement of Waikato, a similar plans would then need to be carried out with 'the rebellious tribes of Taranaki'. These examples would, the Premier believed, prove sufficient:

It would be an effectual warning to all other tribes – especially if it be distinctly and authoritatively announced to them that a like offence will entail a like punishment. The present will be the first occasion in which an aboriginal native of New Zealand will be deprived of a foot of land against his will, and we feel assured that it will be the last. The colonists have never desired thus to acquire land. Self-preservation now renders it necessary; and we fully believe that that imperious law of nature will not demand another similar sacrifice: one example will suffice.⁸¹⁸

Even Domett must have found it difficult to believe much of that which he wrote, though no doubt, like much official correspondence produced at this time, it was mainly intended for Colonial Office consumption.

Grey swiftly approved interim arrangements for 2000 men to be recruited on the terms outlined by Domett.⁸¹⁹ In forwarding the detailed proposals, which envisaged grants ranging from 50 acres for privates to 400 acres for a field officer, conditional on the performance of military service, to the Colonial Office at the end of August 1863, Grey declared that the plan was 'based upon that which I adopted in British Kaffraria'.⁸²⁰ He also noted that 'The land upon which it is proposed to locate these military settlers it is intended ultimately to take from the territories of those tribes now in arms against the Government.' Although the General Assembly was not scheduled

⁸¹⁸ *ibid.*

⁸¹⁹ Grey, memorandum, 5 August 1863, AJHR, 1863, A-8, p.7.

⁸²⁰ Grey to Newcastle, 29 August 1863, AJHR, 1863, A-8, p.1.

to meet until 19 October, Grey was confident that its members would, under the circumstances, 'pass without hesitation the laws necessary to give legal validity to the proposed measure'.⁸²¹ Given that arrangements had hitherto already advanced beyond proposals and towards active recruitment of military settlers in Australia and Otago, the governor's statement here constituted an implicit acknowledgement that the scheme lacked legal validity as it stood. Grey, though, mimicked Domett's arguments that the Waikato tribes urgently required punishing. He declared that:

I feel certain that the Chiefs of Waikato having in so unprovoked a manner caused Europeans to be murdered, and having planned a wholesale destruction of some of the European settlements, it will be necessary now to take efficient steps for the permanent security of the country, and to inflict upon those Chiefs a punishment of such a nature as will deter other tribes from hereafter forming and attempting to carry out designs of a similar nature, which must in their results be so disastrous to the welfare of the Native race as well as to Her Majesty's European subjects.⁸²²

The Secretary of State for the Colonies, the Duke of Newcastle, replied to Grey's despatch on 26 November 1863. He declared that:

I do not disapprove of the principle of this measure; I think that any body of natives which takes up arms against Her Majesty, on such grounds as those which are alleged by the Waikatos, may properly be punished by a confiscation of a large part of their common property. I think that the lands thus acquired may properly be employed in meeting the expenses of carrying on the war; nor do I see any objection to using them as the sites for military settlements, which, however, must soon lose their distinctive character, since it is probable that the natives of these districts, unlike those in the Cape Colony and Kaffraria, will soon become an unimportant minority of the inhabitants.

But, while I acquiesce generally in the principles which you have adopted, I must add that the application of these principles is a matter of great danger and

⁸²¹ *ibid.*
⁸²² *ibid.*

delicacy, for which the Colonial Government must remain responsible. It will be, evidently, very difficult to control within wise and just limits that eagerness for the acquisition of land which the announcement of an extended confiscation is likely to stimulate among old and new settlers, and which, if uncontrolled, may lead to great injustice and oppression. Still more evidently is it possible that the natives who still remain friendly to the Government may view this measure, not as a punishment for rebellion and murder, but as a new and flagrant proof of the determination of colonists to possess themselves of land at all risks to themselves, and at any cost, and as thus furnishing the true explanation of the past and present policy of the Government. Such a belief would obviously tend to make the Maories desperate, and aid the efforts of the King party to effect a general rising throughout the Northern Island.⁸²³

Newcastle hoped that the colonial authorities had taken sufficient steps to assure innocent individuals and tribes that their property would be strictly respected, and warned that ‘if this important determination of your Government should have the effect of extending and intensifying the spirit of disaffection, and of thus enlarging the sphere or prolonging the period of military operations, these consequences will be viewed by Her Majesty’s Government with the gravest concern and reprehension.’⁸²⁴

In a private note to Grey sent at the same time as his official despatch, Newcastle was a little more forthcoming as to his concerns. He informed Grey that:

I am a little uneasy about the confiscation of lands contemplated by your Government and explained in a very clear & able Minute; not that I have any doubt of its justice so far as the rebel natives are concerned or of the effect it is likely to have on the Waikatos, but in a country where there is a thirst for land and where the settlers have too often shewn themselves not very scrupulous as to their means of obtaining it I fear the measure may raise the alarm of the now friendly natives and drive and drive them over to the King...[unless] great pains are taken to reassure them and unless the strictest justice is shewn with [the] mode of dealing with each case as it arises. If the Assembly is sitting

⁸²³ Newcastle to Grey, 26 November 1863, GBPP, 1864 [3277], pp.104-105.

⁸²⁴ *ibid.*, p.105.

they may probably urge you further in this direction than you may wish to go, and I have therefore written a despatch which may strengthen your hands for resistance if you find it necessary.⁸²⁵

Newcastle thus made the British government's position perfectly clear in both his official and private letters:⁸²⁶ the Colonial Office did not object to the principle of confiscation but worried that it would be crudely and overzealously implemented, intensifying and prolonging Maori resistance and therefore incurring considerable additional expenses in respect of the troops stationed in New Zealand. There was nothing principled or humanitarian about this position. It was a purely pragmatic one based on the financial implications of confiscation to the British. The Treaty barely entered proceedings.

Already, though, in October 1863 the 5000 men proposed in Domett's original memorandum had doubled to 10,000 military settlers for Auckland alone – to be stationed from Raglan, dipping down to the upper Waipa and across to Tauranga – with a similar number proposed for the rest of the country.⁸²⁷ These proposals came in the most detailed outline to date of the plan of military settlements, penned once again by Domett. He repeated the arguments in favour of sweeping confiscation employed in his earlier memorandum. Although 'the conquest of the most powerful Tribe in New Zealand' (Waikato), might be sufficient to deter future 'rebellion', a material guarantee was necessary to ensure this was the case, since defeats in war could easily be forgotten or excused away. Domett added that:

The most obvious material guarantees for the prevention of future wars are the making of roads that could be used by the Military everywhere throughout the Country; and the introduction of such an amount of armed population, formed

⁸²⁵ Newcastle to Grey, 26 November 1863 (private), Duke of Newcastle Papers, Micro-MS-Coll-20-1576, ATL.

⁸²⁶ And in a minute drafted upon Grey's despatch, in which Newcastle wrote that 'Upon the whole I believe the policy of confiscating the lands of the Waikato who appear in arms against us is right, provided that it is exercised with justice and with a scrupulous desire not to involve the innocent with the guilty. It is not however free from danger. If the other Tribes are persuaded that it is a new and flagrant proof of the greediness of the settlers for land and not adopted as a just punishment for murder and rebellion it may make them desperate and aid the efforts of the King Party to effect a general rising.' Newcastle, minute on Grey to Newcastle, 29 August 1863, no.109, p.233, CO 209/174, Archives NZ.

⁸²⁷ Domett, memorandum, 5 October 1863, AJHR, 1863, A-8A, pp.3-4.

into defensive settlements, as would overawe the Native Tribes, or if not overawe them, at least be always ready and able to check or punish their incursions and depredations.⁸²⁸

In an early indication that Newcastle's warning against settler greed was fully justified, as least as far as the Premier went, he outlined detailed proposals for the confiscation of no less than 2,292,000 acres in the Waikato district, with a further 500,000 acres in Taranaki. Domett wrote that there were 'in the Upper Waikato, Waipa, and Thames districts above Ngaruawahia, according to the computation of the Government Surveyors, about 1,392,000 acres of land, described as some of the richest in New Zealand', and a further 900,000 acres of 'not so good' land in the lower Waikato and lower Thames districts. Quoting evidence from Fenton's 1858 census that the adult male Maori population for the district was 3355, the Premier claimed that:

Say that to leave for these Natives out of the above lands, half a million acres – a quantity far beyond all that they have ever cultivated (which Mr. Fenton estimates at one and a quarter acres per head of the whole population – 12 or 15,000 acres), and more than three times the amount for each individual that would be considered sufficient or is proposed to be given to each military settler.⁸²⁹

Deducting this 500,000 acres for Maori (and a further 100,000 acres at Taranaki), along with a total area of 700,000 acres to be allocated to the military settlers left a total area of 1,492,000 acres that would be available for sale across the two provinces. These lands could be expected to generate a return for the government in excess of £2,192,000, based on nearly half the land being on sold for £2 per acre and the remainder fetching half this sum. In Domett's view these figures would fully justify the government in seeking to secure a £3,500,000 loan in order to fund the costs of immigration, road building and other public works, as well as the direct costs involved in fighting the war. In time the additional revenue gained from a substantial increase in immigration would more than cover the costs of the scheme, and the initial

⁸²⁸ *ibid.*, p.1.

⁸²⁹ *ibid.*, p.8.

loan would be 'not only prudent, but profitable.'⁸³⁰ Such profits might then be invested in the further development of the colony, encouraging yet more migrants and therefore boosting the potential profits even more, lending the whole plan something of a ring of the later Vogel schemes implemented in the 1870s, with the manner of land acquisition a primary point of difference.

Always, however, in memoranda of this kind there was the need for a few reassuring words for the Colonial Office, and Domett once again obliged. He declared that:

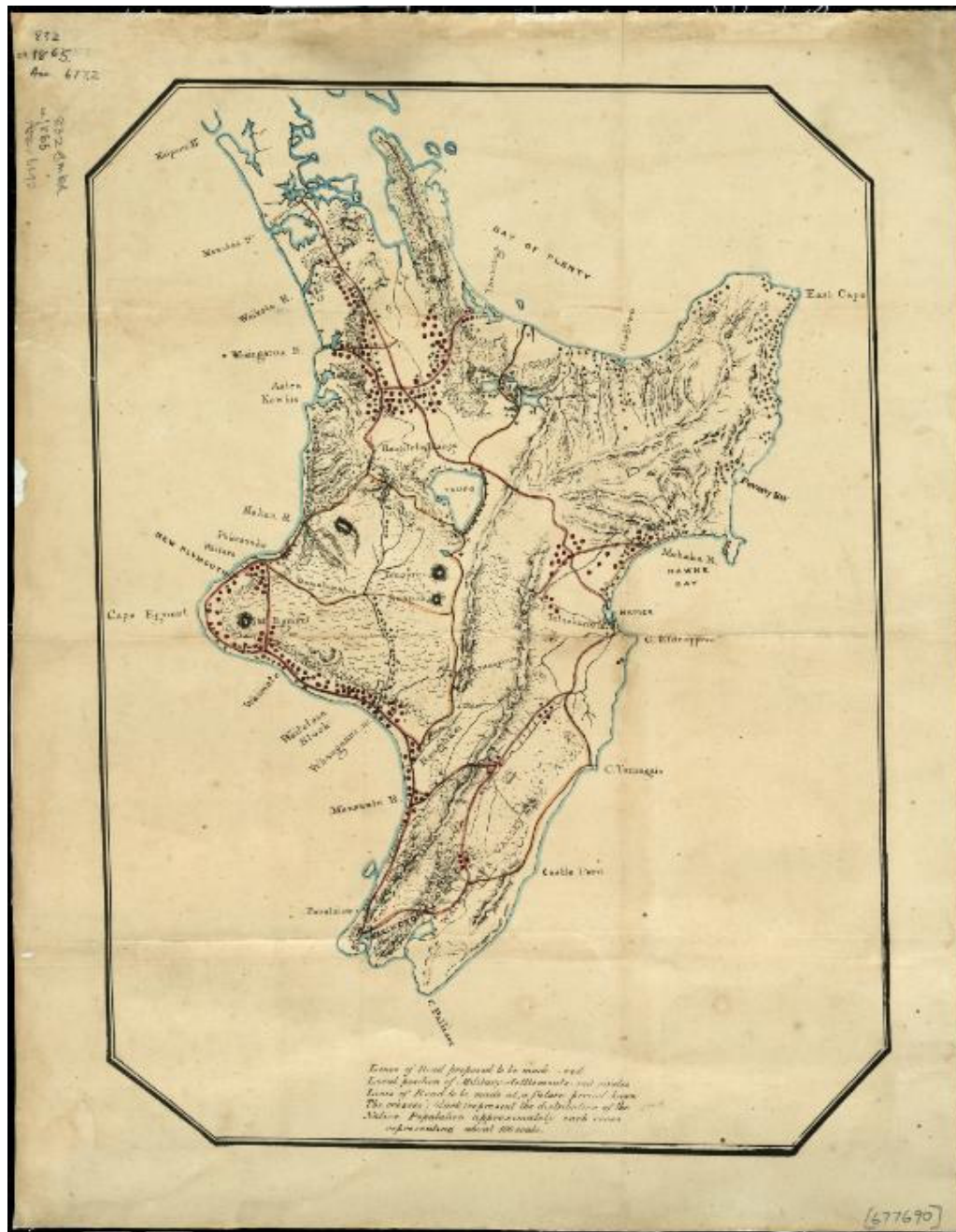
...it would certainly be only just and reasonable that all the lands of the Waikato and Taranaki tribes that are best adapted for European settlement should be taken for that purpose, leaving them the valleys and plains further up in the interior. These tribes have wantonly and altogether without provocation murdered our soldiers and settlers, including old men and boys. They have most unequivocally, through their mouth-piece, William Thompson, declared in writing their intention to kill all Europeans they can, whether armed or unarmed. They have literally declared a war of extermination against us. But we do not advise extreme measures of retaliation, however justifiable. It is not consistent with generosity or good policy, however much so it may be with justice, to inflict upon these Natives the full measure of punishment that is strictly their due, or exact from them the full measure of redress that is rightly ours. We have no desire to drive them to desperation and the mountains. It is right and fair – nay, we are forced by the necessity of self-preservation, to occupy so much of their land with settlements as will render our own people secure from them for the future. It is equally right and fair to take for sale and settlement so much of their lands, utterly waste and useless for the most part in their own hands, as will to some extent indemnify us for the losses their wilfulness and barbarity have entailed and are entailing upon us. What other plan can be devised to prevent them making the Colony uninhabitable for peaceable settlers?⁸³¹

⁸³⁰ *ibid.*, p.11.

⁸³¹ *ibid.*, p.7.

But Domett's assurances that he did not wish to locate Maori 'up among the mountains' but would rather see them located 'on what may be considered the plains outside our boundaries' was hardly convincing.⁸³² And perhaps the most remarkable feature of his memorandum was the complete failure to acknowledge the need to respect the land rights of loyalists. Indeed, he seemed to assume that the whole of lower and upper Waikato was available for allocation, with any reserves set aside for Maori merely a reflection of the government's moderation in the hour of victory than reflecting any kind of actual right or entitlement.

⁸³² *ibid.*, p.8.



(Source: MapColl-832gmbd/[1865]/Acc.6172, ATL; originally published in AJHR, 1863, A-8A)

Figure 7 North Island, Showing Proposed Road and Location of Military Settlements [October 1863]

Even judged by the standards of mid-nineteenth century colonial politicians, Domett was notably unsympathetic towards Maori, however, and his crude views were given full vein in a concluding section to his memorandum in which the Premier wrote that:

It may be objected to the foregoing plans that they are based solely on the idea of force; and it is true that physical power is the main element of the conception. But the adoption of this plan does not by any means preclude the employment of moral methods for acquiring influence over the Natives or ameliorating their condition, bodily or mental. On the contrary, we are firmly persuaded that this basis of physical power is the best and only one on which to rear the superstructure of moral sway. The want of it has been the one great cause of failure of all the attempts of Government to raise and civilize the Natives. Let respect for its power be once firmly established, and its plans for the introduction of “law and order” among the Natives, and for their investment with political powers and rights, will have some chance of success. All the more chance when these efforts are no longer liable to the suspicion of being promoted by interest or fear, nor to the danger of being contemptuously rejected without trial, or found wanting and discarded, because not duly supported by physical force.⁸³³

In a variation of the old civilise to evangelise approach of the missionaries, Domett’s philosophy was essentially to conquer Maori first and then civilise the remnant as an optional follow up (though given, as Alan Ward has noted, that Domett ‘repeated the pseudo-scientific nonsense of the craniologists...[and] thought the Maori biologically inferior’, it seems doubtful whether he had any kind of personal belief in the second part of this equation).⁸³⁴ Domett exposed his prejudices all too clearly in adding:

Power first – as the only thing that naturally commands the respect of these undisciplined men; after it, the humanising institutions; after it, every wise and mild contrivance to elevate and improve them. This is the natural order of things. Until you get rid of the rank growths of savagery, how can you rear the plants of civilisation? The axe and the fire are wanted before the plough and the seed-corn. Cut down the towering notions of savage independence so long nursed by the Maoris – stately, imposing, even attractive though they be – root up their ill-concealed passion for lawless self-indulgence. Then you will have

⁸³³ *ibid.*, p.11.

⁸³⁴ Ward, *Show of Justice*, p.161.

clear space and a free soil for the culture of the gentler and more useful products of the heart and the intellect.⁸³⁵

Even Grey did not buy this latest nonsense to emanate from Domett's pen, which rather undid the feeble and unconvincing attempt made at putting a positive spin on the confiscations. The governor failed to forward this latest memorandum to the Colonial Office at the time, prompting one London official to complain that Grey should keep the Secretary of State for the Colonies 'so much in the dark as to what is really being put to the Colonists, as [to] the practical meaning of their Legislation.'⁸³⁶ Colonial Treasurer Reader Wood, who had travelled to London in an attempt to secure the necessary loan money, evidently attempted to explain away the failure to forward Domett's all too revealing memorandum on the patently misleading basis that it was a 'private production' and not an official one.⁸³⁷ It probably made such a denial seem more plausible that Domett had resigned from office just weeks after drafting the proposals, even if, as various historians have noted, the new administration of Frederick Whitaker and William Fox retained most aspects of the original plan.⁸³⁸

4.7 The Opening of the 1863 Parliamentary Session and the Passing of the Suppression of Rebellion Act

On 19 October 1863 the General Assembly opened for the first time in over a year, allowing for the confiscation plans to receive legislative ratification. The decision to convene Parliament had been partly forced by the Bank of New Zealand, which had withdrawn a line of credit to the government, forcing it to look for legislative sanction for further sources of funding for the war.⁸³⁹ Further credit was desperately required, but so too was statutory validation and confirmation of the confiscation arrangements that had been put into effect since June. Additionally the government also perceived the need for legislation allowing for 'rebels' to be dealt with in an uncompromising manner. It was a case of winning the war, paying for the war, and taking the land.

⁸³⁵ Domett, memorandum, 5 October 1863, AJHR, 1863, A-8A, p.11.

⁸³⁶ Sir Frederick Rogers, minutes on Grey to Newcastle, 6 January 1864, CO 209/178, cited in Parsonson, 'Tainui Claims', p.136.

⁸³⁷ Parsonson, 'New Zealand Settlements Act', p.26.

⁸³⁸ *ibid.*; Dalton, *War and Politics in New Zealand*, p.181.

⁸³⁹ Rutherford, *Sir George Grey*, p.495.

These legislative priorities were reflected in the Suppression of Rebellion Act, the New Zealand Loan Act and the New Zealand Settlements Act respectively. Given that these measures were in many respects linked, it is worthwhile to take some time considering the first two of these measures before focusing more fully on the confiscation mechanism.

Domett's ministry was replaced at the end of October 1863 by a new administration headed by Frederick Whitaker, with William Fox as Native Minister. According to Rutherford, with Domett forced from office by his disgruntled colleagues, Grey had called on William Fox, in the hope that a 'more moderate and manageable ministry' might be formed.⁸⁴⁰ Fox, though, was outgunned by Whitaker and his colleague Thomas Russell, who was appointed Defence Minister, as a result of which 'Grey was now confronted with a war ministry dominated by Auckland interests.'⁸⁴¹ And whereas Domett had shunned responsibility for Maori affairs, preferring to place the full weight of this on Grey, Whitaker's first act upon taking office was to accept full ministerial responsibility.⁸⁴² There would be much future manoeuvring around this issue, and so long as Imperial troops were deployed in New Zealand under the control of the governor Grey would retain significant ability to intervene in and influence the shape of future policy. But nominally, at least, from this time onwards the colonial ministry became responsible for the conduct of Maori affairs.

In ministerial statements to the Legislative Council and House of Representatives respectively, Whitaker and Fox on 3 November 1863 signalled the intention to introduce the three Bills noted above. After noting the substantial military force at hand, Fox told the House that:

We are in the hope that the day will come when, by the exhibition, or by the use, of these large military forces, and by the legal means which the House may think proper to place at the disposal of the Government, this rebellion will be suppressed; and then comes the question, How and when are the Government of this country prepared to make peace? We are not prepared to

⁸⁴⁰ *ibid.*, p.496.

⁸⁴¹ *ibid.*

⁸⁴² *ibid.*

make peace at all. This is not a war we are waging, it is an insurrection we are suppressing; and when that insurrection ceases we shall cease in our efforts to put it down, but not before. I have always considered it to be one of the most fatal errors committed in reference to the Taranaki war that the Natives were treated, in public documents, not as subjects in rebellion, but as enemies – a position in which they could not legally stand, and which must necessarily involve any Government in the greatest amount of difficulty in adjusting the subject of dispute, because, if you admit that the Natives are in a position to be enemies, you admit at once that they have belligerent rights which, by the law of nations, are granted to enemies, and you accept all the consequences attached thereto.⁸⁴³

Alien enemy combatants had certain rights, even in the mid-nineteenth century, whereas, as was noted in a previous section, rebels found guilty of treasonous acts could expect to be hanged, drawn and quartered – a gruesome and protracted process of execution following ritual humiliation and torture.

It was clearly unthinkable that such a punishment would be inflicted on Maori and yet the government did not wish to have its hands tied by accepting anything which might imply that any rights had to be respected. Referring to the restoration of lasting peace, Fox declared that:

We shall not endeavour to secure this end by any sanguinary law or cruel punishment. No Natives will be blown away from the muzzles of our guns; we shall not, because we are fighting an uncivilized enemy, adopt any of their uncivilized practices; but we shall endeavour to take from them such substantial guarantees as to render it impossible for them again to place themselves in such a position towards us.⁸⁴⁴

To this end Fox signalled that the incoming government had determined to adopt the scheme of confiscation and military settlements outlined by the previous government,

⁸⁴³ NZPD, 3 November 1863, 1861-1863, p.760.

⁸⁴⁴ *ibid.*, p.761.

while pointedly denying that Domett's recent memorandum formed any part of the policy to be pursued.⁸⁴⁵

Part of that policy involved the raising of a very substantial loan in order to fund the costs of war and confiscation, to be paid off in future with the profits accrued from the sale of lands not allocated to military settlers or returned to Maori. But before this could be fully implemented there was a war to be won, and an indication of why Fox had been so keen to deny Maori rights as enemy combatants perhaps came in the form of the Suppression of Rebellion Bill. As noted earlier, this was largely modelled on similar legislation directed against the Irish, and gave the government sweeping and draconian powers, including the suspension of habeas corpus, trials by courts martial, and indemnification of all actions already committed in the Crown's name in the course of suppressing 'rebellion'.

Fox, in introducing the Bill for its second reading in the House on 5 November 1863, explained that the Bill had been:

...framed strictly, and almost verbally, by reference to two Acts – one of the Irish Parliament, passed in 1799; and the other of the Imperial Parliament, in 1833. The Attorney-General has thought it desirable to adopt the phraseology of those Acts, and even to adopt an amount of obscurity in one section which may puzzle honourable members when they come to read it; but he thought it better to take them word by word, as they had been concurred in by Her Majesty, and acted upon, as no doubt this Act will be similarly sanctioned if sent Home to the Imperial Government.⁸⁴⁶

J.C. Richmond, though, objected to the very title of the Bill. He declared that although, by virtue of the legislation:

They were giving the power to decree treason in certain cases, to create other offences, and to punish with death or imprisonment; but he never could be persuaded that the present action of the Maori race was treason, and it was

⁸⁴⁵ *ibid.*

⁸⁴⁶ NZPD, 5 November 1863, 1861-1863, p.792.

allowing themselves to be led astray by words to admit anything of the kind. He had often had a fling at the Treaty of Waitangi, and he was glad to have an opportunity of showing that it was not in a nasty greedy spirit that he had done so. It was made by men who, in the words of the present Governor, never could bind anybody. Substantially, the Natives never had been subject to the Crown, and many great chiefs never knew of such a treaty until they were told of it at Kohimarama.⁸⁴⁷

According to Richmond, although it was perhaps all very well to describe Maori as British subjects for technical purposes, when it came to building on such an admission, that was another matter entirely. Maori may have made ‘a very gross mistake’, but it would never do to describe their acts as murder or treason liable to be punished with death.

Atkinson also opposed the Bill, arguing that it enabled any officer appointed under its provisions who might suspect someone to have him arrested, tried and possibly executed.⁸⁴⁸ Others, including Julius Vogel, argued against the Bill on the basis that it essentially removed the power to declare martial law from the commanding officer to the governor.⁸⁴⁹ Even some of those who supported the measure deplored the vague reference to ‘aiding and abetting rebellion’, which might extend to those guilty of selling flour or sugar to suspected rebels. Others took this critique even further. Walter Mantell described the Bill as ‘one of the most perfectly atrocious interferences with the liberty of the subject he had ever known’:

Why, a man might be brought under its operation because he was suspected of aiding or comforting somebody who was suspected to be in rebellion against a Queen whose existence the suspected rebel might suspect, but as to whom he really knew nothing; and, being so brought under the Act, the victim might be called before a drumhead Court-martial, composed of a major or lieutenant-colonel – a kind of man selected for his high legal knowledge and great love

⁸⁴⁷ *ibid.*

⁸⁴⁸ *ibid.*

⁸⁴⁹ *ibid.*, p.794.

of liberty – assisted by three other men of less knowledge and ability, selected therefor, and be subjected to anything from imprisonment to death.⁸⁵⁰

He commented that it was common, even among the class of gentlemen likely to serve on such a court-martial, to hear it said that ‘There will be no peace in this country until a bishop or an archdeacon or two are hung’ and added:

He really did not see how the head of the Church, whom he revered, could escape under this Act. That Prelate was, or had been, “suspected” – by unthinking persons, perhaps; but the fact of being unthinking did not disqualify anyone for a commission in Her Majesty’s forces, or from being a field officer. He was accustomed to use tolerable liberty of speech; and, in the absence of all definition of offences, he felt that it would not be safe to live in the Northern Island if the Bill was passed. Why, he might be “suspected” because, at a dinner-table, he would not agree that “all those niggers should be wiped off.”⁸⁵¹

Isaac Featherston and James FitzGerald objected to the proposed measure on similar grounds.⁸⁵² Fox, in summing up, countered charges that the Bill was monstrous and unprecedented by noting that ‘The Act of 1833, which had been copied word for word, was not passed for the suppression of open rebellion, but for putting down illegal disturbances, secret associations, and agrarian riots. This was sufficient answer to the objection that the nature of the Bill was unheard-of and was likely to cause great excitement at Home as abhorrent to the spirit of the British Constitution.’⁸⁵³ And in response to the complaints of Francis Dillon Bell, the former Native Minister, that the incoming administration had adopted the policies of the previous ministry without due acknowledgement, Fox pointed to overlapping membership between the two. Under the circumstances, he suggested, ‘there was nothing ungenerous in his taking up without acknowledgement the papers he found in the office’.⁸⁵⁴

⁸⁵⁰ *ibid.*, p.795.

⁸⁵¹ *ibid.*

⁸⁵² *ibid.*, pp.795-796.

⁸⁵³ *ibid.*, p.799.

⁸⁵⁴ *ibid.*, p.800.

Despite vocal opposition, the Suppression of Rebellion Bill passed its second reading in the House more than comfortably, by 26 votes to 10. It was read a third time a few days later, on 9 November 1863, and introduced for its first reading in the Legislative Council one day later. Whitaker, who had authored the Bill (or, perhaps more correctly, had extracted and copied the relevant sections from the earlier Irish and British Acts) introduced it for its second reading on 13 November 1863. He referred to supposed Waikato acts of aggression including the removal of timber from Kohekohe, the later seizure of the printing press at Te Awamutu, rumoured plans of an attack on Auckland (conveniently timed to start a few days after the Crown troops' pre-emptive movement across the Mangatawhiri River), and the 'murder' of around 12 settlers subsequent to the outbreak of the war.

The ordinary operation of the law was not sufficient to assist in suppressing the 'rebellion', he argued, pointing to the example, some four or five months previously, of 'some Natives of the Ngatimaniapoto Tribe...apprehended whilst recruiting down in the Middle Island.'⁸⁵⁵ If the government had not deviated from the ordinary course of the law in arranging for their covert capture and despatch to Auckland then the men in question might never have been apprehended and placed on trial. From Whitaker's description, it would appear that the whole operation had assumed something of the nature of a kidnapping, and the clear implication was that the Suppression of Rebellion Bill was required to validate such proceedings in the future.⁸⁵⁶ Nor was such a move unprecedented, he declared, pointing to various measures adopted in relation to disturbances and rebellions in recent Irish, Scottish and English history. In

⁸⁵⁵ NZPD, 13 November 1863, 1861-1863, p.857.

⁸⁵⁶ The case appears to refer to five Waikato Maori captured by Collingwood Resident Magistrate James Mackay in September 1863 and arrested and remanded to stand trial on unspecified criminal charges in Auckland. Brief newspaper reports indicate that Mackay had somehow managed to 'prevent' the men from returning to the North Island of their own accord until such time as he had received instructions from the government as to how to act in the case. It was also noted that whether the men were seeking to recruit South Island supporters to travel to the Waikato to join the fight, or were merely hoping to persuade them to raise the King's flag, was unclear. *Nelson Examiner and New Zealand Chronicle*, 12 September 1863; *Taranaki Herald*, 19 September 1863; *Daily Southern Cross*, 18 September 1863. John Morgan informed the former governor, Thomas Gore Browne, that the prisoners were subsequently charged with treason. Morgan to Browne, 29 September 1863, Gore Browne 1/2d, Archives NZ. A subsequent report from the men's preliminary trial in Auckland indicated that the group belonged to Ngati Kinohaku. They had been attempting to persuade members of Ngati Rarua to return to their former lands at Waikawau, near Kawhia, partly on the basis that the King had made a law restoring all lands to those tribes previously conquered or driven away from these. *Nelson Examiner and New Zealand Chronicle*, 13 October 1863. While there is clearly much more to this story, it has not proven possible to delve further into the case in the present report.

particular, he noted that the 1799 and 1833 Acts for the suppression of rebellion in Ireland had provided the framework for the Bill before the Council.⁸⁵⁷

Criticism was this time more muted with one or two notable exceptions. William Swainson, for example, who as Attorney-General in the 1840s had caused controversy by arguing that British sovereignty applied only to parts of New Zealand,⁸⁵⁸ stated that:

...he...absolutely denied the necessity for this Bill; but, assuming such a Bill to be necessary, then he maintained that, if, with ten thousand men in arms, we were unable to govern and control less than that number of men, women, and children, except by establishing a reign of terror, and except by the subversion of the fundamental laws of the realm, the logical and legitimate conclusion would be, not that we should pass this Bill into law, but that we should abandon the pretension to govern our Native fellow-subjects, and confine the practical exercise of our authority to our own fellow-countrymen, the natural born subjects of the Crown.⁸⁵⁹

The other lawyer in the upper house, Henry Sewell, who was a more recent former Attorney-General, also voiced fundamental objections to the Bill, declaring it a measure which 'if passed, would be an eternal disgrace to the colony.'⁸⁶⁰ He stated that the established practice was that following emergencies of the kind the colony was then experiencing, Parliament reserved to itself the right of final judgment by either passing or refusing to pass Acts of Indemnity. If excesses had been committed in suppressing disturbances then indemnity could be withheld:

But the law now proposed was, in fact, a subversion of all law – it was intended to legalize beforehand whatever might be done, no matter how barbarous or atrocious, under colour of an extraordinary power lodged with the Governor. Whatever crimes might be committed under this pretext would

⁸⁵⁷ NZPD, 13 November 1863, 1861-1863, p.858.

⁸⁵⁸ Ward, *Show of Justice*, pp.59-62; G.H. Scholefield, *A Dictionary of New Zealand Biography*, 2 vols, Wellington: Department of Internal Affairs, 1940, vol.1, p.353.

⁸⁵⁹ NZPD, 13 November 1863, 1861-1863, p.859.

⁸⁶⁰ *ibid.*

be sheltered from all inquiry, whether by the Courts of judicature or by the Legislature. It gave to persons acting under the Governor's orders power to punish by death, penal servitude, or otherwise any one concerned in furthering the so-called rebellion. He...could not but look with horror upon a proposal to vest in three commissioned officers of Militia a power to sentence to death any one concerned, however slightly, in rebellion, subject only to the approval of the Minister. The Hon. the Attorney-General might, with three of his clerks – some of whom, he believed, held commissions in the Militia – sentence him (Mr. Sewell) to death if they so pleased – if they chose to consider him as furthering rebellion by opposing the present measure.⁸⁶¹

Sewell pointed to differences between the 1799 and 1833 Acts, the latter of which expressly barred military courts from inflicting capital punishment.⁸⁶² That restraint had been ignored in the New Zealand Bill in favour of handing full power to three members of the militia to put to death anyone in the colony suspected of having taken part in the outbreak.

Despite these concerns, the Bill was passed by a vote of 13 members to 4, and passed its third reading a week later, on 20 November 1863. Although some amendments were made during the Bill's passage through the Legislative Council, these did little to alter the fundamentally obnoxious nature of the legislation in the eyes of its critics. Even Whitaker, in forwarding the Act, which was passed into law on 3 December 1863, to the governor for transmission to the Secretary of State for the Colonies, acknowledged that 'the Suppression of Rebellion Act is a strong measure' though he claimed that it was 'not stronger than the occasion justifies and requires.'⁸⁶³ He further claimed that it was 'obvious to all that the ordinary course of law was unsuited to the emergency' and that 'the hands of the Government were tied' and special legislation was required to meet the emergency. The legislature, he claimed had been

⁸⁶¹ *ibid.*

⁸⁶² Privately he declared the assertion that the Suppression of Rebellion Bill was based on the 1833 Act to be untrue, declaring that 'No man would have dared to propose such a measure to a British House of Commons.' Sewell, *Journal*, 15 November 1863, p.217, qMS-1787, ATL.

⁸⁶³ Whitaker to Grey, 4 January 1864, AJHR, 1864, A-1, p.3.

‘almost, if not quite, unanimous that some strong and exceptional measure was essential’.⁸⁶⁴

Although there would be many contenders for the most draconian piece of legislation ever passed in New Zealand, the Suppression of Rebellion Act would arguably win out over the Public Safety Conservation Act of 1932 or the various legislative measures passed in the late 1870s and early 1880s to validate the seizure without trial of Te Whiti and other followers at Parihaka. It would win out on the basis that the 1863 measure literally placed the power of life or death in the hands of a hand-picked body of military officers. Despite this, the fact that it was forwarded to the Colonial Office at the same time as the New Zealand Settlements Act saw the Suppression of Rebellion Act largely overshadowed and ignored. As noted previously, Rogers had rather dryly declared the Irish precedent a less than desirable one, but when the new Secretary of State for the Colonies, Edward Cardwell, replied to Grey’s January 1864 despatch forwarding the two Acts he barely mentioned the Suppression of Rebellion Act.⁸⁶⁵

If the Act had any redeeming feature at all it was the fact that a clause had been inserted limiting its operation to effectively around 12 months (expressed in terms of the end of the next session of the General Assembly). The preamble to the Act declared that ‘a combination for the subversion of the authority of Her Majesty’s Government has for some time existed amongst certain Aboriginal tribes of this Colony and has now manifested itself in acts of open Rebellion’.⁸⁶⁶ Murders of subjects engaged in peaceful occupations had been committed and the ordinary course of law was ‘wholly inadequate for the suppression of the said Rebellion and the prompt and effectual punishment’ of those deemed ‘guilty of such atrocity and outrage’.

Section 2 of the Act enabled the governor in council to issue orders to whomever he thought fit authorising ‘vigorous and effectual measures’ for suppressing rebellion, protecting the persons and properties of loyal subjects, and punishing ‘all persons

⁸⁶⁴ *ibid.*

⁸⁶⁵ Cardwell to Grey, 26 April 1864, GBPP, 1864 (326), pp.47-53.

⁸⁶⁶ *New Zealand Statutes*, 1863, no.7.

acting aiding or in any manner assisting in the said Rebellion or maliciously attacking or injuring the persons or properties of Her Majesty's loyal subjects in furtherance of the same according to Martial Law either by death penal servitude or otherwise as to them shall seem expedient'. Under section 3, no act done in pursuance of such an order was liable to be questioned in any court of law. All officers acting under an order would be answerable for their actions only before a court martial operating under the articles of war (section 4). In addition, the right of habeas corpus could be suspended in respect of any person detained by virtue of an order under the Act (section 5). The remainder of the Act provided for the convening of courts-martial consisting of not less than three members of the regular or militia forces (sections 6 to 8), reserved the right of martial law to be proclaimed as a prerogative of the Crown (section 9) and offered full indemnity from prosecution for all acts previously committed which would have been lawful if done in pursuance of an order under the authority of the Act (section 10).

In April 1864 ministers proposed trying those Maori taken as prisoners at Rangiriri in November 1863 in courts-martial convened in accordance with orders under the Suppression of Rebellion Act.⁸⁶⁷ In the event, it appears that no orders were ever issued under the Act, though the debate at this time brought to light a surprising feature of the Act, namely, that Grey had encouraged ministers to pass such a piece of legislation and had specifically pointed to the Irish model (which the governor, as a young officer stationed in Ireland, would presumably have had some responsibility for implementing) as one that ought to be adopted. In September 1863 the government contemplated what action to take with respect to a prisoner named Ihaka. Frederick Whitaker, to whom the case was referred, commented that the papers showed that Ihaka had been implicated in 'transactions and intrigues clearly showing that he was a dangerous person to have at large.'⁸⁶⁸ He added that 'as to a prosecution in the Civil Courts, it must be borne in mind that some of the most important evidence would be that which could be given by persons who have furnished secretly information to the Government, and whose lives, they say, depend upon secrecy being maintained. Their

⁸⁶⁷ Whitaker, memorandum, 19 April 1864, AJHR, 1864, E-1, part II, p.5.

⁸⁶⁸ Whitaker, memorandum, 26 September 1863, AJHR, 1864, E-1, part II, p.44. There is an anomaly here as there is reference to the papers being passed over to the Attorney-General for comment, but Whitaker did not assume this role until 30 October 1863. On the other hand, it is not clear why such a sensitive matter would have been referred to Whitaker in his private capacity.

evidence, I assume, would not be available.’⁸⁶⁹ Was there some kind of secret network of kupapa spies inside the King movement? Whitaker’s memorandum hinted at more than he answered but his conclusion that it was ‘very questionable whether a prosecution should be implemented’ prompted Grey to intervene. According to a note from the Colonial Treasurer, Reader Wood, dated 2 October 1863:

The Governor thinks that an Act should be submitted to the Legislature, empowering the Executive to deal with cases of this kind in a similar manner to the way in which authority was given by the Irish Statute of 1798, and the Imperial Act of 1833, for the Suppression of Disturbances in Ireland, as far as these precedents may be applicable to the state and condition of this country at the present time.⁸⁷⁰

Five days later, on 7 October 1863, Whitaker supplied a draft Bill, which was said to have been ‘submitted to His Excellency, approved, and subsequently with no alterations of principle, passed by the House of Assembly.’ Fox rejected Grey’s efforts to distance himself from the Act, declaring it ‘really the Governor’s Act, and not his Ministers’.⁸⁷¹ Grey, in fact, did not deny that he had first proposed the legislation.⁸⁷² That helps to cast an altogether different light on his later efforts to portray himself as the champion of a more moderate and restrained treatment of the ‘rebel’ tribes.

4.8 The New Zealand Loan Act 1863

Without the necessary funding, the war could not be fought, confiscated lands could not be surveyed and immigrants brought into the country to settle on them, nor roads and other infrastructure constructed. Domett’s proposals had initially envisaged raising a loan of £4,000,000 to be guaranteed by the British government, before this was scaled back to £3,000,000. The New Zealand Loan Bill made provision for a loan of this amount to be raised in London to cover the costs of suppressing ‘Native

⁸⁶⁹ *ibid.*, pp.44-45.

⁸⁷⁰ Reader Wood, memorandum, 2 October 1863, AJHR, 1864, E-1, part II, p.45.

⁸⁷¹ Fox, memorandum, 22 September 1864, AJHR, 1864, E-1, part II, p.42.

⁸⁷² Grey, memorandum of His Excellency explaining his reasons for declining to sanction the Trial of the Prisoners, 20 October 1864, AJHR, 1864, E-1, part II, p.83.

insurrection' and 'colonizing the rebel districts'. William Fox had informed the General Assembly soon after taking office that:

...the expense involved in these plans for the military defence of the colony, which is absolutely unavoidable, and of the assisted immigration, which, I think, is equally unavoidable, will be far beyond the ordinary annual resources of the colony – quite beyond what it is in the power of the colony to pay out of revenue – it will be absolutely necessary to raise a considerable amount by loan. We propose to pay off that loan – in whole or in part – by the sale of the whole or part of the land now in the hands of the rebellious Natives. A sufficient portion of land will be taken to defray the cost to which we are put in suppressing the rebellion. This is a principle not only in accordance with every feeling of justice, but also, I am glad to state, in accordance with the customs of the Natives themselves.⁸⁷³

Fox was referring here not to a supposed Maori custom of raising loans on the security of confiscated lands but of the supposed similarities between customary Maori raupatu and the seizure of their lands in the 1860s in punishment for rebellion. It was seen previously that the parallels were overstretched in order to provide a feeble local precedent for the confiscations. But Hongi Hika was no Whitaker and nor did inter-tribal conflicts usually take on something of the appearance of speculative investments. The entire financial viability of the scheme proposed by Grey and adopted by Domett and his successors depended on conquering and confiscating a sufficient area of land in order to cover the initial outlay funded by way of a loan underwritten by the Imperial government. That was never going to encourage a moderate approach to confiscation, nor an early termination of the war while further gains stood to be made.

Reader Wood, who introduced the Bill for its second reading in the House on 12 November 1863, once more explained the rationale. It was, he declared, 'a distinct characteristic of the policy of the present Government that, to prevent all future rebellion and the possibility of a further insurrection, not only should the present

⁸⁷³ NZPD, 3 November 1863, 1861-1863, p.762.

rebellion be put down, but that the country should be colonized at the same time.⁸⁷⁴ He further declared that:

It is not part of our policy to drive the Natives into the hills and woods – to drive them, in fact, into brigandage and murder; but we desire to give them a specific proprietorship of a particular part of the country, which they will hold under Crown grant. With reference to the quantity of land that will be required for these various purposes, we estimate it as follows: for the location of ten thousand men in Waikato, at fifty acres each, five hundred thousand acres. In the Waikato District we estimate there are four thousand adult Natives, and by giving them twice the quantity of land we propose to give the Waikato settlers – namely, one hundred thousand acres for the Natives there – that is, if all come in and consent to live in peace and order.⁸⁷⁵

Across the different confiscated districts, the government envisaged an area of one and a half million acres available for sale at a minimum price of £2 per acre, which conveniently matched the £3,000,000 sum the government was seeking authority to raise as a loan. He denied, however, that the government ‘looked upon this as a commercial undertaking.’⁸⁷⁶ Members, though, criticised the haste with which a complex scheme involving very large financial undertakings was being rushed through the General Assembly, prompting Wood to agree to a one-day adjournment in order to allow some scrutiny of the figures.

When debate resumed Fox countered suggestions that the Bill gave the government a very large sum of money to spend without specific appropriation by Parliament. He stated that if the Bill was successful supplementary legislation appropriating the sum to specific measures would be introduced.⁸⁷⁷ Members, though, raised further concerns about the manner in which the government intended raising the loan and what would happen if the Imperial government refused to provide a guarantee, while others queried the accuracy of the estimates of income and expenditure.⁸⁷⁸ These and

⁸⁷⁴ NZPD, 12 November 1863, 1861-1863, p.847.

⁸⁷⁵ *ibid.*

⁸⁷⁶ *ibid.*, p.848.

⁸⁷⁷ NZPD, 13 November 1863, 1861-1863, p.861.

⁸⁷⁸ *ibid.*, pp.861-863.

further criticisms were levelled when, after a further adjournment, the Bill was finally read for a second time on 17 November 1863. Many members also expressed concern that the measure essentially constituted a massive subsidy from South Island settlers for the colonisation of the north. FitzGerald, the most articulate and outspoken member of the General Assembly, delivered a two-hour long speech against the Bill, during which he declared that:

...this Bill before the House is a Bill simply for the aggrandizement of Auckland itself...it has no other object in view, and will be attended with no other result...You are going to extend the Auckland frontier, and confiscate large quantities of land for the benefit of the timorous townfolk of Auckland.⁸⁷⁹

In a clear reference to Whitaker, Russell and others of their ilk, he added that ‘this policy, while it may be exceedingly beneficial to the moneyed interest of Auckland – to some few men who will be greatly benefited by it – will be productive of the worst results to the other classes of the community.’⁸⁸⁰ He further asked:

What have the Natives to hope for when you have announced to them that you are going to confiscate what is dearer to them than their lives? You might as well have headed the Bill “A Bill for carrying on a War against the Natives, and for confiscating the Native Lands:” for I am persuaded that will be the fact if this measure passes into law. It will be a measure to drive every Native in the Island into rebellion; or, if they do not adopt that course, it will be from that spirit of miserable hopelessness and helplessness which will certainly fit them to be our slaves for the future...I said last session you must either win the confidence of the Natives by showing them that you do not want to rob them, or you must exterminate them like wild beasts. I confess I have seen no serious efforts made to win the confidence of the Native race; and in the absence of that we have been driving them into a state of rebellion for their own security, and then robbing them for our profit.⁸⁸¹

⁸⁷⁹ NZPD, 17 November 1863, 1861-1863, p.885.

⁸⁸⁰ *ibid.*

⁸⁸¹ *ibid.*, pp.886-887.

William Fox addressed a number of the criticisms raised. Referring to FitzGerald's prediction that the government would eventually find it convenient to extend the scheme of confiscation into Hawke's Bay and other districts not yet at war (a prediction later proven correct), he stated that:

It has been repeatedly declared that the Government has no intention of confiscating one single acre of land in this Island except where the owner of such land has been guilty of rebellion...But let it not go forth from the honourable member for Ellesmere, as representing this House, that and I hope that the reporters will see that this is clearly reported – the Government intends to confiscate, to take by force, one single acre, one rood, or one perch of Native land, except from the rebel, without paying as full a compensation as Government would pay to any European in the country – namely, the full market value as assessed in a Court of Arbitration.⁸⁸²

Following an interjection from FitzGerald, who pointed out that providing compensation did not change the fact of confiscation, Fox repeated his previous undertaking and declared that:

I repeat that the Government has no intention of taking one single acre of Native land without compensation except in the case of rebels, and does not anticipate the probability of taking lands in any case where the owners are not rebels – not at present, at all events – except under circumstances where my own or anybody-else's might be taken.⁸⁸³

As will be seen later in this report, despite various assurances to 'loyalists' that their land rights would be scrupulously respected, the reality was an altogether less sympathetic approach to protecting their customary interests.

After comfortably passing its second reading, the Bill was amended in committee a few days later to shift authority for spending the money raised from the governor to

⁸⁸² *ibid.*, p.890.

⁸⁸³ *ibid.*, p.891.

Parliament. Debate in the Legislative Council was limited. Henry Sewell condemned the sweeping powers placed in the hands of the government to encumber the colony with an enormous debt, and believed the plan to entice many of the new migrants from Australia was flawed since the more desirable segments of the labour market had already been fully tapped and 'There was reason to believe that a portion of the lower classes in those colonies were tainted with crime. By the introduction of further settlers from those colonies they were going to dig deeper into a lower substratum.'⁸⁸⁴ Whitaker, though, justified the step on the basis that it would take eight or nine months to arrange for migrants to be introduced from Britain, but 'It appeared to the present Government to be essential that, immediately the military conquered the country, the settlers should be ready to take possession of it.'⁸⁸⁵

The New Zealand Loan Act was passed into law on 14 December 1863, the same date that the Loan Appropriation Act was also passed. This latter piece of legislation appropriated the sum of £3,000,000 to be raised under the Loan Act, with one-third of this sum to be applied to the costs involved in suppressing the 'rebellion', £900,000 for the costs of surveys and other expenses associated with placing settlers on the lands allocated in specified proportions to the different North Island provinces, £100,000 in payment of any compensation liable in respect of land taken under the New Zealand Settlements Act, £200,000 for the cost of introducing settlers from Australia and Britain, and various other allocations. In an indication of just how loose many of the financial calculations being bandied about at this time were, the Act actually purported to appropriate more money than was authorised to be raised under the Loan Act.

Colonial Treasurer Reader Wood's memorandum accompanying the two Acts declared that these formed part of a policy which had two great objects in view, namely the suppression of the existing rebellion, and providing a material guarantee for the preservation of peace, thereby rendering future insurrections impossible. The first object had not yet been obtained and had already taxed to the utmost the resources of the colony. It was not envisaged that the expenses involved would be

⁸⁸⁴ NZPD, 26 November 1863, 1861-1863, p.940. He had used rather more blunt language in his private journal a few months previously, describing those likely to be attracted as military settlers as 'The sweepings of the Australian kennel,' Sewell, Journal, 23 August 1863, p.193, qMS-1787, ATL.

⁸⁸⁵ NZPD, 26 November 1863, p.941.

reduced for some time to come, and meanwhile the sum of £1,000,000 allocated under this head was regarded as the lowest possible calculation of the likely cost to the colony of future military operations.⁸⁸⁶ The second object could only be achieved through the introduction of a large body of European settlers, but that would require a significant outlay in the first instance.

A loan of £500,000 had been sanctioned by the General Assembly in 1862 in relation to expenses arising out of the first Taranaki War, and the Imperial government had duly agreed to guarantee the sum. Cardwell, upon receipt of the two 1863 Acts, indicated that the British government would be willing to consider extending this existing guarantee and also recognised the exceptional circumstances behind the expenses incurred to the colony as a result of the war. But least the colonial ministers assume that they would have no problem in getting the full £3,000,000 guaranteed, Cardwell gave an early indication that this was not likely to be the case. Fighting a 'native war' was one thing, but settling the country was purely a colonial matter to which the Imperial credit was generally not applicable.⁸⁸⁷

In the event, the British government, after protracted negotiations with Reader Wood, who had made the long journey to London to finalise the loan, agreed to guarantee only a third of the sum sought under the Loan Act. Wood was informed in May 1864 that the Imperial government would guarantee a loan of £1,000,000, subject to a number of terms and conditions. These included nearly half of that sum being repaid to the British government in discharge of existing debts and various arrangements in relation to the future charges that would be levied in respect of British troops stationed in New Zealand, as well as agreement to limit the operations of the New Zealand Settlements Act to no more than two years, as well as confirming that the terms of the conditional assent to this given by Cardwell (discussed below) represented the views of the New Zealand government in respect to the implementation of confiscation policy.⁸⁸⁸

⁸⁸⁶ Reader Wood, memorandum, 23 December 1863, AJHR, 1864, A-1, p.5.

⁸⁸⁷ Cardwell to Grey, 26 April 1864, GBPP, 1864 (326), p.52.

⁸⁸⁸ Reader Wood to Sir Frederick Rogers, 28 May 1864, AJHR, 1864, B-2, p.28; Dalton, *War and Politics in New Zealand*, p.195; Rutherford, *Sir George Grey*, p.512.

Given the parlous state of the colony's finances, Wood had been left with little option but to agree to the stringent terms imposed by the British government. Yet even those terms were not enough to appease critics of the war, who opposed further British funding for what many saw as simply another colonial war of conquest paid for and fought by the British exclusively for the benefit of the colonists. As will be seen later in this chapter, there were ample opportunities to vent such viewpoints given that the £1,000,000 guarantee required an Act to be passed in the British Parliament.

4.9 The New Zealand Settlements Act 1863

The New Zealand Settlements Act was the third part of the policy package introduced in 1863 and the primary legislative mechanism by which extensive confiscations at Waikato, Taranaki and elsewhere would later be implemented. It passed through Parliament in quick time and with minimal opposition or even debate. Read in the House of Representatives for the first time on 4 November 1863, it was introduced by William Fox the following day for its second reading. He informed the General Assembly that while it would no doubt be easy to enlist a large number of men from the diggings in Australia or Otago for temporary service that would be of little value in the longer term, as many would leave the district soon after, and the situation previously existing would likely return. What was required instead was for 'a large population, practically outnumbering that of the Natives in those districts where rebellion exists, or may exist, to be permanently settled, with ownership of the land, so that they may not only have an interest, but the ability, to defend their homes from future aggression; and to effect this the Government looks to the lands of those tribes who have been in rebellion.'⁸⁸⁹

There was 'no injustice', Fox claimed, in taking the lands of such tribes, 'not by way of punishment, or of reducing the tribes from the position they now hold, but simply as a substantial guarantee for the future peace and consolidation of the colony.'⁸⁹⁰ One material question in respect of implementing a confiscation policy, he added, was whether there was sufficient land available for the large number of Europeans to be

⁸⁸⁹ NZPD, 5 November 1863, 1861-1863, p.783.

⁸⁹⁰ *ibid.*

introduced, 'without dispossessing the Natives, and so driving them to the hills and extinguishing the race.' A careful examination of returns of the acreage of land in those districts where a state of 'rebellion' already existed, or where future operations were planned, revealed some 4,000,000 acres available for confiscation, which seemed ample for the object in view. Fox, though, offered some reassurance to those who had not been caught up in the war, stating that:

...the Government is far from proposing, as is thought by some, to take without any compensation the land of any Natives whatever, unless of those who have been in actual rebellion; so that, if in any district it should appear that any section of the Natives have not been in rebellion, it will be open for them to receive compensation as awarded by the Court to be constituted under this Bill. So, again, if in any other parts than those in which rebellion has existed, it should hereafter become essential for the Government to take lands for the purposes of the Bill, compensation will be provided there also; and there will be no instance in which the Government will do other than would be done by the British Government if it wanted land, say, for a railway or any other public purpose, except where the Natives have been in actual rebellion.⁸⁹¹

Only the Canterbury politician – and Irishman – J.E. FitzGerald, who was regarded as one of the outstanding orators of his day, offered anything like unequivocal opposition to the legislation. The Bill was, he declared:

...a repeal...of every engagement of every kind whatsoever which has been made by the British Crown with the Natives from the first day when this was a colony of the Crown...This Bill professes to give absolute and arbitrary power to the Government of the colony to enter upon all Native lands whatsoever in this colony, whether they belong to Natives who have raised their arms against Her Majesty, or whether they belong to men who have fought, war after war, on our side. It gives power to the Governor of this colony, advised as he may be by any Ministry sitting on that bench, to violate every engagement which has ever been made with those Natives, and to confiscate their lands upon any

⁸⁹¹ *ibid.*

imaginary or conceivable wrong. This...is proposed to be done; this great – what I call this enormous – crime is proposed to be perpetrated against a race to whom we have refused the right of representation in this House; who at this moment are totally and absolutely in ignorance that we are about to make this great invasion upon their privileges, and who are unable to appear at our bar to plead their cause.⁸⁹²

FitzGerald added that the Bill would confirm every charge made against the settlers in Britain of the desire to acquire Maori land by whatever means possible. His fundamental objections to the legislation were two-fold, FitzGerald explained:

...I object, first, upon the ground that it is contrary to the Treaty of Waitangi, which has distinctly guaranteed and pledged the faith of the Crown that the lands of the Natives shall not be taken from them except by the ordinary process of law – that is, taken within the meaning of the Treaty. Again, I object because I conceive the provision to be in direct opposition to that section of the Constitution Act which debars us from making any law which is repugnant to the law of England.⁸⁹³

While he admitted that what was repugnant to the law was a matter of debate, FitzGerald noted that it was standard practice in England that if land was required for any public purpose it would in each and every instance be taken by an Act specifying the land so to be taken and providing ample opportunity for aggrieved persons to come before Parliament to plead their cause. An Act such as was proposed by the Settlements Bill providing for the general taking of unspecified lands for public purposes would be considered contrary to the spirit and custom of English law.

He was also critical of the proposed Compensation Court, which in any event would merely be dispensing such compensation as it saw fit after the ‘robbery’ had already been committed. The result, he feared, would be ‘that the moment this Bill gets

⁸⁹² *ibid.*, p.784.

⁸⁹³ *ibid.*

known to the Native race it will drive every single one of them in this Northern Island into a state of hopeless rebellion.’⁸⁹⁴

A lengthy critique of the Waitara purchase followed, along with an equally strident attack on the government’s provocative actions in the build-up to the Waikato War. He suggested that it might have possible, at an earlier date, to separate a substantial number of Waikato Maori from the influence of Ngati Maniapoto. Instead, all were treated alike, and the same approach was continued in the Settlements Bill, which ‘says that over the heads of all Natives alike, friends and foes, there shall hang that sword, that undefined punishment, the confiscation of their property at the arbitrary will of the Governor.’⁸⁹⁵

Somewhat remarkably, considering the momentous nature of the legislation, FitzGerald was just one of four speakers during the second reading of the New Zealand Settlements Bill, and the only one to oppose the measure. Despite this, on 10 November 1863 Fox, in a ministerial statement to the House, admitted that the government was not altogether satisfied with the proposed legislation, and after consultation with FitzGerald had amended some aspects of the Bill. The introduction of a new clause empowering the Governor-in-Council to proclaim districts within which the confiscation provisions would be applicable was intended, he explained, to draw a broad line of distinction between those in rebellion and those who had remained in peace. Section 4 allowing the Governor-in-Council to take land within any such district for the purposes specified had previously applied only to Maori lands but was now to be applied to all classes of lands, while a further new clause gave the governor discretion to call upon tribes or individuals who had engaged in acts of rebellion to come in and submit to the law by a specified date or render themselves ineligible for compensation under the legislation.⁸⁹⁶

After passing its third reading in the House on 11 November 1863, the Settlements Bill was introduced into the Legislative Council one day later, and received its second reading on 16 November 1863. The debate was on this occasion only fractionally

⁸⁹⁴ *ibid.*, p.785.

⁸⁹⁵ *ibid.*, p.789.

⁸⁹⁶ NZPD, 10 November 1863, 1861-1863, pp.824-825.

more extensive than it had been in the lower chamber. Whitaker, who introduced the Bill, trotted out the familiar justifications for it, before defending the legality of compulsorily acquiring customary Maori lands. In support of this principle, he also quoted Vattel's opinion that 'when one side of a treaty was violated the other party was discharged from all obligation; and the Natives had most certainly violated the Treaty of Waitangi.'⁸⁹⁷ The obvious unspoken implication was that the Crown was therefore fully justified in breaching the terms of the Treaty by means of its confiscation policies.

William Swainson believed otherwise. After quoting from Article 2 of the Treaty of Waitangi, he informed members of the Legislative Council that 'the Crown itself, in the face of this treaty, could not, consistently with honour and good faith, seize the land of peaceable Maori subjects without their consent.'⁸⁹⁸ Nor, he contended, did the General Assembly have the power to set aside a treaty entered into by the Crown (or for that matter to set aside the provisions of the Constitution Act).

Daniel Pollen, although indicating that he would vote in favour of the Bill, nevertheless voiced some serious objections to parts of it. Quoting recent government statements, he interpreted those as indicating that all of the lands of those tribes in rebellion were to be confiscated and a large proportion of these made available for purchase. If this was indeed the government's policy, he declared that 'politically it was immoral, and as a financial project utterly delusive and unsound.'⁸⁹⁹ Pollen added that he had been present at Waitangi on 6 February 1840, and had heard the solemn promises and undertakings of Her Majesty's representatives to the assembled tribes:

The ink was scarcely dry on the treaty before the suspicions, which had been temporarily allayed by the promises of the Governor, were awakened with redoubled force; and he need scarcely remind the Council that from that time to this every action of ours affecting the Natives had presented itself to their eyes, and had been capable of that interpretation, as showing that our object and business in this colony was to obtain possession of the lands of the

⁸⁹⁷ NZPD, 13 November 1863, 1861-1863, p.869.

⁸⁹⁸ *ibid.*, p.870.

⁸⁹⁹ *ibid.*, p.872.

Natives *recte si possimus; si non, quocunque modo* [honestly if possible; if not, by any means]. Before we talked of the duties of the Natives to us in this colony, we ought to be able to show that some of the duties which the Crown undertook to discharge to the Native people had been so discharged. He asked any one to point out in the statutes of this colony, or on the records of Native administration, any of those measures which might fairly be said to have fulfilled those obligations which devolved upon the Crown at that time.⁹⁰⁰

Any legislation passed with this intention had been merely nominal and without practical results, but now ‘the Assembly were about the legislate in respect of Native lands, to give power to take these lands by force, and to abrogate, as it will appear to them, the Treaty of 1840.’⁹⁰¹

Turning to the financial implications of the scheme, Pollen pointed out they had been invited to spend £3,000,000 on the basis that this would be recouped through the sale of confiscated lands at £2 per acre. But before land could be sold the government first had to be able to give a quiet and secure title:

...successful settlement meant peaceful settlement. Not many furrows would be turned in Waikato if the ploughman must take his life in his hand into the field, and work with his rifle and cross-belts slung upon his shoulders. If any attempt at such wholesale confiscation as appeared to be contemplated were made, the effect would be to increase exasperation already existing in the Native mind, and it would need for its success the extermination of the race. The soundness of the financial policy of confiscation might be tested by a very simple calculation, the elements of which were at hand. We could determine, approximately at least, the cost of the work of extermination: we might be said to have been at war for three years; we had spent – including the Imperial charges – perhaps £5,000,000 during that period; we had killed a hundred and fifty or two hundred Natives. How much, at that rate, would it cost to kill ten thousand?⁹⁰²

⁹⁰⁰ *ibid.*

⁹⁰¹ *ibid.*

⁹⁰² *ibid.*

In the event only Sewell and Swainson voted against the Bill, and following a third reading it was eventually signed into law by Grey on 3 December 1863.

The preamble to the New Zealand Settlements Act constituted a further extended justification for the confiscation policy, condemning ‘insurrections amongst the evil-disposed persons of the Native race’ which had caused ‘great injury alarm and intimidation of Her Majesty’s peaceable subjects of both races’ and involved ‘great losses of life and expenditure of money in their suppression’. Supposed ‘outrages upon lives and property...of an almost daily occurrence’ were also noted, along with ‘combinations’ formed with ‘the object of attempting the extermination or expulsion of the European settlers’ and ‘open rebellion against Her Majesty’s authority’. The Act was therefore intended to make ‘adequate provision...for the permanent protection and security of the well-disposed Inhabitants of both races for the prevention of future insurrection or rebellion and for the establishment and maintenance of Her Majesty’s authority and of Law and Order throughout the Colony’ through the ‘introduction of a sufficient number of settlers able to protect themselves and to preserve the peace of the Country’.

For these purposes, section 2 of the Act enabled the governor-in-council to declare districts subject to the legislation where satisfied that ‘any Native Tribe or Section of a Tribe or any considerable number thereof has since the first day of January 1863 been engaged in rebellion against Her Majesty’s authority’.⁹⁰³ Within those districts eligible sites could then be set apart for settlement (section 3), from which the governor-in-council could from time to time reserve or take any lands for the purposes of the Act (section 4). There was thus to be three-step process before any land was taken, involving the proclamation of a district subject to the provisions of the Act, followed by the setting apart of eligible sites for settlements for colonisation and finally the actual taking of lands for such settlements.⁹⁰⁴

⁹⁰³ Presumably the date of 1 January 1863 had been selected in order to avoid any appearance that land was to be confiscated as a result of Maori resistance to the by this time widely discredited Waitara purchase. However, given that the second Taranaki War was in many respects a straightforward resumption of the former war, that was less than convincing.

⁹⁰⁴ As will be noted in later chapters, however, in practice the government often failed to follow this process in discrete steps, preferring to issue proclamations which purported to simultaneously

‘Rebellion’ was not clearly defined anywhere in the Act, but section 5 did specify that those who had participated in rebellion, or aided or assisted those who had, were ineligible to receive compensation for any interests taken from them. It stated that:

V. Compensation shall be granted to all persons who shall have any title interest or claim to any Land taken under this Act provided always that no compensation shall be granted to any of the persons following that is to say to any person –

(1.) Who shall since the 1st January 1863 have been engaged in levying or making war or carrying arms against Her Majesty the Queen or Her Majesty’s Forces in New Zealand or –

(2.) Who shall have adhered to aided assisted or comforted any such persons as aforesaid or –

(3.) Who shall have counselled advised induced enticed persuaded or conspired with any other person to make or levy war against Her Majesty or to carry arms against Her Majesty’s Forces in New Zealand or to join with or assist any such persons as are before mentioned in Sub-Sections (1) and (2) or –

(4.) Who in furtherance or in execution of the designs of any such persons as aforesaid shall have been either as principal or accessory concerned in any outrage against person or property or –

(5.) Who on being required by the Governor by proclamation to that effect in the *Government Gazette* to deliver up the arms in their possession shall refuse or neglect to comply with such demand after a certain day to be specified in such proclamation.⁹⁰⁵

implement more than one stage at a time. See Michael R. Litchfield, ‘Confiscation of Maori Land’, *Victoria University of Wellington Law Review*, no.15, 1985, p.353.

⁹⁰⁵ *New Zealand Statutes*, no.8, 1863.

One did not need to be a ‘rebel’ in order to be ineligible to receive compensation, therefore, since merely aiding, assisting or comforting such persons was sufficient to be ruled out. As will be seen in a later chapter, merely preaching to members of the Kingitanga might be deemed an act of comfort, and the clause also made no mention of intent. Inadvertent acts of assistance, such as selling provisions to persons later found to be ‘rebels’, could also fall under this category.

Section 6 was one of those included after consultation with FitzGerald and allowed the governor to issue a proclamation specifying a date by which those who had engaged in rebellion should submit to the law by or render themselves ineligible for compensation. It was entirely discretionary, however, as a result of which there was no requirement for any such proclamations to be issued.

The following section declared that compensation was to be ‘granted according to the nature of the title interest or claim of the person requiring compensation and according to the value thereof’ and set out time limits for filing compensation claims of six months for those living within the colony and 18 months for those outside of it from the date of a proclamation under Section 4. It is unclear what the intent of the first part of this clause was, though it could be read as placing a greater value on confiscated lands previously held under grant from the Crown, for example, compared with those under customary title. There was no further stipulation as to the basis upon which compensation should be calculated, such as a requirement for it to be determined in accordance with full market value, for example.

Sections 8 to 15 of the Act provided for the establishment of a Compensation Court consisting of Judges appointed by Governor-in-Council and set out their power to compel the attendance of witnesses. Under Section 13 provision was also made for compensation claims to be determined by a pair of ‘indifferent Arbitrators’ appointed by the claimant and Crown respectively, provided the former was appointed in writing at the time of making the claim. Although the extent to which this clause was implemented is not clear, it may have been included to cover those few cases where European land interests were caught up in the confiscations. Section 14 stated that ‘The Judge shall grant to every Claimant who shall be entitled to compensation a Certificate specifying the amount thereof and describing the land in respect of which

the same is granted and the nature of the Claimant's title interest or claim therein.' It was followed by Section 15, which stated that such certificates 'shall entitle the person in whose favor the same was granted to receive from the Colonial Treasurer the amount named in such Certificate as payable to him.' Read together, these two clauses seemed to imply that compensation was therefore to be payable in money, though there was nothing that explicitly ruled out compensation in land (or scrip), an ambiguity that would eventually require later legislative amendment to specify the different ways in which compensation could be granted.

Section 16 of the Act required the governor to have laid out a sufficient number of towns and farms to meet any undertakings with persons for the granting of land in return for military service in accordance with any contracts entered. Once such lands had been set apart, it was lawful for the Governor-in-Council to cause towns to be surveyed and laid out, as well as suburban and rural allotments (Section 17). All such lands were then to be 'let sold occupied and disposed of for such prices in such manner and for such purposes upon such terms and subject to such Regulations as the Governor in Council shall from time to time prescribe for that purpose' (Section 18) and all money received directed towards the repayment of 'the expenses of suppressing the present insurrection and the formation and colonization of the Settlements including the payment of any Compensation which shall be payable' under the Act (Section 19). The final section allowed the provisions relating to the formation of settlements for colonisation to also be applied to lands obtained by purchase with the consent of provincial authorities. This was consistent with the Loan Appropriation Act, which had allocated money for settlement purposes to all of the North Island provinces, regardless of whether they were deemed subject to 'rebellion'.

4.10 Local Responses to the New Zealand Settlements Act

Reviewing local responses to the New Zealand Settlements Act, the historian B.J. Dalton somewhat trenchantly declared that:

The pens which had filled volumes in protest against the iniquity of using force to effect the purchase of 600 acres at Waitara, published not a line against the proposal to conquer and confiscate over 4,000,000 acres in the Waikato.⁹⁰⁶

But although it is true that reaction to the New Zealand Settlements Act was more muted than was the case with respect to the Waitara purchase, it would be wrong to suggest that confiscation was without its local critics. Outside the General Assembly, former Chief Justice and prominent humanitarian Sir William Martin was one of the few to publicly voice opposition to the Settlements Act. On 16 November 1863, several weeks before the Settlements Act was passed into law, he forwarded the Native Minister a long, deeply-thought and sustained critique of the proposals, under the heading ‘Observations on the Proposal to take Native Lands under an Act of the Assembly’. Martin reviewed the entire history of British colonisation of North America and the way in which the land rights of its indigenous inhabitants had mostly been recognised and a distinction drawn between external dominion as against foreign nations (assumed to apply immediately upon annexation) and internal dominion, which was left to be acquired gradually from the tribes. That approach had been disregarded in the colonisation of Australia, Martin noted, prompting the Colonial Office to reconsider the whole subject of relations with indigenous peoples. And so, in the case of New Zealand, ‘the attempt was made to acquire at once both the internal and the external dominion by one treaty made once for all.’⁹⁰⁷

Yet the nominal assumption of internal dominion over the tribes differed from the practical reality in New Zealand after 1840 and Martin notes that it was plain that many years would necessarily elapse before colonisation and the rule of law extended over the entire country. That was to be achieved not by mere signatures to a treaty, Martin wrote, but through ‘practical assent’ to the application of English law, based on a growing acceptance of the benefits bestowed by such a system.⁹⁰⁸ He did not deny that Maori were subjects of the Queen, but pointed out that even within Great Britain there were separate legal systems in England and Scotland, in addition to

⁹⁰⁶ Dalton, *War and Politics in New Zealand*, p.182.

⁹⁰⁷ Observations on the Proposal to Take Native Lands Under An Act of the Assembly, encl. in

Martin to Fox, 16 November 1863, AJHR, 1864, E-2, p.5.

⁹⁰⁸ *ibid.*, p.6.

countless local customs in relation to land tenure and other matters which remained respected and enforced. In India, meanwhile, diverse peoples remained under many different systems of law, living under the one sovereign. Beyond ensuring that bloodshed was to be to some extent suppressed, the original theory was largely that the different peoples should be left to their own usage, and questions arose as to the extent to which the Crown could proceed beyond this. In particular, Martin argued, was the question of how far were lands 'holden by persons of the native race of these islands, according to native tenure, subject to the English rule of forfeiture to the Crown'.⁹⁰⁹

Rights of ownership to land held under customary tenure were not enforceable in courts of law, and Maori were largely denied voting rights on the basis of their land tenure, he pointed out, while it was also a moot point as to the extent to which the New Zealand Parliament was competent to deal with such lands. Moreover, in Martin's conception the relation between the sovereign and her subjects should be a mutual one. That is, if the sovereign power has rights then it also had duties, and if less than strict in its performance of these then the Crown should deal less rigidly with its subjects.⁹¹⁰ According to Martin, 'whilst the Queen's sovereignty was not manifested through the greater part of the island in the beneficial exercise of its proper function of protecting life and property, it was constantly presenting itself in all parts in the exercise of one accidental function naturally tending to produce jealousies and disputes amongst the natives and dissatisfaction with the Government.'⁹¹¹ The Crown's role as monopoly land buyer had produced much harm, especially in the Taranaki Province. The events there had vindicated proponents of the King movement at Waikato in their belief that some effort was required to save themselves.

The Waikato War, he believed, had not been 'desired or brought about by the Maori race, but by a small and turbulent minority chiefly belonging to one tribe.'⁹¹² Lest anyone be left in any doubt on this point, Martin was more explicit: 'our local adversary is Rewi, and his section of the Maniapoto, together with so many as by a variety of reasons are induced to join him; our general adversary is the distrust, so

⁹⁰⁹ *ibid.*, p.7.

⁹¹⁰ *ibid.*, p.8.

⁹¹¹ *ibid.*

⁹¹² *ibid.*, p.13.

widely spread in the mind of the native population.’⁹¹³ Continuing on this theme, the former Chief Justice declared that:

...it is just and right to discriminate between the various sections of the Waikato population, who are at this moment in arms, and to inquire whether the rebellious or treasonable character is to be imputed to all alike. This is to be done, as a matter of course, in dealing with any subjects of the Crown; but it becomes in this case especially necessary, from the habit so common amongst us of confounding the various sections of the population which occupies the region of the Waikato and Waipa, under one common name of Waikato. The real source of our troubles is in the tribe of Maniapoto, especially in that section of the tribe of which Rewi is the chief, whose proper district lies near the head of the Waipa, about abreast of Kawhia; amongst the natives themselves that tribe is sometimes included in Waikato, by reason of a common descent from the same ancestors; sometimes distinguished from Waikato, as not being locally settled on that river. The turbulent and violent members of this tribe appear to have controlled the puppet-king, and overborne all the remonstrances and efforts of Thompson. The latter, though he certainly does not trust us, and is now forced to support the king that he set up, has always endeavoured to keep the peace, and to borrow our laws and usages, yet so as to keep aloof from the Government. Probably the king party counts amongst its adherents the very worst and the very best of the whole native population; both conceited and wilful men, who have courted a conflict with the English power, and men who heartily desire and seek after union and peace. The sense of nationality and the common distrust combine them against us now.⁹¹⁴

That sense of distrust could be overcome only by demonstrating moderation in victory. Although it had been argued that Maori should be made to somehow bear the cost of the war, New Zealand had been annexed at least in part with the avowed object of benefiting and advancing the Maori people. Policies perceived to be self-

⁹¹³ *ibid.*

⁹¹⁴ *ibid.*, p.14.

seeking were hardly consistent with the honour of the Crown, and as Martin memorably added:

The example of Ireland may satisfy us how little is to be effected towards the quieting of a country by the confiscation of private land; how the claim of the dispossessed owner is remembered from generation to generation, and how the brooding sense of wrong breaks out from time to time in fresh disturbance and crime.⁹¹⁵

He did not query the wisdom of checking the ‘folly or Waikato’, but did not appear to support confiscation even in the case of those most implicated in ‘rebellion’, other than in the case of a few specific military positions.⁹¹⁶

Henry Sewell was one of the few local politicians to vote against the Settlements Act. In his private journals, he was even more scathing, considering the ‘apology for the hostile movement into the Waikato’ as being ‘very feeble’,⁹¹⁷ and the war and confiscation as being directed largely for the benefit of Auckland businessfolk. Writing just days after the Settlements Bill and Suppression of Rebellion Bill had first been introduced into Parliament, he recorded in his journal:

I am horrified by two Bills brought in by Government worse than anything I could have imagined. One for authorizing the Governor to take Native Lands anywhere for purposes of settlement, a distinct violation of our treaty with the natives and of every principle which has hitherto governed our relations with them. And this not merely as affecting those in arms against us, but throughout the Colony including friendly as well as unfriendly. It is an atrocious proposal, which will if acted on probably involve a general rising of the natives throughout the Colony, and compel Great Britain to send a dozen more Regiments. The other measure is equally insane. It suspends all law throughout the Colony and authorizes the Governor to try by Court Martial any person suspected of favouring the Rebellion (as it is called) and to punish

⁹¹⁵ *ibid.*, p.14.

⁹¹⁶ *ibid.*, p.13, 15.

⁹¹⁷ Sewell, Journal, 25 October 1863, p.207, qMS-1787, ATL.

the suspected person by death, penal servitude or otherwise. The Habeas Corpus Act is to be suspended and there is to be no appeal from the decision of Military Courts. It is the production of madmen, but the two Bills will be carried and the Governor will assent to them and there may be atrocities committed under them worthy of Judge Jefferys [sic] and the Bloody Assize.⁹¹⁸ And there will be a faint echo of them heard in England, but nobody will trouble themselves about them; and these unhappy natives will be exterminated such at least is the power – and there is real danger of its abuse.⁹¹⁹

Sewell was so outraged by the proposed legislation that he resigned from his office as Registrar General in order to allow him to more freely oppose the measures. After giving a speech in the Legislative Council denouncing the Suppression of Rebellion Bill, he noted in his journal that:

It ought to be called a Bill for spreading the Rebellion to all parts of the Colony...It establishes in short a machine for tyranny and oppression borrowed from the worst days of Irish History, from which the precedent is drawn. And this is to be used against a people to whom the Crown solemnly engaged that they should enjoy the privileges of British subjects – a people who are unrepresented in the Legislature and who understand nothing of our language or laws. The thing is a horrible invention of Whitaker, the Attorney General...No doubt, as they say, they mean to use these powers *mildly*. Tyrants always do, until something rouses them, panic, or some other passion and then of course such a seed produces its natural fruit. I am filled with horror, I cannot express my sense of indignation at the wrong done to this unhappy people whose doom may now be said to be sealed, for of course they will resist and resistance will be treated as rebellion, and bring with it confiscation of their lands, and final extermination.⁹²⁰

⁹¹⁸ A series of trials conducted under Lord Chief Justice George Jeffreys in the aftermath of the Monmouth Rebellion of 1685. More than 300 'rebels' (including women) were executed by either being burnt to death, hanged, or hanged, drawn and quartered. 'Hanging Judge Jeffreys', as he became known, was imprisoned following the Glorious Revolution and died in the Tower of London in 1689.

⁹¹⁹ Sewell, Journal, 8 November 1863, pp.214-215, qMS-1787, ATL.

⁹²⁰ Sewell, Journal, 15 November 1863, pp.216-217, qMS-1787, ATL.

He took it for granted that the British government would fail to put a stop to proceedings and added that ‘Sir George Grey sits quietly at home, contented, if he can shift responsibility from his own shoulders.’⁹²¹

Whitaker, though, was regarded by Sewell as bearing primary responsibility for the policies introduced. According to Sewell:

The Policy is Whitaker’s policy and in substance it amounts to this – to seize all the native lands south of Auckland from Tauranga on the East Coast to Raglan on the West including the Thames and all the Lower Waikato about 6 or 7 million of acres. Under pretence of equity it is said that European as well as Native land is to be subjected to the same rule! but as the object is to plant European settlements upon Native Lands of course the inclusion of European Lands in the scheme is a flimsy pretext only intended to palliate the flagrant monstrosity of the proceeding. Friend and Foe are to be treated alike – Pas, Cultivations, Burying Grounds, all are to be swept into one great scheme of confiscation, out of which the projectors mean to reconstruct a new colonization...⁹²²

In fact, Sewell wrote in private what it appears was not publicly alleged, suspecting that the very intention of the Suppression of Rebellion Act was to maximise the potential area liable to confiscation under the Settlements Act. He declared that:

No doubt the Auckland Lawyers who have invented this scheme for driving the Natives to desperation have counted, not without good ground on being able by means of it to exasperate them throughout the whole Colony and then applying to them the confiscation law the whole country will be swept clear. First to drive the Natives to desperation, then to confiscate their Lands, is the obvious chain in this Auckland Policy.⁹²³

Sewell added that:

⁹²¹ *ibid.*, p.218.

⁹²² Sewell, *Journal*, 17 November 1863, p.219.

⁹²³ *ibid.*, p.221.

The gigantic wickedness of this plot against Native Rights is attempted to be supported by an equally gigantic lie. The preambles of these Bills alledge [sic] in fact, that the Natives, the whole body of the Waikato Natives, and generally the Natives as a whole have been engaged in a conspiracy to exterminate the white settlers. It is a shameful falsehood contradicted by every paper which has been set before us.⁹²⁴

He was inclined to believe that there had been some kind of plot on the part of Rewi Maniapoto and Ngati Maniapoto to attack the settlers, even though the evidence for this was 'very faint', but considered it 'as clear as the sun at noon-day' that such a scheme had been rejected by the great bulk of the Kingitanga party in Waikato, including leaders such as Matutaera and Wiremu Tamihana who had actively interfered to prevent it. Grey, on the other hand, had 'turned his back on' overtures made to him for peace on the part of the Kingitanga movement and had 'deliberately conceived in his mind a plan for attacking the Waikatos the moment an occasion presented itself.'⁹²⁵ The war, he added, 'was begun by Sir George Grey and...the armed resistance by the Natives to Sir George Grey's attack is *war* fair, open war, and has nothing of the character of a criminal plot to exterminate the settlers, which the Bills which we have just passed, most basely and most falsely alledge [sic].'⁹²⁶

Sewell's intention to openly campaign against the confiscation policies resulted in a lengthy open letter to his former patron in England, Lord Lyttelton, who had been chair of the Canterbury Association.⁹²⁷ Dated December 1863, the letter was published in London and New Zealand in pamphlet form the following year under the title *The New Zealand Native Rebellion*. It constituted a further extended critique, not merely of the confiscation policy and associated legislation, but of the wider treatment of the Kingitanga movement since its first emergence in the 1850s, a movement interpreted by Sewell as 'a rude attempt on the part of certain native tribes at self-organization and self-government.'⁹²⁸ Rather than attempt to turn the Kingitanga to

⁹²⁴ *ibid.*, p.222.

⁹²⁵ *ibid.*, p.223.

⁹²⁶ *ibid.*, p.224.

⁹²⁷ Parsonson, 'Tainui Claims', p.152, fn.283.

⁹²⁸ Sewell, *New Zealand Native Rebellion*, p.4.

good purpose, the government had instead opted to see it as a threat to the Crown, invading the Waikato district on specious grounds and choosing to brand its inhabitants as ‘rebels’ when they not surprisingly offered resistance. Sweeping and indiscriminate confiscation plans justified on the basis of such ‘rebellion’ would, Sewell once again warned, have the effect of throwing the entire country into a state of war. The Settlements Act, he stated, ‘virtually sets aside all Native rights to land as subordinate to the paramount object of colonization, and to be dealt with at the will of the Colonial Legislature.’⁹²⁹

4.11 The British Response

Although Sewell’s publication met with a predictably hostile response from many quarters in New Zealand,⁹³⁰ in reality the main target was British public and Colonial Office opinion. Following the passage of the Settlements Act through the General Assembly, Grey reserved both this and the Suppression of Rebellion Act for Royal assent, and attention turned to winning the war of words in London.⁹³¹ Here the situation was more or less reversed: there were few prepared to openly condone a policy of confiscation but many quick to condemn it, and not just the usual suspects such as the Aborigines Protection Society. Their opposition could be brushed off as the usual humanitarian line, but the views of the Colonial Office could not be lightly dismissed in the same manner.⁹³²

In forwarding the Settlements Act to Grey, Whitaker claimed that the complete defeat of ‘rebels’ would have little effect on its own in permanently securing the peace of the colony. He stated that:

⁹²⁹ *ibid.*, p.47.

⁹³⁰ See, for example, *Daily Southern Cross*, 5 March 1864.

⁹³¹ Grey to Newcastle, 6 January 1864, AJHR, 1864, D-6, p.1. There was some ambiguity as to the status of the Settlements Act but the Colonial Office later ruled that it was already in effect by virtue of Grey’s assent on 3 December 1863. However, under the New Zealand Constitution Act 1852 whenever the governor assented to any Bill on behalf of the Crown a copy of the legislation was to be sent to the Secretary of State for the Colonies, and it would be ‘lawful at any Time within Two Years after such Bill shall have been received...for Her Majesty, by Order in Council, to declare her Disallowance of such Bill’. See Parsonson, ‘New Zealand Settlements Act’, pp.27-28, fn.46.

⁹³² Alan Ward, *National Overview*, 3 vols, Wellington: GP Publications, 1997, vol.2, p.177.

For the most part, the natives of New Zealand possess but little personal property, and therefore suffer but little from losing temporary possession of their settlements. What they have most dreaded in their own wars has been slavery and the permanent loss of their landed possessions. There is no doubt that the native lands afford the most effectual means of securing the object the Government has in view. They may be made, by affording a striking example, the means of deterring other tribes for the future from engaging in rebellion, and at the same time of securing the rebellious districts against future outbreaks.⁹³³

The object of the Settlements Act was to give effect to these views. Just weeks earlier, though, ministers had been at pains to emphasise that the rights of ‘loyalists’ would be scrupulously respected, and had even declared that there were no firm plans to include ‘loyalist’ lands within confiscated areas. Whitaker’s memorandum sang a different tune. It was unavoidable, he suggested, that such lands would be caught up in the confiscations:

It will be observed that the provisions of the Act may be made to include lands belonging to persons who have not justly forfeited their rights by rebellion. In order to carry out the scheme, this is absolutely necessary. The principal difficulty which would arise from the want of such a power would be in those cases in which portions of a tribe have joined in the rebellion, leaving a few behind them, in some instances with the avowed object of preserving the tribal land from forfeiture. The New Zealand native tenure of land is for the most part, in fact with little or perhaps no exception, tribal; and if the principle were admitted that the loyalty or neutrality of a few individuals would preserve the lands of the tribe, the Act would for the most part be a dead letter, and that in district in which it is most required, and in which its operation would be perfectly just.⁹³⁴

Before the ink was barely dry on the statute books, the application of the Settlements Act was thus already being extended to encompass the lands of ‘loyalists’.

⁹³³ Whitaker to Grey, 4 January 1864, AJHR, 1864, A-1, pp.3-4.

⁹³⁴ *ibid.*, p.4.

Even Grey took issue with some of Whitaker's statements in forwarding the memorandum and legislation to the Colonial Office. There were two methods of dealing with subjects after a rebellion, he wrote, either to treat them with great generosity, or with severity. In the aftermath of former wars with the Maori, the defeated tribes had been treated leniently, and in Grey's view the vindication of this approach was to be seen in the fact that these tribes had refrained from joining the present 'rebellion', and in many cases had even offered their services to the government. Circumstances had changed, however, and Grey informed the Secretary of State for the Colonies that:

I do not think the same policy would now succeed to the same extent. The natives have acquired too many arms and too much ammunition. The war has become more a war of races; we have used no native allies in this war; it has lasted longer than any previous war, and more tribes have been drawn into it, and it originated, at least in the estimation of a large number of the natives, in an attempt on our part to establish a new principle in procuring native lands, and in an overlooking of their interests in other respects. Hence a wide-spread distrust and dislike of the Government has sprung up. The early successes of the natives at Taranaki have also emboldened their young men. All these causes make me think that it is necessary to now take lands from the natives who have been in arms, and to locate an European population upon them. But acting upon the principle of the great wisdom of showing a large generosity towards defeated rebel subjects, I would not carry the system too far.⁹³⁵

What was or was not 'too far' would become a matter of considerable debate and conflict between Grey and his ministers over subsequent months.

But in Britain, the very principle of confiscation was widely questioned. There were the usual suspects, of course, and the Aborigines Protection Society was quick off the mark, forwarding an address to Grey in January 1864, before the Settlements Act had even reached Britain. Signed by a number of influential Exeter Hall figures and their

⁹³⁵ Grey to Newcastle, 6 January 1864, AJHR, 1864, D-6, p.1.

supporters, it appealed to Grey to take the first favourable opportunity which presented itself to terminate the war by negotiation, but added that:

We have, however, been alarmed by the pertinacity with which, in some quarters, it has been proposed to confiscate the Lands of all contumacious and rebellious Natives. As has been truly observed, such a policy as this would shut the door to any possible settlement of the difficulty except by the sword; in other words, it would lead to the extermination of a people who value their property in the soil even more than their existence, and who, despite their faults, are worthy of a better fate. We can conceive of no surer means of adding fuel to the flame of War; of extending the area of disaffection; and of making the Natives fight with the madness of despair, than a policy of confiscation. It could not fail to produce in New Zealand the same bitter fruits of which it has yielded so plentiful a harvest in other countries, where the strife of races has been perpetuated through successive generations; and that, too with a relentlessness and a cruelty which have made mankind blush for their species.

We therefore pray that in the hour of victory your Excellency will temper justice with mercy, and give to the world another bright example of forbearance and magnanimity. By such means, and such means only, may we hope to see the Maori Race saved from extinction, and the dominion of our beloved Queen firmly established over every portion of the Islands of New Zealand.⁹³⁶

Grey, in response, claimed to be more than willing to avail himself of any opportunity for peace (conveniently overlooking the many opportunities that had hitherto been squandered or simply ignored) and, in reference to confiscation, wrote that:

The object of the local Government...has been to secure to that numerous part of the Native population who have taken no active share in the present war, the whole of their landed possessions, and also, by laws passed expressly for

⁹³⁶ Encl. in Secretary of Aborigines Protection Society to Grey, 26 January 1864, AJHR, 1864, E-2, p.16.

this object, to give to the lands held by such Natives a value greater than they have previously had for their owners, by in all respects giving them equal rights in their landed possessions with those enjoyed by their European fellow subjects, the intention in this respect being to show that the rights of peaceable citizens, of whatever race, are carefully respected, and to give the Natives so valuable a stake in the country that they are not likely hereafter to hazard it lightly.

On the other hand, it was thought necessary by an example to show that those who rose in arms against their fellow subjects of another race, suffered such a punishment for doing so as might deter others from embarking in a similar career. It is therefore proposed to deprive such persons of a considerable portion of their landed properties, and to provide for the future safety of the Colony, by occupying such lands with an European population.

But even in the case of these persons, it is intended that sufficient lands shall be reserved for themselves and their descendants, to be held on the same tenure, as lands are henceforth to be secured to the rest of the Native population.⁹³⁷

Grey thus appeared to be drawing a more or less direct connection between confiscation and the process whereby native title was to be extinguished and replaced by titles held from the Crown by means of the Native Lands Act 1862. Two different mechanisms directed respectively at ‘rebels’ and ‘loyalists’ would thus be geared towards a common goal of ensuring that those lands which remained in Maori ownership were held under grant from the Crown.

While the governor promised that these policies would be carried out ‘in a spirit of liberal generosity, and of mercy’, ministers were rather more forthright in their response to the plea of the Aborigines Protection Society. Fox rejected outright the suggestion that there had been the slightest overture for peace on the part of the Kingitanga leaders. He added that:

⁹³⁷ Grey to Aborigines Protection Society, 7 April 1864, AJHR, 1864, E-2, p.17.

It would be of little benefit to patch up peace in Waikato if rebellion were by that means to be encouraged in Cook's Straits or at Ahuriri. Waikato has been and is the head of the rebellion, and the neck of it must be broken there. If a final, permanent, and complete subjugation of Waikato is effected, this will, in all human probability, be the last instance which will occur of any combined resistance to British authority and British law. If in our anxiety to spare the erring Maori race, we press and persuade them to come to terms before they are really convinced of our superiority, and before we have taken those material guarantees for the future which it is contemplated to take, we shall to a certainty have at some future day to repeat the lesson which we are now endeavouring to teach. If the present struggle should be terminated without convincing the Natives all throughout New Zealand of the folly of trying their strength against the Europeans, and without a sufficient material guarantee being taken, new outbreaks will undoubtedly occur from time to time which can only end in chronic hostility of the race and in wars of extermination. The only hope of saving a remnant of the Maori race is the termination of the present struggle by their full acknowledgement of their mistake, their full acceptance of its consequences, and submission to the supremacy of law. It will not be done by treaties of peace which might leave the impression that they are an independent people, and at liberty in any future imaginary *casus belli* to take up the sword.⁹³⁸

Fox once again rolled out the supposed Maori precedent for – and indeed expectation of – confiscation. 'In their wars', he wrote, a conquered tribe not only forfeited its lands, but the vanquished survivors were reduced to a tributary position, and large numbers to personal slavery.'⁹³⁹ Governments had always recognised the validity of claims based on conquest, and Fox specifically cited the example of the Waikato claim to Taranaki, which had been acknowledged by Hobson's payment to some of their chiefs for their interests in the district. There was, he claimed, 'nothing in the course proposed abhorrent to the moral sense or previous habits of thought of the

⁹³⁸ Fox, Memorandum by Ministers in Reply to Aborigines Protection Society, 5 May 1864, AJHR, 1864, E-2, p.19.

⁹³⁹ *ibid.*, p.20.

Maori race.’⁹⁴⁰ Fox claimed that the tribes did not consider themselves conquered if their lands were not taken, and that the failure to implement confiscation in the wake of previous conflicts had occasioned much surprise.

Obviously getting desperate for convincing arguments in support of confiscation, Fox next claimed that at the outset of the war Maori had taunted the settlers that they would take their lands and farms from them and drive the Europeans into the sea. While a totally lame excuse, it was an interesting insight into the minds of ministers, especially with the obvious implication that the government was now fully justified in following such a course in reverse, takings the lands and farms and orchards of the Maori, and driving their former residents ‘into the sea’.

The Colonial Secretary claimed, on the other hand, that confiscation had not been motivated primarily by such base motives. He declared that:

The chief object of the Government is...neither punishment nor retaliation, but simply to provide a material guarantee against the recurrence of these uprisings against the authority of law and the legitimate progress of colonisation which are certain to occur if the rebel is allowed to retain his lands after involving the colony in so much peril, disaster, and loss. The natives are fond of war, as almost their only source of excitement. The practice of incessant hostilities with each other for centuries has become a second nature, and though circumstances have to a great extent suspended the operation of their military impulses for some few years, they have neither lost their skill in fighting, nor their taste for it. If they can have the excitement and many advantages of a summer’s campaign when it pleases them, with liberty to retain their lands when it is over without suffering any losses except their wretched dwellings and a season’s crops, while the colony is nearly broken down by the losses and cost of the war, they will not easily be deterred from renewing hostilities.⁹⁴¹

⁹⁴⁰ *ibid.*
⁹⁴¹ *ibid.*

The English had once fought a war with France lasting some 116 years, and all because of what was seen as a stolen throne,⁹⁴² but neither the deep irony of accusing Maori of being warlike, nor the counter-intuitive logic of stealing something in order to bring about lasting peace, seem to have occurred to Fox. He had, ironically, once been dubbed the leader of the ‘peace party’ in Parliament, but was now doing as much as he could to shed such a tag through his belligerent words and actions.

Fox denied that confiscation would leave its victims without an ‘ample quantity of land for their future occupation.’ He claimed that a quantity much larger per head had been set apart for them than the average area occupied by Europeans in the island, and further noted that:

These lands would no longer be held under the pernicious system of tribal right, but as individualized properties under the security to each proprietor of a crown grant. Ministers believe that nothing has been or can be more pernicious to the native race than the possession of large territories under tribal titles which they neither use, know how to use, nor can be induced to use. It has, in the opinion of the Ministers, been the principal cause of the slow progress and in some respects (particularly in their physical condition) of the actual retrogression and decay of the race. And though, while the Maoris acknowledged the supremacy of a protecting Government, and professed submission to law, it was just to respect these semi-feudal proprietary rights which they declined to surrender, yet now that they have abandoned their allegiance, renounced all submission to law, and staked their *all* against our *all*, there seems no longer any reason for respecting privileges which are believed to be equally injurious to their moral, social, and political condition.⁹⁴³

In the 1840s local authorities had been so fearful that Earl Grey’s ‘waste lands instructions’ (which had required Grey to seize all unoccupied or uncultivated Maori lands) would provoke a massive war that the news had initially been withheld from

⁹⁴² The Hundred Years’ War, fought between 1337 and 1453 though with some brief periods of peace in between, involved rival claims to the throne of France.

⁹⁴³ Fox, Memorandum by Ministers in Reply to the Aborigines Protection Society, 5 May 1864, AJHR, 1864, E-2, p.20.

the tribes. In the 1860s, the government did things the other way around, going to war first and then, in effect, announcing its intention to implement a similar kind of tenurial reform which would see huge areas of land pass to the Crown.

It was no longer a question to be resolved by reference to Maori rights, Fox believed, since those had been forfeited in what had become the colony's struggle for its very existence. Any pretence that the Crown, at least to the extent it was represented by the colonial ministry, intended to adhere to its obligations under the Treaty of Waitangi was now essentially abandoned.

Fox's statements were branded 'disingenuous' in a lengthy rejoinder from the Aborigines Protection Society, which was subsequently published in pamphlet form along with other correspondence on the subject. It had to be remembered from the outset, the Society declared, that 'the original settlement of New Zealand was based upon principles exceptional in the modern history of colonization; that our position in those islands is determined by the express provisions of a treaty which the highest legal authorities have declared to be as valid as any treaty entered into between two European states; and that a compact of this nature involves the performance of mutual and equally binding duties.'⁹⁴⁴ It went on to state that:

Having undertaking [sic – undertaken] the colonization of New Zealand on such terms, it is not for us to repudiate the [Waitangi] agreement on the ground of inconvenience or self-interest; and if it can be shewn that by any laches on our part, by any dereliction of our self-imposed duty, discontent has been fomented, and evils of a serious character have sprung into existence, it is not for us to turn round upon the natives, and to hold them accountable for the fruits of our own misconduct. To teach them that we may break a treaty but they must not; and that while one day we may treat them as aliens, the next we may, if it suits our pleasure, brand them as rebels; is a line of policy, which, on the lowest ground of expediency, must be as fatal to the welfare of any state, as it is manifestly dishonourable to civilized men. Yet this is what we have practically done. By the treaty of Waitangi we not only guaranteed to

⁹⁴⁴ Aborigines Protection Society, *The New Zealand Government and the Maori War of 1863-64*, p.1.

the Maories the possession of their lands, but promised to impart to them all the rights of British subjects. Instead of doing this, we have systematically treated them as a foreign people, who were at liberty to govern themselves as they pleased; to declare war and to make peace one with another; and generally to exercise all the rights which appertain to a separate and independent community.⁹⁴⁵

If the Treaty had been observed in both spirit and letter, Maori would have been regarded as a part of the body politic and would have been truly vested with all the rights of British subjects, including the full right to participate in the governance of the colony's affairs. Instead, 'caste prejudices and false notions of expediency' had prevailed. Maori had been excluded from the General Assembly and from enjoyment of the franchise, and the Treaty had instead been relied upon to secure vast areas of land at 'ludicrous' prices, reinforcing impressions that the government's sole purpose was to advance the interests of the settlers at the expense of Maori. According to the Society, 'The Waikatos, who are suddenly discovered to be rebels who may be killed off like vermin (as indeed they have been designated), were never instructed in any of the duties of loyalty before the date of their king movement.'⁹⁴⁶ That movement had fundamentally arisen as a result of government neglect and indifference, and could have been turned to good.

Referring to the more immediate circumstances leading up to the invasion of the Waikato, the Aborigines Protection Society added that:

It is clear from...well-authenticated statements of facts and dates, that the army had not only been put in motion, but the Waikato territory had actually been invaded before the first shot was fired by the Maories, or the first settler murdered by the straggling bands which are always let loose at the outbreak of every war, and for whose lawless acts of vengeance it is unfair to make an entire people responsible. But Mr. Fox is conveniently silent with regard to certain events which preceded even the invasion of Waikato, and probably provoked the outrages upon the outlying settlers of which he complains. We

⁹⁴⁵ *ibid.*, pp.1-2.

⁹⁴⁶ *ibid.*, p.6.

refer to the cruel and unprovoked deportation of the natives who inhabited the Maori villages in the neighbourhood of Auckland...⁹⁴⁷

Fox's statement that the King party had not made 'the slightest overture of peace' was dismissed as 'astounding' in light of the efforts made in the wake of Rangiriri to bring the war to an end.⁹⁴⁸ Furthermore, any consideration as to the appropriate punishment to be meted out to the 'rebels' had to have regard as to the origin of the war, or in other words: 'Who provoked the natives to embark in a struggle which has cost them far more than it has or will cost the colony.'⁹⁴⁹ Instead, the Treaty had been 'regarded as so much waste paper' while:

...confiscation is persisted in, because the colonists want the land, and they would rather that the last Maori should cease to exist, than forego their insatiable cupidity...The truth is, that the war is, on our side, a contest for the acquisition of land, and that the object of the contractors and land speculators of the northern province is to carry it on until the Waikatos are so completely conquered or exterminated, that the work of spoliation may be accomplished without endangering the future peace of the colony.⁹⁵⁰

The failure of the New Zealand government to take its concerns seriously saw the Aborigines Protection Society address a memorial to the Queen at its annual meeting in 1865, calling for 'trustworthy and unbiased' commissioners to be despatched to the colony to investigate the causes of the war and to devise such measures as were necessary 'for uniting the two races, on terms of equality, under one Government.'⁹⁵¹

That request received short shrift from the Colonial Office. But the Aborigines Protection Society was hardly alone in viewing confiscation as driven by self-interested motives, and as reports began to circulate in Britain that many of those fighting this supposed good fight were beginning to have grave doubts about their mission, seeing it instead as merely a tawdry land grab for the benefit of the settlers,

⁹⁴⁷ *ibid.*, p.10.

⁹⁴⁸ *ibid.*, p.16.

⁹⁴⁹ *ibid.*, p.19.

⁹⁵⁰ *ibid.*, p.20.

⁹⁵¹ *The Times*, 16 August 1865, in IA 1/1865/2897, Archives NZ.

the climate of significant opposition to confiscation in British circles intensified. In July 1864, for example, the *Times* published correspondence from an unnamed field officer, who had recently received a letter from an old comrade stationed in New Zealand on the same day that he had heard of his death. In the soldier's letter he had referred to members of the colonial government who:

“For the sake of patronage, the extension and glorification of the Auckland provinces, and their own glorification and advantage in particular, are trying to push on the troops as far as possible.”

“These Aucklanders,” he adds, “are making heaps of money by our being here,” and “they want the troops to get hold of some gold districts in possession of the natives, so as to turn Auckland into a second Melbourne, and so eclipse Otago, its rival, and utterly crush Wellington, the other aspirant to the capitalship of New Zealand. They really hope for an extinction of the Maori race, and, instead of trying to see openings for peace, shut them all up when they appear.”⁹⁵²

The unnamed field officer asserted that if Imperial troops were to be employed in New Zealand it was the duty of the British ‘to see that they are not, under the pretext of self-defence and of protecting the settlers, enabling robbery and injustice to be done.’⁹⁵³ It was no secret, he claimed, that the Maori people had lost confidence in the government of New Zealand, knowing full well that they could never expect to get justice from it and that the colonists were thirsting for their blood as the quickest route to their lands. Under these circumstances, the author of the letter to the editor added, ‘Can it be wondered at that our soldiers look with apathy and disgust on such a war, and, respecting the Maories as a brave enemy, almost hate the idea of overcoming them for the advantage of their sordid opponents?’⁹⁵⁴

A very high proportion of the Imperial troops stationed in New Zealand during the wars were Irish Catholics – perhaps as many as 40% of the total force, according to

⁹⁵² *The Times*, 11 July 1864.

⁹⁵³ *ibid.*

⁹⁵⁴ *ibid.*

one estimate.⁹⁵⁵ They fought, Belich suggests, ‘less for “Queen and Country” than for the regiment and each other’, and while there is no suggestion that the great majority did not fight with vigour, there were obvious parallels with the occupation and confiscation of their own country, which surely did not escape some of the troops.⁹⁵⁶ Rumblings of discontent among some of the Imperial regiments as the war dragged on may have been influenced by a growing sense that the war was an unjust one, needlessly prolonged for the benefit of the colonists. And although rumours of a mass Fenian uprising in support of the King party did not come to fruition, rumours of this kind persisted well after the last of the Imperial regiments had departed the country.

There were plenty of other critics of the war in Britain also ready to draw parallels with the Irish situation. On 26 April 1864 Arthur Mills successfully moved a motion in the House of Commons calling for all correspondence between Sir George Grey and the Colonial Office relating to the policy of confiscation adopted in New Zealand to be tabled. Mills charged that the local legislature had sent home Bills of such a character that they would surely have the tendency to ‘prolong the war indefinitely’, and the time had come when the Imperial government needed to intervene.⁹⁵⁷ The policy of confiscation was, in his view, both immoral and unprofitable, and the British people ‘ought not to be deceived by rose-tinted despatches, telling us constantly that the war was coming to an end.’ There were some 12,000 Imperial troops stationed in New Zealand, in addition to a naval brigade and three or four ships in the harbours but he contended that ‘if the colonists wanted a policy of extermination to be indefinitely carried on against the Natives, that ought not to be done at the expense of the British taxpayer.’

Many other members of the Commons also condemned the policy of confiscation. Buxton described the situation as he saw it:

On the one hand, there were the settlers, hungering and thirsting for land, and on the other side there were millions of acres of land owned by those of whom

⁹⁵⁵ James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century*, Auckland: Penguin, 1996, p.243.

⁹⁵⁶ *ibid.*

⁹⁵⁷ <http://handsard.millbankssystems.com/commons/1864/apr/26/papers-moved-for> (accessed 14 December 2009).

it had unhappily become usual to speak of as “damned niggers;” and a third party appeared on the scene in the shape of the mother country, who probably could be cajoled and blinded into laying out a few millions of money, and risking the lives of a few thousands of soldiers, in order to effect – let them not call it a robbery, but a transfer of property.⁹⁵⁸

Hunger after land had, he declared, become inflamed beyond all self-control ‘by the furious hatred of the Natives’ engendered by the recent war. Britain had never put forward any claim to New Zealand based on conquest, but rather was reliant upon the terms of the Treaty of Waitangi, but in Buxton’s view that agreement and the circumstances in which it was signed required careful consideration when weighing up allegations that Maori were guilty of treasonous acts. He stated that:

...in the first place, it appears that they had not the least idea that, in agreeing to place New Zealand under the sceptre of the Queen, they were sacrificing or endangering their own national rights or [sic – of?] independence. Then, too, the ridiculous way in which they were got to acquiesce in our proposals showed how absurd it would be to affect to regard the breach of the agreement on their side as being a flagrant crime, an act of treason, an act which could only be punished worthily by the confiscation of their land, and the consequent extermination of their race. Moreover, the treaty was entered into twenty-five years ago, between the first Governor of New Zealand and the chiefs of a certain tribe. It was then hawked about the country, and any chief who could be got to sign it was rewarded by the British Government with a blanket. The only treaty which that resembled was that made between a recruiting sergeant and a drunken recruit. Just as the sergeant gave him a shilling and made him a soldier, so we gave these poor chiefs a blanket each, and then we turned round upon the whole Native race, and said that they were bound, then, to submit with absolute obedience to our rule, and that if they resisted it, then they might be punished for that terrible breach of faith, for that crime of treason, by being driven from the lands which they and their fathers had kept for ages...But the tribes which occupied the greater part of the rich

⁹⁵⁸ <http://handsard.millbanksystems.com/commons/1864/apr/26/papers-moved-for> (accessed 14 December 2009).

plains of Waikato, which it was proposed to confiscate, had never got them. They never signed the treaty. It was true that six old men in Waikato did take their blankets, and did sign the agreement. But the two principal chiefs of Waikato refused to sign, and the son of one of them, William Thompson, who took a very leading part in this war, put forward what Mr. Gorst justly calls this unanswerable argument – namely, that neither his father nor any of his people ever agreed to this cession to the Queen.

In any case, Buxton asserted that British obligations under the Treaty of Waitangi ‘had been left utterly unfulfilled.’ Neither the rights and privileges of British subjects nor the enjoyment of peace and good order had been bestowed on Maori. The Treaty was, in his view, ‘in its nature so invalid as scarcely to confer even a shadow of sovereignty upon us’ but even if valid had been ‘so utterly neglected’ on the part of the Crown ‘that it would be outrageous for us to inflict tremendous penalties upon them if they at length refused to perform their part.’

Edward Cardwell, the Secretary of State for the Colonies, defended the previous actions of Browne and Grey in their dealings with the King movement but declared that he was not prepared to defend the New Zealand Settlements Act and associated legislation:

Neither am I going to say that those Acts ought to be left to pass into operation unrestrained, nor will I say that the language of those Acts is not open to the objections which have been taken to it. I am not going to contend that the language is such as to make the necessary distinction between the innocent and the guilty, or between the more guilty and the less guilty. On the contrary, the language of the particular Act most objected to is wide and sweeping, and would enable the Governor in Council to extend his confiscating powers over all the lands of the Natives. I believe, indeed, that it would extend not only to all loyal and disloyal Natives, but there are cases in which it would extend to Europeans themselves. If that be the case, the question is, what course ought the Government to pursue on receiving these Acts?

There were, in Cardwell's view, objections to disallowing the measure so soon after ceding responsibility for governing Maori to the colonial ministry. Moreover, the law had not been reserved for the signification of the Queen's pleasure upon it, and was therefore already in actual operation. Several thousand settlers were already likely to be serving in New Zealand on the strength of promises under the Act and it was impossible to foresee the consequences of any disallowance. While the British government did not deem it wise or politic under the circumstances to disallow the Settlements Act it remained determined to 'restrain and prescribe the operation of this statute within the limits dictated by justice and equity.' He proceeded to outline the instructions sent to Grey that very day, imposing a number of restrictions around the operation of the Settlements Act (to be discussed below).

Those restrictions did not satisfy Lord Robert Cecil, who wished that the 'atrocious Bill' was simply disallowed. One of the great evils of confiscating 'all the land of the Natives, the innocent as well as the guilty, was that the difficulty of pacification was increased a hundredfold by reinforcing the enemy with tribes which were then, perhaps, doubtful or wavering in their allegiance.' The Colonial Office Under Secretary Chichester Fortescue claimed, however, that the complicated nature of land tenure in New Zealand was the reason the right to take the lands of those not implicated in rebellion had been included in the Act. Such owners would receive fair compensation for their interests by the verdict of a court personally appointed by the governor for these purposes.

In an editorial in the *Times* published a few days after the debate, the newspaper declared that members of Parliament had 'failed to bring out quite clearly the one thing which it is all-important that the tax-paying public and tax-imposing Legislature of the country should know':

That one thing is that for some time past, at the present time, and for we know not how long a time to come, the lives of 10,000 English soldiers and more than 1,000,000*l.* of money raised by taxes in the United Kingdom annually have been and will be under the control of the Legislature of New Zealand, which contributes not one penny to our taxes, which gives not one soldier to our army, which makes and unmakes its own Ministers, passes and repeals its

own laws, and pursues its own policy, without the least reference to our wishes, our convenience, or our interests...Taxes are only justifiable when they are expended for the benefit of those who pay them. What possible benefit do the people of England derive from the most successful campaign against the Waikatos, from the most signal victory over the Ngatiruanui tribe? What does the poor man, whose sugar, tea, and beer are taxed for such a purpose, receive as an equivalent for what he expends? What justification can be urged for the conduct of the House of Commons in thus delegating its own duties to a remote Assembly, the names of whose members it does not know, with whose constitution it is unacquainted, and over whom it can exercise no manner of influence?⁹⁵⁹

The editorial went on to condemn the system of double government in New Zealand, with the colonial assembly free to resolve what it pleased but entirely dependent on the Imperial army and the governor in order to be able to implement anything. It concluded that:

We have lost all Imperial control in this portion of the Empire, and are reduced to the humble but useful function of finding men and money for a Colonial Assembly to dispose of in exterminating natives with whom we have no quarrel, in occupying lands from which we derive no profit, and in attracting to their shores a vast Commissariat expenditure which we have the honour to supply out of the taxes of the United Kingdom, and from which they derive enormous profits.⁹⁶⁰

The policy of confiscation came under further scrutiny in the British Parliament once the intention to at least partially guarantee the very large loan sought by the colonial administration became clear. At the end of May 1864 Lord Lyttelton asked the government's intention with respect to this matter. He declared that:

⁹⁵⁹ *The Times*, 28 April 1864. Note that Boast, citing Harrop, wrongly dates this editorial as 26 April 1864. Boast, "An Expensive Mistake", p.15.

⁹⁶⁰ *ibid.*

...it was a monstrous thing that the people of a colony should be able to carry on unlimited wars in great measure at the expense of the mother country. To the outlying settlers in the wild regions around Auckland this war was no doubt a very serious calamity; but the shopkeepers and contractors of that town, so long as they had British troops to defend them, paid for by this country, had the most direct interest in its continuance. In fact, the Commissariat expenses in Auckland were the main support of the business of that place.⁹⁶¹

He believed that the Settlements Act would drive already disaffected Maori to despair and considered its application in respect of the lands of 'friendly' Maori would be in contravention of the Treaty of Waitangi.

Lord Lyveden considered the state of affairs in New Zealand such that some decisive measure was required. He feared that the colonists were on course to exterminate the Maori as a people and declared that:

It could not be expected that the Natives should have any kindly feeling towards the colonists – they had dispossessed them of their land, and they would never forgive them. Their position had been well likened by Sir William Martin to that of the native Irish, and to the Native races of other conquered countries – the conquered race never forgot or forgave their conquerors, and maintained a traditional and determined hostility towards them. His own impression was that, as matters now stood, there were only two courses open to us. One was to allow the Natives to establish a kingdom of their own in some part of New Zealand and to set aside the sovereignty of the Queen; and the other was to confiscate all the remaining land in their possession. The latter was the object of the Bill for which the Royal Assent was now sought.

So long as the settlers imagined that the Imperial purse was opened for them, they would continue to engage in wars with the Maori people, and he therefore hoped that

⁹⁶¹ <http://hansard.millbanksystems.com/lords/1864/may/30/new-zealand-question> (accessed 14 December 2009).

the government would not carry into effect any scheme for guaranteeing a loan to the colony.

The Earl of Clancarty also deplored the Settlements Act and regretted the failure to disallow the measure. He stated that:

...however humanely and wisely the Act may be administered, it will, if it becomes the law of New Zealand, remain for ever as a damning record of confiscation and injustice towards the Natives. The Bill proposes among other things that neutral and even loyal men shall be dispossessed of their property, if others of the same tribe have taken up arms against the Government. Would such a proposition be tolerated for a moment in England as that an estate, held in copartnership, should be wholly confiscated, because one or more of the proprietors had been guilty of high treason? Certainly not; and yet the case is exactly analogous.

The Earl further declared it contrary to the principles of constitutional government to expect the Maori people to have respect for laws passed by a legislature in which the settlers alone were represented. The 'grasping and unscrupulous spirit' of the New Zealand government was, he contended, fully evident from the Bills sent home for approval.

Earl Grey, the former Secretary of State for the Colonies responsible for issuing the deeply controversial 'waste lands' instructions in 1846, was also critical of what he viewed as an erroneous interpretation of the law by which Maori were excluded from voting in general elections or standing for Parliament. The result had been to hand over the Maori population to the 'unchecked dominion' of the settlers:

What could they expect from such a system? They knew that what took place in Ireland when the Catholics were under the dominion of the Protestants was an opprobrium to our history; and in New Zealand it was worse, for there the evils of allowing a minority to govern the majority were aggravated by the contemptuous feeling which Englishmen, especially those of the less educated classes, habitually entertain towards the coloured races, whom they

contumeliously describe as “niggers.” The oppression of the inferior race was the inevitable result of what was done; and he conceived that the Government which allowed all power to be engrossed by the settlers over the Natives were responsible for the consequences which had ensued, and which were now witnessed.⁹⁶²

The most detailed debates with respect to confiscation policy in New Zealand came during the passage of the New Zealand (Guarantee of Loan) Bill through both the Commons and Lords chambers in July 1864. As noted previously, such a Bill was required in order to implement the arrangement previously entered into with Reader Wood for the Imperial government to guarantee one-third of the £3,000,000 sum sought by the colonial regime. Members once again queried the very heavy expenditure borne by British taxpayers for the exclusive benefit of the colonists and suggested that the provision of further funding would only tend to perpetuate the war.⁹⁶³ During the course of this and other debates on the Bill members proceeded to read extracts from private letters received from New Zealand, including one read during the committee stages in which it was stated that:

We all out here consider the war an unjust one. But the cry of the colonists is still for land. Moreover, the troops are the making of Auckland, as contractors and that kind of people are making large fortunes. So long, therefore, as you are fools enough to supply the needful, so long will they keep on the war.⁹⁶⁴

During the third reading in the House of Lords reference was made to a perception afoot in New Zealand that the Imperial troops were ‘utterly disgusted’ with the service on which they were engaged.⁹⁶⁵ But by this time the British government’s response to the confiscation policies had already been fully formulated.

⁹⁶² <http://hansard.millbanksystems.com/lords/1864/may/30/new-zealand-question> (accessed 14 December 2009).

⁹⁶³ <http://hansard.millbanksystems.com/commons/1864/jul/14/new-zealand-guarantee-of-loan-bill-bill> (accessed 14 December 2009).

⁹⁶⁴ <http://hansard.millbanksystems.co./commons/1864/jul/18/new-zealand-guarantee-of-loan-bill-bill> (accessed 14 December 2009).

⁹⁶⁵ <http://hansard.millbanksystems.com/lords/1864/jul/25/second-reading> (accessed 14 December 2009).

4.12 Cardwell's April 1864 Despatch

The Colonial Office received Grey's despatch forwarding the New Zealand Settlements Act at the same time as Sir William Martin's detailed critique of confiscation as a general principle. Newcastle, the former Secretary of State, had previously admitted the principle of confiscation but had warned about its overzealous application. For the British government the main concern appeared to be that excessive or poorly implemented confiscations would prolong Maori resistance and therefore increase the military and financial burdens entailed upon British taxpayers. Yet there was plenty of robust debate inside the Colonial Office as to the policy and practice of *raupatu*. Permanent Under-Secretary Sir Frederick Rogers, in commenting upon Martin's protest, rejected his arguments based on the protection that ought to be afforded Maori by English law. If it was impossible and unfair to enforce law upon Maori, as had been often contended, neither he believed could the full protection of such law be afforded them. It was necessary, in Rogers' view to deal with people of this kind 'in a more or less anomalous, tentative and transitional way. English law is an instrument of improvement – not a basis of logical argument.'⁹⁶⁶ But if matters of pure law or constitutional form were irrelevant in the circumstances, Rogers nevertheless supported Sir William Martin in his views based on policy, good faith and natural justice. The colonial ministry, in his view, seemed to contemplate 'no other mode of keeping the natives quiet than by fear'.⁹⁶⁷ The scheme of military settlements was quite likely to prove a failure and in any event was based on a form of 'tyranny'. Rogers argued that:

...the extra-legal intervention of the Legislature is controlled by the Treaty of Waitangi – the Native Charter as it may be called. And though in my opinion it would be a forced construction of the treaty to hold that it precluded the New Zealand Legislature from taking land (with compensation of course) for a road or a post office – or any other really public purpose – yet it is plainly the

⁹⁶⁶ Rogers, minute on Grey to Newcastle, 6 January 1864, no.9, p.137, CO 209/178, Archives NZ.

⁹⁶⁷ *ibid.*, p.138.

intention of the Treaty to preclude the Government from taking lands for purposes of settlement.⁹⁶⁸

Fortescue disagreed, writing immediately beneath Rogers' minute: 'I can't think however that the Treaty of Waitangi is any obstacle to the confiscation of the lands of "rebel" Natives.'⁹⁶⁹ He contended that although Martin's paper was 'interesting', it nevertheless took a 'very one-sided view of the strange and anomalous' relations between Maori and the Crown in New Zealand. He wrote that:

The legal status of the Maories is that of subjects. It is true that the British Govt. has done but little to "impart to them (practically) all the rights & privileges of British subjects." But if this failure has been caused partly by negligence, ignorance, vacillation (for our sins against the Maories have been almost altogether sins of omission) it has been caused much more by want of power, and the refusal of the Natives to accept the condition of subject, with all its duties of obedience. The state of things then which has arisen must not be used altogether against the Govt., and in favour of the Natives as, I think, the advocates of the latter are apt to use it. We must not be told, for instance, that the hostile Natives must not be treated as ordinary rebels (wh. is true & right) because they are not ordinary subjects, and, in the same breath, that it is iniquitous to take their lands from them, except under the scrupulous application of English law, because they are subjects. In the same way, it seems to me absurd for Sir W. Martin first to prove elaborately that the Natives are British subjects and then to complain of the troops crossing the Mangatawhiri, and to justify or excuse "resistance to invasion" on the part of W. Thompson, as though Ngatihauas & Ngatimaniapotos were two independent neighbouring nations, one friendly, the other hostile, and the Governor had unjustly attacked the former, making them suffer for the sins of the latter.⁹⁷⁰

⁹⁶⁸ *ibid.*, p.141.

⁹⁶⁹ Fortescue, minute on Grey to Newcastle, 6 January 1864, no.9, p.141, CO 209/178, Archives NZ.

⁹⁷⁰ *ibid.*, p.142.

Fortescue failed to distinguish between Maori as subjects of the Crown in legal fiction and subjects in practice. No amount of rhetoric could disguise the fact that crossing the Mangatawhiri was a hostile and aggressive step on the government's part, and the Colonial Office in particular had previously seen nothing incompatible between nominal British rule over the whole of New Zealand and the existence of large areas of more or less autonomous Maori communities. Indeed, the British government had even explicitly legislated for this prospect under section 71 of the New Zealand Constitution Act 1852 and had later expressed surprise at the failure to offer this to the Waikato tribes in response to the emergence of the King movement.

These contrasting viewpoints carried over into consideration of the New Zealand Settlements Act, or as it was less euphemistically referred to within the Colonial Office, the 'Confiscation Act'. Rogers pointed out that 'half or the whole of the Northern Island' could in theory be proclaimed under the legislation. The legal power to take land was 'unlimited' and few checks were provided for, including the failure to define the level of proof required under the Act.⁹⁷¹ He contended that the colonial ministry 'have framed this Act on the supposition that they are subject to no other rules of justice but are at liberty – as they do in this Law – to treat the Maori population as far as they are even indirectly implicated in the rebellion as having no rights at all and those who are not so implicated as having very few.'⁹⁷² If the reimbursement of war costs was a legitimate objective, Rogers noted, then the British government might also claim confiscated lands on these grounds. But in his view any penalty suffered should be 'a definite punishment once for all, such that the Maories should suffer and remember it, and then be able to work in their own way to better their own condition without any fear of any thing hanging over their heads.'⁹⁷³ To this end he suggested that a commission of inquiry should be appointed to determine the relative involvement in the wars of different land owners and the extent of territory to be taken, with generous reserves assigned as areas for the 'rebels'.

One of Rogers' primary concerns was the extent to which a government answerable solely to the settlers would be able to influence the operations of the Act. He declared

⁹⁷¹ Rogers, minute on Grey to Newcastle, 6 January 1864, no.10, p.240, CO 209/178, Archives NZ.

⁹⁷² *ibid.*, p.241.

⁹⁷³ *ibid.*, p.244.

that 'The only excuse for thus placing a whole population at the foot of a despotic power is that the power is sure not to be abused.'⁹⁷⁴ But although the power to confiscate was technically lodged in the Governor and Executive Council, Rogers stated that 'long ago even before the Government of the natives was formally handed over to the Colonists we found that the Governor was unable practically to refuse what was forced upon him by the Colonists and their Ministry.'⁹⁷⁵ Grey might be able to withstand pressure for a time, but later governors would be unlikely to do so. Rogers further declared that:

The Council who will practically decide these questions are of course the reflex of the settlers. A large and the most active portion of the Settlers always have been and always must be desirous to obtain land by the quickest and cheapest method. And after the passing of this Act the cheapest mode of obtaining land will be by confiscating the lands of those who have been or whose neighbours have been in rebellion already, by goading into something which may be called rebellion those who have hitherto been peaceable. I do not think there is any reason for supposing that the existing race of settlers are above these ordinary motives. And I therefore fear that the settlers can neither be expected to resist themselves or to allow the Ministry to resist such a standing temptation to injustice as the present Act supplies.⁹⁷⁶

Rogers concluded that the Act was 'a thoroughly bad one.'⁹⁷⁷

Fortescue was hardly more flattering in his overall assessment of the New Zealand Settlements Act. He stated that:

There can be no doubt of the sweeping and despotic nature of the Act, nor of the opportunities which it supplies for an offensive treatment of the Natives, if the N.Z. Govt. is so disposed, and it is not controlled.⁹⁷⁸

⁹⁷⁴ *ibid.*, p.249.

⁹⁷⁵ *ibid.*, pp.249-250.

⁹⁷⁶ *ibid.*, pp.250-251.

⁹⁷⁷ *ibid.*, p.253.

⁹⁷⁸ Fortescue, minute on Grey to Newcastle, 6 January 1864, no.10, p.253, CO 209/178, Archives NZ.

He was not, however, prepared to condemn it as entirely as Rogers had. In his view the standing of 'rebel' tribes in relation to the New Zealand or Imperial governments ought to be viewed 'in the relation of foreign enemies', even though this was not the case in law. He pointed out that the powers contained in the Settlements Act were less sweeping than those of a conquering power over a foreign enemy, though adding 'No doubt...these poor Maories are also the Queen's subjects, however little the reality has hitherto corresponded to the name, and we are bound to treat them with greater consideration than any foreign enemy.'⁹⁷⁹ Everything, he believed, depended 'on the mode & spirit in which the Act shall be carried into effect. If the confiscation is not excessive and is discriminating, I believe it will be a justifiable and wise measure.'⁹⁸⁰ To this end, Fortescue urged that 'peremptory instructions' should be issued to Grey, 'to secure than it shall be so.'⁹⁸¹ There was never, he added, a 'clearer case for the exercise of the Governor's veto, or one in which the veto wd. be more effectual.'⁹⁸² He then proceeded to outline various conditions that might be required, including Grey's personal assent to any confiscation proclamation, the negotiated cession of a specified extent of territory at the time of submission by 'rebels', payment of full compensation to those not implicated and the restoration of a liberal amount of land to all. These measures would, Fortescue contended, be 'far more likely to secure peace, and revive confidence than if the confiscation were kept hanging over their heads for any length of time.'⁹⁸³

Fortescue's suggestions formed an important part of the response to the Settlements Act dated 26 April 1864. Edward Cardwell shared the same misgivings over confiscation previously expressed by his predecessor as Secretary of State for the Colonies, the Duke of Newcastle. In April 1864 Cardwell gave reluctant and conditional assent to the Settlements Act. Cardwell observed that 'the Act now forwarded, taken in combination with the scheme proposed by your Government, exhibits a rapid expansion of the principles in which the Duke of Newcastle acquiesced with so much reserve.'⁹⁸⁴ That was a reference to the outline of the scheme of military settlements previously forwarded to the Colonial Office by Grey

⁹⁷⁹ *ibid.*, p.255.

⁹⁸⁰ *ibid.*

⁹⁸¹ *ibid.*, p.256.

⁹⁸² *ibid.*

⁹⁸³ *ibid.*, pp.256-257.

⁹⁸⁴ Cardwell to Grey, 26 April 1864, AJHR, 1864, E-2, p.20.

on 29 August 1863 and cautiously approved by Newcastle in November of the same year. But whereas Domett's original plans envisaged some 5000 military settlers, Cardwell noted that under the most recent proposals:

The number of settlers, and consequently the immediate amount of confiscation, is quadrupled, the compulsory power of acquiring land within a proclaimed district is, by the terms of the Act, applied alike to the loyal and the disloyal; the right of compensation is jealousy limited, and is denied even to the most loyal native if he refuses to surrender his accustomed right of carrying arms, and these powers are not to be exercised exceptionally and to meet the present emergency, or by regularly constituted courts of justice, but are to be permanently embodied in the law of New Zealand; and to form a standing qualification of the treaty of Waitangi.⁹⁸⁵

Cardwell then went on to point out a number of 'very grave objections' to these proposals:

It renders permanently insecure the tenure of native property throughout the Islands, and is thus calculated to alarm our friends. It makes no difference between the leaders and contrivers of rebellion and their unwilling agents or allies, and is thus calculated to drive to despair those who are but half our enemies. The proceedings by which unlimited confiscation of property is to take place may be secret, without argument and without appeal; and the provision for compensation is as rigidly confined as the provision for punishment is flexible and unlimited.⁹⁸⁶

He pointed out the anomalous position which Maori occupied, having 'on the one hand...acknowledged the Queen's sovereignty, and on the other hand as having been allowed to retain their tribal organisation and tribal usages, and as thus occupying, in a great measure, the position of independent communities.'⁹⁸⁷ Viewed as subjects of the Crown, Maori had rendered themselves subject to punishment by death and

⁹⁸⁵ *ibid.*

⁹⁸⁶ *ibid.*

⁹⁸⁷ *ibid.*, p.21.

confiscation for their rebellion, whereas if seen as independent they were 'at the mercy of their conquerors', to whom all public property would be at once transferred, private property remaining under the protection of international custom. Neither situation was satisfactory, and Cardwell believed that Maori could not be treated by methods described in any law book, but in accordance with the exceptional circumstances which arose in their case. Above all else, he urged that they must be dealt with equitably and justly:

It is...doubly necessary that those who administer in the name of the Queen a Government of irresistible power should weigh dispassionately the claims which the insurgent Maoris have on our consideration. In the absence of those legal safeguards which furnish the ordinary protection of the vanquished, the Imperial and Colonial Governments are bound so to adjust their proceedings to the laws of natural equity, and to the expectations which the Natives have been encouraged or allowed to form, as to impress the whole Maori race at this critical moment with the conviction that their European rulers are just, as well as severe, and are desirous of using the present opportunity, not for their oppression, but for the permanent well being of all the inhabitants of New Zealand.⁹⁸⁸

Cardwell went on to explain how, in his view, the difficult balancing act of being seen to be both just and severe could be achieved. The Secretary of State for the Colonies declared that:

I recognise the necessity of inflicting a salutary penalty upon the authors of a war which was commenced by a treacherous and sanguinary outrage, and attended by so many circumstances justly entailing upon the guilty portion of the Natives measures of condign punishment. But I hold, in the first place, that in the apportionment of this punishment those who have actively promoted or violently prosecuted this war should be carefully distinguished from those who, by circumstances, connection, or sense of honour, or other natural temptation, have been unwillingly drawn into it, and still more pointedly from

⁹⁸⁸ *ibid.*

those who have on the whole adhered to the British cause. Even in the case of the most culpable tribes the punishment should be such as to inflict present humiliation and inconvenience rather than a recurring sense of injury, and should leave them with the conviction that their punishment, if severe, has not exceeded the limits of justice and also with the assurance that for the future they have nothing to fear, but everything to hope from the Colonial Government. With this view, the punishment, however exemplary, should be inflicted once for all, those who may have suffered from it should be led to feel that they may engage in the pursuits of industry on the lands which remain to them with the same security from disturbance which is enjoyed by their most favoured fellow-subjects. And I should hold it as a great misfortune if the punishment were so allotted as to destroy those germs of order and prosperity which have been so singularly developed in some of the Waikato tribes.⁹⁸⁹

Although he did not dispute the right of the colonial administration to seek to defray some of the costs of the war from the lands to be confiscated, Cardwell pointed out that those expenses had been overwhelmingly borne by the British government, which was therefore entitled to require that any cession or confiscation was not carried further than was consistent with the permanent pacification of New Zealand and 'the honour of the English name.'⁹⁹⁰

Cardwell pointed out the inherent difficulties in placing 20,000 most male and unmarried military settlers of limited means and farming experience on scattered settlements located across a disaffected portion of the island, while 'bound to a distasteful military tenure, and perhaps exposed to the hostility of the Natives'.⁹⁹¹ Given the likely hardships that would be endured, it was to be feared that many of the military settlers would soon be attracted from their farms to the goldfields of Otago or high wages on offer in Australia.

Considering that the defence of the colony was at that time reliant upon a substantial Imperial force, Cardwell informed Grey that:

⁹⁸⁹ *ibid.*

⁹⁹⁰ *ibid.*

⁹⁹¹ *ibid.*

...I should perhaps have been justified in recommending the disallowance of an Act couched in such sweeping terms, capable therefore of great abuse, unless its practical operation were restrained by a strong and resolute hand, and calculated, if abused, to frustrate its own objects, and to prolong, instead of terminate war. But not having received from you any expression of your disapproval, and being most unwilling to take any course which would weaken your hands in the moment of your military success, Her Majesty's Government have decided that the Act shall for the present remain in operation.⁹⁹²

The decision not to disallow the Act had not only been taken in light of the fact that Grey had voiced no opposition to it, but had also been influenced by the observation that no confiscation could take effect without the governor's concurrence. Cardwell indicated that he placed much reliance upon Grey's sagacity, firmness and experience in implementing the Act. To this end, a number of instructions were conveyed with respect to the practical application of a policy of confiscation. Grey was informed that it was 'very much to be desired that the proposed appropriation of land should take the form of a cession imposed by yourself and General Cameron upon the conquered tribes, and made by them to the Representative of the Queen, as a condition on which Her Majesty's clemency is extended to them.'⁹⁹³ If this measure was found to be impossible, Grey was at liberty to enforce the provisions of the New Zealand Settlements Act, subject to a number of conditions, including that the measure 'should be at once submitted to the Legislature to limit the duration of the Act to a definite period', not exceeding two years from the date of its original enactment. Such a timeframe was, in Cardwell's view, 'long enough to allow for the necessary inquiries respecting the extent, situation, and justice of the forfeiture, yet short enough to relieve the conquered party from any protracted suspense, and to assure those who have adhered to us that there is no intention of suspending in their case the ordinary principles of law.'⁹⁹⁴

⁹⁹² *ibid.*, pp.21-22.

⁹⁹³ *ibid.*, p.22

⁹⁹⁴ *ibid.*

Grey was further instructed that the aggregate extent of any confiscation and its exact position were to be made known as soon as possible. In addition, an independent commission was to be constituted for the purpose of inquiring into which lands should be confiscated, the members of the commission not being removable by the colonial ministry and having been chosen so as to guarantee a fair and careful consideration of the matters brought before them. It was also, Grey was informed, to be 'clearly understood that your own concurrence in any forfeiture is not to be considered as a mere ministerial act, but that it will be withheld unless you are personally satisfied that the confiscation is just and moderate.'⁹⁹⁵ Cardwell added that:

...here I must observe, that if in the settlement of the forfeited districts all the land which is capable of remunerative cultivation should be assigned to Colonists, and the original owner, the Maori, be driven back to the forest and morass, the sense of injustice, combined with the pressure of want, would convert the native population into a desperate banditti, taking refuge in the solitudes of the interior from the pursuit of the police or military, and descending, when opportunity might occur, into the cultivated plain to destroy the peaceful fruits of industry. I rely on your wisdom and justice to avert a danger so serious in its bearing on the interests of the European not less than of the Native race.⁹⁹⁶

With respect to the property of those who had not engaged in rebellion, Cardwell declared that although the Imperial government admitted with regret that the tribal nature of native tenure in New Zealand would sometimes render it unavoidable that innocent persons should be deprived of their lands:

...they consider that land should not be appropriated against the will of the owners merely because it is in the same district with rebel property, and may conveniently be used for purposes of settlement, but only in cases where loyal or neutral Natives are unfortunate enough to be joint owners with persons concerned in the rebellion, or because it is absolutely required for some purpose of defence or communication, or on some similar ground of necessity.

⁹⁹⁵ *ibid.*
⁹⁹⁶ *ibid.*

But every such case of supposed necessity should be examined with the greatest care, and admitted with the greatest caution and reserve.⁹⁹⁷

The Secretary of State for the Colonies stated that compensation was under the Act properly made the subject of inquiry in an open court. However, he also advised that section 5 of the Settlements Act should be amended so that the court would not be limited in any manner from doing ‘complete justice’ to the claims of every innocent person, or of extending reasonable consideration to those whose guilt was ‘of a less heinous character’.

Finally, once all cessions deemed necessary to the satisfactory pacification of the country had been secured, Grey was to ‘accompany these measures of justice and severity’ with the announcement of a general amnesty, from which only those guilty of the murders of ‘unoffending settlers’ or other like offences of a ‘heinous and strictly exceptional character’ were to be excepted.⁹⁹⁸ Subject to these conditions and the general principles set out, Cardwell indicated that the British government were prepared to leave in Grey’s hands the responsibilities entrusted him under the legislation.

While the implementation of confiscation policy on the ground is the subject of subsequent chapters, it is relevant to note here that Cardwell’s conditions were in some cases wholly ignored and in other instances only partly implemented or observed. However, Professor F.M. (Jock) Brookfield, in a legal opinion on the Taranaki and Bay of Plenty confiscations, concluded that although the legal status of royal instructions issued to colonial governors remains a matter of some controversy, those issued in this instance were not intended to have binding legal effect and therefore have no bearing on the question as to whether the confiscations were legal.⁹⁹⁹ As will be seen, there have been other grounds upon which the legality of the confiscations have sometimes been called into question.

⁹⁹⁷ *ibid.*

⁹⁹⁸ *ibid.*

⁹⁹⁹ F.M. Brookfield, ‘Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu (Particularly in Taranaki and the Bay of Plenty)’, January 1996, Wai-143, #M19(a), pp.27-28.

4.13 Later Confiscation Legislation

Such, in fact, were the intricacies of confiscation that the New Zealand Settlements Act was merely the first in a long string of legislative measures implementing, modifying, validating or otherwise giving effect to the various confiscations. The background to some of these later enactments will be discussed in more detail in subsequent chapters, but it is worthwhile to at least briefly note here the main statutes impacting on the Waikato and Taranaki districts.

The New Zealand Settlements Amendment Act 1864 (section 2) gave the Governor-in-Council discretion to award compensation to those refused it by the Compensation Court or to increase the level of compensation awarded. Section 3 limited the operation of the New Zealand Settlements Act to 3 December 1865, two years from the date of its original enactment. These were the only substantive clauses contained in the legislation, which was passed into law on 13 December 1864.¹⁰⁰⁰ Frederick Weld, who was by this time Premier, explained when introducing the Bill for its second reading in the House that it had been rendered necessary by intimations from the Imperial government that Royal assent for the Settlements Act could be withdrawn if certain limitations were not put in place around its operation.¹⁰⁰¹ Some members were highly critical of Cardwell's conditions. William Fox, for example, declared that his despatches 'had been constructed with that lamentable ignorance of colonial interests which had prevailed, during his remembrance, for twenty years, and resembled the mode in which the American colonies were treated before their independence.'¹⁰⁰²

The two-year limitation on the operation of the Settlements Act complied with Cardwell's original stipulation but was subsequently amended (see below), while the other clause was said to be in adherence with the instruction that every class of

¹⁰⁰⁰ *New Zealand Statutes*, no.4, 1864.

¹⁰⁰¹ NZPD, 5 December 1864, 1864-1866, p.100.

¹⁰⁰² *ibid.*, p.101.

claimant for restitution or compensation should be dealt with in such a manner that the governor retained sufficient power to ensure 'substantive justice' was done to them. However, the Colonial Office remained unconvinced that the amendment complied with the original stipulation, with Rogers declaring in a minute that 'this is insufficient because it places the judgment respecting such cases just where it ought not to be – i.e. with a removable Ministry. The Governor being helpless to cause compensation to be made; though he wd. have legal power to prevent it.'¹⁰⁰³ He thought that perhaps the intention was that the Governor-in-Council would merely rubberstamp recommendations made by a court, but feared that such a system would not last long if the court proved more liberal than popular feeling among the settlers. The Act did not adequately provide for a judicial or quasi-judicial consideration of Maori claims for compensation, in Rogers' view, though he trusted that Grey could be relied upon to secure the proper treatment of these questions.¹⁰⁰⁴

The New Zealand Settlements Amendment and Continuance Act 1865 was a much lengthier Act than its 1864 predecessor, containing 18 clauses in total. Perhaps the most important of these was section 2, which unilaterally overturned the previous two-year limit on the operation of the Settlements Act, declaring it to be perpetual, other than the power to proclaim districts and take lands, which was extended to 3 December 1867.¹⁰⁰⁵ Other clauses provided for the Governor-in-Council to pass regulations for the practice and procedure of a Compensation Court (section 3); set out the powers of such a Court (section 7); provided for compensation to be payable in land rather than money (section 10); and gave the governor discretion to sell any land under the provisions of the Act (section 16).

Henry Sewell, who was once again Attorney-General at the time of the Bill's passage through Parliament, explained that the 1863 legislation had made provision for the establishment of a Compensation Court, 'and to give all persons who might suffer loss a right to go into the Court constituted under the authority of the Act and obtain compensation in money.'¹⁰⁰⁶ Sewell added that:

¹⁰⁰³ Rogers, minute on Grey to Cardwell, 7 January 1865, no.8, pp.67-68, CO 209/188, Archives NZ.

¹⁰⁰⁴ *ibid.*, p.68.

¹⁰⁰⁵ *New Zealand Statutes*, no.66, 1865.

¹⁰⁰⁶ NZPD, 8 August 1865, 1864-1866, p.263.

This was to be in payment for certain rights of which they might have been deprived, and subject to certain expenses. By means of that Act the Government was enabled to take possession of such land as it required, to extinguish all titles, giving compensation to friendly Natives and Europeans who had not been concerned in the rebellion. One portion of the Bill was to remedy some of the practical difficulties which had arisen in carrying out the Act it was intended to amend. It was quite clear that it was the intention of the Legislature not only to affect all the lands of Natives who were in rebellion, but it was one of the cardinal objects of the measure that it was intended to affect the lands of all persons, whether innocent or guilty, within the limits of a district. That was one of the cardinal objections to the measure; and he must admit that, at the time, it appeared to him to be a very frightful measure, looking at what could be made of it. It was clear, however, that, in justice, they had a right, at such a time, to such measures enabling them to take the land of those who were guilty of rebellion, and that they should exclude from such confiscation the lands of those who had taken no such part. He might say that, in the practical working of the measure, the Government, so far as possible, had acted upon that principle, and the lands of friendly Natives had never been taken under it.¹⁰⁰⁷

Sewell, the outspoken critic of the Settlements Act when it passed through Parliament in 1863, was not the only poacher to turn gamekeeper when it came to confiscation policy, with Cabinet colleague James FitzGerald another notable example. Yet Sewell's claim that 'loyalist' lands had not been taken under the Settlements Act was simply preposterous, and presumably based on ignorance as to what was happening on the ground. Meanwhile, the two-year extension to the period in which the Act could be enforced in any new district, though passed in complete and wilful defiance of the Imperial government, was based on the cynical if realistic calculation that the Colonial Office would not intervene.

That calculation ultimately proved correct, even though the Colonial Office response to the 1865 amendment and an Outlying Districts Police Act championed by

¹⁰⁰⁷ NZPD, 8 August 1865, 1864-1866, p.263.

FitzGerald (which provided for an alternative method of confiscation but was never utilised)¹⁰⁰⁸ was predictably hostile. Rogers wrote that the two Acts ‘not only facilitate oppression, but invite plunder – no.66 [New Zealand Settlements Amendment and Continuance Act] by giving a kind of unlimited power to confiscate in punishment for the recent rebellion – and no.23 [Outlying Districts Police Act] providing indefinite occasion of confiscation & sale hereafter.’¹⁰⁰⁹ He thought the Acts ‘especially bad’, but advised against interference which he believed would prove ineffectual. Taking on a fatalistic tone, he declared that ‘The colonists will ultimately have their way.’¹⁰¹⁰ It was as if the Colonial Office was now giving them free rein to do so, though Rogers at least recommended that the Acts not be sanctioned till the last of the British troops had departed New Zealand. The implication was clearly that the colonial government could more or less do what it wanted from that point onwards. He concluded that:

On the whole the Acts leave all the Tribes who have engaged in rebellion, and probably many who have not, pretty absolutely dependent on the mercy and honesty of the local Government. But I apprehend the real truth to be that the Home Government cannot help this and will do more harm than good by trying to help it.

It is a bargain that the Home Government shall withdraw its troops and not meddle in Native affairs, except, I suppose, when the Governor is called on to be party to some act of large and visible injustice – and these laws do not effect injustice but only empower the Government to effect it, an objection which may be made to many laws which are most necessary in times of disturbance and transition.

I should be therefore disposed to sanction all these Native Laws except 23 and 66, to state that these appear open to great objection, on which Her Majesty’s Government might have thought it necessary to insist if New Zealand was any longer to have the protection of British Troops. But that as this protection was

¹⁰⁰⁸ *New Zealand Statutes*, no.23, 1865.

¹⁰⁰⁹ Rogers, minute on Grey to Cardwell, 9 January 1866, no.8, p.97, CO 209/196, Archives NZ.

¹⁰¹⁰ *ibid.*

apparently about to be wholly withdrawn Mr. Cardwell did not think it necessary to do more than indicate the nature of the objections – and if the whole of the Troops left New Zealand without delay beyond what was necessary to procure shipping, Mr. Cardwell would be prepared to advise that Her Majesty should relinquish her power of disallowing these Acts on receiving news that the whole force had quitted the Colony.¹⁰¹¹

Not only, therefore, was the Imperial government prepared to wash its hands of New Zealand, but it was also more than willing to trade off its objections to confiscation legislation deemed obnoxious in order to secure a more expeditious withdrawal of its own troops from the colony. When push came to shove, it would seem, money mattered more to the Colonial Office mandarins than principles, or even its own obligations under the Treaty.

Cardwell's despatch on the 1865 amendment outlined the various objections identified within the Colonial Office. He noted that under the 1863 Act 'most innocent persons...who had been or were likely to be in the neighbourhood of any disturbance, were placed in a state of indefinite disquiet as to their lands, and those who had been or might be guilty to the most venial extent of participation in any insurrection, were rendered incapable, if their lands were among those taken for settlement, of receiving any consideration whatever from the Court.'¹⁰¹² Objections such as these to the scheme of confiscation had resulted in the original series of conditions issued by Cardwell in April 1864. Although there had been some modifications to the scheme since that time, the legislation and policies pursued nevertheless remained clear 'departures from the policy which Her Majesty's Government would have desired to have adopted had they remained as directly responsible as heretofore for the preservation of peace, and the maintenance of internal security in New Zealand.'¹⁰¹³ That was no longer the case, however, as a consequence of which the Imperial government had determined not to disallow the Settlements Act or Outlying Districts Police Act. Cardwell did, however, warn that:

¹⁰¹¹ *ibid.*, pp.105-106.

¹⁰¹² Cardwell to Grey, 26 April 1866, GBPP, 1866 [3695], p.128.

¹⁰¹³ *ibid.*, p.129.

...if Her Majesty's Government have not advised the disallowance of these enactments in their present shape, it is because they have deliberately accepted the policy of the New Zealand Government and Legislature, and have determined, in compliance with that policy, to withdraw from the Colony the Imperial troops, and to leave the Governor to be guided by the recommendations of his Constitutional Advisers in native as well as in ordinary affairs, whenever the case does not involve Imperial interests, the honour of the Crown, adherence to treaties entered into by Her Majesty's Government, or other matters of an analogous kind.¹⁰¹⁴

That warning was an especially hollow one, however, given that the confiscation scheme certainly raised issues regarding the honour of the Crown, as well as its obligations under the Treaty of Waitangi. But in any event, thereafter the views of the British government were little more than an interesting aside to the main story.

There was, meanwhile, no let-up in the rate of legislative enactments and amendments concerning confiscation. The Friendly Natives' Contracts Confirmation Act of 1866 passed through the General Assembly with literally no debate, but was the result of an interim report of the Select Committee on Confiscated Lands. Having examined a number of out-of-court arrangements entered into by H. Hanson Turton on behalf of the Crown with 'loyal' Maori in the Waikato district, the committee recommended that such awards required validation by way of legislation.¹⁰¹⁵ Section 2 of the Act declared that:

All Crown Grants of land made and issued or to be made and issued to Aboriginal Natives of New Zealand in satisfaction of their claims to compensation in respect of any title interest or claim to land taken under "The New Zealand Settlements Act 1863" and in fulfilment of arrangements made with them for this purpose by any person or persons authorized on the part of the Government of New Zealand to negotiate with them in this behalf shall be

¹⁰¹⁴ *ibid.*, p.130.

¹⁰¹⁵ Crosbie Ward, interim report, July 1866, AJHR, 1866, F-2, p.1.

deemed and taken to have been and shall be valid and of full force and effect.¹⁰¹⁶

However, the Act failed to include a schedule of the grants issued or proposed to be issued, as had been recommended by the select committee, as a consequence of which it is difficult to discern what, if any, grants were in fact validated by virtue of the legislation.

The trend of annual amendments to the Settlements Act also continued in the 1866 parliamentary session, during which the New Zealand Settlements Act Amendment Act was passed. It also passed through both chambers without debate and contained no preamble but appears to have been intended to remedy a number of defects in the earlier legislation. Ironically, however, it contained its own flaws. Section 2 was intended to repeal a provision in the New Zealand Settlements Amendment and Continuance Act of 1865 which had stipulated that land would not be sold except on cash terms and at a minimum rate of ten shillings per acre. In its printed version, at least, this referred to amending the 1866 Act.¹⁰¹⁷ Other provisions enabled the Colonial Secretary to elect either before or after any judgment of the Compensation Court to make any award either wholly or in part by land in lieu of money (section 3); allowed land scrip to be issued in lieu of money (section 4); enabled the governor to set aside reserves (section 5); clarified that nothing in the governor's proclamation of peace dated 2 September 1865 would entitle those excluded from compensation under the Settlements Act to receive relief from such exclusion (section 7);¹⁰¹⁸ and enabled lands to be sold under regulations issued by the Governor-in-Council. There was one further clause, which was perhaps the most important. Section 6 of the Act declared that:

All orders proclamations and regulations and all grants awards and other proceedings of the Governor or of any Court of Compensation or any Judge thereof heretofore made done or taken under authority of the said Acts or either of them are hereby declared to have been and to be absolutely valid and

¹⁰¹⁶ *New Zealand Statutes*, no.16, 1866.

¹⁰¹⁷ *New Zealand Statutes*, no.31, 1866.

¹⁰¹⁸ *New Zealand Gazette*, no.35, 5 September 1865, p.267. The proclamation will be discussed in a later chapter.

none of them shall be called in question by reason of any omission or defect of or in any of the forms or things provided in the said Acts or either of them.

It has been said that this provision was so wide ‘as to validate almost any irregularity or proceeding of the Governor or Court of Compensation but only if that irregularity is made under the authority of the Acts.’¹⁰¹⁹ However, the section contained its own irregularity. The long title to the legislation described it as ‘An Act to amend “The New Zealand Settlements Amendment and Continuance Act 1865” and to confirm certain Acts done under “The New Zealand Settlements Act 1863” “The New Zealand Settlements Amendment Act 1864” and “The New Zealand Settlements Amendment and Continuance Act 1865.”’ That was three Acts in total, but section 6 of the 1866 Act referred to ‘the said Acts or either of them.’ Which two of the three Acts precisely was this intended to refer to? One can begin to understand why annual amendments had hitherto been required, given the sloppy and careless manner in which the Acts were drafted in the first place.

The Confiscated Lands Act of 1867 was the last major piece of legislation dealing generically with lands confiscated under the New Zealand Settlements Act (though other and subsequent legislation concerned particular districts proclaimed under the 1863 Act or related solely to the East Coast, which had its own unique confiscation regime). The 1867 Act chiefly addressed issues around the power to set aside reserves within the confiscated districts. Section 2 provided that the governor could make reserves within districts confiscated under the Settlements Act and grant such lands to those persons who may have received less compensation than claimed through the Compensation Court. Under section 3 the governor was empowered to make reserves out of the confiscated lands for ‘friendly’ Maori who had assisted in ‘suppressing the rebellion’, while section 4 for the first time made legal provision for lands to be reserved for the benefit of ‘surrendered rebels’. Reserves set aside for either ‘friendly’ Maori or ‘surrendered rebels’ could be subdivided by the Native Land Court (section 5) and grants issued were to be subject to whatever conditions or restrictions the governor saw fit to make (section 6). Reserves could also be set aside for educational purposes (section 7) and confiscated lands could also be deemed to be ordinary waste

¹⁰¹⁹ Litchfield, ‘Confiscation of Maori Land’, p.346.

lands of the Crown to be administered under the applicable provincial land laws (section 8).

There was at least a modicum of debate in Parliament on this occasion. De facto Native Minister J.C. Richmond, when introducing the Bill for its second reading in the House, explained that ‘In the numerous Acts which had been passed to carry out the intentions of the New Zealand Settlements Act there had been no power given to return confiscated lands to their former proprietors. There was also need of powers to make reserves and gifts to persons who had done great services during the war.’¹⁰²⁰ As will be seen more clearly in the next chapter, by this time, however, confiscation was a much more contentious policy than it had been in 1863. George Graham, for example, stated that:

He was confident that it was not the way to make peace, to keep up a large standing army to oppress the Natives; and he believed that it would cause each year increased expense. What had been gained by confiscation? Nothing; and it had cost a great deal of money. The word “confiscation” should be struck out of the Statute Book.¹⁰²¹

This speech caused Richmond to counter that Graham ‘took Maori views’ and ‘talked like a surrendered rebel who could not get it into his head that the land had actually gone.’¹⁰²² The government, he added, was seeking to ‘plant the amiable rebel Natives on their own land again. The Bill was one for giving and not for taking.’¹⁰²³

This was by no means the end of the legislative enactments dealing with confiscation, though as noted above, many subsequent Acts tended to concern specific confiscation districts, while later statutory references to the confiscations tended to relate to efforts to seek redress for the takings.¹⁰²⁴ As Richard Boast notes, ‘None of the confiscations went smoothly or simply. They *all* sank into a morass of confusion, and they all

¹⁰²⁰ NZPD, 26 September 1867, vol.1, p.1102.

¹⁰²¹ *ibid.*

¹⁰²² *ibid.*

¹⁰²³ *ibid.*, p.1103.

¹⁰²⁴ See Appendix One.

required special legislative interventions of various kinds.¹⁰²⁵ In the following chapters we turn to consider more closely the implementation of confiscation policy in the Waikato and Taranaki districts, both of which contained ample evidence of confusion and conflict, not least between Grey and his ministers.

4.14 Conclusion

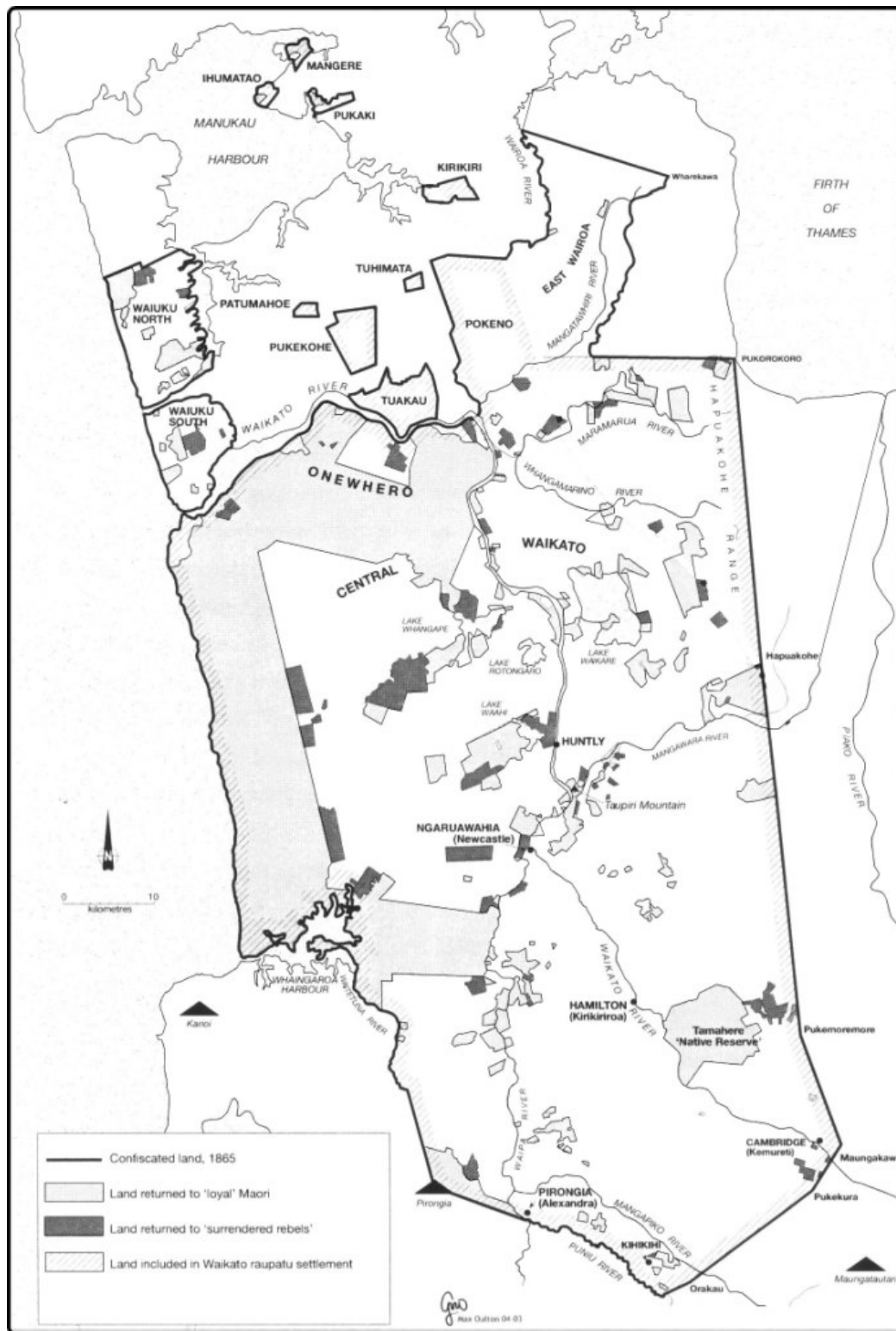
This chapter has traversed a number of broad issues associated with the development of confiscation proposals in New Zealand in the 1860s. We saw that, much as colonial politicians sought to justify the application of a policy of confiscation at Waikato, Taranaki and elsewhere by reference to Maori custom, on closer consideration such a comparison did not withstand scrutiny. As some critics of confiscation in New Zealand liked to point out, there were much stronger (if less than favourable) precedents in Irish history, as there was in the history of imperial expansion elsewhere around the globe. Locally as well, there had been earlier examples of what might be described as proto-confiscatory acts. It was not, however, until 1861 that confiscation began to be openly contemplated in official circles in the aftermath of the first Taranaki War. Talk of confiscation turned to more concrete proposals in the months preceding the invasion of Waikato in July 1863, with military settlers to be planted on the lands of those who resisted the British troops and other newly-surveyed sections to be sold under these plans in order to defray war expenses.

The 1863 parliamentary session opened some months after British troops had crossed the Mangatawhiri River and was largely focused on a package of measures intended to provide the legislative framework to finance and legally authorise the various war and confiscation manoeuvres. While the Suppression of Rebellion Act granted officials a range of truly draconian powers in order to crush Maori resistance, the New Zealand Loan Act sanctioned raising a £3,000,000 loan on the London markets in order to cover the costs of suppressing ‘Native insurrection’ and to provide for ‘colonizing the rebel districts’, with proponents of these measures confident that the sale of confiscated lands would more than cover the initial outlay. A third measure,

¹⁰²⁵ Richard Boast, “‘An Expensive Mistake’: Law, Courts, and Confiscation on the New Zealand Colonial Frontier”, in Richard Boast and Richard S. Hill (eds), *Raupatu: The Confiscation of Maori Lands*, Wellington: Victoria University Press, 2009, p.152

the New Zealand Settlements Act, provided the statutory framework for confiscation. It was not without its critics, some of whom accused the government of abrogating the Treaty in order to forcibly seize Maori lands. Those kinds of concerns were also expressed in London, where it was widely believed that British taxpayers were funding a war of conquest and dispossession for the exclusive benefit of settlers in New Zealand, a sentiment reinforced by rumours that Imperial troops stationed in the colony were 'utterly disgusted' with the conflict they had been asked to fight in.

The British government, while accepting confiscation in principle as justified under the circumstances, was concerned that its overzealous application might intensify and prolong Maori resistance, thereby entailing additional military and financial burdens. But conditions imposed upon its consent to the Settlements Act intended to mitigate these risks (including a requirement to pursue voluntary cessions of land before enforcing outright acts of confiscation and the establishment of an independent commission to determine which lands should be taken) were either partially or wholly ignored by colonial authorities. Even a two-year time limit on the operation of the Settlements Act was overturned by one of a number of later pieces of legislation amending or refining the confiscation and compensation process. But the British government was no longer disposed to intervene directly in the affairs of New Zealand, especially once agreement had been reached for its troops to be gradually withdrawn from the colony. While in theory the governor remained directly responsible for any matters involving the honour of the Crown or adherence to treaties, in practice colonial ministers came to have more or less free hand after 1865. As the next chapter discusses, that stood in stark contrast to the bitter disputes between Grey and his ministers over the implementation of confiscation policy which had occurred prior to that point.



(Source: Waitangi Tribunal, *Hauraki Report*, vol.1, p.208)

Figure 8 Waikato Confiscated Lands

5. Implementing Confiscation on the Ground: The Waikato District

5.1 Introduction

Confiscation efforts on the ground had commenced in the Waikato district within weeks of the battle of Orakau. That was hardly surprising given that military settlers were already beginning to arrive to take up lands promised them. Yet although the New Zealand Settlements Act provided a legislative basis for the confiscation of lands for these purposes, there was little urgency in actually proclaiming the lands as confiscated. Such legal niceties were evidently not considered a priority by colonial officials at the time. Meanwhile, later delays were in large part attributable to a lengthy dispute between Grey and his ministers as to the extent of territory to be confiscated. While the governor sought to portray his stance as a principled one based on justice and moderation, it was Grey who (by his own admission) had initially devised the confiscation proposals and who eventually agreed to the wholesale confiscation of Waikato lands.

5.2 Initial Arrangements

It was seen in the previous chapter that proposals to invade the Waikato district and confiscate the lands of those who resisted had been agreed between Grey and his ministers sometime before 24 June 1863. As was seen, those proposals were reworked and expanded in subsequent memoranda by Domett dated 31 July 1863 and 5 October 1863 – the latter of which was subsequently repudiated by the incoming administration of Whitaker and Fox, largely on the grounds of the intemperate language it engaged in, though the policies themselves were essentially embraced without significant changes. It is clear, however, that much of the detail of the scheme had already been fully agreed upon prior to the memorandum of 31 July. Several days before this, for example, Native Minister Francis Dillon Bell wrote privately to Walter Mantell that:

...we have had seriously to consider the state of the militia & other colonial forces. The general has required so many to be sent to the front, that business is likely to be entirely stopped. Fox's prediction last year about an exodus is being verified, & industry of all sorts is suspended. We have come to the conclusion that in the present crisis there is only one course to be taken, which is to endeavour to import a large number of men to occupy land on the Waikato, on terms similar to those which we lately offered to people willing to settle between Omata and Tataraimaka.

We have therefore decided to make a great effort to bring in people from Australia, who shall go at once to the front and relieve the Auckland citizens from the duty of guarding the frontier. Our plan is a wide one, aiming at bringing in no less than 5,000 men, and I go to Sydney in a few days to put the thing in train. From all accounts I think we may be able to get 1000 or 2000 at once, but this has yet to be proved. If it succeeds for Auckland, we shall gradually pour in an armed population to the settlements of the North Island...You see there is only one thing possible now, which is to make the rebels' land pay the cost of the war. It will not do on the one hand, to say that nothing shall be done till the assembly meets, nor on the other to say that it shall be done without the assembly. We have decided to go on, and at the same time to give Parliament a chance of limiting or extending the plan, which is simply this [:] to advance the frontier at all points.¹⁰²⁶

One day later, the Premier Alfred Domett wrote officially to the Auckland Superintendent Robert Graham regarding the scheme. He advised that:

In order to relieve to a great extent the population of the Province of Auckland from the pressure of the Militia duties now imposed upon them by the war with Waikato, and effectually to provide for their permanent security, whenever the war shall have been brought to a close, the Government have resolved to introduce a large body of men from Australia and elsewhere and

¹⁰²⁶ F.D. Bell to Walter Mantell, 26 July 1863, Mantell Family Papers, folder 245, ATL. In the same letter Bell stated that it was 'only yesterday that the governor settled the terms on which the people shall be invited'.

form settlements along a frontier line through the heart of the country, on lands to be taken from the tribes now in arms against us, and given on conditions of Military tenure to the immigrants in question.¹⁰²⁷

Domett added that the formation of such a line of settlements would probably require the acquisition of some lands belonging to 'friendly Natives, which must be bought in the usual way.'¹⁰²⁸ He advised that the government intended to introduce as many as 5000 men and that it would be necessary for the province to pay their passages from Australia and cover other expenses.

Graham replied two days later offering a sum of £15,000 for these purposes.¹⁰²⁹ Domett had forwarded Grey draft terms of enrolment on 31 July 1863, and these were finalised by 3 August 1863 and gazetted two days later.¹⁰³⁰ These stipulated that in order to be eligible to serve as a military settler the men had to be under 40 years of age, of good character, health and general fitness for service. Once accepted, the men were to be provided with a free passage to Auckland and were entitled to receive pay and rations while on actual service, with rations also to be distributed for the first twelve months regardless of service. For a period of three years the men would be liable to be trained and exercised as other militia, and could be called upon to serve at any time. In return, at the expiry of three years, all military settlers who had fulfilled the conditions of their contracts would receive Crown grants for town allotments and farms sections to be allocated on a sliding scale according to rank (ranging from 400 acres for field officers down to 50 acres for privates).¹⁰³¹

While the response to this announcement was generally positive throughout the settler press, at least some critics pointed out that the government was not in a position to grant what it promised potential military settlers, since 'rebel' lands had neither yet been seized in practice nor confiscated in law.¹⁰³² For the most part, however,

¹⁰²⁷ Domett to Superintendent of Auckland, 27 July 1863, AJHR, 1863, A-8, p.8.

¹⁰²⁸ *ibid.*

¹⁰²⁹ Superintendent of Auckland to Domett, 29 July 1863, AJHR, 1863, A-8, pp.8-9.

¹⁰³⁰ Ross B. Hamilton, 'Military Vision and Economic Reality: The Failure of the Military Settlement Scheme in the Waikato, 1863-1880', MA thesis, University of Auckland, 1968, p.21.

¹⁰³¹ *New Zealand Gazette*, no.35, 5 August 1863, pp.303-306.

¹⁰³² Hamilton, 'Military Vision and Economic Reality', pp.22-23; *Daily Southern Cross*, 7 August 1863.

conquest and confiscation were seen as mere formalities that would follow in due course.

Meanwhile, the enlistment of volunteers commenced almost immediately. Within a week of the terms being gazetted, the first applications for commissions in the Waikato Regiments were received.¹⁰³³ The conditions of service were also widely advertised in a number of Australian newspapers.¹⁰³⁴ While multiple recruitment schemes were advanced by private agents touting their own services,¹⁰³⁵ these were quickly rejected by the government in favour of a centralised approach. To this end, a day before the conditions had even been gazetted a party led by Bell departed for Melbourne. Accompanying him was the former Waikato Civil Commissioner J.E. Gorst, who had subsequently assumed the role of private secretary to Bell (by this time nearly blind), along with Lieutenant-Colonel George Dean Pitt, who was later made responsible for overall recruitment in Australia.¹⁰³⁶

At the end of August, the first contingent of 405 privates and non-commissioned officers sailed for New Zealand from Melbourne. Despite efforts to recruit selectively in order to counter allegations that the lowest refuse of Australian settler society would be enrolled, even the Victorian newspaper noted that ‘the volunteers included many specimens of the genus “loafer”’.¹⁰³⁷ Bell, in addressing the large crowd gathered to witness the departure, told the recruits that:

One thing, indeed, is quite true, that the Government has not got at this moment in possession the land which is offered to you. The land is still in the hands of rebel natives; and we trust to you and your military comrades to hold by the force of your arms that territory which will hereafter be allotted to you by Government. This is land we have long tried to obtain by peaceable means. We have endeavoured to colonise the country, and introduce the arts of civilization among the natives without violence, and with every advantage to

¹⁰³³ Hamilton, ‘Military Vision and Economic Reality’, p.24.

¹⁰³⁴ *Mercury* (Hobart), 16 September 1863; *Courier* (Brisbane), 26 August 1863; *Sydney Morning Herald*, 21 September 1863; *Argus* (Melbourne), 19 August 1863.

¹⁰³⁵ See the various proposals contained in: Introduction of Military Settlers, IA 14/12, Archives NZ.

¹⁰³⁶ Leonard L. Barton, *Australians in the Waikato War, 1863-1864*, Sydney: Library of Australian History, 1979, p.15.

¹⁰³⁷ *Argus*, 1 September 1863.

them. We should never have thought of taking this land by force if they had not made war upon us, and did not constantly threaten the lives of the women and children of our peaceful settlers. It is not only the colonists and colonial Government who were engaged in the present plan of military settlements: the Governor of New Zealand is a party to that plan, to which we have given our cordial assent. It is his and our opinion that nothing can now secure peace in the country of New Zealand but the establishment of strong military settlements in the interior of the country, and it is to form such settlements that we have invited you.¹⁰³⁸

Bell's admission that the settlers had coveted the Waikato lands prior to the outbreak of war would probably have seemed tactless in any other context but was perhaps intended as part of a marketing pitch designed to emphasise the desirability of the lands to be allocated recruits. Given that, upon arrival in Auckland, military settlers were, after a few weeks basic training, more or less immediately thrust into the war, such talk may have seemed necessary.

Not that there was any shortage of willing recruits. By October 1863 nearly 1000 men had been enlisted in Australia, provoking complaints from local newspapers that settlers were being lured away from the Victorian and New South Wales colonies.¹⁰³⁹ Combined with additional recruits from the Otago gold fields and elsewhere, the initial intake of 2000 military settlers was quickly filled. Defence Minister Thomas Russell wrote that, following the first *Gazette* notice, 'within two months upwards of two thousand [men] were enrolled, equipped, and engaged on service.'¹⁰⁴⁰

Although the party was soon withdrawn from Australia, Pitt returned in December on a second, equally successful, recruiting mission, this time targeting married men with families.¹⁰⁴¹ Further vociferous attacks followed in the Australian press, including accusations that a scheme of mass immigration at the expense of the other colonies was being covertly pursued by the New Zealand authorities under the cover of

¹⁰³⁸ *Daily Southern Cross*, 19 September 1863.

¹⁰³⁹ Hamilton, 'Military Vision and Economic Reality', pp.26-27.

¹⁰⁴⁰ Thomas Russell, Memorandum on Measures of Defence in Northern Island, 20 October 1863, AJHR, 1863, A-6, p.2.

¹⁰⁴¹ Hamilton, 'Military Vision and Economic Reality', pp.28-29.

military necessity.¹⁰⁴² This time the Victorian government intervened, formally requesting that a stop be put to Pitt's activities. Although Pitt replied that he could not comply with this request without instructions, the Colonial Treasurer, Reader Wood, happened to be in Victoria at that time, and soon ordered Pitt to discontinue the enrolment of further men.¹⁰⁴³ A total of just over 4000 military settlers had been recruited to the Waikato Militia by March 1864.¹⁰⁴⁴ That was a far cry from the projected 10,000 military settlers required to defend the Raglan to Tauranga frontier in some estimates,¹⁰⁴⁵ though this does not appear to have resulted in any corresponding reduction in the quantity of land it was considered necessary to confiscate.

5.3 Grey and his Ministers Dispute Confiscation

It was seen in an earlier chapter that at a meeting of the Executive Council held on 14 December 1863 the future direction of the war was discussed. Ngaruawahia had been taken without opposition and the prospects for peace seemed high. But Grey and his ministers bickered over the basis upon which negotiations with the Kingitanga should be held and by whom, as a result of which Cameron pushed on with his military operations. Whitaker later claimed that the Executive Council meeting had formally agreed to establish a frontier line stretching from Raglan across to Tauranga. Grey denied that this had taken place, while Cameron, who had also been present, denied any memory of such a conversation. Either way, it was Grey who had, by all accounts, first proposed such a line in June of that year. By December the New Zealand Settlements Act had been passed into law, thousands of military settlers were on active service in the Waikato and were waiting to receive their land allocations, while it remained to be seen how much further south the Imperial troops would push. That, above all, would determine the amount of land potentially available for confiscation.¹⁰⁴⁶

¹⁰⁴² *Argus*, 20 January 1864, 21 January 1864, 23 January 1864; *Mercury*, 25 January 1864.

¹⁰⁴³ *Daily Southern Cross*, 17 February 1864.

¹⁰⁴⁴ Hamilton, 'Military Vision and Economic Reality', pp.30-31; Whitaker, Memorandum by Ministers as to Future Military Operations, 5 March 1864, AJHR, 1864, E-2, pp.26-27; Grey to Newcastle, 29 February 1864 (and encl.), AJHR, 1864, E-3, pp.33-34.

¹⁰⁴⁵ Notably Domett's disowned memorandum. Memorandum on Roads and Military Settlements in the Northern Island of New Zealand, 5 October 1863, AJHR, 1863, A-8A, p.4.

¹⁰⁴⁶ See chapter 2.

It was in this context that, on 17 December 1863, Grey penned a draft despatch to the Colonial Office concerning the implementation of confiscation policy. He stated that:

I understand that some uneasiness exists in the public mind here, from the opinion being entertained that I may not, in the confiscation of the lands of those Natives who have been engaged in the present war, go so far as some of the settlers think proper and desirable.

2. Under these circumstance, I request your Grace will advise me, whether, in assenting to the confiscation of these lands, I am, as of course to assent to any advice that my Responsible Advisers may tender to me; or whether your Grace proposes to issue any special instructions to me on the subject; or generally, what course you wish me to pursue in regard to it.

3. Until your instructions reach me, I shall act in this matter in the manner which I may think Her Majesty's interests require me from time to time to adopt, carefully reporting to your Grace each step that I may take.

4. I ought to mention to your Grace that I believe I was the first to recommend the forfeiture of lands by those Natives who took arms against us, and I did so for the following reasons: - Because such a proceeding is in conformity with their own customs. It will only affect lands of those who have forced us into war, and leaves secure to the Native owners who have remained at peace, their large landed possessions in other parts of this island. They will thus, from contrast, see the advantages secured by being protected by British rule, and the punishment which follows wanton attacks upon the European race and their properties. At the same time, from enactments recently made, the well-disposed Natives, who retain their lands can deal as they please with them.

It seems perfectly just that those who forced us into a war we did our utmost to avoid, and which entails great losses on us, should pay the cost of that war, and they can do so in no other way but by the sale of their lands.

It also appeared just that those who by their acts had shewn that the lives and properties of the Queen's inoffensive European subjects were not safe from them should afford us the means from their properties of placing the lives and properties of the Europeans in security for the future.¹⁰⁴⁷

Grey claimed that these reasons would be understood and appreciated by the great bulk of Maori who had not taken up arms against the Crown. At the same time, however, he warned that:

Some persons, however, as I gather from articles I see in the local papers, appear to desire that the Native lands should be taken, not for the reasons and objects, and to the extent which would follow from the views I have above stated, but in order that a magnificent and extensive territory may be thrown open to any amount of prosperous colonization; such persons may not unnaturally think with uneasiness that I may not in the confiscation of the lands of the Natives go so far as they desire for I think that if it was believed that such views were being acted on, nearly all the Native tribes would join in rebellion against us, and that we should be drawn into a long and most expensive war for objects which Her Majesty's Government ought not to sanction.¹⁰⁴⁸

Whitaker, on behalf of ministers, protested at the presumed interference in Native affairs so soon after full responsible government had been handed over which Grey's despatch constituted.¹⁰⁴⁹ He also noted that ministers had not seen the newspaper articles referred to, which was perhaps intended to suggest that he believed Grey's real target was themselves. That suspicion is heightened by a later memorandum from Reader Wood in which he recalled that Grey had read the draft despatch to him. Wood stated that he had:

...fearing that an allusion might possibly be made to Ministers, and fearing too that if the forfeiture of Native lands were carried out on a scale more limited

¹⁰⁴⁷ Grey to Newcastle, 17 December 1863 (draft), AJHR, 1864, E-2, pp.27-28.

¹⁰⁴⁸ *ibid.*, p.28.

¹⁰⁴⁹ Whitaker, Memorandum by Ministers as to Responsible Government, 29 December 1863, AJHR, 1864, E-2, p.27.

than that which Ministers had stated in the House of Representatives it was their intention to carry it, and to render it impossible for them to realise the views of the Legislature with reference to emigration and the repayment of a proportion of the cost of the war by the sale of some of the land, asked His Excellency whether, upon this point, there was any difference of opinion between himself and his Advisers, and added: "Your Excellency of course is fully aware of our views upon this subject from the speeches made by us on the Settlements and Loan Bills in the House of Representatives," His Excellency replied that he was aware of those views, and that he did not know that there was any difference of opinion between himself and his Ministers on the subject of confiscation; "if anything," he added, "he went further than they did." (The Colonial Treasurer asked in what direction. The Governor replied: "You would give them (the rebel Natives) back some of their lands, but I would not." The Colonial Treasurer then asked what he would do, as if the people had no land, they would be driven to despair." The Governor replied: "No, that would not be the case, as other tribes in different parts of the country would give them land enough for their wants."¹⁰⁵⁰

Wood left for England fully satisfied on the basis of this conversation that no material difference existed between Grey and his ministers as to the implementation of confiscation policy.

As was discussed in chapter 2, on 2 February 1864 a notice was issued to Maori who had taken part in the war outlining the terms they could expect to receive upon submission.¹⁰⁵¹ It was somewhat ambiguous with respect to land, but was followed by a further exchange of memoranda regarding the practical workings of responsible government, during the course of which the December despatch was again raised. On 5 February 1864 Grey wrote that ministers had misunderstood the draft despatch:

He wrote it in consequence of a conversation he held with the Colonial Secretary, and upon receiving the Ministerial Memorandum upon it, he

¹⁰⁵⁰ Reader Wood, Memorandum for His Excellency the Governor, 29 September 1864, AJHR, 1864, E-2, p.109.

¹⁰⁵¹ Government Notice, 2 February 1864, AJHR, 1864, E-2, pp.32-33.

thought the correspondence then was in so unsatisfactory a form that he ought not to send it home until Ministers had in some explicit form stated to what extent they thought it might be necessary to carry the confiscation of Native lands. The Governor felt that to have proposed this question to his Responsible Advisers, at the present moment, might have proved a serious embarrassment to them, whilst if General Cameron's present operations terminated successfully, they might shortly be able to come to a clear and satisfactory conclusion upon this subject. The Governor therefore, anxious in no way to throw any difficulties in the way of his Ministers, did not send on, or in any way allude to the draft Despatch to which Ministers have referred in their Memorandum, nor will he, after what they have said, send it to the Secretary of State.¹⁰⁵²

The receipt that same month of Newcastle's despatch of 26 November 1863 in which he approved of the principle of confiscation and added that 'the application of these principles is a matter of great danger and delicacy, for which the Colonial Government must remain responsible',¹⁰⁵³ put an end to any incipient argument over the extent of confiscation for the time being. Grey, as was seen previously, even launched a forceful defence of confiscation in early April in response to the objections of the Aborigines Protection Society. Later that same month, however, ministers drafted a proclamation which required all those who desired peace to make their submission by 1 July 1864. It declared that the chiefs and tribes of Waikato had 'justly forfeited all their lands', but out of consideration for them a further opportunity was now to be given them to return and live in peace, under the protection of the Queen. This would require the surrendering up of all arms and ammunition, taking an oath of allegiance, and agreeing to go and reside where directed until a permanent residence was found for each man, to be held under Crown grant. The proclamation added that 'Military and other settlers will be placed throughout Waikato, so that the law may be upheld, peace preserved, and the well-disposed of both races protected.'¹⁰⁵⁴ It was further stated that other Maori who had fought against the Queen

¹⁰⁵² Grey, Memorandum by the Governor as to Responsible Government, 5 February 1864, AJHR, 1864, E-2, p.29.

¹⁰⁵³ Newcastle to Grey, 26 November 1863, AJHR, 1864, E-2, p.31.

¹⁰⁵⁴ Whitaker, Memorandum by Ministers enclosing Draft Proclamation, 22 April 1864, AJHR, 1864, E-2, p.36.

but were desirous of living in peace would be permitted to do so upon like terms to those offered the Waikato tribes.

Grey signed the proclamation on 30 April 1864, but at the same time made known in writing his own objections to a number of provisions contained in the document. He was concerned that the demand to surrender up all arms could be misinterpreted, especially as the Crown was not in a position to offer protection from tribal enemies who might take advantage of such a situation, and objected to the sweeping nature of the proclamation, preferring a more precise document directed solely at Waikato. He further stated that:

The Governor has always desired to see the Government, having conquered the Waikato District, proclaim exactly what regulations it intended to establish in that district, encouraging those of its former inhabitants who may be well disposed to return and live there in peace and security, under regulations framed with an evident view to their future welfare, as well as to that of the European population which is to be located there, such a plan would be in strict fulfilment of the legislation of the General Assembly during its last session. As additional districts were required for settlement they would be proclaimed in like manner, and the law then pronounces the penalty for all those engaged in the rebellion, that they shall receive no compensation for any of their lands which the Government may take possession of for the purposes of settlement in such districts.¹⁰⁵⁵

Far from wishing to withdraw from confiscation, Grey was thus advocating its speedy application in the Waikato district, albeit with ‘such leniency as...thought consistent with the safety of the country’ shown towards those who complied with the deadline to submit. Precisely what Grey or his ministers thought would happen in the event that the Kingitanga as a whole tendered their submission by 1 July is not clear. However, with further offensive operations in the district effectively suspended, both parties were presumably operating on the assumption that such an event was extremely unlikely.

¹⁰⁵⁵ Grey, Memorandum by the Governor as to the Proposed Terms to Rebel Natives, 3 May 1864, AJHR, 1864, E-2, p.36.

In fact, although Whitaker took issue with a number of Grey's arguments, between the drafting of the proclamation and the governor's assent to it, British troops had suffered a humiliating defeat at Gate Pa on 29 April 1864. Ministers now deemed it unwise to issue any proclamation so soon after this event, as a result of which the notice was never issued. Nevertheless, Whitaker added that:

Ministers are equally anxious as His Excellency to encourage the well disposed of the former inhabitants of Waikato to return and live there in peace and security, under regulations framed with an evident view to their future welfare. Ministers are, moreover, extremely anxious that no unnecessary delay should take place, and they beg respectfully to remind His Excellency that the first step towards carrying this object into effect is to determine the country that is to be used for the purpose. It has now for some time rested with His Excellency to express his opinion on the proposition of Ministers that a line near the Punui River [sic] shall be taken for the location of military settlers, with a view to render the country between that place and Auckland available for the occupation of European settlers, and Natives willing to accept terms of submission. The whole operations connected with the location of settlers and Natives in Waikato are now delayed awaiting His Excellency's decision. As soon as this question of a line of protecting posts is determined, Ministers are prepared at once to proceed to carry into effect the legislation of the last session of the Assembly, by proclaiming districts under the New Zealand Settlements Act.¹⁰⁵⁶

The line of posts currently occupied, Whitaker reminded the governor, had been proposed by Grey upon the recommendation of General Cameron and was:

...simply that which the emergencies of the campaign have imposed. The Maoris have fought Her Majesty's forces up to that line, making determined resistance, at a succession of strong posts. They have been driven from these, leaving Her Majesty's Forces in possession of the country of which the line

¹⁰⁵⁶ Whitaker, Memorandum by Ministers as to Proposed Terms to Rebel Natives, 6 May 1864, AJHR, 1864, E-2, p.38.

referred to is the frontier. Fortunately, it happens to be in the opinion of Ministers, confirmed by General Cameron, the very best line which could be taken with a view to the permanent occupation of the country.¹⁰⁵⁷

Here was a clear statement that ministers intended to confiscate the full extent of the territory conquered by Cameron and not an inch more or less. Combined with Newcastle's previous indication that the application of confiscation policy was a matter for the colonial authorities, this might have settled the matter.

Grey, though, was having none of it. On 5 May 1864 he sought an explanation as to the power he would have over the disposal of 'rebel' lands placed in his hands under the terms of the February notice.¹⁰⁵⁸ On the same day he demanded to know the legal basis for ministers' view that 'all those Natives who have been fighting against the Queen's troops, have forfeited all their lands'.¹⁰⁵⁹ William Fox's response to the former query to the effect that the governor should accept the advice of his responsible ministers prompted Grey to appeal to the Colonial Office for a further ruling on the matter.¹⁰⁶⁰

Whitaker, meanwhile, denied that ministers had advised that Maori who had fought against the Queen's troops thereby forfeited all their lands. He reminded Grey that the first intimation of such a policy had been made by Grey himself in May 1863 in relation to Taranaki, while the notice addressed to the Waikato tribes gazetted on 15 July 1863 had also warned of forfeiture as the consequence of waging war and had again been penned by the governor.¹⁰⁶¹

Grey, in response, avoided discussing these earlier notices and again sought to know the legal basis for the proclamation that the tribes had forfeited all their lands.¹⁰⁶²

Whitaker replied that:

¹⁰⁵⁷ *ibid.*

¹⁰⁵⁸ Grey, Memorandum, 5 May 1864, AJHR, 1864, E-2, p.32.

¹⁰⁵⁹ Grey, Memorandum, 5 May 1864, AJHR, 1864, E-2, p.39.

¹⁰⁶⁰ Fox, Memorandum, 18 May 1864, AJHR, 1864, E-2, p.35; Grey to Newcastle, 8 June 1864, AJHR, 1864, D-6, pp.6-7.

¹⁰⁶¹ Whitaker, Memorandum, 6 May 1864, AJHR, 1864, E-2, p.39.

¹⁰⁶² Grey, memorandum, 6 May 1864, AJHR, 1864, E-2, p.40.

It appears clear to Ministers that the claim which the Natives have on the good faith of the Crown to the possession of their lands, under the treaty of Waitangi, can last only so long as they fulfil their share of obligations of that treaty. Therefore, when they throw off their allegiance and levy war against the Queen's authority the guarantee ceases, both in law and reason, to be of any binding force, and they forfeit that right of possession which they previously enjoyed.

But if there were any doubt on this point, as a matter of law, the New Zealand Settlements Act, 1863, would virtually justify the declaration which it was proposed His Excellency should issue and would afford ample means of practically carrying it into effect.¹⁰⁶³

In a lengthy reply one day later, Grey asserted that the question of confiscation was 'one which concerns the whole future destiny of the Maori nation.'¹⁰⁶⁴ The governor might, 'by sending forth a few words be made the means of reducing whole generations, including the off-spring of many loyal Englishmen from wealth to poverty, and of depriving of property they would otherwise have inherited, men who have rendered services to the Government, upon account of the misconduct of relations, over whose actions they had no control, and of which they disapproved.'¹⁰⁶⁵ He further denied that the effect of his July 1863 proclamation to the Waikato tribes was to confirm the legality of confiscation, asserting that he knew at that time that he could not take any land from the tribes until a law was passed for these purposes. He thought that the action of the tribes in supposedly 'breaking the Treaty of Waitangi' justified him to ask the Assembly to pass a law enabling him to take from the hostile tribes 'such lands as were necessary to enable him to introduce into the Colony a sufficient number of European settlers able to protect themselves and preserve the peace of the country'. But he could not agree with ministers that the Settlements Act 'justified him in declaring that those Natives who have been fighting against the

¹⁰⁶³ Whitaker, Memorandum, 10 May 1864, AJHR, 1864, E-2, p.40.

¹⁰⁶⁴ Grey, Memorandum, 11 May 1864, AJHR, 1864, E-2, p.40.

¹⁰⁶⁵ *ibid.*

Queen's troops have forfeited all their lands, and in then dealing with all those lands as being the property of the Crown.'¹⁰⁶⁶ Grey wrote that:

He cannot think that an Act for the purpose of such general confiscation would have been called in its title, an Act to enable the Governor to establish settlements for colonization; - he cannot think that in an Act intended to punish so severely a large portion of the Native race and their descendants for ever, the Preamble would have been made to recite, that its object was to permit of the introduction of a sufficient number of settlers, able to protect themselves, and to preserve the peace of the country,- nor can he believe that if such severe punishment had been the intention of the Act, the Assembly would ever have subjected to it, all those persons, and their heirs, who had been guilty of no greater offence than comforting a parent, a child, or husband, who had borne arms against the Queen.¹⁰⁶⁷

He claimed that, on the contrary, the Act, by distinctly limiting his power to take land solely for the actual purposes of settlement, and excluding those who had committed specified offences from the right to compensation, implied that the residue of such lands could not be touched.

This was a specious reading of the Settlements Act, drawing on some of its more euphemistic language. While it was true that the Act restricted the right to take lands to those actually required for settlement purposes, there was nothing in the legislation which prevented the confiscation of a tribe's entire landed estate so long as such a taking complied with this requirement.

Grey was now clearly grasping at straws. The confiscation policy he had devised and championed for so long was now the subject of a major breach with ministers.¹⁰⁶⁸ Whitaker accused the governor of taking a one-sided view of the matter. It was not just a question that concerned the future destiny of Maori in the country, but also of

¹⁰⁶⁶ *ibid.*

¹⁰⁶⁷ *ibid.*, p.41.

¹⁰⁶⁸ When John Morgan pleaded with Grey for the rights of 'loyalists' to be respected, the governor is said to have replied 'that he himself had no power, that Ministers had taken it all out of his hands. That "the whole system was iniquity and he only cared to get well out of it." Morgan to Browne, 30 May 1864, Gore Browne 1/2d, Archives NZ.

the settlers. A 'weak, vacillating policy', he declared, would be of benefit to no one.¹⁰⁶⁹ Indeed, Grey had at no previous point challenged the justice or legality of confiscation, Whitaker reminded the governor, but on the contrary had devised and vigorously defended the necessity for such a policy and his recent communications on the subject had come as quite a surprise in consequence.

Grey, in response, countered that if his opinions on some aspects of the question had been shown to have changed, he had remained consistent on some points. In particular, Grey wrote:

His views have never varied as to the propriety and necessity of confiscating large portions of the territory of the Waikato, Ngatimaniapoto, and Ngatiruanui Tribes; portions which in extent should be made, in as far as possible, to vary with the degree of guilt of the several Tribes, or sections of Tribes. He has always felt strongly the necessity of such *confiscation*, and has perhaps expressed himself strongly in regard to it.¹⁰⁷⁰

Matters quickly came to a head. On 17 May 1864 ministers submitted a draft order-in-council to Grey intended to proclaim a substantial area as a district under the Settlements Act. The draft proclamation described the district as including:

A line commencing at the Tamaki Portage, and thence, following the Tamaki River and the Waiheke Sound, and crossing the Frith [sic] of the Thames, to Cape Colville; thence along the East Coast to the Tauranga Harbour; thence through that harbour to Urumingi; thence to Arowhena; thence to Hangatiki; thence to the mouth of the Awaroa River on the Kawhia Harbour; thence to the mouth of the Kawhia Harbour; thence along the West Coast to the Manukau Harbour; and thence to the Tamaki Portage.¹⁰⁷¹

¹⁰⁶⁹ Whitaker, Memorandum, 17 May 1864, AJHR, 1864, E-2, p.41.

¹⁰⁷⁰ Grey, Memorandum, 25 May 1864, AJHR, 1864, E-2, p.44.

¹⁰⁷¹ Draft Order-in-Council, Submitted for His Excellency's approval, 17 May 1864, AJHR, 1864, E-2c, p.11. The document was accompanied by draft regulations setting out the basis upon which lands would be allotted to those who had previously been in arms against the Queen's troops. It stipulated, amongst other things, that each man would receive between 5 and 1000 acres of land according to circumstances.

What is interesting about this draft proclamation from a Rohe Potae perspective is that the old Raglan to Tauranga frontier line that had been spoken of since at least June 1863 had now become a Kawhia to Tauranga line. In the interior, meanwhile, the line was pushed deep into territory still controlled by Ngati Maniapoto and other Kingitanga supporters. This was less a case of creeping confiscation than of leaping confiscation. It suggests ministers may have remained hopeful of a resumption of warfare in the spring, when Cameron and his troops might push on beyond the Puniu River. Alternatively, given the distinction between districts declared under the Settlements Act and actual sites set aside for settlement, the inclusion of a substantial portion of Ngati Maniapoto territory not yet conquered under the former category may have been intended as a kind of symbolic reminder of the punishment that many Europeans thought ought to be inflicted on the tribe if only the government was ever in a position to do so.

Grey, for one, objected to the sweeping nature of the draft proclamation, preferring a more targeted approach. The district defined encompassed not one tribe or section of a tribe, he wrote, but including many, including a number of tribes against which no evidence of involvement in rebellion had been presented to him. He therefore concluded that:

Upon the whole, the Governor would prefer a district being in the first instance defined, which would only embrace a considerable part of the territory of the Waikato and Ngatimaniapoto tribes, who have been engaged in the rebellion. This would suffice for all practical purposes, would not alarm the Natives, and they would then see by experience that such Order in Council would not interfere with the rights of those Natives who had committed no offence.¹⁰⁷²

Ministers later countered that the Settlements Act was never intended to apply solely to districts containing none but ‘guilty tribes’, and that the legislation clearly contemplated that the lands of innocent persons would sometimes be required.¹⁰⁷³ But there was no fundamental dispute between Grey and his ministers as to the presumed ‘guilt’ of Ngati Maniapoto and other Waikato tribes.

Grey’s objections to the proclamation of one large district under the Act were reluctantly heeded by ministers, and three separate districts (two at Tauranga and one in the Waikato), based upon ‘the exact boundaries which His Excellency had personally and verbally approved of’ instead presented at a meeting of the Executive Council on 28 May 1864.¹⁰⁷⁴ The governor later wrote that one of the three districts ‘embraced a very large extent of country, including much territory which had neither been taken possession of or occupied by our troops’, but that being ‘satisfied of his own knowledge that a considerable number of the Natives within those districts had been engaged in rebellion against Her Majesty’s authority’, he had nevertheless agreed to sign all three draft proclamations.¹⁰⁷⁵ This was no doubt a reference to the Waikato district, which again extended well south of the Puniu River as far as

¹⁰⁷² Grey, Memorandum, 25 May 1864, AJHR, 1864, E-2, p.54.

¹⁰⁷³ Whitaker, Memorandum, 18 November 1864, AJHR, 1864, E-2C, p.3.

¹⁰⁷⁴ Whitaker, Memorandum, 30 May 1864, AJHR, 1864, E-2, p.55.

¹⁰⁷⁵ Grey, Memorandum, 24 October 1864, AJHR, 1864, E-2C, p.4.

Hangatiki, though no longer encompassing the coastal region.¹⁰⁷⁶ Although Grey denied it, ministers asserted that Grey had personally insisted that Hangatiki should not be left out.¹⁰⁷⁷

Grey had thus signed off on the proclamation of an area extending from Mangatawhiri south to Hangatiki, in theory opening the way for extensive confiscations. Farcical scenes followed at the Executive Council meeting, however, which had been attended by only Whitaker and Russell on behalf of ministers, when Grey brought up the issue of the regulations governing the allocation of lands to 'returned rebels' also tabled at the earlier meeting. He demanded to know whether these implied that all lands owned by such persons were to be deemed to have been forfeited to the Crown, whether inside the proclaimed district or not.¹⁰⁷⁸ When ministers objected that this was irrelevant, Grey instructed the clerk of the Executive Council not to issue the orders in council, which were consequently never issued.¹⁰⁷⁹

With the military settlers still on full pay and rations some two months after the final engagement of the Waikato War, the question of their placement on the ground was becoming an urgent one. Whitaker warned that further delays in resolving this question would inevitably lead to embarrassment, with the colonial government not having the means to meet future expenses.¹⁰⁸⁰ Although an interim arrangement was agreed by June 1864 to start forming village settlements in advance of the larger rural land allocations, the ongoing delay in legally confiscating the lands required for these purposes necessarily complicated matters.¹⁰⁸¹ Grey had suggested the placement of military settlers along the lower reaches of the Waikato River,¹⁰⁸² a proposal flatly rejected by ministers as inconsistent with the long talked of frontier line across to Tauranga.¹⁰⁸³

¹⁰⁷⁶ Draft Order-in-Council, n.d. [28 May 1864], AJHR, 1864, E-2C, pp.12-13.

¹⁰⁷⁷ Whitaker, Memorandum, 18 November 1864, AJHR, 1864, E-2C, p.5.

¹⁰⁷⁸ Grey, Memorandum, 24 October 1864, AJHR, 1864, E-2C, pp.5-6.

¹⁰⁷⁹ Minutes of the Executive Council, 28 May 1864, p.589, EC 1/2, Archives NZ; Extract from the Minute Book of the Executive Council, 28 May 1864, AJHR, 1864, E-2, p.57; Dalton, *War and Politics in New Zealand*, p.192.

¹⁰⁸⁰ Whitaker, Memorandum, 30 May 1864, AJHR, 1864, E-2, p.55.

¹⁰⁸¹ Grey to Cameron, 9 June 1864, AJHR, 1864, E-2, p.64.

¹⁰⁸² Grey, Memorandum, 17 June 1864, AJHR, 1864, E-2, pp.55-56.

¹⁰⁸³ Whitaker, Memorandum, 24 June 1864, AJHR, 1864, E-2, p.56.

Ministers had previously sought to justify their sweeping draft proclamation of 17 May 1864 on the basis that naming a district under the Act was not the same as taking land under it, and at least one historian has suggested that Grey failed to understand this crucial distinction.¹⁰⁸⁴ But an indication that Grey had been right to be concerned about the district to be proclaimed came late in June 1864. Asked to clarify the general policy it was intended to be pursued with respect to confiscation, Whitaker responded by repeating the frontier line proposals, which were now being spoken of as running from either Raglan or Kawhia to Tauranga. He again cited the disputed Executive Council meeting of 14 December 1863 at which such a policy had supposedly been discussed, and added that:

Ministers consider that all the land belonging to Rebel Natives within that line, and to the extent of the southern boundary fixed by the Orders in Council signed by His Excellency on the 28th of May should be confiscated, but they propose to give in convenient localities, estates varying in size from 10 to 2,000 acres to each of those of the former inhabitants who wish to return and reside in the District. This is the extent to which Ministers propose to carry confiscation in the Waikato country. It may be necessary to deal separately with the Ngatimaniapoto tribe, that perhaps most deserving punishment whose land may not be sufficiently touched if confiscation were confined to the present proposal.¹⁰⁸⁵

Whitaker added that ministers did not consider it necessary to interfere with the property of 'loyal' Maori, except in special cases where they happened to hold lands in common with 'rebels', in which cases an 'equitable division' would be made, though in some cases money might be received in extinguishment of claims to land.¹⁰⁸⁶

All 'rebel' interests within the district were thus, as far as ministers were concerned, to be confiscated and areas as small as ten acres allowed to those who agreed to return

¹⁰⁸⁴ Michael Allen, 'An Illusory Power? Metropole, Colony and Land Confiscation in New Zealand, 1863-1865', in Boast and Hill (eds), *Raupatu*, pp.124-125.

¹⁰⁸⁵ Whitaker, Memorandum, 25 June 1864, AJHR, 1864, E-2, p.58.

¹⁰⁸⁶ *ibid.*, p.59.

and reside in the district.¹⁰⁸⁷ And although the proclamation purported to extend as far south as Hangatiki, at least on paper, Whitaker made it clear that future confiscation would be pushed much deeper into Ngati Maniapoto territory if the opportunity arose.

A query from Grey as to the meaning of 'rebel' prompted Whitaker to reply that it was intended to cover all those ineligible for compensation under the provisions of the New Zealand Settlements Act.¹⁰⁸⁸ This definition therefore encompassed persons who had not actually engaged in 'rebellion'. It was sufficient under section 5 of the Act merely to have 'comforted', aided or assisted persons who had been 'rebels'.

While ministers and Grey scrapped over the origins of the 'frontier line' policy, trading lengthy memoranda on the subject, Cardwell's 26 April 1864 despatch reached New Zealand at the end of June 1864.¹⁰⁸⁹ This changed the complexion of things significantly. Whereas Newcastle had previously instructed that the application of confiscation policy was a matter for colonial ministers to determine, his successor had put in place a number of qualifications around assent to the confiscation scheme and had insisted that Grey follow his own personal judgment with respect to ensuring these were adhered to in full.

The governor had clearly been playing for time, finding increasingly tenuous objections to the course proposed by ministers. He now had what he wanted, but remained constrained by the need to work through a ministry responsible to Parliament. As Rutherford noted, if Grey could 'neither accept their advice nor induce them to accept his decisions, the onus lay upon him to find other advisers who would be more amenable to his wishes and who could gain the support of the colonial Parliament.'¹⁰⁹⁰ Grey's hand may have been strengthened, but it was not a case of doing as he pleased, as events subsequently confirmed.

¹⁰⁸⁷ The range of 10 to 2000 acres to be allocated such individuals was, however, double that originally proposed in the regulations of 17 May 1864.

¹⁰⁸⁸ Grey, Memorandum, 30 June 1864, AJHR, 1864, E-2, p.59; Whitaker, Memorandum, 1 July 1864, AJHR, 1864, E-2, p.59.

¹⁰⁸⁹ Dalton, *War and Politics in New Zealand*, p.201.

¹⁰⁹⁰ Rutherford, *Sir George Grey*, p.511.

On 7 September 1864 Grey forwarded ministers a draft proclamation setting out the terms upon which Maori implicated in the 'rebellion' could make their submission. It declared that:

The Governor, desiring to prevent the evils of continued war being inflicted on the inhabitants of New Zealand, and having been authorized to extend, upon certain conditions, Her Majesty's clemency to those misguided persons who have engaged in rebellion, thinks the present a fitting opportunity to give effect to Her Majesty's most gracious wishes; he therefore notifies and proclaims, that he will, in Her Majesty's name, and on Her behalf, grant a free and absolute pardon to all (persons) implicated in the rebellion who may come in on or before the 22nd day of October next, take the Oath of allegiance, and make the cession of such territory as may in each instance be fixed by the Governor and Lieutenant General.¹⁰⁹¹

Whitaker, though declaring that ministers would not withhold their concurrence, suggested that the surrender of arms also be made a condition of submission, while also seeking assurances from Grey that the proposed cessions of territory would be sufficient not merely to locate military settlers on but also to aid in defraying the expenses of the war. He queried the timing of the proclamation, however, adding that the position of Maori as defeated 'rebels' had not yet been unequivocally exhibited, and the general amnesty contemplated by Cardwell had clearly been intended as a final measure, following submission and cession of land.¹⁰⁹²

Grey denied that the draft proclamation amounted to a general amnesty. He believed there were many Maori, including the Waikato tribes, who admitted that they had been defeated and if they came in and made a cession of territory under the terms of the proclamation he would deem this a sufficient submission. He added that:

The views of the Governor and his Responsible Advisers differ also on the subject of cession of territory. They in their Memorandum look only to the acquisition of territory, as a means, of aiding by its sale, in defraying the

¹⁰⁹¹ Draft proclamation, encl. in Grey, Memorandum, 7 September 1864, AJHR, 1864, E-2, pp.89-90.

¹⁰⁹² Whitaker, Memorandum, 8 September 1864, AJHR, 1864, E-2, p.90.

expenses of the war, or for the purpose of being devoted to military settlements, and they ask the Governor to give an assurance that the cessions taken shall be to the extent required for these purposes. The Governor views the cession of territory as a punishment inflicted to deter other Natives from engaging in rebellion, and as a punishment which in as far as possible is to be in each instance apportioned to the degree of guilt in which the several tribes have been involved. The whole of the territory thus taken will of course be available for the objects mentioned by Ministers, but he cannot take a man's land, to a greater extent than the limits of justice warrant, because it may be wished to get it to plant settlements on. He cannot therefore give the vague assurance asked for.¹⁰⁹³

Grey's typically passive-aggressive memorandum was sufficient for Whitaker to promptly withdraw agreement to issue the proclamation. Ministers could not, he wrote, 'be parties to the declaration in the proposed Proclamation, which has the effect of constituting the Governor and the General the sole arbiters of what shall be deemed a satisfactory cession of territory by the rebel Natives'.¹⁰⁹⁴

While the question of who ultimately determined what was a satisfactory cession or confiscation was the central issue, Whitaker further disputed Grey's contention that the purpose of confiscation was as a form of punishment. He asserted that it was also intended to ensure the permanent peace of the colony, and reminded Grey that 'Contracts and promises have been made with a view to carry out such measures, and those who have relied upon the honor of the Government have a right to expect the engagements made with them to be honestly fulfilled.'¹⁰⁹⁵ He denied any suggestion that ministers were determined to pursue a course contrary to the limits of justice, and added that:

Ministers beg most respectfully to express their regret, that what appears to them, a serious change of policy is contemplated by His Excellency, - a change, in their opinion, uncalled for by any change of circumstances

¹⁰⁹³ Grey, Memorandum 8 September 1864, AJHR, 1864, E-2, pp.90-91.

¹⁰⁹⁴ Whitaker, Memorandum, 13 September 1864, AJHR, 1864, E-2, p.91.

¹⁰⁹⁵ *ibid.*

whatever. Her Majesty's Troops are in undisputed possession of sufficient land in Waikato to fulfil our engagements in this part of the Colony, and thus secure the future safety of its inhabitants, and yet not one-half of the land of the rebel Waikato and Ngatimaniapoto tribes is so occupied.¹⁰⁹⁶

A more unfortunate moment for the exhibition of any vacillation on the part of the governor, Whitaker concluded, could not be chosen than the present.

The escape of the prisoners captured at Rangiriri and elsewhere from Kawau Island on 11 September 1864 only added to a sense of crisis. It was widely feared that they might make common cause with Ngapuhi and their own kin back in the Waikato, leaving Auckland engulfed and at their mercy.¹⁰⁹⁷ According to Te Puhi Paeturi's later recollection, those prisoners had not initially understood that they were to be taken into captivity, but had believed that an end to the war would be negotiated. Instead they were taken into custody and eventually transferred to the hulk *Marion*, anchored in the Hauraki Gulf. The fate of the Rangiriri prisoners at this point once again became something of a political football between Grey and his ministers, with the former pressing for the release of some of those considered least dangerous from February 1864 and seeking an early decision as to the manner in which the remainder should be dealt with.¹⁰⁹⁸ He forwarded the Colonial Office rumours in circulation among the Waikato tribes that their relatives would be tried and hanged and asserted that this was fuelling 'a spirit of desperation' among those still at large.¹⁰⁹⁹ Later, in May 1864, he forwarded further reports that Rewi Maniapoto and others were 'very anxious to make peace and live quietly by the side of the white people, but that he is afraid that he would place himself too much at the General's mercy by giving up his arms; that the Natives captured at Rangiriri had been dealt with treacherously, they having been led to believe that, upon giving up their arms, they would be permitted to go free and live within the lines of the troops'.¹¹⁰⁰

¹⁰⁹⁶ *ibid.*, pp.91-92.

¹⁰⁹⁷ Dalton, *War and Politics in New Zealand*, p.202.

¹⁰⁹⁸ *ibid.*, p.198.

¹⁰⁹⁹ Grey to Newcastle, 6 April 1864, GBPP, vol.13, 1864 [3386], p.10.

¹¹⁰⁰ Grey to Newcastle, 3 May 1864, GBPP, vol.13, 1864 [3386], p.26.

Amidst claims and counter-claims regarding the actual treatment of the prisoners on the *Marion*, that same month they were transferred to Grey's private island of Kawau. Here, they were held under lax security before escaping to the Mahurangi district with the apparent assistance of local Ngapuhi sympathisers in September 1864.¹¹⁰¹ The presence of such a large body of Kingites so close to Auckland prompted alarm and a further round of mutual accusations, overlapping with the broader argument around the implementation of confiscation policy. A specific allegation has also been raised by some claimants that prisoners infected with smallpox were deliberately released and allowed to return to the district as part of a programme of 'germ warfare' directed against hapu and iwi of the Rohe Potae region. The research for this project has not unearthed any documentary evidence in support of such an allegation. There are problems even making out a plausible case for such an occurrence. For one thing, where did the smallpox come from? It was not a disease that was prevalent in nineteenth-century New Zealand, in part owing to the length of the journey from Europe and partly due to a successful vaccination campaign, which according to one estimate had seen something like two-thirds of Maori vaccinated against the disease by 1859.¹¹⁰² Moreover, while in Crown custody the prisoners were subject to regular medical examinations, none of which disclosed any cases of smallpox. Unless we are to believe that the examining doctors were somehow complicit in the supposed conspiracy that would seem fairly conclusive evidence. On the other hand, it was seen in Chapter Three that there were serious bouts of illness and disease amongst the Maori population of the Rohe Potae district in the aftermath of the wars, and that the very heavy death toll which typhoid in particular appears to have taken could be attributed in large part to the straitened circumstances in which the tribes found themselves by this time. While the stories of 'germ warfare' provide a telling reminder of the legacy of bitterness and mistrust over many generations left by war and raupatu in the 1860s, these narratives might therefore be seen as ultimately stemming from the very real and serious impact of such epidemics.

Grey, meanwhile, warned that if ministers failed to reconsider their rejection of the proclamation he might still issue it regardless.¹¹⁰³ Whitaker, foreshadowing the

¹¹⁰¹ Schnackenberg, *Maori Memories*, no pagination.

¹¹⁰² Dow, *Maori Health and Government Policy*, p.53.

¹¹⁰³ Grey, Memorandum, 14 September 1864, AJHR, 1864, E-2, p.92.

inevitable, indicated that ministers would have no other option but to resign from office if such proved to be the case.¹¹⁰⁴

Just days later, on 30 September 1864, Whitaker and the rest of his ministry did indeed tender their resignation. The catalyst for this, according to Dalton, had been Reader Wood's recent return from England. When he had departed the colony earlier in the year there had seemed perfect agreement between Grey and his ministers over confiscation policy. Astonished and dismayed at the deadlock which had subsequently developed, and Grey's abrupt reversal of his earlier position, Wood urged his colleagues to resign at once. This followed a meeting with Grey a day earlier at which the governor had stated that the refusal of ministers to sanction the governor's proclamation 'was prolonging the war, and closing the avenues of peace.'¹¹⁰⁵

The wonder is not that Whitaker and his colleagues resigned but that they had clung to office for so long. It may be, as Dalton suggests, that they had feared Grey would take advantage of the opportunity to form a more moderate administration committed to pursuing conciliatory policies towards Maori.¹¹⁰⁶ In any case, it was not until 24 November 1864 that a new administration led by Frederick Weld assumed office. On the same day that ministerial resignations had been tendered, Grey had sought for the first time to clarify precisely how much land ministers proposed to confiscate. The response, received the same day, indicated that ministers now envisaged confiscating 1,000,000 acres of land in the Waikato district, of which 360,000 acres was to be allocated to military settlers, 240,000 acres set aside for emigrants from England, and the remaining 400,000 acres opened for sale. A further 600,000 acres was also to be confiscated in Taranaki and again allocated three ways. The curt memorandum enclosing this information noted pointedly that 'this total falls very far short of the quantity proposed in the General Assembly [in November 1863], but Ministers have made the modification for the purpose of avoiding any imputation even of prolonging the war for the acquisition of territory.'¹¹⁰⁷ A tracing of the land it was proposed to confiscate followed a few days later, in response to a further request from Grey.¹¹⁰⁸

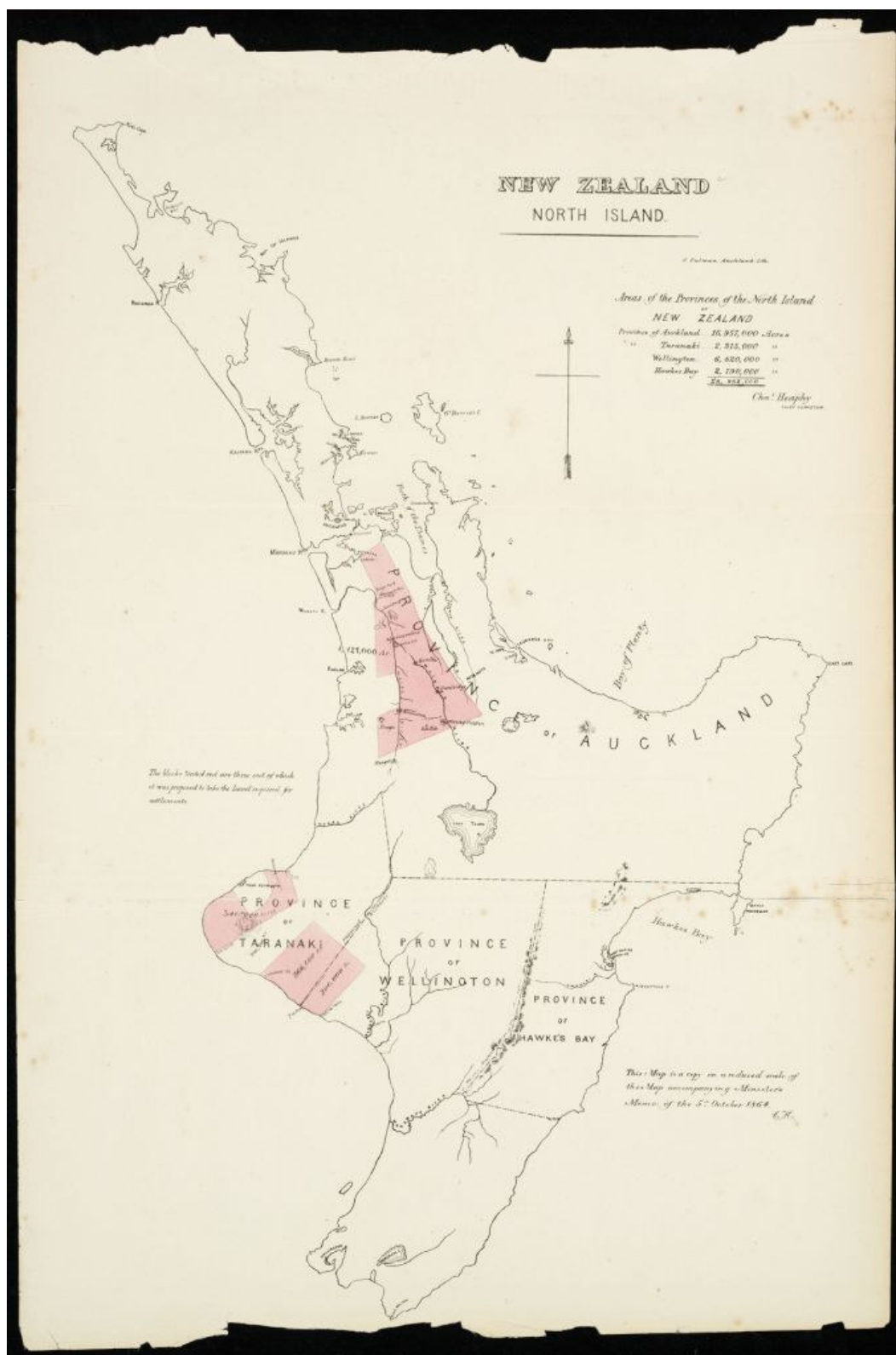
¹¹⁰⁴ Whitaker, Memorandum, 22 September 1864, AJHR, 1864, E-2, p.94.

¹¹⁰⁵ Reader Wood, Memorandum, 29 September 1864, AJHR, 1864, E-2, p.110.

¹¹⁰⁶ Dalton, *War and Politics in New Zealand*, p.204.

¹¹⁰⁷ Memorandum by Ministers, 30 September 1864, AJHR, 1864, E-2, p.95.

¹¹⁰⁸ Whitaker, Memorandum, 5 October 1864, AJHR, 1864, E-2, p.96.



(Source: AJHR, 1864, E-2A)

Figure 10 Map Accompanying Ministers' Memo of 5 October 1864

The arrival of a further group of military settlers from the Cape Colony was highlighted by ministers in a subsequent memorandum, with Fox pointing to even more migrants expected to arrive over the following month and seeking to know when the government would be in a position to honour its undertaking to place them on the land.¹¹⁰⁹ Grey, in response, claimed that he had been waiting for ministers to issue him with advice with respect to how they proposed to implement a scheme of confiscation in accordance with Cardwell's instructions but none had been forthcoming, leading him to eventually suggest his draft proclamation. He now suggested that a modified version of the proclamation be issued at once and that 'in the meantime such land as is really required for emigrants – which is the property of tribes engaged in the rebellion – and which from position and other causes is necessary for our safety – and is such as would be required either to be ceded by the natives or would have to be taken under the New Zealand Settlements Act – should at an early date be taken for the purposes of the emigrants now arriving.'¹¹¹⁰ It is not clear how the governor reconciled such a suggestion with Cardwell's instructions, given the proposal to simply take what lands were required was directly contrary to the requirement to first seek a cession of land in lieu of outright confiscation.

While Grey sought to pin the blame on ministers for the potentially embarrassing situation which now arose with respect to the inability to provide land for incoming military settlers, Fox and his colleagues in the outgoing administration countered that the difficulty was 'solely owing to His Excellency having so long declined to accept their advice with reference to the confiscation of Rebel Territory in Waikato.'¹¹¹¹ Fox added that the reason they had not issued advice as to how to implement Cardwell's instructions was because these consisted of guidance for the governor and not themselves. Secondly:

They did not believe it was possible to give effect to Mr. Cardwell's instructions even if it had been expedient to attempt it. And thirdly, They did not consider that the time had arrived which those instructions distinctly

¹¹⁰⁹ Fox, Memorandum, 15 October 1864, AJHR, 1864, E-2A, p.7.

¹¹¹⁰ Grey, Memorandum, 17 October 1864, AJHR, 1864, E-2A, p.7.

¹¹¹¹ Fox, Memorandum, 17 October 1864, AJHR, 1864, E-2A, p.7.

contemplated, namely, when the Maoris could be treated with on the unmistakeable footing of “defeated rebels.” Mr. Cardwell expressly required His Excellency to make it a condition precedent to his treaty with them, that they should be unmistakably exhibited in the character of “defeated rebels.” His Excellency has never had the Waikato tribes in such a position. The most important tribes and the principal chiefs still retain a defiant position, and even talk of attacking Ngaruawahia in December. They have never exhibited themselves in any other character yet than as defiant rebels, and are, in the opinion of Ministers, greatly encouraged in that position by the vacillating policy which has been pursued towards them by His Excellency.¹¹¹²

Fox proposed that some 180,000 acres of Waikato land be at once set apart to meet the most immediate needs while the broader questions around confiscation policy remained to be resolved.¹¹¹³ Meanwhile, Grey was informed by Whitaker that the outgoing ministry would not stand in the way of publication of a modified form of the governor’s proclamation, though they could not concur in what they believed would be viewed by Maori as further proof of the ‘vacillation and weakness’ of the government.¹¹¹⁴ Grey forwarded the revised draft publication to ministers on 24 October 1864, and it was published in the *Gazette* two days later.¹¹¹⁵ The proclamation declared that the governor, having been ‘authorised to extend, upon certain conditions, Her Majesty’s clemency to those tribes who have engaged in the present unhappy rebellion’ hereby notified that he would

grant a Pardon to all such persons implicated in the Rebellion, as may come in on or before the Tenth day of December next, take the Oath of Allegiance, and make the cession of such Territory as may in each instance be fixed by the Governor and the Lieutenant General Commanding Her Majesty’s Forces in New Zealand.¹¹¹⁶

¹¹¹² *ibid.*, p.8.

¹¹¹³ Fox, Memorandum, 27 October 1864, AJHR, 1864, E-2A, p.8.

¹¹¹⁴ Whitaker, Memorandum, 20 October 1864, AJHR, 1864, E-2A, p.18;

¹¹¹⁵ Grey, Memorandum, 24 October 1864, AJHR, 1864, E-2, p.96-97.

¹¹¹⁶ *New Zealand Gazette*, 26 October 1864, no.41, p.399.

All persons who had engaged in the ‘rebellion’ who wished to ‘return within any part of the ceded territory’ (‘nga rohe o te wahi kua tukua mai ki a Te Kuini’) or within the limits of European settlement were required to deliver up all arms and ammunition, while it was further stated that the pardon would not be extended to any individuals who may have been involved in the ‘murders’ of a number of specified persons (including the British troops ambushed at Oakura in May 1863, and a number of South Auckland farmers attacked during the early phases of the Waikato War).

There had, of course, been no land actually ‘ceded’ to the Crown in Waikato, or even any land formally confiscated in the district.¹¹¹⁷ The use of such language could only be seen as at least a token acknowledgement of Cardwell’s clear preference for cessions to be pursued prior to the imposition of outright acts of confiscation. Yet the proclamation said nothing as to how those who complied with the terms of the proclamation might expect to be treated, beyond the fact that they would be pardoned, presumably sparing such persons from arrest. Whether they would be required to cede all, most or only a small amount of their territory was not explained, and there were hardly any reassurances of generous treatment. Nor is it clear what, if any, steps were taken to ensure the proclamation reached Kingitanga supporters living south of the Puniu River.

Under these circumstances, it seems hardly surprising that the proclamation appears to have met with little or no response,¹¹¹⁸ other than a letter received from Wiremu Tamihana dated 24 November 1864. In it, Tamihana recalled his sadness at the outbreak of war, and particularly Grey’s seizure of the Tataraimaka block in 1863 and his subsequent ultimatum to the Waikato tribes. He recalled:

I said to you then, Don’t yet go, rather let me go first. You then said, Does my land belong to a stranger that it should be left for another to take me on to my

¹¹¹⁷ In fact, John Morgan alleged that the dispute between Grey and his ministers had been communicated to the Waikato tribes through ‘rebel’ scouts and others such as C.O. Davis, and that ‘A result is that the natives think that they have only to hold out and that their lands will not be confiscated.’ Morgan to Browne, 24 October 1864, Gore Browne 1/2d, Archives NZ.

¹¹¹⁸ According to one report, just seven Maori came in and took advantage of its terms. *The Times*, 16 March 1865, in IA 1/1865/1321, Archives NZ.

own ground. Then I ceased to speak to you, because I knew that you would not accede to my request.¹¹¹⁹

Referring to Grey's more recent proclamation of October 1864, in which he gave the tribes until 10 December to submit to the government's demands, Tamihana added:

Now with reference to this case, I now make a similar request, extend to me the days from the 10th December even unto the end of February, but my great desire is to have (the time extended) to the end of April, only I presume that you will not grant my request, and therefore I only ask to the end of February. This is the reason why I wish to have these days. All Waikato are at Taranaki. I alone am here...I desire that the chiefs of Waikato should all assemble in my presence. Then I will fully declare my word to them and to you also.

I don't allude to the suspension of hostilities, that still continues, (that) which commenced at Ngaruawahia and extended even to Maungatautari, and to the coming of Reihana and Hapi.

I declared my word then, you keep Waikato. I will not fight there.

My word is the same now.

The words which I now leave for the assembling together of Waikato are,-

1. The land.
2. The murders.
3. The guns and powder.¹¹²⁰

Grey, in forwarding Tamihana's letter to Cardwell, noted that:

2. Its purport is to ask me for a further extension of time during which the Natives may be free to accept the terms you have directed me to offer them.

¹¹¹⁹ Wiremu Tamihana to Grey, 24 November 1864, GBPP, 1865 [3425], p.21.

¹¹²⁰ *ibid.*

He begs for an extension of this time from the 10th of December to the end of February next, and gives his reasons for making this request, viz., the manner in which the war has caused the leading chiefs to scatter to different parts of the island, so that it is difficult for them to consult together. There appears to me at present to be considerable force in the argument which he has thus advanced.

3. William Thompson further repeats the declaration he had previously made, that he will in no way interfere with our occupation of the land which we have taken possession of in the Waikato country, which comprises probably nearly all, if not the whole of the land that would be asked for in that part.¹¹²¹

Grey added that he had yet to consult with ministers regarding the advisability of extending the deadline. But although the governor at least professed to have some sympathy for Tamihana's argument, there was to be no such extension prior to the expiry of the timeframe for compliance with the proclamation. If Grey did refer the letter from Tamihana to ministers then it fell to the incoming administration of Frederick Weld to decide the matter.

Whitaker had earlier alleged that the governor's actions in opposing the sweeping confiscation of most of the Waikato district had been designed 'to secure to him a character for clemency at their expense.'¹¹²² Grey, it was believed, had become more concerned by the court of British public opinion and the verdict of posterity than by the need to secure a lasting peace. Nor have most historians been convinced by Grey's claims to have been acting solely out of a sense of justice. B.J. Dalton, referring both to the confiscation issue and to the contemporaneous controversy over the Rangiriri prisoners, commented that:

Any reader who succeeds in threading his way through the labyrinth of memoranda on these questions will not fail to be struck by Grey's vacillation

¹¹²¹ Grey to Cardwell, 9 December 1864, GBPP, 1865 [3425], p.20

¹¹²² Whitaker, memorandum by ministers, 22 September 1864, AJHR, 1864, E-2, p.93.

and inconsistency, by his habitual dread of responsibility, by his delays, quibblings and evasions, and by his chronic dishonesty in controversy.¹¹²³

On the other hand, Grey's biographer James Rutherford is more sympathetic towards the governor's viewpoint, writing that:

Rightly or wrongly, Grey suspected the Whitaker ministry of designs with which he could not conscientiously associate himself. He should perhaps have foreseen their object earlier and avoided putting himself in the position where he seemed to be a consenting party. The weakness of his constitutional position forced him into devious courses in his campaign of obstruction. He became overwrought and ill with anxiety so that his judgment was, as he admits, at times clouded and he sometimes failed to act resolutely or consistently. But, at bottom, as Grey saw it, a great injustice was in danger of being perpetrated, and rather than allow it he was prepared to wreck the ministry.¹¹²⁴

While Grey did indeed succeed in wrecking the Whitaker-Fox ministry, none of this helps to explain why in December 1864 he agreed to the extensive confiscation of Waikato lands, especially in conjunction with an incoming administration supposedly committed to pursuing more moderate confiscation policies.

5.4 The Weld Ministry and the December 1864 Proclamation

As speculation began to turn to who might form the next government ahead of the scheduled meeting of the General Assembly in November 1864, Frederick Weld, one of those considered most likely to be offered the premiership, wrote privately to his brother that:

I think...my policy would be too bold for the Representatives. I should propose to ask the Home Government to take away *all* the soldiers, and reduce our

¹¹²³ Dalton, *War and Politics in New Zealand*, p.204.

¹¹²⁴ Rutherford, *Sir George Grey*, pp.514-515.

own forces to about 2000 men, whom I should arm with the best rifles procurable; these I would have trained to bush work and employ a part of them on the roads when not required to fight. With regard to the natives, I should not disarm them – it would be equivalent to a war of extermination to insist upon doing so. Their pride would be hurt as well as their fears roused, and we should only succeed with the loyal tribes, who would thus be at the mercy of their enemies. I should pardon all offenders except those convicted of murder, and I should confiscate only enough land to show them that they lost by going to war, and, in order to secure the peace of the country, by starting armed settlements where they were required. But I should leave even the most turbulent tribes more land than they could ever require, which would then be of treble its present value. I should offer every inducement to the defeated tribes to settle down quietly, and enforce their submission by making roads through the most disturbed parts of the country – *by force* if necessary. At the same time I should stop the lavish expenditure in presents and bribing the natives to keep quiet. By the policy I have sketched out I believe the expenses of the colony might be reduced by one-half.¹¹²⁵

Weld's apparently more moderate approach to confiscation than that previously pursued by the Whitaker-Fox ministry was in large part necessitated by the policy of 'self-reliance' he intended to pursue. That, in turn, reflected his deep dislike for the perpetuation of a system of 'double government' in consequence of the presence of Imperial troops in the colony. As Dalton says, much of Weld's approach had been shaped by his view of the bitter controversy which marked the final phase of Grey's relations with the Whitaker-Fox administration.¹¹²⁶ Determined to avoid a repeat of those mistakes, Weld insisted on setting out the propositions by which he intended to govern in a memorandum dated 22 November 1864, in which he insisted that:

...if the Governor should feel it his duty to differ on any material point with his Constitutional Advisers, Mr. Weld would, without hesitation, place his resignation in His Excellency's hands; he therefore considers it essential that

¹¹²⁵ Baroness Alice Lovat, *The Life of Sir Frederick Weld, G.C.M.G.: A Pioneer of Empire*, London: John Murray, 1914, pp.122-123.

¹¹²⁶ Dalton, *War and Politics in New Zealand*, p.209.

in such a case, the Assembly should at once be called, or other Advisers summoned.¹¹²⁷

Weld added that he recognised the right of the British government to insist upon the maintenance of a system of double government between Grey and his ministers so long as troops were stationed in the colony. Accordingly, he was prepared to accept the alternative and would ask the General Assembly to adopt a motion calling for the Imperial government to withdraw the whole of its land force from the colony and to issue instructions requiring the government to be entirely guided by the recommendations of his responsible advisers, except on such matters as might directly concern Imperial interests or the prerogatives of the Crown.¹¹²⁸ In terms of specific policy proposals, the memorandum went on to state that:

The Colony having entered into arrangements with a large number of Military Settlers, Mr. Weld would propose that sufficient land, being part of the territory belonging to the insurgents and now in military occupation, should be taken to fulfil those engagements, and that the description of such confiscated lands, and proper plans thereof, should be made public without delay.¹¹²⁹

There was no talk of confiscating lands for sale, or of additional immigration schemes, but merely of meeting existing, unavoidable commitments. That was a sea change from Whitaker's more expansionary rhetoric.

Resolutions calling for the almost immediate withdrawal of the entire Imperial army introduced into the General Assembly just over a week later were soon watered down to a less striking and more ambiguous demand that they should begin leaving 'at the earliest possible period consistent with the maintenance of Imperial interests and the safety of the colony'.¹¹³⁰ That kind of wording gave ample scope for the troops to remain for so long as there remained significant unrest. But significant opposition to the original wording had been occasioned, in large part, by fears that, as soon as British troops had left, 'the Natives would repossess themselves of the lands from

¹¹²⁷ Weld, Memorandum for His Excellency, 22 November 1864, AJHR, 1864, A-2, p.1.

¹¹²⁸ *ibid.*

¹¹²⁹ *ibid.*

¹¹³⁰ NZPD, 5 December 1864, 1864-1866, p.93; Dalton, *War and Politics in New Zealand*, p.210.

which they had been driven, overrun the more settled parts of the province and lay it waste'.¹¹³¹ Under such circumstances, the conquest of the Waikato might prove to have all been in vain. Weld, though, stood fast in his conviction that a 'moderate punishment', backed up with 'ample provision being made for the wants and requirements of insurgents after their submission', remained the best course to pursue. Referring to the New Zealand Settlements Act, he declared that:

I am not aware how far, in carrying out the practical working of this Act, I differ from or may entirely coincide with the honourable gentlemen who preceded us in the Ministry. Still, I think there may be a little difference in the mode in which we should wish to carry out the New Zealand Settlements Act. Should there be any such difference, I do not think it would be fair to the House for me to avoid calling attention to it. It is my intention now to recommend that, for the purpose we have already mentioned, blocks of land should be confiscated, and that they should be confiscated specially in such positions as may increase our strength, and not give us a large floating undefined confiscation, extending over distant portions of the country, and which it would tax us far above our resources to sustain. My idea is to strengthen the colony by settlements of colonists in self-supporting, self-dependent positions, and not to weaken it by prolonging unnecessary hostilities, and the confiscation of vague floating blocks throughout the country.¹¹³²

Weld announced that it was the newly-formed government's intention to at once recommend to the governor that no delay take place in putting these plans in place.

The newly-installed Premier was certainly quick to ensure that positive steps were taken in the direction of confiscation, even if the resultant measure was an ambiguous one of dubious legal standing, and even more dubious when contrasted with previous statements reassuring interested parties of a 'moderate' approach to confiscation. With the expiry of the 10 December deadline for the pardoning of 'rebels' who agreed

¹¹³¹ NZPD, 26 November 1864, 1864-1866, pp.4-5.

¹¹³² NZPD, 28 November 1864, 1864-1866, pp.14-15.

to certain conditions, a week later Grey issued a further proclamation under instructions from Weld. The proclamation stated that:

WHEREAS the Governor did on the twenty-fifth day of October last issue a Proclamation offering to grant a Pardon to all persons engaged in the present Rebellion who should comply with certain conditions therein specified before the tenth day of December instant, which time has expired:

And whereas it is now expedient that the mind of the Governor should be fully declared, so that all persons may know his intentions:

It is therefore declared and made known that the Governor will retain and hold as land of the Crown all the land in the Waikato taken by the Queen's Forces, and from which the Rebel Natives have been driven, within the following lines; that is to say,

Commencing at Pokorokoro in the Gulf of the Thames, thence proceeding Southward in a straight line to the Haupua Kohi pass, thence in a straight line to the summit of Pukemoremore, thence in a straight line to the summit of Maunga Kawa, thence in a straight line to Pukekura, thence in a straight line to Orakau, thence in a straight line to the nearest point of the Puniu River, thence following the Puniu River to its junction with the Waipa River, thence in a straight line to the summit of Pirongia, thence in a straight line to the nearest point of the Waitetuna River, thence by the Waitetuna River to Waingarua Harbour, thence by that harbour to the sea, thence by the Sea Coast to the Waikato Heads, thence by the Waikato River to the Mangatawhiri River, thence by the Mangatawhiri River to the Great South Road, thence Northward by the Great South Road to the Razor Back Redoubt, thence by the boundary of the Rama Rama and Hunua purchases to the Wairoa River, thence by the Wairoa River to the North Eastern boundary of the land of the Kowhairiki Tribe, thence to the summit of the Whare Kawa Mountain, thence following the ridge of the Whare Kawa to the Surrey Redoubt, thence in a straight line to the point of commencement.

And all lands Northward of the above boundaries belonging to Rebel Natives or Tribes up to, and as far as, the waters of the Manukau and the Waitemata.¹¹³³

For all of Weld's talk of moderation, then, the proclamation purported to confiscate all 'rebel' lands between Auckland and the southern limit of the area Cameron's campaign had effectively secured possession of during the course of the Waikato War. Evidence of moderation was, needless to say, hardly overwhelming.

The proclamation did, however, at least supposedly secure the lands of those who had not 'rebelled' to them. It went on to state that:

The land of those Natives who have adhered to the Queen shall be secured to them; and to those who have rebelled, but who shall at once submit to the Queen's authority, portions of the land taken will be given back for themselves and their families.¹¹³⁴

It also effectively signalled the end of the Waikato War, provided the Kingitanga made no aggressive steps. The governor, it was declared, 'will make no further attack on those who remain quiet.' On the other hand, it was warned that any 'guilty of further violence the Governor will punish as he has punished the Waikato Tribes.'¹¹³⁵

The proclamation also announced the governor's intention to take 'such land belonging to the Rebels as he may think fit' in the country between Wanganui and New Plymouth, and in the province of Taranaki, as well as asserting a general right to construct roads anywhere in the island. Those roads, it was stated, 'will be for the protection of the peaceable, the upholding of Law, and for the benefit of both Races.' Fair compensation would be paid for lands taken for these purposes, and those who agreed to build the roads would be paid in money, while all those who violently

¹¹³³ *New Zealand Gazette*, no.49, 17 December 1864, p.461.

¹¹³⁴ *ibid.*

¹¹³⁵ *ibid.*

obstructed the construction of new roads would be ‘forcibly repressed.’ On the other hand, the proclamation issued a blanket assurance:

To all those who have remained and shall continue in peace and friendship the Governor assures the full benefit and enjoyment of their lands.¹¹³⁶

Earlier demands for arms to be delivered up were now relaxed, as Weld had previously signalled (and Grey had supported), so that there was no blanket requirement for all guns to be handed over, but arms were not to be brought into ‘settled districts’, while it was added that ‘arms will be taken from such as are unruly and turbulent.’ The earlier pardon, which had previously exempted those who may have been involved in specific ‘murders’, was now modified with a more generic statement that those ‘who have in any way been engaged in the murders of women and children, or treacherous murders of unarmed men’ were now excepted.

This really was a most curious proclamation. As Ann Parsonson has noted, it made no reference to the New Zealand Settlements Act or to the concurrence of the Executive Council in any decisions regarding the lands to be taken as required under that legislation.¹¹³⁷ It purported to be on the one hand a statement of the governor’s intentions and on the other squarely declared that he would ‘retain and hold as land of the Crown all the land in the Waikato taken by the Queen’s Forces’. Grey claimed, in forwarding the proclamation to the Secretary of State for the Colonies, that he had ‘virtually repeated the terms offered to the rebel Natives’ in the notice issued in October 1864, with the exception that:

having consulted with the Lieut.-General, we arranged in as far as possible the boundaries of the territory which might be regarded as conquered territory, and which we thought ought to be ceded to the Crown; and then in this case I notified in my Proclamation that such lands would be retained and held as lands of the Crown.¹¹³⁸

¹¹³⁶ *ibid.*

¹¹³⁷ Parsonson, ‘Tainui Claims’, pp.185-186.

¹¹³⁸ Grey to Cardwell, 7 January 1865, AJHR, 1865, A-5, p.2.

While Grey and Cameron may well have thought such lands should be ceded to the Crown, there had in fact been no cession, and the only point of employing such language was surely to obscure the fact that the actual confiscation path was deviating from the one laid down by Cardwell in April.¹¹³⁹ The Secretary of State for the Colonies had, of course, called for voluntary cessions to be sought before resorting to outright confiscation.

While it is difficult to view the 17 December proclamation as a legal instrument by which confiscation was effected in the Waikato district, it is important to keep this issue in perspective. Hapu and iwi with customary interests in the area between Waitemata Harbour and the Puniu River are unlikely to have appreciated such legal niceties. As Ann Parsonson says, for Maori 'reading or hearing of this Proclamation, the ambiguities in the legal language were not an issue. To the lay person, the Proclamation spelt out the confiscation.'¹¹⁴⁰ That view was certainly shared by Francis Dart Fenton, the former Waikato Resident Magistrate, who wrote to Native Minister Walter Mantell in March 1865, in his new capacity as Senior Judge of the Compensation Court. Fenton wrote that:

A great many claims for compensation have arrived on account of taking in all parts of the Waikato Country, within the boundaries of the proclamation of December. The Natives (and in point of fact the bulk of the Europeans) understand that proclamation [of 17 December 1864] as Confiscating the land described therein and the Waikato loyal Natives seem so to have understood it, and have made up their minds to accept it, and have sent in their claims. It has not appeared to me politic to return these claims and tell the Claimants that I had no jurisdiction as the land was not yet confiscated, the proclamation of December having no legal operation, as such a course would again unsettle the Native mind and reopen the question.¹¹⁴¹

¹¹³⁹ However, when Morgan saw Grey 'in reference to reserves for the natives within the block of what the general public consider the confiscated block', he was advised in response that 'You appear to mistake the Proclamation. It does not mean what you suppose. I only declared that I would take whatever lands I required within those general boundaries and not go beyond them.' Morgan to Browne, 31 March 1865, Gore Browne 1/2d, Archives NZ.

¹¹⁴⁰ Parsonson, 'Tainui Claims', pp.186-187.

¹¹⁴¹ Fenton to Native Minister, 4 March 1865, Maori Land Court, Whangarei, Compensation Court Correspondence, RDB, vol.111, pp.42995-42996.

The perception that the December 1864 proclamation did amount to a form of confiscation has also been shared by some later historians.¹¹⁴² They have tended to view the proclamation in one of either two quite contrasting ways.¹¹⁴³ In the first of these Grey, having finally seen off the rapacious Whitaker-Fox ministry and installed a more moderate one, had successfully seen off demands for the wholesale confiscation of Waikato, securing a more modest taking than anything Whitaker would ever have signed up to. By contrast, the second school of thought has it that Grey, having resisted Whitaker's demands for the better part of a year, wholly capitulated to the Weld administration, whose talk of 'moderate' confiscation proved little more than false rhetoric when it came down to actually confiscating land. The debate turns in large part on how one measures the difference between what the Whitaker-Fox ministry initially argued should be seized in the Waikato district and what was later actually taken under the Weld and later Stafford administrations. Rutherford, who squarely falls into the camp of defender of Grey's reputation on this issue, wrote that:

Whitaker's declared intention had been to confiscate at least 4,250,000 acres north of Raglan and Tauranga, of which over 2,000,000 acres were to have been reserved for sale. Only after he had tendered his resignation did he reduce his demands to the more modest figures of 1,000,000 acres in the Waikato and 600,000 acres at Taranaki, doing so avowedly to avoid the imputation of prolonging the war for the sake of land. The area confiscated in the Waikato under the Weld proclamation was approximately 1,200,000 acres, of which 230,000 acres were reserved for natives, and Weld was tacitly abandoning the hope of recovering any significant portion of the war expenses out of the sale of the confiscated lands.¹¹⁴⁴

Even by Rutherford's own analysis, then, the area confiscated under Weld exceeded that which Whitaker had eventually proposed in respect of the Waikato district.¹¹⁴⁵

¹¹⁴² Dalton, *War and Politics in New Zealand*, p.211; Rutherford, *Sir George Grey*, p.520.

¹¹⁴³ Allen, 'An Illusory Power?' in Boast and Hill (eds), *Raupatu*, pp.131-133.

¹¹⁴⁴ Rutherford, *Sir George Grey*, p.520.

¹¹⁴⁵ The figure of 4,250,000 acres appears to have been based on statements made to the General Assembly in November 1863 by Colonial Treasurer Reader Wood. At that time Wood had estimated

And if we make allowance for the fact that Whitaker had proposed a straight 1,000,000 acre confiscation with no provision made for land to be ‘returned’ to Maori then the difference between the two becomes negligible.¹¹⁴⁶ Little wonder that former Colonial Secretary Fox, writing to the *Wellington Independent* newspaper in January 1865, appeared incredulous at the proclamation:

...the Governor has issued a proclamation confiscating Waikato. We, the ex-Ministers, cannot conceive why we are out of office! This is our proclamation; the very thing we were contending for for upwards of eight months – almost the precise metes and bounds, the very acreage and area, that we wished to confiscate in April last; slightly different in the wording, *practically identical* with what we all along proposed...It is clear that Sir George Grey’s horse has run away with him. It is equally clear that he is riding the race in the colors [sic] of the late ministry.¹¹⁴⁷

If the same measures had been introduced at the conclusion of the Waikato War in April, Fox wrote, then the tribes would likely have submitted. Instead the vacillation and delay had allowed them to ‘renew the contest’. All of this, he alleged, was down to ‘the personal jealousy, the selfishness, the perverse temper of one man’, upon whom alone the continuing war could be blamed on.

Henry Sewell, a member of the incoming Weld administration, privately disputed Fox’s claim. He wrote that:

Fox’s averment that our late Proclamation is identical with what they proposed and meant, is not I think consistent with the fact. It is true that they did, after a

that in the ‘rebel districts’ there were some 8,500,000 acres of land, of which approximately half was ‘available’ for settlement (by which he meant capable of being settled). He clearly included Taranaki in his calculations, besides making it clear that an unspecified area of land to be set aside for Maori was included in this figure. NZPD, 12 November 1863, 1861-1863, pp.847-848. See also Fox’s statement on this issue. NZPD, 5 November 1863, 1861-1863, p.783. In short, while there had clearly been some reduction in the area claimed, Rutherford’s assessment compares apples with oranges.

¹¹⁴⁶ Although Rutherford somewhat underestimates the area of land ‘returned’ to Maori. The Sim Commission estimated that out of a total area of 1,202,172 acres confiscated, some 314,364 acres were ‘returned’ to Maori ownership. AJHR, 1928, G-7, p.17. That gives a net confiscated area of 887,808 acres retained by the Crown. However, there are good reasons for including the ‘returned’ lands in any calculation of confiscated areas, given the defects of the compensation process to be discussed in subsequent chapters.

¹¹⁴⁷ *Wellington Independent*, 7 January 1865.

time, propose some such boundary of confiscated land, as the Governor has since adopted under our advice. But no one can read the papers, without seeing clearly that the issue between Governor and Ministers was one of general principle. And that Ministers insisted on a principle of indiscriminate confiscation of land. Whereas our Proclamation limits and defines the maximum extent. I grant that the Governor did, up to a very late period, assent to the broad principle in the sense, and to the extent mentioned by Ministers, and that he retracted only, as soon as he found that the people in England would not back him up, but that merely convicts him of inconsistency, it does not justify them. When at least they found that they could get nothing more from him, they showed an apparent willingness to take the boundary as he would give it but still only as an instalment.¹¹⁴⁸

But even if Sewell was right that Whitaker had only agreed to lower his demands in the expectation that the area to be confiscated could be extended in future (an allegation which would seem impossible to either prove or disprove in the absence of documentary proof),¹¹⁴⁹ it is harder to perceive the clear limits which he claimed for the Weld government's proclamation.

Indeed, the correspondent for *The Times* pronounced the proclamation 'practically identical with what the late Ministry urged upon Sir George eight months ago'. In one direction (to the westwards) it even took in more land than previously envisaged, though given that this was mainly owned by 'friendly' tribes, and much of it was already bought from them, this was largely nominal. On the other hand, it was added:

In another direction (south-west) it falls short of their proposal, which took in a goodly slice of Ngatimaniapoto land, which is omitted in the present proclamation, probably because the troops have not yet occupied it; but the

¹¹⁴⁸ Sewell, Journal, 19 January 1865, qMS-1788, ATL.

¹¹⁴⁹ John Morgan wrote that 'The chief event of the past month has been the Governor's Confiscation Proclamation. It is a right policy but presses unevenly on the various tribes. Some lose every inch of their land, as the Rangiahia and Kihikihi tribes, Wm. Thompson's tribe will have a loss of 1/4 or a fifth of their land, while Ngatimaniapoto will not lose a single acre of their own country. They will however suffer in the loss of a few hundred acres at Alexandra and Kihikihi held by them by conquest. Some months ago I pointed this out to Mr. Russell and he replied "we will deal separately with Ngatimaniapoto."' Morgan to Browne, 29 December 1864, Gore Browne 1/2d, Archives NZ.

omission lets off the worst tribes – Rewis [sic] included – scot free, or nearly so...At first sight the omission to confiscate the rebel land not yet in our possession...may appear a wise one; but, as Mr. Stafford lately pointed out, the fact of confiscation stopping with the lands the soldiers have occupied appears as if ingeniously framed to encourage the insurgents to contest every yard of ground, as none would be declared forfeited that the troops did not stand on. Instead of the forfeiture resulting as the punishment of lawless conduct, murders, and plunderings, for which the Ngatimaniapotos have been so conspicuous, it is now made to ensue from defeat in battle.¹¹⁵⁰

That easy assumption of Ngati Maniapoto's relative guilt, which has also been shared by many later historians, invites closer inspection, and will be the focus of particular attention in the political engagement report for the period to 1863. But the correspondent was arguably right about one thing: pragmatism have prevailed over lofty principles when it came to the crunch.

It is difficult, then, to disagree with Dalton's conclusion that in signing the 17 December 1864 proclamation Grey had 'jettisoned the principle for which, ostensibly, he had withstood Whitaker so long.'¹¹⁵¹ That proclamation was just another of the 'sordid bargains' to which Grey succumbed as his hopes of a rapid subjugation of the Kingitanga evaporated and the governor instead turned his attention to continuing to exercise as much influence as he could in the now fully self-governing colony.¹¹⁵² The short-lived and self-proclaimed champion of Maori rights was no more, as the adherence to Cardwell's instructions which Grey had previously insisted was a sine qua non of any confiscation proclamation was now quietly forgotten. As Dalton notes, not only was there no attempt to negotiate a cession, but no commission was appointed to inquire into the culpability of the tribes who were to suffer confiscation.¹¹⁵³

The Weld ministry had, with Grey's support, published a strangely-worded proclamation that appeared to confiscate a large area of land in Waikato. Such a

¹¹⁵⁰ *The Times*, 16 March 1865, in IA 1/1865/1321, Archives NZ.

¹¹⁵¹ Dalton, *War and Politics in New Zealand*, p.211.

¹¹⁵² Ward, 'The Origins of the Anglo-Maori Wars', p.156.

¹¹⁵³ Dalton, *War and Politics in New Zealand*, p.211.

sweeping taking was at odds with Weld's previous pronouncements favouring a smaller and more discrete confiscation and also contradicted Grey's public opposition to blanket takings. His prior criticism of the scale of confiscations proposed under the Whitaker-Fox ministry ultimately proved shallow. Regardless of the legal weight of the December 1864 proclamation, the Crown was thereafter publicly committed to confiscating a large part of the Waikato district. It had, despite calls from some Europeans, disavowed, at least for the time being, the idea of confiscating further land within what would become the Rohe Potae. Confiscation would instead be based around the area already conquered and would seek to cement that conquest. Rather chaotically, the Crown was stumbling towards putting confiscation into practice.

5.5 The 1865 Confiscation Proclamations

As noted above, the December 1864 proclamation was of at best doubtful legal standing and made no reference to the New Zealand Settlements Act. Further proclamations based on the provisions of that legislation would be required in order to convert the purported taking into something more solid. But meanwhile officials anxiously monitored Maori reactions. While there had been a widespread assumption that many Kingitanga supporters would accept raupatu as a *fait accompli*, it did not take long for that viewpoint to come under challenge.

In January 1865 Grey forwarded General Cameron a letter from Wiremu Tamihana, and at the same time observed that although this was imperfectly translated, 'Still there is no doubt that the Waikatos have determined not to agree for the present to the boundaries of confiscated land fixed in my Proclamation of the 17th December.'¹¹⁵⁴ A letter from Wiremu Tamihana to the Rongowhakaata and Te Whanau-a-Kai chief Anaru Matete dated 18 January 1865 indicated that Tawhiao (as Matutaera was by this time known) and the rest of Waikato had returned from Taranaki on 28 December 1864. Two days later a large meeting was held at Paewhenua, to which delegates from

¹¹⁵⁴ Grey to Cameron, 13 January 1865, AJHR, 1865, A-4, p.5. Tamihana's letter was not published as an enclosure and does not appear in a published index of the letters of Wiremu Tamihana. See Stokes, *Wiremu Tamihana*, appendix 2.

Hauraki, Taupo, Tauranga and elsewhere had also been invited. Tamihana reported that:

The chiefs considered two issues: the confiscation boundaries and the words of the Governor's proclamation. When they had considered these two issues they decided to remain neutral. What is the point of remaining passive. Nothing. All the land is gone...The meeting was unable to reach a decision because of the Governor's proclamation. My word to you, friends, is that my personal opinion is that the meeting inclined towards war.¹¹⁵⁵

The early indications therefore defied expectations that the confiscation would be accepted by the tribes concerned as an inevitable and necessary consequence of war. Such had been Henry Sewell's belief. A fierce and outspoken critic of the New Zealand Settlements Act at the time of its passage through Parliament in 1863, he was now Attorney-General in the Weld administration, which in itself has been pointed to as evidence of the supposed moderation of the new ministry. He wrote in January 1865 that 'the unhappy King Natives beaten and dispirited are lying down in despair, without spirit or intention to resume active operations against us.'¹¹⁵⁶ He added that:

They accept the boundary line prescribed by the Governor in his last Proclamation, as a final settlement of the territorial limits, and will remain quiet in their own country if we don't move over the borders. This is not submission. It can hardly be called peace, but it is the only position likely to be taken by them for some time to come. Till confidence in us is restored, and the events of the last three years are wiped out of remembrance, it is idle to suppose that they will enter into really friendly relations with us.¹¹⁵⁷

A day later, however, Sewell learnt of Tamihana's letter announcing an intention not to accept the boundary line laid down in the 17 December 1864 proclamation. The letter was discussed at a meeting of the Executive Council held on 14 January. According to Sewell:

¹¹⁵⁵ Wiremu Tamihana to Anaru Matete and Wereta, 18 January 1865, Grey GNZ MA 201, in Stokes, *Wiremu Tamihana*, pp.425-426.

¹¹⁵⁶ Sewell, Journal, 13 January 1865, qMS-1788, ATL.

¹¹⁵⁷ *ibid.*

Both Governor and General took a very gloomy view of it – thought it meant renewal of war – attack on our settlements, with the necessity for more troops etc. They thought it unwise to proceed with the [planned military] operations at Taranaki. The General derided the notion of withdrawing the troops from the Colony – intimated his opinion that our plan of operations between Taranaki and Wanganui was extremely unsafe and likely to involve a renewal of the War. He implied that our object was to seize land for some base purpose or another; ridiculed the idea of the removal of the Seat of Government etc. The Governor took pretty much the same view, intimated that our proceedings at Taranaki...would produce all the consequences which the General imagined.¹¹⁵⁸

Ministers denied that they were bent on land acquisition and asserted that their sole object in Taranaki was to secure the safety of the settlements through taking no more land than was necessary for this purpose. Sewell recorded that:

From thence we diverged to the case of Waikato – what to do with the conquered territory. The General thought it was impossible to hold it without the presence of troops. We said, that it was preposterous to suppose that Great Britain would maintain an army here, simply to protect the settlers in the Waikato. That we had formed our plans upon a defensive principle, assuming that the troops would be withdrawn, and that we should be left to our own resources, in which case, we must do the best we could; as other Colonists had done before. We explained to the General that our plan was, as the Regiments were withdrawn, to get permission to enlist from them, so as to form a Colonial force of about 1500 men. He laughed at the notion of 1500 men doing anything. We said it was all we could afford.¹¹⁵⁹

According to Sewell, the ‘great object of Governor and General seemed to be, to shew [sic] the monstrous absurdity of Responsible Government, and the indispensable

¹¹⁵⁸ Sewell, Journal, 14 January 1865, qMS-1788, ATL.

¹¹⁵⁹ *ibid.*

necessity of Imperial rule with Imperial troops and Imperial money.¹¹⁶⁰ While ministers had pushed for a speedy confiscation proclamation with respect to Taranaki, and Grey had evidently initially supported such an approach, by Sewell's account he had become 'frightened by the General's threats to represent the whole thing as a mere land-raid' and 'recedes from his former opinion of the desirableness of the Proclamation'.¹¹⁶¹

Had Grey consented to the Waikato proclamation in a moment of weakness and quickly come to regret his capitulation on the issue? Sewell's journal hints that this may have been the case. But at least there was better news for the government from Waikato, where reports from the latest meeting held at Hangatiki in mid-January indicated that the Kingitanga had resolved that they would remain quiet unless attacked by British forces.¹¹⁶² That decision hardly amounted to acceptance of the confiscation proclamation or a willingness to submit to British rule, so much as an extension of the de facto truce in place since April 1864. Sewell, nevertheless, was of the belief that:

There seems no doubt they (at least the old true King party) mean no more fighting...So the Governor thinks, and we think too that we are approaching to a settlement; but he is mistaken if he supposes all our difficulties to be over. We are now pretty much as we were before the General crossed the Mangatawhiri in July, 1863; only with a more distant and more difficult frontier line. The natives really mean (at present at least) to keep themselves outside that pale, and not to attack us, unless we attack them. But this is not a final state of peace. However it is the first step to it.¹¹⁶³

¹¹⁶⁰ A view evidently shared by other senior members of the Imperial force stationed in New Zealand. In June 1865 Cardwell wrote a confidential despatch to Grey in which he quoted from the journal of the Deputy Quartermaster General to the effect that 'in the present unsatisfactory state of affairs (not rendered more hopeful by entering on the acquisition of new territory without a population to occupy it) only one thing appears certain, that except the Natives in this part of New Zealand give in their allegiance there is no immediate prospect of the possibility of the reduction of the force now in the Country.' Cardwell to Grey, 26 June 1865, Inwards Despatches from the Secretary of State for the Colonies, G 1/60, Archives NZ.

¹¹⁶¹ Sewell, Journal, 15 January 1865, qMS-1788, ATL.

¹¹⁶² *Taranaki Herald*, 28 January 1865; *Daily Southern Cross*, 31 January 1865.

¹¹⁶³ Sewell, Journal, 19 January 1865, qMS-1788, ATL.

In Sewell's conception time, above all else, would prove to be the great healer. He noted in February 1865 that:

It is idle to hope for a sudden restoration of Native confidence, and equally idle to look for or to demand an outward and visible shew [sic] of submission on their part, or a distinct acceptance of British authority. The invasion of Waikato must be forgotten before we can hope for this.¹¹⁶⁴

It was no doubt difficult to forget the invasion when its practical consequences, including confiscation, continued to be felt. By early in 1865 a further proclamation had been issued, this time in the name of the governor-in-council and pursuant to the Settlements Act, taking the first legal steps towards formally confiscating lands in the Waikato district. According to the minutes of the Executive Council meeting of 29 December 1864:

The Colonial Secretary brought under consideration the disposal of Lands of Natives believed to have been in rebellion. Resolved. That within the boundaries proclaimed by the Governor in his Proclamation of 17th of December 1864, the lands of all Natives believed to have been implicated in the Rebellion shall by Proclamations from time to time issued by the Governor be brought under the provisions of the New Zealand Settlements Act.¹¹⁶⁵

The subsequent series of proclamations stretching over more than nine months by which various portions of the Waikato district were formally confiscated were thus part of a pre-determined plan, rather than reflecting any indecision or hesitation as to precisely which lands should be confiscated. This is not to say the extent covered by each of the proclamations had been determined in advance at the December 1864 meeting, and in this respect the sting was most definitely in the tail, as supposedly targeted proclamations of well-defined sites became engulfed by a blanket taking encompassing much of the Waikato district.

¹¹⁶⁴ Sewell, Journal, 20 February 1865, qMS-1788, ATL.

¹¹⁶⁵ Minutes of the Executive Council, 29 December 1864, EC 1/2, pp.610-611, Archives NZ.

On 5 January 1865 the first eight districts to be formally confiscated in the Waikato were gazetted. These takings had been approved at the same Executive Council meeting held on 29 December 1864 and included five lower Waikato districts (Patumahoe, Pukekohe, Pokeno, Tuakau, and Tuimata) which together totalled an estimated 36,609 acres, along with two further areas (Waiuku North and Waiuku South) for which no acreage was given but which were later listed as containing 27,350 and 16,500 acres respectively.¹¹⁶⁶ The eighth district, known simply as 'Military Settlements', also had no acreage listed next to it, but was the only site within the upper Waikato region proclaimed at this time. The boundaries as described in the proclamation covered:

All that land bounded on the North by a straight line running East from the junction of the Waipa and Horatiu Rivers, to the Eastern boundary of the lands described in the Proclamation of December 17, 1864, and by a prolongation of the same line, running West from the junction of the Rivers Horatiu and Waipa to the summit of the Hakarimata Range; on the West by the summits of the Hakarimata, the Kapa mahunga, and the Pirongia Ranges; on the South by the Southern boundary of the afore-mentioned proclaimed lands; and on the East by the Eastern boundary of the afore-mentioned proclaimed lands, to a point due East of the junction of the Waipa and Horatiu Rivers aforesaid.¹¹⁶⁷

The area covered by this proclamation thus covered easily the largest of the eight districts proclaimed at this time, running from approximately Ngaruawahia south as far as the Puniu River. The Military Settlements block proclaimed at this time was subsequently estimated to contain 316,600 acres, thus dwarfing the remaining seven blocks.¹¹⁶⁸ In a sense this could be seen as the original blanket taking, while the other districts proclaimed at this time were arguably more consistent with Weld's supposed policy of targeted confiscations. It was not a question of the Weld government necessarily abruptly adopting a policy of blanket confiscations later in September 1865, since the original proclamations had a foot in both camps. But at the same time

¹¹⁶⁶ *New Zealand Gazette*, no.1, 5 January 1865, pp.1-2; Return of Land Taken under the New Zealand Settlements Act, 1863, AJHR, 1865, D-13, p.1.

¹¹⁶⁷ *New Zealand Gazette*, no.1, 5 January 1865, p.1.

¹¹⁶⁸ Return of Land Taken under the New Zealand Settlements Act, 1863, AJHR, 1865, D-13, p.1.

subsequent section, however, legal scholars have expressed doubts as to the legality of this short-circuited approach to confiscations under the Settlements Act.

Further proclamations gazetted on 31 January 1865 nevertheless followed the same format. In the Waikato district these encompassed the West Pukekohe and East Wairoa blocks, the former estimated to contain 1133 acres and the later 58,000 acres.¹¹⁷¹ The same *Gazette* also included the first formal notifications of confiscation in respect of the Taranaki province. Here, a slightly different process was followed, with one large district proclaimed (Middle Taranaki, extending from Waitara south as far as the Waimate River) within which two smaller sites for settlement (Oakura and Waitara South) were set apart and reserved under the Settlements Act.¹¹⁷² Although the obvious discrepancy in the processes followed in Waikato and Taranaki is difficult to understand,¹¹⁷³ the next set of Taranaki proclamations in September returned to the 'Waikato model' of a one-stage process, with the Ngatiawa and Ngatiruanui districts both proclaimed as districts and entirely set apart and reserved in a single notice.¹¹⁷⁴

Then, on 7 June 1865, the huge Central Waikato district was proclaimed under the New Zealand Settlements Act. The boundaries given were described as being:

Bounded on the North by a line commencing at Pukorokoro on the Frith of Thames and extending in a straight line to the Esk Redoubt, thence by a straight line to Tuahu or the Surrey Redoubt, thence by a straight line bearing South 43° West to the Southern margin of the Mangatawhiri Swamp, thence by the Southern boundary of the Mangatawhiri Swamp to the Waikato River, thence by the Waikato River to the sea; on the West by the sea coast from the Waikato Heads to the Harbor [sic] of Whaingaroa, and by the Harbor of Whaingaroa to the Waitetuna River, thence by the Waitetuna River to its source, thence by a straight line to the summit of the Pirongia Range; on the South-East by a straight line from the summit of the Pirongia Range to the summit of the Kapamaunga Range, and thence by the summit of the

¹¹⁷¹ *New Zealand Gazette*, no.3, 31 January 1865, p.15; Return of Land Taken under the New Zealand Settlements Act, 1863, AJHR, 1865, D-13, p.1.

¹¹⁷² *New Zealand Gazette*, no.3, 31 January 1865, pp.15-17.

¹¹⁷³ Allen, 'An Illusory Power?', in Boast and Hill (eds), *Raupatu*, p.135.

¹¹⁷⁴ *New Zealand Gazette*, no.35, 5 September 1865, pp.266-267.

Kapamaunga and Hakarimata Ranges to a line running East to the junction of the Waipa and Horotiu Rivers, thence by that line to the said junction and by a line extending East from such junction to the North-Eastern angle of the Military Settlements Land, constituted a District under the “New Zealand Settlements Act, 1863,” on the 29th December, 1864; and on the East by a straight line extending from the North-Eastern angle of the said Military Settlements Land to the most Easterly source of the Matahuru River, thence by a straight line extending to the summit of the Rataroa Range, and by the summit of the Rataroa Range to the Maungakawa summit, and thence in a straight line to Pukorokoro aforesaid.¹¹⁷⁵

Essentially, then, the entire area north of the previously proclaimed military settlements land as far north as Mangatawhiri was declared a district under the Settlements Act by virtue of this proclamation. This time, however, a two-stage process was adopted, and a number of specified sites set apart and reserved under the Act (that is, actually confiscated) as opposed to the entire district. Again, the inconsistency in approach appears, on the face of it, inexplicable in the absence of documentary evidence setting out the reasons for the two-stage approach adopted on this occasion. In any case, by a separate proclamation five specific sites within the central Waikato district were set apart and reserved under the Settlements Act. Thus the Onewhero, Whangape, Kupa Kupa, Rangiriri and Mangawhara blocks were formally confiscated.¹¹⁷⁶ Adding to the confusion, the same *Gazette* included a separate proclamation by which four relatively discrete areas in South Auckland were declared to be districts under the Settlements Act, and set apart and reserved (Mangare, Pukaki, Ihumatao and Kerikeri or Pukekiwiriki) in a one-stage process.¹¹⁷⁷

The final formal taking of Waikato lands was gazetted on 5 September 1865, when a further Central Waikato district stretching from the Mangatawhiri to the Puniu River was proclaimed and all lands within it not already subject to the provisions of the New Zealand Settlements Act were declared to have been set apart and reserved. The schedule to the proclamation encompassed:

¹¹⁷⁵ *New Zealand Gazette*, no.19, 7 June 1865, p.169.

¹¹⁷⁶ *ibid.*, pp.169-170.

¹¹⁷⁷ *ibid.*, pp.171-172.

All the land not yet subjected to the provisions of “The New Zealand Settlements Act, 1863,” lying within the following lines, that is to say – Commencing at Pokorokoro in the Gulf of the Thames, thence proceeding southward in a straight line to the Hapuakohe Pass, thence in a straight line to the summit of Pukemoremore, thence in a straight line to the summit of Maungakawa, thence in a straight line to Pukekura, thence in a straight line to Orakau, thence in a straight line to the nearest point of the Puniu River, thence following the Puniu River to its junction with the Waipa River, thence in a straight line to the summit of Mount Pirongia, thence to the nearest point of the Waitetuna River, thence by the Waitetuna River to Whaingaroa Harbour, thence by the harbour to the sea, thence by the sea to Waikato Heads, thence by the Waikato River to the junction of the Mangatawhiri River, thence by the Mangatawhiri River to the southern angle of the District of East Wairoa, being a district under the provisions of the said “New Zealand Settlements Act, 1863;” thence in a straight line to the Surrey Redoubt, thence in a straight line to the Esk Redoubt, thence in a straight line to the commencing point at Pokorokoro.¹¹⁷⁸

The controlled roll out of proclamations decided in December 1864 thus culminated in the largest taking of all. Every piece of land within the district not previously confiscated now was, with this latest proclamation estimated to encompass an area of 577,590 acres.¹¹⁷⁹ This was not the abrupt departure from the Weld government’s previous approach, as suggested by some,¹¹⁸⁰ since (as suggested above) the huge Military Settlements block set aside in January 1865 could hardly be considered a small taking. But at least in that case just over half of the area was set aside for actual military settlement. According to one return compiled late in 1865, of the estimated 316,600 acres contained in the block, 4673 acres had been surveyed for military townships and 162,948 acres were set aside for farms for the military settlers. The settlement of missionary and other old land claims from early European settlers took up 1669 acres and 3240 acres were reserved for roads and landing places, with 4865

¹¹⁷⁸ *New Zealand Gazette*, no.35, 5 September 1865, p.265.

¹¹⁷⁹ Peter D.H. Allen, ‘Military Settlement in the Middle Waikato Basin’, MA thesis, University of Waikato, 1969, p.89.

¹¹⁸⁰ See, for example, Allen, ‘An Illusory Power?’, in Boast and Hill (eds), *Raupatu*, pp.136-137.

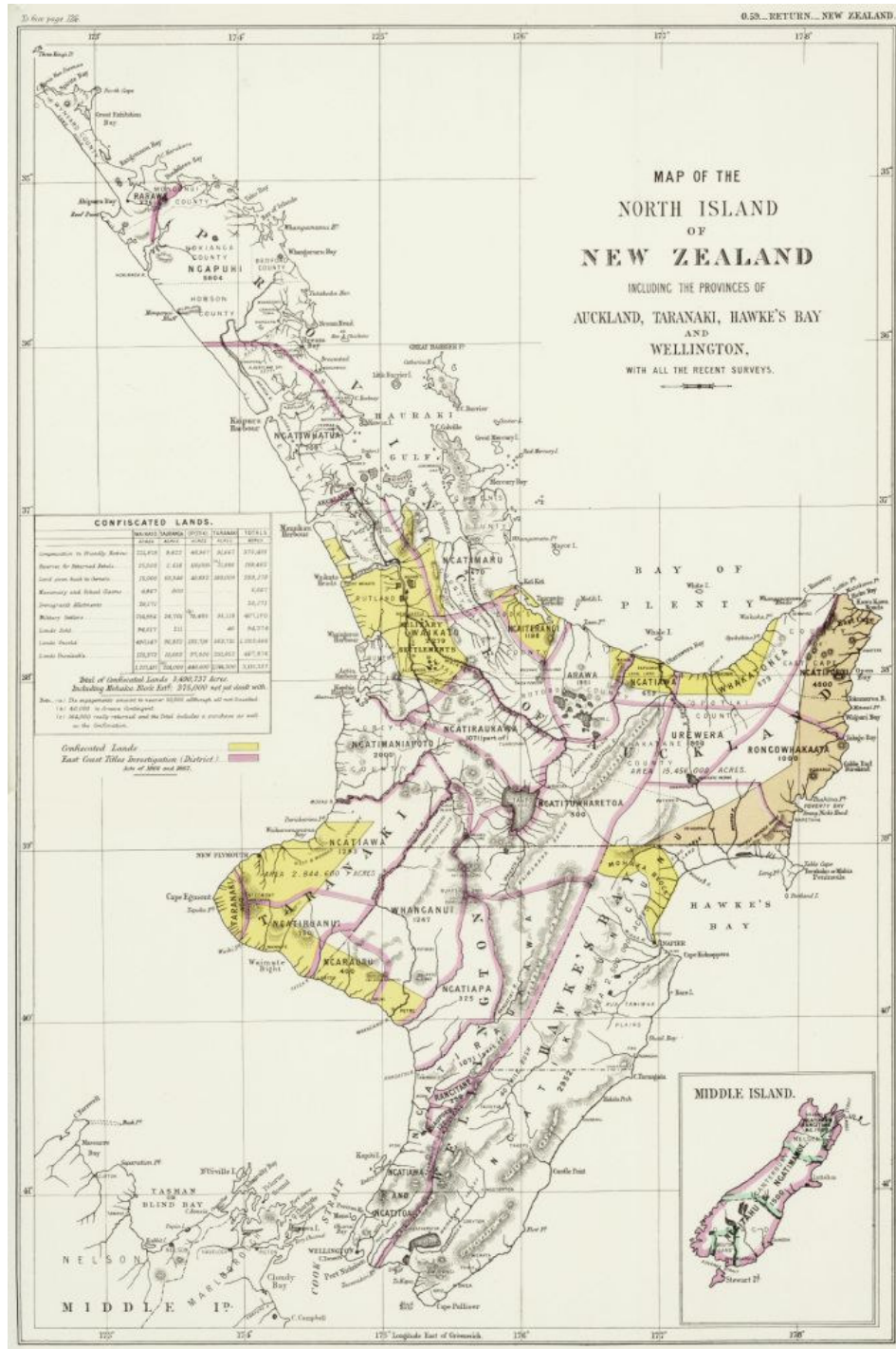
acres surveyed for sale. A total area of 21,600 acres had been set aside for 'Native purposes', which might have covered both 'loyalist' claims to compensation and reserves for Maori deemed 'rebels' but who now wished to live under the Queen's laws. The remaining 117,707 acres of the Military Settlements block remained unappropriated since much of it consisted of swamp land.¹¹⁸¹ According to district surveyor A.K. Churton, once the demands of military settlers and immigrants were provided for, what remained was 'a great extent of mountainous, broken and poor land, with an unusually large extent of swamp.'¹¹⁸² Although he believed that this would eventually form a most valuable estate, it is not apparent that scope was provided in the relevant legislation for future potential to be taken into account when setting out the basis upon which confiscation was permissible. Either the land was or was not a suitable site for settlement. 'Not yet' hardly applied.

More than one-third of the Military Settlements block was thus patently not suited for settlement and had arguably been confiscated contrary to the requirements of the New Zealand Settlements Act (the legality of the confiscations is discussed further below). In fact, an even lower proportion than suggested by the numbers above was actually allocated to military settlers, since in many instances particular sites were rejected as unsuitable. This is also discussed below. Yet any suggestion that the government had abandoned wide-ranging confiscation and was solely concerned to honour existing commitments was surely disproved with the September 1865 proclamation. Of a block estimated at 577,590 acres, just 4502 acres was set aside for farms for military settlers.¹¹⁸³

¹¹⁸¹ Return of Land Taken under the New Zealand Settlements Act, 1863, AJHR, 1865, D-13, p.1; Charles Heaphy, 'Schedule of Lands in the Military Settlements District', 4 January 1866, *Journals of the Auckland Provincial Council*, Session XIX, 1865-66, A-5, p.12; Allen, 'Military Settlement in the Middle Waikato Basin', p.75.

¹¹⁸² A.K. Churton, Report on the Lands in the Waikato District, 28 December 1865, *Journals of the Auckland Provincial Council*, Session XIX, 1865-66, A-5, p.3.

¹¹⁸³ Return of Land Taken under the New Zealand Settlements Act, 1863, AJHR, 1865, D-13, p.1.



(Source: GBPP, 1868-69 (307), p.128)

Figure 12 Map of the North Island of New Zealand, including the Provinces of Auckland, Taranaki, Hawke's Bay and Wellington, with all the recent surveys

5.6 *The Establishment of the Military Settlements*

Even as the Waikato War continued to be waged an anonymous pamphleteer had published a tract entitled *The Waikato and Ngaruawahia, The Proposed New Capital of New Zealand*.¹¹⁸⁴ Not only did the author of this remarkably early piece of boosterism for a district yet to be actually confiscated propose that Ngaruawahia should become the new capital of New Zealand, but he also perhaps more realistically (and somewhat presciently) advocated the construction of a ‘great trunk railway’ running through the settlement between Auckland and Wellington. While it would be the following century before such a railway connection was finally completed, this early pamphlet was an indication of the kind of excitement generated by expectations that the valuable Waikato district south of Mangatawhiri was about to be thrown open to significant European settlement for the first time. It is all too easy to forget this early optimism, amidst all of the later emphasis on the failure of the scheme of confiscation and military settlement of the district.

Yet while Ngaruawahia was always a logical location for one of the key settlements for both symbolic and practical reasons (being the former ‘capital’ of the King movement and strategically located at the confluence of the Waipa and Waikato Rivers), the process by which sites for settlement were selected was a fraught one. Much of this reflected growing tensions between Grey and his ministers as to the extent and location of land to be confiscated, discussed above. As was seen in chapter two, in the final stages of the Waikato War questions of military strategy and future confiscation and military settlement plans increasingly overlapped. Grey and Cameron came to suspect that ministers wished to prolong the war in order to maximise the potential area available for confiscation and settlement. And although the Whitaker ministry agreed with Cameron’s February 1864 decision to establish redoubts at Rangiaowhia, Kihikihi and Te Awamutu, they also signalled a determination to ‘commence without delay to establish military settlements in convenient localities’.¹¹⁸⁵ Grey informed Cameron a short while later that military

¹¹⁸⁴ ‘A Settler’, *The Waikato and Ngaruawahia, The Proposed New Capital of New Zealand; with A Railway from Auckland to the Proposed New Capital and thence to Wellington, with Branches to Hawke’s Bay and Taranaki, To Be Called the Great Trunk Railway of New Zealand*, Auckland: Wilson & Burn, 1863.

¹¹⁸⁵ Whitaker, Memorandum, 27 February 1864, AJHR, 1864, E-2, p.26.

settlements were to be established firstly on the Horotiu (Waikato), followed by Kihikihi and then Raglan or Kawhia.¹¹⁸⁶

Little immediate progress was made while the war continued to be waged. In April 1864, just three weeks after the battle of Orakau, Defence Minister Thomas Russell wrote to Grey that:

To enable the Government to commence and push forward as soon as possible the foundation of Military Settlements on the Waikato frontier, Ministers propose to locate the 2nd Waikato Regiment, under Colonel Haultain, in the Waikato district, between Pirongia and Maungatautari. This Regiment is at present broken up into detachments, and these are located at posts in various directions. It will be necessary, to enable the Government to carry on the work of locating these Military Settlers rapidly and successfully, to concentrate Colonel Haultain's Regiment along the proposed line; His Excellency the Governor is therefore respectfully advised to move the Lieut. General Commanding to give the necessary orders for carrying out this arrangement with as little delay as possible.¹¹⁸⁷

In response to a specific follow-up query from the governor, Grey was informed that ministers proposed to station the men along the Puniu River, with a detachment of about 100 military settlers at each post selected.¹¹⁸⁸

Ministers had fallen for the trap that Grey had obviously set for them, as he proceeded to advise that the determination of appropriate points where detachments should be placed was properly a matter for military authorities.¹¹⁸⁹ Russell urged that the matter be speedily resolved as the approach of winter would occasion even greater delay and expense. Grey, though, was in no mood to comply, writing that:

¹¹⁸⁶ Grey to Cameron, 3 March 1864, G 36/4, Archives NZ.

¹¹⁸⁷ Russell, Memorandum, 22 April 1864, AJHR, 1864, E-2, p.52.

¹¹⁸⁸ Grey, Minute, 23 April 1864, AJHR, 1864, E-2, p.52; Russell, Memorandum, 23 April 1864, AJHR, 1864, E-2, p.52.

¹¹⁸⁹ Grey, Memorandum, 9 May 1864, AJHR, 1864, E-2, p.52.

His Advisers have not yet informed the Governor where, in detachments of what strength, they propose to locate the other three Waikato Regiments, or what is the whole line of frontier they propose should be occupied. He has, in fact, as yet been made acquainted with but a small part of their plan.

In his belief, that part of their plan which they have disclosed will probably, under any circumstances, fail as a plan for the military protection of the country, and for the future welfare of the Waikato military settlers, and will certainly so fail unless the proposed posts are supported by strong detachments of the regular troops. If a similar plan is adopted with the other Waikato Regiments, still larger detachments of troops may be required to co-operate with them, and to keep open the long line of communication which will separate them from the settled districts.¹¹⁹⁰

The governor thus questioned one of the core features of the scheme of military settlements, which was its supposedly self-sufficient nature, with defence and colonisation simultaneously advanced. Meanwhile, Grey argued that there were important priorities elsewhere in the colony, and potential conflicts that might break out at any time requiring reinforcements to be urgently sent. He demanded to know where and in what manner the three other Waikato regiments would be located and the total extent of country they would be distributed over before reaching any further view in the matter.

Perhaps sensing another trap had been set for them (especially as the wider conflict over the extent of confiscation required had now broken out), ministers declined to answer this question, declaring it too early to definitively determine all of the positions in which the regiments would be located. Russell wrote that:

To occupy the line from Pirongia to Maungatautari will require the whole of the 2nd Regiment and a considerable portion of another Regiment; but it must, in the opinion of Ministers, depend entirely on the course of events whether it will be possible to extend that line either towards the East or the West.

¹¹⁹⁰ Grey, Memorandum, 10 May 1864, AJHR, 1864, E-2, p.53.

Ministers hope to be able to do so in both directions, but it may be that the line now proposed will require to be strengthened rather than extended, and thus render it necessary to locate the remaining men of the Waikato Regiments accordingly.¹¹⁹¹

Russell denied that the establishment of military settlers along the line between Pirongia and Maungatautari would divert troops from the field, claiming the intention was to free up extra forces for elsewhere. At the same time he asserted that ministers 'certainly never contemplated a step so pernicious and likely to be dangerous to the whole Northern Island as a retreat from the line in the Waikato country beyond which General Cameron has driven the enemy, and now occupies with the troops'.¹¹⁹² It was clear that, as far as ministers were concerned, confiscation would embrace all of the territory conquered by Cameron, and not an acre or rood less.

Cameron wrote to Grey a short time later that 'The force stationed on the line between the Waipa and Horotiu I consider not more than sufficient under present circumstances to secure our possession of the country we have conquered, especially if part of that force is to consist of Waikato militia placed along the line as Military Settlers.'¹¹⁹³ He subsequently requested to know the exact locations of the military settlements to be placed on the Waikato frontier.¹¹⁹⁴ Grey forwarded the General a tracing showing roughly the points on which it was proposed to establish settlements,¹¹⁹⁵ but Cameron objected that all this showed was:

...the mere division of a certain area of country into three districts...but in which I would observe that there are no points marked showing even roughly where it is proposed in the first instance to establish the settlements. I have received no information regarding the number of men it is proposed to settle in each district; from what regiment of the Waikato Militia they are to be taken;

¹¹⁹¹ Russell, Memorandum, 11 May 1864, AJHR, 1864, E-2, p.54.

¹¹⁹² *ibid.*

¹¹⁹³ Cameron to Grey, 15 May 1864, G16/3, Archives NZ.

¹¹⁹⁴ Cameron to Grey, 25 May 1864, AJHR, 1864, E-2, pp.62-63.

¹¹⁹⁵ Grey to Cameron, 29 May 1864, AJHR, 1864, E-2, p.63.

how they are to be distributed, whether into large or small bodies; whether any protection is to be given to them in the shape of stockades, &c., &c.¹¹⁹⁶

Grey may well have actively solicited Cameron's queries as part of his arsenal in the ongoing and increasingly bitter dispute with ministers. In any case, Russell responded that the government's intention was in the first instance to establish the military villages and that in order to determine the precise spots to be occupied ministers were prepared to name an officer to confer with military authorities on the subject. While it was envisaged that the men would occupy their village acres at once, it was not proposed to locate any settlers on the country land for the time being, doubtless because of concerns over their security. Instead, it was proposed to locate between 300 and 500 men at each of the points selected, with each settlement to have a stockade capable of holding between 200 and 300 men. For these purposes the 2nd regiment was to be allocated Alexandra (Pirongia) and Kihikihi, the 3rd regiment was allocated Cambridge and the 4th Kirikiriroa (Hamilton as it later became).¹¹⁹⁷

On 10 June 1864 Colonel T.M. Haultain, who later served as Defence Minister in the Stafford ministry, was formally appointed to make the final selection. He was instructed that:

...the Government intend immediately to locate a large number, and as soon as convenient, the whole of the military settlers upon the village sites intended for them; that they will be located in villages of from three hundred to five hundred men; that the sites are to be selected in the localities shewn in the sketch enclosed, and that Mr. Russell requests that you will, on behalf of the Government, confer with the Lieut.-General, and fix the precise spots for the several village sites, having regard to the objects in view, viz.- A military settlement, on good land, and in a good natural position. The village sites on the Waipa, and those on the Horotiu, rivers, are to be selected on the most eligible and convenient places, at the head of the navigable part of those

¹¹⁹⁶ Cameron to Grey, 2 June 1864, AJHR, 1864, E-2, p.63.

¹¹⁹⁷ Russell, Memorandum by Ministers, 6 June 1864, AJHR, 1864, E-2, pp.63-64; Hamilton, 'Military Vision and Economic Reality', p.60. Members of the 1st Waikato regiment were sent to Tauranga and later Opotiki. Evelyn Stokes, 'Raupatu: The Waikato Confiscated Lands', *New Zealand Map Society Journal*, no.9, 1995, pp.37-38.

rivers, so that the residents may have their supplies taken up by steamers. The object of the Government in selecting the sites at the head of the river navigation being to encourage the speedy growth of settlements at points where, from their natural positions, it is certain towns must eventually spring up, where travellers to the interior of the country would leave the steamers and where the produce of the Upper Waikato districts would be shipped. In selecting the sites on the Waipa river regard should be had to the point where the Kiwiroa Road is likely to reach the river. Captain Cadell, the Superintendent of the River Transport, has been instructed, in connection with this subject, to give his assistance and advice as to the points where the rivers cease to be navigable for steamers.¹¹⁹⁸

Ngaruawahia itself was widely predicted to become a central hub, and it was perhaps no coincidence that already, in May 1864, the Bank of New Zealand (over which Defence Minister Thomas Russell exerted significant influence) had opened a branch in the settlement.¹¹⁹⁹ Bankers were never far behind land speculators in the ‘great land rushes’.¹²⁰⁰

By mid-June 1864 these developments were being widely reported and considerable excitement generated. One correspondent reported that:

The disposition of the four regiments of Waikato Militia will, we understand, be as follows:- The 1st regiment, three hundred and fifty of whom will embark on Monday next, in the Alexandra, for Tauranga, will be settled in that district. The 2nd regiment on the Waipa river; the 3rd regiment on the Horatiu river; and the 4th regiment on the rivers Horatiu and Waipa, between Ngaruawahia and the other settlements. The 2nd and 3rd regiments being settled high up the country, occupy positions at the head of the river navigations on the Waipa and Horatiu, and will be located in villages of from three hundred to five hundred men each. That these will become flourishing towns and settlements

¹¹⁹⁸ William Seed to Haultain, 10 June 1864, AJHR, 1864, E-2, p.64.

¹¹⁹⁹ Hamilton, ‘Military Vision and Economic Reality’, p.60; R.C.J. Stone, *Makers of Fortune: A Colonial Business Community and its Fall*, Auckland: Auckland University Press/Oxford University Press, 1973, pp.20-22.

¹²⁰⁰ The phrase comes from John C. Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900*, Montreal: McGill-Queen’s University Press, 2003.

who can doubt? commanding as they will the traffic of the rivers, and forming their depots where the river steamers will receive their freights from the interior of the island, and discharge their goods and passengers for the interior. Nor will the other regiments be less fortunate in their lot. The second regiment could have no more fertile spot in New Zealand than the rich plains of Rangiohia [sic], the very cream of the Waipa; and the 4th regiment possesses in Ngaruawahia, the site of a future great city, and a district in fertility, second only to the one we have just alluded to.¹²⁰¹

The military settlers had been allocated ‘the very choicest of the confiscated lands’, the report continued, and any failure could only be the result of ‘individual misappliance of the advantages placed before them.’

Cameron meanwhile travelled to Waikato to personally inspect the sites selected. He reported on 25 June 1864 that a site had been chosen about four miles ‘above’ (that is, towards the headwaters of the Waipa River, or south of) Te Rore for one of the two settlements to be formed by the 2nd regiment under Haultain’s personal command and he had sanctioned a detachment of 400 Waikato military settlers being stationed there, who would be employed in throwing up a work on each bank of the river for their protection, until a stockade could be constructed. Cameron noted that this settlement (Alexandra, later changed to Pirongia) was not navigable by steamer during the summer, in consequence of which supplies would need to be conveyed overland from Te Rore for a great part of the year unless navigation of the river could be much improved.¹²⁰² On the Horotiu (Waikato) a site some six miles ‘above’ (i.e, south of) Pukerimu was fixed as the location of the 3rd Waikato regiment, though this was subsequently amended by ministers concerned as to navigability, and relocated to a point ‘below’ Pukekura previously determined as safe for steamers (probably Cambridge).¹²⁰³

On 11 July Haultain officially reported on the results of his inspection of the various sites. He noted that he had, in conjunction with Cameron and others, visited:

¹²⁰¹ *Hawke’s Bay Herald*, 21 June 1864.

¹²⁰² Cameron to Grey, 25 June 1864, AJHR, 1864, E-2, pp.64-65.

¹²⁰³ Russell, Memorandum by Ministers, n.d. [c.25 June 1864], AJHR, 1864, E-2, p.65.

...the country near the junction of the Punui [sic] and Waipa, and also the neighbourhood of the rapids of the latter river, when it was decided that the most eligible place for settlement would be on both banks of the Waipa, a little below the rapids; near the old native pah at Matakيتaki, and about three miles above Te Rore, beyond which point Captain Cadell considered that steamers could not pass.

The land on the eastern bank is a flat about a mile deep, 80 or 100 feet above the bed of the river, and extending from the Punui to Te Rore, intersected by the Mangapiko, which runs at the bottom of a steep gully, and falls into the Waipa just below Matakيتaki; it is generally of very good quality, dry, and well suited for settlement, and with a good supply of wood on the eastern bank, and an abundance, though less accessible, on Pirongia Mountain, the base of which reaches the left bank of the river.

The distance from Te Awamutu is between eight and nine miles, with an excellent line of road, presenting no difficulties in the shape of swamps or gullies, and the greater part of the road is suitable for settlement. On the western bank there is also some flat land for the township, on which the rich slopes and spurs from Pirongia abut, and it is at this point that the Kiiroa road from Raglan will terminate; and I am informed that some of the best land in the district will be found along the portion of this line that traverses the base of Pirongia.¹²⁰⁴

Besides reporting on the site at Pukekura on the Waikato River, Haultain also noted that he had visited 'the Native village of Kirikiiroa', which he considered would be a favourable site for a further military settlement.¹²⁰⁵

Cameron had meanwhile been forwarded memoranda from ministers in which they responded to Grey's request for an outline of the general policy it was intended to pursue with respect to confiscation. Whitaker's response was discussed in chapter 2.

¹²⁰⁴ Haultain to Colonial Defence Minister, 11 July 1864, AJHR, 1864, E-2, p.65.

¹²⁰⁵ *ibid.*, pp.65-66.

He had claimed that the establishment of a frontier line from Raglan or Kawhia across to Tauranga had been discussed at a meeting of the Executive Council on 14 December 1863, while also indicating an intention to pursue a policy of confiscation in Taranaki.¹²⁰⁶ A second memorandum outlined the views of ministers as to future military operations. Whitaker urged that the recent success at Tauranga should be followed up, as well as advising that ‘an effective blow should be struck at Taranaki and Wanganui as soon as possible.’ Beyond this, he also considered it ‘very desirable that an expedition should, as soon as practicable, be sent from Waikato to William Thompson’s settlements of Mata Mata and Peria.’¹²⁰⁷

While this latter suggestion may have been prompted by a desire to extend the eastern perimeter of the area subject to confiscation (as had been suggested in correspondence cited previously), Cameron was entirely dismissive of the various proposals. With respect to military operations he declared that:

...active military operations in New Zealand, during the winter rains, are in most cases impracticable; and where practicable, would be attended by a heavy loss in transport animals and material, as well as by serious injury to the health of the troops – disadvantages not likely to be compensated by the result of a raid to Mata Mata, or of the operations at Tauranga, and which would only impair the efficiency of the force for more decisive operations undertaken at a more favourable season of the year.¹²⁰⁸

The General was clearly not of a mind to resume military operations in the Waikato district any time soon. On the subject of confiscation, Cameron was hardly more encouraging. He wrote with respect to the ministerial memorandum on the issue that:

It is proposed to confiscate and permanently occupy the following tracts of country:-

¹²⁰⁶ Whitaker, Memorandum by Ministers, 25 June 1864, AJHR, 1864, E-2, pp.58-59.

¹²⁰⁷ Whitaker, Memorandum, 27 June 1864, Selections from Despatches and Letters, p.268, WO 33/16, Archives NZ.

¹²⁰⁸ Cameron to Grey, 2 July 1864, Selections from Letters and Despatches, p.269, WO 33/16, Archives NZ.

1. The Waikato country, as far as a line across the island, from Raglan or Kawhia to Tauranga, excepting certain portions to be reserved for such natives as may return to their allegiance.
2. A portion of the country of the Ngatimaniapoto tribe.
3. Land on both sides of the town of New Plymouth, to an extent not defined.
4. Land north of the Waitotara River, to a point ten or twenty miles north of the Patea River, including Waimate, which place is, I believe, about sixty miles from Wanganui.

I need hardly inform your Excellency that it would be impossible to carry the whole of so extensive a plan into effect, in a speedy and satisfactory manner, with the force at my disposal. The establishment of the proposed frontier-line between Kawhia and Tauranga – that is to say, the formation of a complete chain of posts nearly 100 miles in length, and passing for a considerable distance through dense forest and mountainous country – would alone employ nearly all the troops in the province, including Tauranga, leaving no reserve for any emergency in other parts of the island... .

To ensure, therefore, the rapid execution of the whole plan of occupation, proposed by Ministers, which involves the conquest of part of the difficult country of the Ngatimaniapoto tribe, large reinforcements would be necessary, the exact amount of which it is impossible to estimate, without more definite information as to the extent of land to be occupied, and a better knowledge of the country than I find it possible to obtain. The number of troops required, would, however, be greater, than the Imperial Government would probably be induced to send, especially for the purpose of occupying territory, the defence of which might involve their detention in the country for many years, until a sufficient number of military settlers could be found to supply their place.¹²⁰⁹

¹²⁰⁹ *ibid.*, p.270.

The number of troops available was therefore barely sufficient to protect the existing frontier line, let alone extending it further east into Ngati Haua territory or further south into the rohe of Ngati Maniapoto as ministers hoped to achieve. The implication was clear: both the extent of confiscation to be inflicted and future military operations would need to be scaled back. But at the same time Cameron added that:

I do not wish it to be inferred from the preceding observations, that I object to the frontier line between Tauranga and Kawhia or Raglan (which I consider a good one), or that I offer any opinion on the expediency of occupying the tracts of country described in the memoranda of Ministers; but I wished to point out that the whole of the plan proposed by them could not be carried out rapidly (the particular point on which your Excellency has asked my opinion) with the force at present in the colony; nor the whole frontier line, above referred to, taken up at once without employing more troops than can be spared for the purpose in the present state of affairs.

Whatever plan for the confiscation and occupation of native lands may be decided upon, I think it should not be based upon the expectation that further reinforcements will be sent from England, but rather upon the probability that a reduction of the present force will be ordered before long by the Imperial Government.¹²¹⁰

Grey failed to forward Cameron's memorandum to ministers until seven weeks after it had been written, thus ensuring a ministerial response could not be included when the correspondence was forwarded to the Colonial Office. Having finally secured a copy of the document late in August, Whitaker in reply denied that the plans involved any possible reinforcement of troop levels, insisting that the intention was, on the contrary, to operate on the assumption of a reduction in the force available. He queried the difficulty involved in capturing Matamata and Peria (a mere 20 miles distant from extant posts by means of a flat and level road) and insisted that the intention remained to establish a frontier line from Raglan or Kawhia to Tauranga, which might be achieved through six or seven posts placed at strategic locations,

¹²¹⁰ *ibid.*

either at harbours, navigable rivers or other convenient locations. Further than this, Whitaker noted that:

General Cameron is mistaken when he states that it was proposed to confiscate and permanently occupy a portion of the country of the Ngatimaniapoto tribe, beyond the Raglan and Tauranga frontier line. Ministers stated that it *may* be necessary to *deal speedily* with that tribe, and the difficulty of permanently occupying a substantial portion of this territory was the ground that led Ministers to the conclusion that it might be necessary to deal specially with them, and their land outside the frontier line.¹²¹¹

The reference here was to Whitaker's earlier memorandum concerning confiscation policy, penned on 25 June 1864, in which the Premier had, after referring to draft confiscation proclamations presented to Grey for approval on 28 May (discussed earlier in the chapter) added that 'It may be necessary to deal separately with the Ngatimaniapoto tribe, that perhaps most deserving punishment whose land may not be sufficiently touched if confiscation were confined to the present proposal.'¹²¹² The subsequent statement on this point hardly clarified matters, other than to suggest that any extension of the confiscation further south into Ngati Maniapoto territory would not be accompanied by a corresponding shift in the frontier line in the same direction.

Grey and Cameron were, meanwhile, implying that the line might actually be taken north, rather than south. Such a suggestion had previously been advanced by the *New Zealander* newspaper, which had ridiculed the notion of placing the settlers so far from Auckland, alleging that a primary motive for this was that prominent friends of the Whitaker-Fox ministry owned lands between Auckland and the proposed military settlements which they expected to see swell in value with the insertion of a protective buffer between these sites and the Kingitanga forces.¹²¹³

Neither Grey nor Cameron went quite this far. On 19 August 1864 Grey wrote to Cameron with respect to the statement in his letter of early July that he did not wish it

¹²¹¹ Whitaker, Memorandum by Ministers, 30 August 1864, AJHR, 1864, E-2, p.83.

¹²¹² Whitaker, Memorandum by Ministers, 25 June 1864, AJHR, 1864, E-2, p.58.

¹²¹³ Hamilton, 'Military Vision and Economic Reality', pp.61-63.

to be inferred that he objected to the frontier line between Tauranga and Kawhia or Raglan as he considered it a good one. What, Grey requested to know, was 'the line between the Waipa and Horotiu Rivers which would...be the best we could occupy as a frontier line.'¹²¹⁴

Cameron's response, dated 22 August 1864, raised a number of issues with respect to the much-debated frontier line. He stated that:

...in a purely military point of view, the line from Te Rore, passing through Paterangi and Ohaupo, and meeting the Horotiu north of the Mangawera Creek, would in my opinion require the fewest men to occupy it, would be the most easily supplied, and would cover the country behind it the most effectually.

By adopting this line we might dispense with the posts beyond it at Alexandra, Kihikihi, Te Awamutu, Haerini [sic], Rangiawhia [sic], Cambridge, and Pukekura, retaining only those at Te Rore, Paterangi, and Ohaupo, and forming two additional posts to complete the line, viz., one on the high ground above Te Awamutu, where the tracks leading to that place from Paterangi and Ohaupo meet, and the other in the angle formed by the Mangawera Creek and the Horotiu.¹²¹⁵

Cameron did not seek to portray this as a complete abandonment of the confiscated lands to the south of the new positions he believed were the soundest from a military point of view, but rather claimed that:

The open country in from of this position would still be almost as completely under our control as though we actually held it, and could only be occupied by natives willing to live on friendly terms with us, and who might thus become a useful barrier against the incursions of other tribes.

¹²¹⁴ Grey to Cameron, 19 August 1864, Selections from Despatches and Letters, p.276, WO 33/16, Archives NZ.

¹²¹⁵ Cameron to Grey, 22 August 1864, Selections from Letters and Despatches, pp.276-277, WO 33/16, Archives NZ.

If, however, the proposed frontier line is to be defended by military settlers, I would observe that the country for some miles behind the position just mentioned is covered to so great an extent by swamp, that it would be impossible to give to each settler the whole amount of land of good quality to which he is entitled under the terms of his enlistment, an objection, however, which would apply in a greater or less degree to any other line that might be selected.¹²¹⁶

The present line, Cameron added, was also ‘easily defended’, but required a larger force to occupy on account of the greater number of posts, though this might be reduced with some rearrangement of the manner in which supplies were transported, allowing some of the positions to be dispensed with as not essential to the defence of the line. Thus, the General concluded:

The choice between the two lines appears to me a question which may be decided rather on political than on military grounds; as although, for purely military reasons, I consider the inner line the better one, the difference between the two is not such as to necessitate the forfeiture of any great political advantage, if any there be, in maintaining the more advanced line.

Under present circumstances, we could hardly retire from any of the positions we now occupy on the Waikato frontier; but if in any future arrangement with the natives regarding a boundary line, we thought proper to restore to them the territory beyond the inner line I have described, we might claim from them the cession of other territory towards the Thames and West Coast, by the possession of which we should improve our frontier by extending it, and possibly provide equally well for the requirements of military settlers.¹²¹⁷

While nothing appears to have come from Cameron’s suggestions, the possibility he raised of returning this relatively small but highly valuable area of land to its original owners is a significant statement in the context of the Rohe Potae inquiry, given this is an area in which hapu and iwi from the inquiry district claimed strong interests.

¹²¹⁶ *ibid.*, p.277.

¹²¹⁷ *ibid.*

There are a number of obvious reasons why such a proposal may not have been acted on, including the fact that the military settlers had already taken up possession of at least the townships allocated to them. In May 1864 the first 300 men of the 1st Waikato regiment arrived at Tauranga, with a further 280 men following in June.¹²¹⁸ A party of 400 men of the 2nd Waikato regiment occupied Alexandra and Kihikihi in June, and Cambridge and Kirikiriroa (Hamilton) were taken up in July.¹²¹⁹ By September 1864 the surveys of the townships had been completed and plans made available to each of the regiments for allocation of the township lots to settlers.¹²²⁰

There was, though, no getting around the fact that while lands could be allocated on an informal basis, military settlers could not receive titles to their lands until the government had taken steps to legally confiscate these, since it patently could not give to one party something which it had yet to take possession of from another. In this respect, Grey's proclamation of 17 December 1864 was greeted as a welcome development which would finally allow the military settlements to move ahead. As the *Daily Southern Cross* noted:

The recent proclamation...issued under the hand of his Excellency the Governor, confiscating the whole of the land in the Waikato taken by the Queen's forces, and from which the rebel natives have been driven, has tended to instil confidence in the minds of the military settlers already placed on their allotments, but who felt scarcely secure in their possessions until the act of confiscation had been made, also so long delayed after the conquest of the country had been completed. The painful uncertainties and suspicions that even should they fence in and improve their lands, at considerable expense of time and labour, they might at any moment be ordered to remove within a frontier line fixed at Ngaruawahia, or even Maungatawhiri, paralysed the efforts of the settlers: and though such has been undeniably done to reclaim the country from its wild and barbarous state, it cannot but be admitted that,

¹²¹⁸ Stokes, 'Raupatu: The Waikato Confiscated Lands', p.37.

¹²¹⁹ Allen, 'Military Settlement in the Middle Waikato Basin', pp.48-49.

¹²²⁰ Parsonson, 'Tainui Claims'; Allen, 'Military Settlement in the Middle Waikato Basin', pp.48-60.

had satisfactory possession been given at the outset, very much more important results would be exhibited at the present moment.¹²²¹

The report went on to note that the ongoing delays had resulted in the loss of many military settlers, who after waiting patiently with their regiments, had eventually relieved themselves from any further obligations by obtaining substitutes. Of the various settlements which had been established at Kihikihi, Alexandra, Kirikiriroa and Cambridge, the report made particular note of the first of these locations:

The well-known fertility of the land around Kihikihi – that place being distant from Awamutu about four miles, and once the favourite residence of the arch-rebel Rewi – has been often commented upon. Large tracts of ground around the settlement have been turned up by the plough and sown with oats on Government account; whilst the settlers, having in many instances furnished the construction of their weatherboard tenements, have now turned their attention to the improvement of their town allotments and fifty-acre farms. For extent of improvement effected in this direction, the settlement of Kihikihi is acknowledged to stand in the front rank when compared with the sister settlements.¹²²²

While the military settlers were eager to take possession of the land, and would become increasingly clamorous as delays continued to be experienced in granting allotments to them, they were not the only ones putting their hands up for a slice of the confiscated lands. In a perhaps surprising development, and one that does not appear to have been noted by historians previously, late in October 1864 Grey was forwarded multiple claims from the commanders of the various Imperial regiments which had participated in the Waikato War, ‘relative to Prize money on account of Lands captured from the Rebels during the recent military operations.’¹²²³ Typical of these was a letter from Arthur Leslie, the commander of the 40th regiment, who

¹²²¹ *Daily Southern Cross*, 31 December 1864.

¹²²² *ibid.*

¹²²³ Major Pitt to Private Secretary, 18 October 1864, Inwards Letters on Naval and Military Subjects, G 16/4, Archives NZ.

specifically noted the role of his troops in the capture of Ngaruawahia on 8 December 1863, as well as the more recent auction of some 80 acres in the settlement.¹²²⁴

That auction, held in September 1864, had realised £8350, or more than £100 per acre, enough for the *Daily Southern Cross* to mock critics who had previously suggested that confiscation could not – and would not – pay.¹²²⁵ Now that it had paid, at least in part, those who had taken the leading role in actually conquering the confiscated lands perhaps not unfairly sought a share of the profits. Nor was this confined to the 40th regiment: the commanders of the 65th regiment, the Royal Artillery, the Engineers, the 18th Irish regiment, the 43rd, and the 50th Medical Corp all wrote letters to similar effect. Edward Williams, the commander of the Royal Artillery, in advancing claims to prize money in respect of ‘the operations which led to the acquisition of the lands which have been, or may be hereafter sold’, noted that:

It will, I believe, be difficult to convince such men that the Troops of the Colonial Government have a better right to such lands than themselves, and as they derive no benefit whatever in serving in this country may equally fail in seeing the justice of the Colonial Government being permitted to enrich itself at their expense.¹²²⁶

It had long been rumoured that Imperial troops widely viewed the Waikato War as a sordid campaign of conquest for the exclusive enrichment of land-hungry settlers and their government. If the timing and tone of these letters is any indication, perhaps there was some truth to this assumption. Another commander set out his arguments as follows:

That in cases of Troops having been employed where an extent of Country has been conquered or annexed, that Batta [sic] or Prize Money has always been granted, and this when the original occupants of the soil have not been displaced, but merely Crown taxes levied, and therefore they feel they are

¹²²⁴ Leslie to Assistant Military Secretary, 19 September 1864, G 16/4, Archives NZ.

¹²²⁵ *Daily Southern Cross*, 10 September 1864, 30 September 1864.

¹²²⁶ Williams to Assistant Military Secretary, 23 September 1864, G 16/4, Archives NZ.

doubly entitled to remuneration in a case where the land is actually sold and virtually becomes Prize Money.¹²²⁷

A draft reply from Grey indicated that the claims were to be forwarded to the Imperial government for a formal response. While it is unlikely that they met with a favourable reception from penny-pinching Imperial authorities, the fact the claims had been lodged in the first instance might have given rise to a degree of embarrassment within New Zealand had their existence been made public.

5.7 The Failure of Military Settlement

From modest beginnings the military settlements quickly began to take shape. Alexandra township had been surveyed in July and August 1864, with redoubts strategically located on both sides of the Waipa River forming central hubs around which rectangular blocks of one-acre allotments were laid out, albeit with some modifications in lay out where the contour of the land required such changes.¹²²⁸ In total 1400 acres of one-acre lots were laid out in the township, of which 1272 acres was handed over to the 2nd Waikato regiment for allocation to the military settlers and the provision of reserves.¹²²⁹ Kihikihi, on the other hand, was officially deemed a military village, rather than township, and was surveyed over June and July 1864. It consisted of just 404 lots of one acre each.¹²³⁰

Following the allocation of township lots, which followed the standard procedure whereby officers and NCOs chose their allotments in order of rank and seniority, before the rank and file entered a ballot for the remainder,¹²³¹ attention turned to the rural sections. These were surveyed in standard 50-acre lots, and clustered around the townships as much as possible in order to facilitate their defence.¹²³² In addition to farms located along the Waipa River around Alexandra, at Kihikihi 50-acre sections were surveyed as far south as the Puniu River and the Orakau redoubt, and north to

¹²²⁷ H. Weare (50th regiment) to Assistant Military Secretary, 5 October 1864, G 16/4, Archives NZ.

¹²²⁸ Allen, 'Military Settlement in the Middle Waikato Basin', pp.50-51.

¹²²⁹ *ibid.*, p.51.

¹²³⁰ *ibid.*, p.52.

¹²³¹ Hamilton, 'Military Vision and Economic Reality', p.64.

¹²³² Allen, 'Military Settlements in the Middle Waikato Basin', p.75.

the Hairini and Rangiaowhia redoubts. In the latter district, however, large reserves were also set aside to accommodate pre-war European residents and the large Church Missionary Society estate at Otawhao.¹²³³

In many cases, farm sections were rejected as unsuitable for various reasons, including isolation from the military townships and the danger of attack, steep slopes, heavy timber cover or swamps.¹²³⁴ That inevitably meant that further land would need to be found in order to meet the government's obligations. With the transfer of the capital to Wellington in 1865 Daniel Pollen was appointed to the newly-created position of Agent for the General Government at Auckland and in July 1865 given charge of all lands in the province taken under the New Zealand Settlements Act. Charles Heaphy, the government's Chief Surveyor, who was overseeing the operations in Waikato (and in his spare time agitating to be personally awarded a Victoria Cross for his actions at the Waiari engagement), was also placed under Pollen's supervision at this time. But de facto Native Minister J.C. Richmond warned that:

The financial condition of the Colony forbids the carrying on of surveys on the present burdensome scale a day after the absolute engagements of the Government are fulfilled and I have to request you to report how soon it will be practicable to reduce the establishment to a number of officers that may be kept in hand easily and economically.¹²³⁵

Not only did rejected lands mean fresh surveys would be required, but it also prolonged the time that members of the Waikato regiments would be required to remain on full pay. In fact, it was alleged that many of the men were rejecting allotments precisely so they could remain on active service, and the regulations relating to the rejection of land were subsequently enforced with more rigour in consequence.¹²³⁶

¹²³³ *ibid.*, p.80.

¹²³⁴ *ibid.*, p.89.

¹²³⁵ Richmond to Pollen, 18 July 1865, AGG-A 1/34/65 (box 1), Archives NZ (Akl).

¹²³⁶ Hamilton, 'Military Vision and Economic Reality', pp.65-67.

Heaphy, though, warned in July 1865 that ‘The whole of the available land in the Military Settlements district will be required for the location of the officers and men of the 2nd 3rd & 4th Waikato Regts and most probably a variation (in addition) of the Northern boundary will be necessary.’¹²³⁷ This was followed up less than a fortnight later by a further letter from Heaphy in which he informed Pollen that:

I have the honor to bring under your notice the circumstance of the necessity of varying the boundary of the Military Settlemt [sic] Block at the Waikato in order to [enable] its enlargement.

The whole of the land situated in the triangle between the rivers has been inspected and but a very small extent of good land remains now unsurveyed. The Militia authorities inform me that they require, still, about 600, 50 acre allotments.

On the Western side of the Waipa there is a considerable area of good land within the boundaries of the confiscated block but on this there [are] so many Native claims and reserves that but little free scope is left for Militia Surveys.

Mr Graham, contract surveyor, carried, erroneously, his survey to the north of the northern boundary of [the] Proclaimed Block... . From a desire to locate the Militiamen as speedily as possible I handed over 33 of his surveyed allotments before I had compiled them on the General plan or was aware that they were without the district.

I would recommend that the Block should be extended by varying the northern boundary and making a line running East from the mouth of the Maungawharo River the Northern boundary.¹²³⁸

There was to be no modest extension of the northern boundary in response to the overzealous extension of the survey of lands beyond the confiscated block, however, but rather the proclamation of the massive Central Waikato district in September

¹²³⁷ Heaphy, Memorandum, 18 July 1865, AGG-A 1/34/65 (box 1), Archives NZ (Akl).

¹²³⁸ Heaphy to Pollen 26 July 1865, AGG-A 1/69/65 (box 1), Archives NZ.

1865. Whether Graham's survey had been the catalyst for this final taking is unclear. But it is possible that, having been alerted to the need for a further proclamation, the government took advantage of the situation to greatly extend the area confiscated. As noted previously, less than 1% of the newly-confiscated lands north of the Military Settlements block was allocated to military settlers. As will be discussed further in a later chapter dealing with the Compensation Court, the government had justified the September 1865 proclamation on the basis that a blanket taking was necessary in order to convince the Waikato tribes of the finality and irreversibility of the confiscations.¹²³⁹ Certainly it does not appear to have been driven by the requirements of the military settlers.

Richmond did grant authority for the military settlements to be extended into the newly-proclaimed area soon after the land had formally been taken.¹²⁴⁰ But in the same month some 74 members of the 2nd Waikato regiment and Forest Rangers based at Kihikihi petitioned Parliament concerning their circumstances. They complained that they had been 'struck off pay through having drawn their land, and the majority not feeling themselves in a position to cultivate it with safety', they wished to bring to the notice of members:

...the present unsettled state of the Colony having been led to believe when enrolled that they were not to be placed on their land until the war should be definitely settled; the distance at which the Settlers who wish to cultivate their lands are obliged to reside, some of the Farm Sections being 15 or 16 miles from the Township renders them liable to inroads from the enemy which in their present scattered condition would be impossible to resist with success.¹²⁴¹

They complained of the lack of public works in the district, which was 12 miles distant from the nearest water transport and reached by roads that were 'almost impassable owing to the numerous gullies and swamps which intervene' and claimed that 'your Petitioners at the time of their enrolment understood that public works would be undertaken such as the construction of roads bridges etc – without which

¹²³⁹ J.E. FitzGerald (Native Minister) to Pollen, 3 September 1865, AGG-A 1 (box 1), Archives NZ (Akl).

¹²⁴⁰ Richmond [to Pollen], 8 September 1865, AGG-A 1 (box 1), Archives NZ (Akl).

¹²⁴¹ Petition of 2nd Waikato Militia and Forest Rangers, 8 September 1865, IA 14/26, Archives NZ.

many...Farm Sections are entirely valueless being inaccessible.' Monthly musters were also a source of annoyance, but the petitioners noted that 'the issue of their Crown Grants would prove the most effectual means of giving confidence to those who are anxious of cultivating their lands as many who are unsuited to agricultural pursuits would make room for a class better adapted.'¹²⁴² They regretted that such a fertile district should be abandoned, but such would inevitably prove the case if members failed to heed their petition.

In fact, an even more numerous signed petition, this time with 362 signatures attached to it, had previously been drafted in June 1865. This time the specific cause of their concern had been news of the intention to withdraw the whole of the Imperial regiments from the Waikato district, a course of action that would 'necessitate the total abandonment of that fertile District'.¹²⁴³ The petitioners went on to note that 'The Colony at large would suffer a very serious loss in the event of the abandonment of the Waikato District to its original owners, a necessary consequence of the withdrawal of Her Majesty's Troops, at such a moment as the present.' They were desirous of bringing the lands into cultivation 'in order to make themselves a lasting and prosperous Home in Waikato' but could not do so until peace had been established. While the Imperial troops might eventually be withdrawn any move to do so in the existing circumstances, it was added, would likely result in 'the total defeat and failure of the Waikato Military Settlement Scheme.'¹²⁴⁴

The government did little to address the concerns expressed in either petition. In some case the military settlers took it upon themselves to mitigate their own situation as best they could and some officers, for example, turned a blind eye to absenteeism at the muster parades.¹²⁴⁵ Authorities were instead seemingly more concerned about the question of who should have responsibility for administering the confiscated lands. By September 1865 there was agreement in principle that these should be transferred to the Auckland Provincial Government, but an extended period of negotiations was

¹²⁴² *ibid.*

¹²⁴³ Petition of Waikato Military Settlers, 30 June 1865, IA 14/26, Archives NZ.

¹²⁴⁴ *ibid.*

¹²⁴⁵ Laurie Barber, *Frontier Town: A History of Te Awamutu, 1884-1984*, Auckland: Ray Richards Publisher and Te Awamutu Borough Council, p.52.

necessary before the terms of the transfer were finally agreed early in 1866.¹²⁴⁶ Initial discussions proceeded on the assumption that some 1,220,000 acres of confiscated lands were available to deal with (including 50,000 acres at Tauranga), of which 200,000 acres would be required for military settlers, a further 50,000 acres for other settlers and 250,000 acres 'For Natives', leaving some 720,000 acres at the disposal of the provincial authorities.¹²⁴⁷ The question of compensation, whether in land or money, to 'loyal' Maori, and the provision of reserves for 'those Maori who may wish to return to the districts, and to accept the Queen's authority, and take grants from the Crown' were quickly identified as potential complicating factors in any transfer of the lands.¹²⁴⁸

In October 1865 the House of Representatives passed a series of resolutions on the issue, including:

1. That it is expedient that the confiscated lands in the Province of Auckland should, with certain exceptions, and subject to certain conditions, be transferred to Provincial administration in that Province, for the purposes of colonization.
2. That the General Government cannot properly divest itself of the duty of securing to the loyal Natives the lands to which they may be entitled, and of settling those Natives who may desire to return to those districts comprised in such lands, and to accept the Queen's authority, and to take grants from the Crown; that, therefore, this duty should be retained in the hands of the General Government: Provided also, that sufficient lands be retained to fulfil engagements with Military Settlers.¹²⁴⁹

The province was to be liable for all sums expended which would contribute to its 'permanent advantage' and was to make a payment to the general government on the resale of all confiscated lands sold for more than two shillings and sixpence, once

¹²⁴⁶ Memorandum of a Conversation between Ministers and the Representatives of the Province of Auckland, n.d. [September 1865], AJHR, 1865, D-2A, p.4.

¹²⁴⁷ Memorandum relative to Confiscated Lands, n.d. [September 1865], AJHR, 1865, D-2A, p.5.

¹²⁴⁸ Richmond to Robert Graham (Auckland Superintendent), 3 October 1865, AJHR, 1865, D-2A, pp.6-7.

¹²⁴⁹ Extract from the Journals of the House of Representatives, 26 October 1865, AJHR, 1866, A-2, p.1.

previous liabilities on the land had been discharged. Beyond this, the proceeds derived from confiscated lands were to be expended on ‘colonizing and otherwise for the general advantage of the confiscated districts’, while it was also resolved that the province was ‘to provide for any compensation to Natives in money that may be awarded by the Compensation Court under the “New Zealand Settlements Act”’.¹²⁵⁰ The Auckland Superintendent, Frederick Whitaker observed in January 1866 that the provincial government was being asked, by virtue of these resolutions, to assume very large liabilities which were more properly the responsibility of the central authorities. He requested that the general government should introduce legislation authorising the sum of £250,000 to be made available to the province.¹²⁵¹ The Stafford ministry, which had replaced the Weld administration in October 1865, promptly agreed to this condition.¹²⁵²

At the end of January 1866 Whitaker conveyed a copy of the correspondence on the subject to the Auckland Provincial Council, with the recommendation that it agree to accept responsibility for the lands on the terms outlined. In his covering message he noted that the confiscated land in Waikato consisted of an estimated 1,217,473 acres, of which 603,173 acres would be required for military settlers, immigrants and Maori, leaving a balance of 614,300 acres which was unappropriated. This latter land consisted of 64,961 acres of good land, including about 20,000 acres of some of the most valuable lands of all, located between Auckland and the Waikato River; a further 78,660 acres consisted of easily-drained swamps, and 39,614 acres of swamps which would be difficult to drain, while the balance of 431,065 acres was poor and hilly land.¹²⁵³ In fact, when Tauranga and the more recently confiscated eastern Bay of Plenty districts were added, Whitaker observed that ‘the whole of the confiscated lands may be said to comprise 1,750,000 acres of land, of which 840,000 may be considered good, and 910,000 acres varying in quality from inferior to worthless.’¹²⁵⁴ In other words, a majority of the lands confiscated under the New Zealand Settlements Act within the Auckland province by this time was arguably unsuitable for settlement – the only purpose for which it could legally be taken.

¹²⁵⁰ *ibid.*

¹²⁵¹ Whitaker to E.W. Stafford (Colonial Secretary), 10 January 1866, A-2, p.3.

¹²⁵² Stafford to Whitaker, 18 January 1866, AJHR, 1866, A-2, pp.4-5.

¹²⁵³ Whitaker, 30 January 1866, AJHR, 1866, A-2, p.7.

¹²⁵⁴ *ibid.*

In any case, the Auckland Provincial Council endorsed Whitaker's recommendation to accept the confiscated lands, in consequence of which these were transferred to it in February 1866.¹²⁵⁵ While provincial authorities were quick to pass regulations providing for the sale of the confiscated lands to settlers, they proved more reluctant to make provision for compensation to Maori to be covered in the same way.¹²⁵⁶ By the end of August 1866 Auckland province had spent just £77,720 of the £250,000 loan, with a further £135,218 earmarked for expenditure. Asked by Stafford in September 1866 to explain the shortfall, while also satisfying the General Assembly of its ability to repay the interest and sinking fund on the proposed loan, Whitaker, on behalf of the province, dropped something of a bombshell. He estimated that the sale of confiscated lands in the province would generate an average annual return of between £20,000 and £30,000 for some years to come. While this might be sufficient to cover the commitments under the special loan, an existing £500,000 loan raised in 1863 had also to be considered, with any additional loan unlikely to be saleable except at a 'ruinous discount' to the province. On top of this, Whitaker noted that:

...it is becoming clearer every day that the operations of the Native Lands Court are reducing the price of land in the Province of Auckland, and it is difficult at present to foresee to what extent this may go. Already it is said that titles to 200,000 acres of native land have been obtained, and most of it may be bought at a few shillings per acre. This will necessarily much interfere with the sales of confiscated land, and disturb the calculations made; it suggests, moreover, the question, - Whether it would not be a wise course to bring these latter lands at once into the market at such a price as will ensure purchasers without delay.

Having regard to all the foregoing considerations I have come to the conclusion that the proper course for me to adopt is to ask to be relieved from the arrangement under which the management of the confiscated lands has been handed over to the Province of Auckland, and consequently from the

¹²⁵⁵ Stafford to Whitaker, 15 February 1866, *Journals of the Auckland Provincial Council*, Session XX, 1866, A-1, p.4.

¹²⁵⁶ See AJHR, 1866, A-2, pp.12-15.

liabilities thereby entailed, and thus avoid the absolute necessity which otherwise exists for raising money on Provincial securities, which I cannot contemplate without doubt and apprehension.¹²⁵⁷

Whitaker, the canny lawyer and businessman in private life, no doubt knew that any attempt to bring the unappropriated confiscated lands to market in one hit would collapse their potential price even further – opening up significant opportunities for large-scale speculators to acquire much of the district. But when he repeated his comments in Parliament on 27 September 1866, the Colonial Treasurer William Fitzherbert declared that the government was equally anxious to see the confiscated lands sold.¹²⁵⁸ If the decision to agree to accept the confiscated lands from the general government had been prompted by any kind of desire to advance Whitaker's own personal business interests (as was alleged in the case of the Turanga confiscated lands),¹²⁵⁹ then it is obvious that the Auckland Superintendent quickly came to regret the move. The lands were promptly returned to the administration of the general government, with Whitaker having charge of them solely as the new Agent for the General Government at Auckland.¹²⁶⁰

An August 1866 return of confiscated lands in the province of Auckland compiled by a parliamentary select committee, while noting the 'exceedingly intricate and complex' nature of any detailed computations, nevertheless listed an area of just 6971 acres within the Waikato confiscated district (listed at 1,217,437 acres) as having been sold. That equated to just over half a per cent of the total area, and contrasted with 446,978 acres listed as saleable lands. The same return listed just 150,000 acres as having been set aside for military settlements, with 224,080 dedicated to 'Compensation and Reserves for Friendly Natives', and a further 50,000 acres estimated as required for 'returning Rebels'. In addition, 26,436 acres had been allotted to immigrants, 4227 acres were set aside for missionary and other claims,

¹²⁵⁷ Whitaker to Stafford, 22 September 1866, AJHR, 1866, A-2B, p.8.

¹²⁵⁸ *Nelson Examiner and New Zealand Chronicle*, 9 October 1866, 13 October 1866

¹²⁵⁹ O'Malley, 'East Coast Petroleum Wars', passim.

¹²⁶⁰ *Daily Southern Cross*, 1 December 1866

5471 acres had been purchased during provincial administration, and 303,274 acres were mountains and swamps.¹²⁶¹

The total lands available for sale were listed as having a value of £153,883, more than half of which was expected to be swallowed up in compensation and survey expenses. Reader Wood's grand projections from just three years earlier, when the confiscated lands (including those at Taranaki and elsewhere) were tipped to return a profit of more than £3,000,000 doubtless seemed a very long time ago by late 1866. But in fact the actual returns appear to have been even worse than projected. Although it is not clear whether comprehensive returns are available, a summary return of confiscated lands in the province of Auckland sold in the first six months of 1867 revealed a total of 60,285 acres sold for a return of £25,278. Deferred payments and purchases made with land scrip meant that the actual cash received was a mere tick over £3883.¹²⁶²

Although it was hardly mentioned in official exchanges, perhaps another reason why the demand for government-held confiscated lands in the Waikato district was so weak was the significant competition coming from the military settlers, who had begun to sell their lands in droves, even before Crown grants were received. As the Waikato military settlers came off full pay and rations, and yet continued to be denied access to their rural sections, their situation became grim. They had been able to just get by with the aid of free rations and occasional public works, but by 1866 'most of these supplementary sources of income were gone',¹²⁶³ and one January 1866 letter to the editor declared that:

Should the Government discontinue the rations on the 7th of March next, the memorable years of 1846-7 in Ireland will scarcely equal the destitution on the Waikato. Why, the last print rag is on the women now; the children long ago barefooted. The men are, or shortly will be, as badly off for clothing as their Maori neighbours.¹²⁶⁴

¹²⁶¹ Report of the Select Committee on Confiscated Lands, 14 August 1866, AJHR, 1866, F-2, p.4. The detailed returns upon which those figures were based can be found among the unpublished papers of the committee: Le 1/1866/6, Archives NZ.

¹²⁶² Return of Sales of Confiscated Land in the Province of Auckland, Showing the Amount Realized, the Amount Paid in Scrip or Cash, and the Number of Acres Sold, AJHR, 1867, A-8, p.1.

¹²⁶³ Hamilton, 'Military Vision and Economic Reality', p.81.

¹²⁶⁴ *Daily Southern Cross*, 16 January 1866.

Official reports backed up these suggestions of significant poverty and hardship, predicting possible starvation for some if the supply of rations was discontinued.¹²⁶⁵ But the government remained unmoved, and desertion became a significant problem among the military settlers.¹²⁶⁶ Most of the men of the 2nd and 3rd regiments had been recruited between August and December 1863, and therefore received their grants upon fulfilment of three full years of service in the same months of 1866.¹²⁶⁷ Earlier in the year, especially around the time the last of the rations were distributed in March, there had been significant agitation for the early release of Crown grants. A resolution to this effect was passed by the Auckland Provincial Council, with speakers urging that it was preferable to allow the military settlers to sell their entitlements and allow suitable substitutes to come and occupy the district than to perpetuate the distress and hardship already being experienced.¹²⁶⁸

In the same month an official return gave a total of 3543 military settlers and their families located in the upper Waikato, consisting of 675 men, 102, and 183 children of the 2nd regiment at Alexandra; 843 men, 80 women, and 198 children of the 3rd regiment at Cambridge; and 432 men, 282 women and 751 children with the 4th regiment at Hamilton.¹²⁶⁹ The report noted that the scheme of military colonisation of the Waikato had, from various causes, so far failed to achieve many of its initial objectives. In the view of the author, the successful development of a new area required a balanced injection of both capital and labour, but in the Waikato district 'there was an undue preponderance of labour and a most inadequate supply of capital.'¹²⁷⁰ The report further claimed that 'enforced idleness' consequent upon the 'wholesale and indiscriminate' distribution of rations had degraded and weakened the community, while the supposed contraction of the confiscation boundary line from that originally proposed (presumably a reference to the Raglan to Tauranga frontier line) had rendered the government powerless to carry out the scheme in full. Subsequent to the military settlers being placed upon the lands:

¹²⁶⁵ Hamilton, 'Military Vision and Economic Reality', p.81.

¹²⁶⁶ *ibid.*, pp.81-82.

¹²⁶⁷ *ibid.*, p.83.

¹²⁶⁸ *Daily Southern Cross*, 13 March 1866, 22 March 1866, 16 April 1866.

¹²⁶⁹ *Daily Southern Cross*, 13 March 1866.

¹²⁷⁰ 'Waikato Military Settlements: Dr. Waddington's Report', in Cowan Papers, MS-Papers-0039-41F, ATL.

...it was found that reserves for friendly and rebel natives would absorb most of the available land confiscated in the Waikato country, leaving little more than small patches of good land open for purchase or occupation by men of capital. More than 3000 military settlers have thus been introduced into the Waikato whilst the Government have not sold one acre to a capitalist. The contraction of the confiscation line has effectually prevented the Government from fulfilling this vital part of the condition which it directly or indirectly imposed upon itself. The present condition of the Waikato settlements may therefore be briefly described as that of a community without roads, destitute of capital, with great numbers of men willing to work but unable to find employment, and for the present, without means to support themselves or to maintain the crowds of helpless women and children dependent upon them.¹²⁷¹

In the view of the author of this report the prompt issue of Crown grants to all officers and men of the Waikato regiments was one of the urgent remedies required, allowing the settlers to sell some of their lands to capitalists who might take up the land.

The lack of Crown grants was hardly a total impediment to total alienation, however, since one in six (16.6%) of the rural allotments had been sold prior to the issue of titles.¹²⁷² Most men did, though, wait around long enough to receive titles, and there was a sharp upwards spike in alienations as titles were issued. By the end of 1867 an incredible 43.6% of the rural lands had been sold, with the standard 50-acre lots often selling for as little as £10-15.¹²⁷³ Many departed to try their luck on the goldfields, and by the end of 1868 some 58% of the farm lots had been alienated. Further steady alienation throughout the subsequent decade meant a mere 10.4% of the rural lands remained unsold by 1880, and although the figure was a little higher for the town lots (28.2%), it appears this may have been partly due to a lower demand for these: military settlers literally could not sell their township sections at any price.¹²⁷⁴

¹²⁷¹ *ibid.*

¹²⁷² Hamilton, 'Military Vision and Economic Reality', pp.82, 85.

¹²⁷³ *ibid.*, p.83.

¹²⁷⁴ *ibid.*, p.85.

One thing patently clear, then, is that for the average military settler their time in the Waikato was hardly a prosperous one. After three years of hardship, deprivation and continual danger many sold their sections for a song, leaving the district little or no better off than they had been when they first arrived. But if the government was now coming to realise that confiscation literally did not pay, and the hopes and dreams of individual military settlers had also quickly been dashed, precisely who did benefit from the confiscation of Waikato lands? In a word, speculators: the very people that Henry Sewell and others had suspected in 1863 of passing the New Zealand Settlements Act for their more or less exclusive benefit. It was these speculators who could afford to acquire vast portions of the confiscated lands in a depressed market and at a fraction of their true value,¹²⁷⁵ sitting and holding on to the lands until they stood to make an enormous profit from the rising value of their estates. In 1866 the average price of a 50-acre farm section was £20; by 1874 it had risen 600% to £120, and by 1880 the same section sold for £300, equivalent to a staggering 1500% increase in the space of just 14 years.¹²⁷⁶ Or to put it another way, this would be equivalent to an average annual return on the initial investment of just over 107%. Multiple that one section by many times and you begin to appreciate something of the scale of the riches available to wealthy speculators.

In short, the confiscation of the Waikato district had been of little tangible benefit to the government, at least in financial terms, and the same could be said for the average settler. About the only group to do well out of it were a handful of wealthy Auckland businessmen and ‘capitalists’. Russell Stone, perhaps the pre-eminent historian of the Auckland business community in the nineteenth century, concluded in his 1973 book, *Makers of Fortune*, that:

A scrutiny of deeds and land-transfer records in Auckland and Hamilton discloses that in much the same way as they had earlier ‘mopped up’ unwanted 40 acre allotments in North Auckland, so the city capitalists acquired for a few pounds, and amalgamated, many of the abandoned military allotments in the Waikato. In this fashion most of the four thousand freeholds,

¹²⁷⁵ In 1868 the Agent for the General Government stated that ‘the land market is absolutely gutted.’ Pollen to Colonial Secretary, 18 February 1868, AGG 3/2, Archives NZ (Akl).

¹²⁷⁶ Hamilton, ‘Military Vision and Economic Reality’, p.88.

the gift of the state, so to speak, quickly melted away. Other larger holdings were created from confiscated lands released by allegedly sympathetic Governments to private buyers. The 10,000-acre Rukuhia estate came into the hands of James Williamson and Alfred Cox in this manner. The Piako swamp near Hamilton was a similar release by Government in 1873; although the 87,623 acres transferred in 1879 by the speculators' syndicate to the Waikato Land Association included, on the margins of the swamp, some dozens of former 50 acre soldier sections bought cheaply at an earlier date to round off the estate or to secure outfalls for drains.¹²⁷⁷

Thomas Russell, the former Minister of Colonial Defence in the Whitaker-Fox ministry, held a 40% stake in the 90,000-acre Piako swamp, with Whitaker himself another member of the syndicate of owners.¹²⁷⁸ Their purchase of the area from the government proceeded on such favourable terms that it provoked something of a colonial scandal.¹²⁷⁹ But by the late 1870s it was said that the steady rise in Waikato land values consequent on the construction of a railway made it far more profitable to speculate in land than to farm it.¹²⁸⁰

Speculators were not interested in settling the district, or even in developing it, but merely in maximising the return on their investments. Thus vast areas of Waikato north of the Puniu River remained virtually deserted for years, while the former owners crowded into the Rohe Potae beyond this and refused to accept the confiscation of their lands. Numerous reports testified to the deserted appearance of much of the district in the wake of significant alienation to the speculators. One report from June 1867, for example, noted that:

With regard to the present, we greatly regret to say that the Waikato exhibits, in comparison with what it ought to do, a sad spectacle. Those settlements which were to have been covered with happy homesteads – with hundreds of trained men to protect them – the hills dotted with lowing cattle and bleating sheep – the fields covered with golden grain and crops of maize and potatoes –

¹²⁷⁷ Stone, *Makers of Fortune*, p.17.

¹²⁷⁸ R.C.J. Stone, 'Russell, Thomas, 1830-1904', DNZB, vol.1, p.378.

¹²⁷⁹ R.C.J. Stone, 'Whitaker, Frederick, 1812-1891', DNZB, vol.1, p.587.

¹²⁸⁰ Stone, *Makers of Fortune*, p.18.

are, in reality, principally deserted and dilapidated whares left behind; the hundreds of men have dwindled down to a mere handful, and are still decreasing; whilst the lowing herds and fields of grain have given place to a few cattle and pigs, and scattered potato fields and pumpkin patches...One district we know, on which originally 120 settlers were located, contains now not above 15 on their land; and we believe that this is not a per-centage very much in excess of the exodus from other districts.¹²⁸¹

St. John also painted a vivid picture of the Waikato he encountered upon travelling through the district in the early 1870s. He observed that:

One of the very first things which strikes the visitor in Waikato is the quantity of good land lying idle; and to any question on the subject the same answer is almost always given, "Oh! it's military settlers' land." Notably in one instance is this exemplified, and that is in the country between Ngaruawahia, and Alexandra, on the right bank of the Waipa. There are to be found thousands of acres, formerly supporting a large native population and producing corn in abundance, which have once more returned to a wild stat[e]. After confiscation they were allotted to military settlers, who sold them for mere songs to speculative buyers, who do not now well know what to do with them; especially, as, when the purchasers can be found, they are sharply pounced upon by Road Boards for rates.¹²⁸²

An English visitor to the Waikato district in 1874 subsequently wrote to one Auckland newspaper that:

I visited Hamilton and Cambridge, and after riding round both districts was struck with the vast area of land lying idle. The few good farms that are to be seen on both banks of the river show that the land, under proper cultivation, is capable of producing fair results, but the deserted paddocks, in which fern is again taking the place of grass, and where fences and banks are allowed to remain broken down and furze hedges to overspread the road, show also that

¹²⁸¹ *Daily Southern Cross*, 27 June 1867.

¹²⁸² St. John, *Pakeha Rambles*, p.49.

some of the first settlers have abandoned their land. It is but fair to remark that these places were said to have belonged to military settlers, who exhausted their means in a preliminary spurt, and afterwards sold their land to Auckland speculators, who are holding for extravagantly high prices.¹²⁸³

For the speculators it was doubtless less a case of not knowing what to do with their land than of biding their time. The Waikato confiscated lands now existed, it seemed, largely if not solely to benefit a handful of Auckland speculators. If contemporary critics were right, that may have been the intention of Whitaker and Russell from the outset. But it was hardly the basis upon which the confiscation policy had been sold to the public, or indeed to the Colonial Office. This raises the interesting point that, whereas crushing the Kingitanga and imposing substantive sovereignty may have been the overriding objective of the invasion of the Waikato, at least from Grey's perspective, its confiscation was perhaps based ultimately on more self-interested motives.

In any case, it is not difficult to see where the military settlements went wrong. As St. John further commented:

In every settlement where the plan was adopted of granting lands on a quasi-military tenure, the same unhappy result is found. Men without the taste or experience for a farmer's life, and mostly quite devoid of capital, received a grant of fifty or more acres, of as much use to them as if they were in the moon. Some of the men utilized them to pay off small grog scores; others sought a market in Auckland, where they obtained only nominal prices; some held on in hope of good times and increased value; a few set to work manfully on their little properties; whilst by good fortune others disposed of their lands to enterprising and real settlers who, whilst cultivating to their own advantage, are also largely benefiting the district.¹²⁸⁴

Clearly, the latter scenario was an unusual one, requiring an ounce of luck to find a bona fide would-be settler with both the means and inclination to take up land in the

¹²⁸³ *Daily Southern Cross*, 5 October 1874.

¹²⁸⁴ St. John, *Pakeha Rambles*, pp.49-50.

district. For many military settlers, desperate to sell out their interests and quit the area, the question of just who bought these was likely to be of secondary interest.

The lack of mystery to the failure of the military settlements can be largely attributed to the fact that the scheme itself was inherently flawed.¹²⁸⁵ The notion of placing a group of inexperienced and undercapitalised men on uneconomic farm units in the middle of an active war zone, far from potential markets, and expecting them to somehow miraculously transform themselves into viable farmers was always a doubtful one. To quote from one detailed assessment of the scheme:

Military settlement in the Middle Waikato Basin did not succeed as a method of colonization. The scheme failed to foresee the problems that would be met in applying the theory of military settlement to the practical situation. It was impossible to maintain a compact pattern of military settlements. The scheme of military settlement did not provide sufficient support for the militiamen in their task of settling and developing the land. The settlers who took part in the military settlement of the region were not hardy pioneers used to the problems and hardships of living from the land. Few were willing or able to love a subsistence existence on small holdings that were often isolated and were always within close proximity to rebel Maoris known for their hostility toward the military settlements.¹²⁸⁶

That assessment is broadly shared by a similarly detailed study, which after listing a number of factors behind the failure of the scheme, concluded that:

There are many reasons that can be given for the failure of the military settlements, but probably in the last resort most of the blame must be laid at the door of the government. Its planning was defective. It allowed quite unsuitable men to be enrolled, and gave them land that did not constitute an economic unit. It did not impose any restrictions on the men's right to sell out and leave, and thus opened up a fruitful field for speculators to cash in on the men's despair. Shortage of funds had forced the government to take the men

¹²⁸⁵ Hamilton, 'Military Vision and Economic Reality', p.102.

¹²⁸⁶ Allen, 'Military Settlement in the Middle Waikato Basin', p.111.

off pay as quickly as possible, and this was also the reason for the lack of public works. Had the men had a sufficient inducement to stay, the story could well have been different. As it was, government mishandling and parsimony did much to cause the failure of the Waikato military settlement scheme.¹²⁸⁷

Ongoing Maori resistance to the confiscations was thus a significant contributing factor in the failure of the military settlements and contributed to the depressed market for the Waikato lands until well into the 1870s. Would-be settlers continued to prefer the South Island or Manawatu so long as the Kingitanga remained unsubdued and unwilling to accept the confiscations. While one consequence of this and other factors was the significant concentration of Waikato land interests in a handful of wealthy Auckland speculators, this might potentially have worked in favour of the iwi concerned. It might arguably have made it easier for the government to reacquire significant areas for return to the tribes provided there was a political willingness to go down this path in order to achieve a lasting peace with the Kingitanga.¹²⁸⁸ There was no such willingness, however, in consequence of which much more limited government offers to return a small portion of the confiscated lands proved inadequate.

5.8 Was Confiscation Legal?

The question of whether the Waikato confiscation was legal is best addressed in legal submission and argument. The purpose of this section is to summarise previous discussions with respect to the legality of the confiscations under the New Zealand Settlements Act in general. Notable in this respect are the findings of the Taranaki Tribunal, which concluded that confiscation as implemented in that district was not legal. In reaching this finding the Tribunal was influenced by an opinion prepared by Emeritus Professor F.M. (Jock) Brookfield with respect to the legality of the Taranaki

¹²⁸⁷ Hamilton, 'Military Vision and Economic Reality', pp.108-109.

¹²⁸⁸ Reporting on the results of a recent tour through the Waikato, in March 1871 Native Minister Donald McLean informed his Cabinet colleagues that 'A large extent of country still lies unoccupied; of this a part is the property of the Government; the remainder has passed from military settlers into the hands of non-residents.' He also observed that 'recent parries' had 'had a very bad effect in lowering prices of land and in deterring several intending purchasers from investing for residence in the District'. McLean to the Premier (William Fox) and Ministry, n.d. [c.March 1871], McLean Papers, MS-Papers-0032-0033, ATL.

and Bay of Plenty confiscations. The Tribunal noted that the legality of the confiscations had long been raised, but courts had been constrained in their consideration of the issue by validating legislation passed by Parliament at various times, as well as by the now outdated view that treated raupatu as an unreviewable act of state.¹²⁸⁹ While lawyers had attempted to raise the question of legality before the 1880 West Coast Commission (as well as before the Sim Commission in 1927), commissioners had, in the former case, ‘refused to hear counsel who wished to question the validity of the confiscation, and we told the Naives at the very outset that we were not there to discuss such questions with them’.¹²⁹⁰

Yet ironically, the reason why issues of legality were raised so often in relation to the confiscations was no doubt the fact that attempts to bring the Treaty of Waitangi into the mix fared even worse. The Sim Commission, for example, was explicitly debarred from considering any ‘contention that Natives who denied the sovereignty of Her then Majesty and repudiated Her authority could claim the benefit of the Treaty of Waitangi’ (though in that instance the commissioners were also prevented from considering arguments that the New Zealand Settlements Acts were ultra vires of the colonial Assembly).¹²⁹¹

The question of whether the New Zealand Parliament was properly empowered to enact the New Zealand Settlements Act and associated legislation was the first question considered by Professor Brookfield. On the fundamental issue of whether the British assumption of sovereignty was valid, as per Hobson’s two proclamations of 21 May 1840, Brookfield concluded that the doctrine that these were acts of state had hitherto barred any court from inquiring into the validity of the annexation. The New Zealand Constitution Act of 1852, which was passed by the British Parliament and provided for the establishment of a General Assembly which ultimately enacted the various raupatu-related legislation, therefore had to be seen as valid, in his view.¹²⁹² And although the Native Rights Act of 1865 (section 2 of which deemed Maori

¹²⁸⁹ Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington: GP Publications, 1996, p.124.

¹²⁹⁰ AJHR, 1880, G-2, p.xlvii.

¹²⁹¹ AJHR, 1928, G-7, p.2. A legal loophole would have allowed the Commission to consider Treaty-based arguments in relation to the various petitions presented to it, but the commissioners declined the opportunity to do so.

¹²⁹² Brookfield, ‘Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu’, pp.2-4.

natural born subjects of the Queen) had been passed, according to its preamble, in relation to doubts as to whether such was the case, Brookfield held that such doubts were without foundation 'and that the indigenous inhabitants of a colony acquired by Acts of State automatically became in law the subjects of the Crown. This would be so independently of the geographical extent of actual control exercised by the Crown in the territory.'¹²⁹³ On the other hand, Brookfield noted that the persistence of areas of de facto Maori autonomy (which presumably would have encompassed Waikato south of the Mangatawhiri River prior to July 1863, and south of the Puniu River subsequent to April 1864) could be seen as having limited the extent of liability to the colonial legal order.

A further broad question concerned the nature of 'rebellion'. If Maori had not committed rebellion (or rather had not committed any of the acts described in section 5 of the New Zealand Settlements Act) and yet had been deprived of compensation to which they were entitled that could be considered unlawful. The Crown could not legally declare or wage war against its own subjects or be the aggressor, 'attacking Maori and forcibly trying to wrest from them dwellings and lands in their possession.'¹²⁹⁴ In Professor Brookfield's view, faced with unlawful Crown invasion, Maori were entitled to meet force with force, by the applicable standards of reasonableness (in self-defence) or necessity (in defence of dwellings). In considering how far these principles applied to the large-scale hostilities preceding confiscation, he declared that:

In my opinion application must be limited to immediate actual defence by Maori to the aggression of the Crown's armed forces in any cases where that is shown to have occurred; but not to counter-attacks (except where these occurred as part of the immediate Maori response in, and as part of, the situation created by a particular attack by the Crown) or to Maori attacks launched quite independently of the Crown's original aggression, even if ultimately consequential on it.¹²⁹⁵

¹²⁹³ *ibid.*, p.6.

¹²⁹⁴ *ibid.*, p.10.

¹²⁹⁵ *ibid.*, p.12.

The detailed discussion of the course of the Waikato War presented in chapter 2 may or may not present examples of both kinds of actions (those that complied with this very narrow legal test of self-defence and those that did not). But it is important to remember that broader historical and Treaty-based definitions of self-defence are also capable of construction (that is, the entire Waikato War might be viewed as a war of self-defence, judged from the perspective of the Waikato tribes attacked by Crown forces, with legal niceties over particular engagements of less significance when considered in this way). Similarly, Brookfield notes that Maori could be seen to have been provoked into committing ‘rebellion’ by the actions of the Crown, but though such a situation might involve Treaty breaches it would be beyond the cognisance of the ordinary courts. In the case of Taranaki, the Tribunal concluded that Crown officials had failed to maintain sufficient documentation on the perceived state of affairs at the time the confiscation districts were declared, with large areas included that belonged to loyal or neutral hapu or which were outside the main theatre of the war, as a result of which the confiscations were unlawful ‘owing to the lack of evidence of rebellion.’¹²⁹⁶

In terms of the right of Parliament to pass laws such as the New Zealand Settlements Act and the Suppression of Rebellion Act, Brookfield quotes the opinion of law officers of the Crown, who observed in respect of these pieces of legislation that ‘the Laws of England have repeatedly recognized the necessity for exceptional legislation, to suppress a rebellion threatening the existence of the State’.¹²⁹⁷ There was no doubt of the right of the Imperial Parliament to pass such legislation because it had done so repeatedly over many years in respect of Ireland and elsewhere, and some of this legislation provided important precedents for the later New Zealand equivalents, as we have seen. Nor was Brookfield (or the Taranaki Tribunal) convinced by arguments that section 53 of the New Zealand Constitution Act, which empowered the General Assembly to ‘make laws for the peace, order and good government of New Zealand’, constituted a bar on the right to pass later raupatu-related legislation, since it was not a matter for the courts to determine what was repugnant to this provision.¹²⁹⁸

¹²⁹⁶ Waitangi Tribunal, *Taranaki Report*, p.130.

¹²⁹⁷ CO 209/186, p.219 (b), quoted in Brookfield, ‘Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu’, p.14.

¹²⁹⁸ Waitangi Tribunal, *Taranaki Report*, p.126.

Brookfield goes on to note his view that legislation was necessary in order to confiscate Maori lands, given the status of Maori as natural born subjects of the Queen. If Maori had not been considered as such, they would have been incapable of committing acts of 'rebellion' and as non-subjects their lands could have been acquired by conquest, without the need for confiscatory legislation.¹²⁹⁹

Brookfield thus rejects arguments that the New Zealand Settlements Act was repugnant to the laws of England or ultra vires the General Assembly. He further goes on to dismiss suggestions that Cardwell's conditional assent to the legislation, dated 26 April 1864, formed a legally binding qualification upon the legislation.¹³⁰⁰

Where Brookfield saw legal problems with the New Zealand Settlements Act was not in the process of enactment, or the right of the New Zealand Parliament to pass such legislation, but in the process by which confiscation was implemented on the ground. In essence, Brookfield argued that the Crown failed to comply with the statutory provisions of the Settlements Act in the manner in which lands were taken. Firstly, he notes that section 2 of the Act required the governor to be 'satisfied that any Native Tribe or Section of a Tribe or any considerable number thereof' had engaged in 'rebellion' since 1 January 1863 before making an order-in-council declaring a district subject to the provisions of the legislation. In Professor Brookfield's view, orders in council under section 2 of the Settlements Act might be attacked on the grounds that Maori either had not in fact been in rebellion or alternatively that too few of them had been to constitute a conceivable risk to security.¹³⁰¹ Further than this, as the Taranaki Tribunal observed, the requirement for the governor to satisfy himself as to the existence of a state of rebellion before proclaiming a district, implied some kind of thorough inquiry into these matters in order to comply with section 2. But in the case of Taranaki, the Tribunal concluded, 'any inquiry was fleeting and...the Governor was not aware of the true position.'¹³⁰² The Tribunal also went on to note that the lands of several hapu had been included in districts proclaimed under the Act, even though the war had yet to reach their areas, while there were so few Maori in the northern part of

¹²⁹⁹ Brookfield, 'Opinion for the Waitangi Tribunal on Legal Aspects of the Raupatu', p.17.

¹³⁰⁰ *ibid.*, pp.27-29.

¹³⁰¹ *ibid.*, p.31.

¹³⁰² Waitangi Tribunal, *Taranaki Report*, p.127.

Taranaki at the time that there could not have been a realistic threat to peace, as required under the legislation.¹³⁰³

Looked at in terms of the Waikato confiscation, even a cursory glance at a map showing the course of the Waikato War would reveal significant areas where there was no fighting at all (the long stretch of coastline between Port Waikato and Whaingaroa, for example) but which were later included in districts proclaimed under section 2 of the Settlements Act. And at the risk of pointing out the obvious, at no point prior to implementing the Act in Waikato does any kind of detailed inquiry into the existence of 'rebellion' appear to have been conducted.

What the Taranaki Tribunal concluded was an even more serious error in the manner of implementation involved the rolling together of the three-step process of confiscation into one single proclamation. As the Tribunal noted:

By section 4 of the Act, the Governor could do no more than take specific lands for particular settlements within prescribed districts. Instead the Governor defined an enormous part of Taranaki province (and beyond) as a confiscation district in three parts then, in one proclamation, declared the whole area to be eligible settlement sites and took the lot.

The Act required a three-stage process. By section 2, the Governor was obliged to declare districts where tribes or a significant number of tribes were in rebellion. By section 3, he was then to set apart 'eligible sites for settlement', being prescribed and suitable areas within such districts. By section 4, he was finally to take such lands within those areas as might be necessary. The statutory prescription, which was essential for the survival of the hapu in this case, was not followed. The Governor declared extremely large districts then purported to take the lot on the basis that the whole area was an eligible site. This was done without an inquiry, which he was obliged to make, into such matters as which lands were suitable for settlement and

¹³⁰³ *ibid.*, pp.127-128.

how settlement could be arranged and without first laying out the settlements by survey in order to define the parts to be taken.

The effect was to alter fundamentally the Act's objective of taking land in discrete areas for such numbers of settlers as might be sufficient to keep the peace in the district as a whole.¹³⁰⁴

Not only, in other words, did the governor need to be satisfied as to the existence of 'rebellion' under section 2 of the Settlements Act, but section 3 also required him to be satisfied that areas within these districts were 'eligible sites for settlement' before these were 'set apart' and subsequently 'reserved' under section 4. Instead, as the Taranaki Tribunal noted, 'there was a global taking of mountain, hill, and vale, and some places have never been divided into town or farm allotments to this day.'¹³⁰⁵ The same scenario applied with respect to the eastern Bay of Plenty confiscation, with respect to which the *Ngati Awa Raupatu Report* concluded:

...in the eastern Bay of Plenty, the Governor did not take those steps. A confiscation district was simply proclaimed, and in the same step the whole of the land in that district was taken, whether suitable for military settlement or not, and without plans for military settlements being prescribed. It is now clear that the greater part of the land was either unsuitable for settlement, being hill country or swamp land, or was more than could have been settled by military personnel at the time. Large areas have not been settled to this day.¹³⁰⁶

In that case the government had officially been notified in April 1867 that 'the Judges of the Compensation Court are of opinion that the Bay of Plenty district has not been legally occupied by the Government, for the purpose of Military Settlement'.¹³⁰⁷ As Bryan Gilling put it, the Judge in question was 'browbeaten by the government into acquiescing',¹³⁰⁸ partly with the assistance of Senior Judge, Francis Dart Fenton, who

¹³⁰⁴ *ibid.*, pp.128-129.

¹³⁰⁵ *ibid.*, p.129.

¹³⁰⁶ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p.65.

¹³⁰⁷ Wilson to Pollen, 30 April 1867, IA 1/1867/2659, Archives NZ, quoted in Waitangi Tribunal, *Ngati Awa Raupatu Report*, p.84.

¹³⁰⁸ Bryan Gilling, 'Raupatu: The Punitive Confiscation of Maori Land in the 1860s, in Boast and Hill (eds), *Raupatu*, p.26.

though ‘aware of the illegality of the Government’s confiscation...appeared unwilling to confront it on the issue.’¹³⁰⁹

The importance of this incident is that it highlights a contemporary awareness of issues surrounding the legality of the confiscations, and especially of those blanket takings in which large districts were proclaimed under sections 2, 3 and 4 of the New Zealand Settlements Act in one hit, including areas which were patently not ‘eligible sites’ for settlement. As was seen earlier in this chapter, one-step blanket takings were also employed in the Waikato district. In the case of Taranaki the Tribunal cited the maunga of the same name as a site that was clearly not eligible for settlement, and although a comparably iconic example is perhaps missing in the case of Waikato, many maunga were confiscated, along with swamplands and other areas unsuitable for settlement. Based on the government’s own figures, at a minimum something like one quarter of the entire area confiscated was not suitable for settlement, ranging up to over half in other estimates, while it was also seen that only a small portion of the total area was used for military settlements.

The Taranaki Tribunal also concluded that the confiscations in that district ‘were inconsistent with the objects and purposes of the governing statute and again, for that reason, were unlawful.’ It found that:

...the purpose of the New Zealand Settlements Act, as stated in the preamble, was to achieve law and order by establishing a sufficient number of settlers on the land who could protect themselves and preserve the peace. It is axiomatic that the Governor did not consider the numbers necessary or the land needed for that purpose, because he simply took all the land that was capable of settlement (and a great deal that was not). In effect, an Act that was passed for the maintenance of peace was converted into an Act for the furtherance of colonisation. The ostensible objective of the Governor was to settle sufficient numbers to keep the peace; his actual purpose was simply to take the land.

¹³⁰⁹ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p.85.

As the Act was confiscatory of rights, it was to be strictly construed. Any confiscation had to be referable to the Act's purpose and should not have exceeded the minimum necessary for that objective. The confiscation was clearly more than was necessary, and for breach of statutory purpose, it was again illegal.¹³¹⁰

As noted in the previous chapter section 6 of the New Zealand Settlements Acts Amendment Act involved a wide-ranging clause purporting to declare:

All orders proclamations and regulations and all grants awards and other proceedings of the Governor or of any Court of Compensation or any Judge thereof heretofore made done or taken under authority of the said Acts or either of them are hereby declared to have been and to be absolutely valid and none of them shall be called in question by reason of any omission or defect of or in any of the forms or things provided in the said Acts or either of them.¹³¹¹

The Taranaki Tribunal suggested that it was arguable such a clause 'did no more than validate illegalities arising from want of proper process and form and, more particularly, that it did not make lawful those actions of the Governor that were fundamentally outside the authority of the statutory scheme.'¹³¹² It concluded that the question as to whether the confiscations had later been validated was, in any event, of little more than academic interest, since the main concern was to establish whether they were unlawful at the time and if so how that related to the government's fulfilment of its Treaty obligations. As noted in the previous chapter, there was also a major ambiguity about the way this clause had been drafted in that while the long title to the 1866 legislation described it as amending the three earlier New Zealand Settlements Acts, section 6 referred to 'the said Acts or either of them.'

While the short-circuiting of the three-step process for confiscating land in favour of a one-step one has been noted frequently in this report, and been discussed here in the context of questions concerning its legality, it is also worthwhile to consider the

¹³¹⁰ Waitangi Tribunal, *Taranaki Report*, p.130.

¹³¹¹ *New Zealand Statutes*, no.31, 1866.

¹³¹² Waitangi Tribunal, *Taranaki Report*, p.131.

government's official justification. In September 1865 Premier Frederick Weld forwarded the governor two proposed orders in council for approval, containing the two largest confiscations of all, central Waikato, and most of Taranaki. He observed in justification of the measures that:

Ministers wish it to be understood with regards to the whole of the land which they propose to take, that they do not aim at expelling any part of the tribes who now occupy, or lately occupied, it. Their purpose is to apportion, without delay, ample allowances of land to all rebels who come in within a reasonable time, and to give back to the loyal inhabitants as nearly as possible the exact land they are entitled to now, but under Crown Grants, replacing to them whatever it may be absolutely necessary to take for settlements by other adjacent land, or a money payment if preferred. With such intentions plainly expressed and carried into immediate action, the extent of the proposed confiscations will not, it is believed, cause fresh irritation; but, on the contrary, will be understood at once by many loyal Natives, and very shortly discovered by the returning rebels to be a benefit to all. The number of the Proclamations, some of them relating to small patches of land, has hitherto been the source of alarm rather than the extent taken. The Natives do not distinguish between proclaiming a district and taking the land in it. Both are alike confiscation in their eyes. It is therefore thought better, for every reason, at once to include the territory over which the right of conquest is admitted in one operation, proclaiming it and taking it for administration.¹³¹³

Weld thus made it clear that blanket takings of extensive areas had been adopted at least in part in order to allow the government to control the process by which lands were granted to 'loyalists' and 'returned rebels'. But as Michael Litchfield wrote, in a short but insightful analysis of the confiscation regime under the Settlements Act, 'Land could not be taken for any purpose other than for settlements. It could not even be taken from "rebels" unless it was required for settlement.'¹³¹⁴ Land confiscated with a view to it being returned to Maori under Crown grant patently had not been

¹³¹³ Weld, Memorandum for His Excellency the Governor, 2 September 1865, AJHR, 1865, A-1, pp.26-27.

¹³¹⁴ Litchfield, 'Confiscation of Maori Land', p.353.

confiscated for settlement purposes and much of this land was actually sold rather than settled. In Litchfield's view if land was taken for purposes other than settlement 'it renders the proclamations invalid and ultra vires section 4 of the 1863 Act.'¹³¹⁵ There is thus a question mark over whether lands granted to 'loyal' Maori in compensation (as discussed in the next chapter) had been unlawfully confiscated in the first instance.

5.9 Conclusion

This chapter has examined the implementation of confiscation on the ground in the Waikato district. Proposals developed by June 1863 were premised on the recruitment of large numbers of military settlers from Australia or the Otago goldfields for service in the Waikato, fulfilment of the terms of which would entitle them to a land grant after three years, to be allocated on a sliding scale according to rank. Grey was widely acknowledged as the driving force behind these proposals and remained an eager advocate of confiscation in the early phases of the war. Yet as word began to filter back to New Zealand of British discomfort over the confiscation proposals, Grey's own position shifted. From May 1864 onwards he embarked on a long and increasingly bitter contest of wills with ministers, arguing against what he had by this time come to view (or at least publicly denounce) as excessive and unjust confiscation proposals. A draft proclamation that would have confiscated lands as far south as Kawhia and Hangatiki, deep into territory still occupied and controlled by Ngati Maniapoto and other tribes, was therefore never promulgated. In fact, ministers made it clear that they were committed to pushing confiscation even further south into Ngati Maniapoto lands should the opportunity arise. Grey did not appear to differ from his ministers in believing that Ngati Maniapoto might require separate treatment at some point, but the dispute over the overall extent of lands to be confiscated proved an intractable one, and had still not been resolved by September 1863, when the Whitaker-Fox ministry tendered its resignation from office over the issue. The following month Grey secured agreement from the by this time caretaker ministry to publish a proclamation giving the tribes until 10 December 1864 to make their submission and cede any territory demanded of them. That proclamation prompted

¹³¹⁵ *ibid.*

Wiremu Tamihana to unsuccessfully request an extension of the deadline in order to allow him to consult with other Kingitanga leaders.

Then, in December 1864, Grey abruptly shifted his position once again, this time agreeing to sign a confiscation proclamation presented to him by the incoming administration of Frederick Weld that paved the way for wholesale land takings in the Waikato. The actual proclamation was, as we saw, curiously worded and ambiguous as to its meaning and intent. It made no reference to the New Zealand Settlements Act (the sole legislative sanction for a policy of confiscation) and could be read either as announcing the governor's intention to confiscate all lands between the Mangatawhiri and Puniu rivers at a future time or alternatively as actually confiscating them. Legal quibbles over the effect of the proclamation were unlikely to have been shared by Kingitanga supporters in the Rohe Potae district, however, and for all the doubts surrounding the measure it marked the end of Grey's period of opposition to sweeping confiscation proclamations. The measure did, though, encompass a lesser area of land to the south, where the original Kawhia and Hanganaki boundaries were moved further north to Whaingaroa and the Puniu River – reflecting the full extent of territory under actual Crown control.

A series of proclamations followed between January and September 1865 by which just over 1.2 million acres of the Waikato district was confiscated under the provisions of the New Zealand Settlements Act. These included the Military Settlements block, an area of some 316,600 acres immediately to the north of the Rohe Potae inquiry district and encompassing the former Maori settlements of Kihikihi and Rangiaowhia. It had been specifically earmarked for allocation to the military settlers, even though official reports indicated that more than one-third of the block was unsuitable for settlement, being mountainous or poor quality land covered with a large extent of swamp land.

In the event, further disputes between Grey and his ministers delayed the allocation of the lands, though military posts were eventually established at Kihikihi, Alexandra (Pirongia) and elsewhere. Military settlers had already begun to informally occupy such areas even before any legal steps had been taken to confiscate these from their customary owners, while an auction of some of the confiscated lands which realised

prices of more than £100 per acre prompted the commanders of a number of the British regiments which had actually taken possession of such territory to put in a claim for their share of any prize money. But the scheme of military settlements soon proved a complete failure. Many of the settlers lacked basic farming skills or any form of capital and faced an uphill struggle once they came off full pay and rations, while the constant fear of attack from parties of Maori deterred many from taking up their rural sections. Under these circumstances many of the military settlers preferred to sell up as soon as they could, with much of the land in question being snapped up by a handful of wealthy Auckland speculators and investors. This in turn helped to dampen the market for the remaining government-owned sections, the sale of which was supposed to more than cover the full costs to the colony of war and confiscation.

Instead, by 1866 the colony had been plunged deep into debt as a result and much of the confiscated lands, having formerly been the home to many Waikato Maori, sat vacant, as speculators bided their time, sitting on their lands until the market demand for these improved. Ironically, that combination of a concentrated ownership and relatively light settlement might have made it easier for the government to acquire significant areas for re-vesting in the tribes had there been any willingness to taken such steps in an effort to reach lasting peace terms with the Kingitanga. But that was not to be the case.

In the final section of this chapter previous analyses of the legality in general terms of the confiscations implemented under the New Zealand Settlements Act were briefly considered. Similar questions had been raised from a relatively early date, partly, it would seem, because attempts to bring the Treaty of Waitangi into the picture were emphatically rejected by officials convinced that Maori had forfeited all rights to their lands under the 1840 agreement by virtue of their supposed 'rebellion' against the Crown. While a number of different aspects have been explored regarding questions of legality (including, for example, the right of the New Zealand Parliament to pass confiscatory laws with respect to customary Maori lands), in the main most concern has focused on two sets of issues. The first of these revolves around the extent to which confiscation on the ground complied with the legal requirements of the New Zealand Settlements Act, and especially the 'three step' process stipulated under the legislation by which districts were first to be declared subject to the measure, before

eligible sites were then set apart within such a district and, finally, particular lands proclaimed taken as deemed necessary. As we saw, in some cases that process was short circuited in favour of a 'two step', or even in some cases a 'one step', confiscation procedure. Secondly, only lands eligible for settlement were able to be confiscated under the Settlements Act, a stipulation that appears to have been interpreted so liberally as to include mountain-tops, swamps, ravines and other sites of questionable settlement value. And as the next chapter further explores, the takings were indiscriminate in other ways as well, more especially in the way in which large areas of land belonging to Maori deemed 'loyalist' or neutral were nevertheless swept up in the blanket confiscations.

6. The Operations of the Compensation Court in the Waikato District

6.1 Introduction

In this chapter the process by which compensation, in either land, money or scrip was awarded to ‘loyal’ or neutral Maori in the Waikato district is considered. As we saw in an earlier chapter the New Zealand Settlements Act of 1863 provided for the establishment of a Compensation Court in order to determine claims for compensation, and later amendments modified or clarified aspects of the process by which this was to be delivered. But while the statutory requirements are clear enough the actual operations of the Compensation Court have until now been more or less a total mystery. As Richard Boast has observed, ‘In Waikato and South Auckland, we know next to nothing about the court’s actions.’¹³¹⁶ While the Hauraki inquiry did at least shed a little light on the operations of the Court on the north-eastern fringes of the Waikato confiscation district, the issues and processes employed there were not necessarily the same as those evident elsewhere in the Waikato. And while the lack of understanding as to the operations of the Court elsewhere in the Waikato district is chiefly attributable to the absence of prior meaningful research into the topic, it also needs to be noted from the outset that the poor records kept by the Court severely limit the extent to which light can be shed on its operations. Fortunately a growing body of research into the Court’s activities in other confiscation districts does provide a useful yardstick against which to measure the Waikato experience and it is to this wider history that we first turn.

6.2 The Court’s Operations Elsewhere

Perhaps the most detailed consideration of the Court’s activities to date is Heather Bauchop’s insightful analysis of its activities in the Taranaki district. While some of the specific details of the Court’s operations in that area will be discussed in a later

¹³¹⁶ Richard Boast, “‘An Expensive Mistake’: Law, Courts, and Confiscation on the New Zealand Colonial Frontier”, in Boast and Hill (eds), *Raupatu*, p.158.

chapter, it is worthwhile to consider some of Bauchop's more general conclusions. She writes that:

The major theme of the report is the almost complete mayhem...[and] confusion surrounding the attempts to compensate "loyal" iwi for the confiscation of their land. The New Zealand Settlements Act 1863 underwent a number of amendments when various clauses were found to be unworkable in practice. There were inconsistencies, contradictions and gaps in the legislation as well as [in] the rules and regulations of the Compensation Court.

The Court was hurriedly set up, with little guideline for its work. Much power [was] granted to individual Judges, particularly Senior Judge Fenton. The procedure for applying for compensation was unclear, the forms ambiguous, the process of negotiations undefined and unrecorded, the roles of pivotal personnel at times blurred and conflicting. The gaps in sources, the lack of recording of discussions that led to out of Court settlements, the impossible task of trying to define the process of allocating/issuing/granting awards/certificates/land scrip raises more questions than are answered. Even these terms used by the officials are unclear, and it is difficult to assess the how/when/whether Maori got their promised land.¹³¹⁷

Little wonder, perhaps, that the author subtitled her report 'A Case Study in Confusion', a sentiment with which other historians unfortunate enough to have had to delve into the murky world of the Compensation Court would doubtless wholeheartedly share.

Bauchop writes that the confusion is most obvious for the personnel involved in trying to resolve questions of compensation. If the various officials, including judges found it difficult to fathom the process, she writes, then it is obvious that 'iwi applying for compensation must have been thoroughly bewildered.'¹³¹⁸ It is worth noting in this context that the personnel of the Court would more than likely have

¹³¹⁷ Heather Bauchop, 'The Aftermath of Confiscation – Crown Allocation of Land to Iwi: Taranaki, 1865-80 – A Case Study in Confusion', research report commissioned by the claimants 1993, pp.2-3.

¹³¹⁸ *ibid.*, p.3.

added to their confusion. Many of the Judges of the Compensation Court, including Senior Judge F.D. Fenton, were also on the bench of the Native Land Court.¹³¹⁹ As we will see later in relation to Waikato, contemporary newspaper reports sometimes described sittings of the Compensation Court as being Native Land Court sittings, a situation perhaps understandable given the two Courts would sometimes sit consecutively or within a short space of one another in the same venues. Bauchop noted, in the case of Taranaki, ‘ample evidence of the disarray and confusion’ of government officials when it came to the Compensation Court, and though Maori responses to it are poorly documented she believed there was little reason to think the tribes would be any better informed.¹³²⁰

In the case of the eastern Bay of Plenty confiscations, the Tribunal emphasised the role of the Compensation Court in facilitating the subsequent alienation of lands awarded to Maori. After noting the figures for lands supposedly ‘returned’ in the district, the *Ngati Awa Raupatu Report* commented that:

...such figures give little indication of the damaging results of the compensation process on Maori. They do not, for instance, in any way attest to the trauma caused by the dislocation of communities, or the uncertainty and divisiveness engendered by the Crown’s actions. Nor do they give any indication as to the actual capacity of the land to maintain either the people or the polity.¹³²¹

In particular, the Tribunal noted that much of the land awarded Maori in the district was either swampland or rugged hill country unsuitable for cultivation or occupation; lands were ‘returned’ with minimal regard for customary rights; and lands were never returned in the condition in which they were taken. Instead, the compensation scheme

¹³¹⁹ Historians have not been immune from this confusion, sometimes describing Fenton as the Chief Judge of the Compensation Court. While Fenton’s appointment as Chief Judge of the Native Land Court was announced in the same *Gazette* that declared his appointment as one of three inaugural Judges of the Compensation Court, he was never declared the Chief Judge of the latter body, instead usually being addressed as the Senior Judge. *New Zealand Gazette*, no.2, 14 January 1865, p.13. Fenton was informed by the Native Minister, Walter Mantell, when notified of his appointment as a Judge of the Compensation Court that he was to be ‘regarded as the Senior Judge and charged with the duty of administering the Department.’ Mantell to Fenton, 11 January 1865, IA 1/1866/2595, Archives NZ, RDB, vol.111, p.42904.

¹³²⁰ Bauchop, ‘The Aftermath of Confiscation’, pp.24-25.

¹³²¹ Waitangi Tribunal, *Ngati Awa Raupatu Report*, p.90.

‘facilitated the transformation from a communal to individual form of ownership in which the entitlement of many was reduced to the rights of a few.’¹³²² As evidence presented later in this chapter will clearly show, that was hardly an accident. Indeed, in some respects the failure to distinguish the Compensation Court from the Native Land Court is perhaps not surprising, since their functions were closely related. Both had been established with the clear intention of eliminating customary titles to land, instead replacing this with ‘pseudo-individualised’ and fully alienable rights held under grant from the Crown. In the case of eastern Bay of Plenty the Tribunal concluded that:

The combined effect of the awards process was to create a situation in which the subsequent alienation of the land was not only possible but likely. That many of the awards were of poor quality was itself an incentive to alienate, as was the fact that many did not coincide with traditionally occupied lands. The degree of uncertainty created by the delays in issuing title also lent itself to the sale of Maori interests, with many of the awards being sold or leased before title had been issued.

Of greater importance still was the dislocation caused to communities by the individualisation of customary tenure. Not only did it destabilise ownership and make land susceptible to alienation, but it destroyed the communal base of interests upon which the community depended for its unity, productivity, and very identity. The individualisation of land led to the separation and individualisation of the community itself.¹³²³

In the Tauranga district, the Compensation Court did not sit at all, instead being replaced by a similar, though equally chaotic and poorly documented, process of compensation through an official known as the Commissioner of Tauranga Lands.¹³²⁴

In the case of the Mohaka-Waikare confiscation in the Hawke’s Bay province a different path was followed, with the government bypassing any formal process of compensation conducted by an independent (or nominally independent) body in

¹³²² *ibid.*

¹³²³ *ibid.*, p.92.

¹³²⁴ See Vincent O’Malley, ‘The Aftermath of the Tauranga Raupatu, 1864-1981:An Overview Report’ (report commissioned by the Crown Forestry Rental Trust), 1995, pp.26-43.

favour of a single out-of-court agreement negotiated with the tribes which allocated the entire block between confiscated and 'returned' portions.¹³²⁵

As noted above, in terms of Waikato the only substantial research previously conducted has occurred within the context of the Hauraki district inquiry and thus was focused on the north-eastern fringes, and especially East Wairoa and the East Waikato blocks. Research into the compensation process adopted with respect to the East Wairoa confiscation district points to problems with vaguely defined boundaries of the area over which claims were to be submitted, serious failings in the notification procedures adopted by the Compensation Court, a low turnout at many hearings and brief and perfunctory evidence heard.¹³²⁶ A major focus in this area was also the extent to which compensation was equitably distributed, with the Tribunal concluding that:

...the whole concept of distinguishing in the Compensation Court between 'loyal' and 'rebel' Maori was almost absurd. It is obvious...that many Maori were impelled to take up arms in what they considered to be the defence of their lives and lands; others supported their kin who were fighters. Similar problems of definition surrounded the concept of 'loyalist' or 'kupapa'. Many simply tried to keep from being caught up in the conflict. Others chose to cooperate with the Crown's forces or Crown officials out of the complexity of inter-hapu rivalry. Many changed sides (either way) during the course of the conflicts. Throughout the country, the courts and commissions charged with identifying 'rebel' and 'loyal' Maori found the task almost impossible to do with any precision, and in many cases virtually abandoned it.¹³²⁷

In fact, Crown agents such as James Mackay, who was active with respect to the East Wairoa confiscation district, frequently preferred to settle claims out of court, meaning many claims to compensation were dealt with outside the Compensation

¹³²⁵ Boast, "An Expensive Mistake", in Boast and Hill (eds), *Raupatu*, p.160.

¹³²⁶ Rigby, 'Hauraki and East Wairoa', pp.54-55; Parsonson, 'Tainui Claims', pp.195-196.

¹³²⁷ Waitangi Tribunal, *Hauraki Report*, vol.1, p.227.

Court process.¹³²⁸ These out-of-court arrangements are frequently even more poorly documented than the Court's operations.

The Hauraki Tribunal also observed that the East Wairoa Compensation Court hearing was the subject of very short notice and itself took place over just two days. It endorsed the comments of Barry Rigby that such brevity must have precluded an adequate testing of allegations of 'loyalty' or 'rebellion' or a detailed inquiry into customary rights.¹³²⁹ However, as a table of the Waikato hearings of the Compensation Court reproduced later in this chapter will clearly show, the East Wairoa hearing was hardly atypical. Claims to massive areas of land were being adjudicated upon by the Court in just a day or two each time. It was practically impossible for the Court to undertake a thorough and comprehensive investigation into customary rights, or the relative status of claimants as alleged 'loyalists' or 'rebels' under these circumstances. Claims to the Military Settlements block, for example were disposed of over the course of two one-day hearings. A block of comparable size might take months to go through the Native Land Court, and while the frequently lengthy hearings of the latter body were often the subject of complaints, there was ample room to find a happy medium somewhere between ridiculously short and interminably long. And although the hearings of the Compensation Court itself were short, the *process* of actually delivering compensation was often a protracted one. It had been the best part of three years since the end of the Waikato War by the time the Compensation Court even got around to considering claims on the Military Settlements block.

'Rebel' applicants, the Tribunal concluded, were 'largely excluded' from the awards of the Compensation Court in respect of East Waikato, and such groups were not represented in the various out-of-court arrangements entered into by Mackay. Much of this took the form of cash payments to particular groups, and the Tribunal concluded that total compensation paid to the former Hauraki owners of East Wairoa and East Waikato was little short of 'derisory'.¹³³⁰ The Tribunal later went on to quote

¹³²⁸ Bryan D. Gilling, 'The Policy and Practice of Raupatu in New Zealand: Part B: The Practice of Raupatu – The Five Confiscations', January 1997, Wai-201, #M9, p.40.

¹³²⁹ Waitangi Tribunal, *Hauraki Report*, vol.1, pp.227-228; Rigby, 'Hauraki and East Wairoa', pp.62-66.

¹³³⁰ Waitangi Tribunal, *Hauraki Report*, vol.1, p.232.

Crown closing submissions with respect to the raupatu claims of the Hauraki tribes that:

As a policy in itself, confiscation was fraught with difficulties. It was draconian in nature and deliberately intended to be so. It has been observed that the legislative authority to take the land was never perfected and the practical machinery required to implement it never really existed in New Zealand. Much of the Crown's administration of land subject to the legislation was arbitrary, slow and expensive. Confiscation relied heavily on Maori cooperation, occasionally on the threat of renewed hostilities, and often on monetary payments as compensation.

Given the very real potential for injustice arising from the inherently draconian nature of the powers – and having abrogated the Article 2 guarantee of protection, the Crown was under a Treaty duty to take particular care in implementing the legislation. However, it clearly failed to do so.

There was thus a clear failure to uphold the honour of the Crown.¹³³¹

While these concessions were much broader than merely the Compensation Court process, they could certainly be seen as applicable to the process by which compensation was delivered. The Hauraki Tribunal considered that these concessions, along with those contained in the preamble to the Waikato Raupatu Claims Settlement Act 1995, eliminated the need to 'labour' the point regarding the all too obvious shortcomings in the policy and practice of raupatu in the district. As will be seen below, those shortcomings were, however, equally evident elsewhere in the Waikato Compensation Court process.

¹³³¹ Closing Submissions of the Crown, Doc AA1, Wai-686, p.106, quoted in Waitangi Tribunal, *Hauraki Report*, vol.1, pp.245-246.

6.3 Land Purchase as Compensation

Although the Compensation Court is usually spoken of the sole compensatory mechanism operating in the Waikato district, that was far from the case. As we will see later in the chapter, out-of-court arrangements negotiated directly with the Crown agent in the district, though poorly documented, were common. And in the case of the agreement discussed in this section, what began life as a problematic Crown purchase negotiation in the late 1850s, had developed strong elements of compensation by the time of its completion in 1864.

On 2 May 1864 Henry Hanson Turton, a former Waikato missionary, was informed of his appointment at a salary of £600 per annum as Commissioner for the Investigation of Native Titles, effective from 19 April 1864. He was directed to undertake an investigation of title to Ngaruawahia, and informed that the government ‘contemplates the necessity of continued investigations of a similar character into the titles of Natives in other parts of the Waikato country,’ as a result of which his services were likely to be required elsewhere.¹³³²

Turton departed Auckland on 10 May for Raglan and Waikato, in accordance with instructions received to ‘investigate and satisfy the claims of friendly or neutral natives to certain undefined portions of the Waikato land, which, by reason of rebellion, had become confiscate to the Crown.’¹³³³ After waiting eight days without success for a steamer to Whaingaroa, Turton proceeded overland, being conscious that no time should be lost in the matter, ‘since the Government were so very anxious to have all native titles cleared away, and the district left to them for immediate occupation by military settlers’.¹³³⁴

On arrival at Waipa he found just two people willing and able to assist in his investigations, William Barton, an assistant missionary, and his son Andrew, both of whom accompanied Turton overland to Raglan in order to counteract ‘any false claims which might be put-in at that place.’ At Whaingaroa, the Ngati Mahanga

¹³³² E. Shortland, Native Secretary, to H.H. Turton, 2 May 1864, AJHR, 1864, E-4, p.1.

¹³³³ Turton to Colonial Secretary, 17 June 1864, AJHR, 1864, E-4, p.1.

¹³³⁴ *ibid.*

rangatira Wiremu Nera Te Awaitaia (sometimes referred to as 'Naylor' by Europeans) arranged a meeting at which, according to Turton, all of the 'friendly' or neutral chiefs agreed to dispose of all of their rights to lands between the Horotiu and Waipa Rivers. They received £50 as a first instalment for their claims, with Turton 'leaving the remainder to be paid as soon as we can arrive at an approximate estimate of their real claims, - agreeing, nevertheless, that they, and not the Government, should be responsible for the equitable distribution of the money, in accordance with the claims proved, but under my own general supervision and sanction in the first place.'¹³³⁵ He subsequently entered into the same agreement at Waipa and reported having made arrangements 'for obtaining the consent of similar claimants residing at Aotea, Kawhia, and elsewhere, so that no injustice should be knowingly done to any individual.' The nature of those 'arrangements' is not clear from his report, but Turton believed that:

The result of this negotiation (and which the natives perfectly understand, whatever they may say in future) is, that the Government shall make a specific award in compensation of their claims (whatever they may prove to be) between the rivers Horotiu, *i.e.* Waikato proper, and Waipa; and that, in the meantime, the Government can carry out their scheme of military settlement as if no such claims existed.¹³³⁶

One newspaper report from early June 1864 noted that Turton had recently returned to Auckland from Waikato. It stated that:

...the extent of the claims made by Naylor and his tribe to certain portions of the Waikato have been greatly exaggerated. There is no claim made to large and extensive tracts of lands once held and since conquered by the rebels, but merely we learn, to spots on which individuals have been born, or where their friends and relatives lie buried, or where there are some local attachments to tie them to the spot.¹³³⁷

¹³³⁵ *ibid.*

¹³³⁶ *ibid.*

¹³³⁷ *Taranaki Herald*, 11 June 1864 (reproduced from *New Zealand Herald*, 8 June 1864).

This followed an earlier report, quoted previously, to the effect that Wiremu Nera was claiming that ‘the greater part of the Waikato district belongs to him; he lays claim to the whole of “Rangiawhia,” [sic] and goodness only knows how many thousand acres to the east, west, north, and south of that place’, and that he was doing so in collusion with the real ‘rebel’ owners in a bid to avoid confiscation.¹³³⁸

Instead, it was said that the claims were ‘far from being extensive’, and the arrangements made by Turton satisfactory, the claimants having agreed to receive a certain lump sum in return for relinquishing all claims upon the delta between the Waipa and Horotiu rivers. The report concluded, rather optimistically, that:

We are glad to find that the character which Naylor has all along held for loyalty has not been forfeited by any grasping, covetous act such as he has been charged with by our Raglan correspondent. Now, at any rate, the obstacles arising from the claims of loyal natives upon the confiscated land of the Waikato have been removed, for the agreement [sic] has been signed by the natives, who have received an instalment in money on the arrangement.¹³³⁹

The agreement itself was described as that of ‘the Neutral Natives of Raglan and Waipa to dispose of their Claims on the Waikato Delta’. Dated 24 May 1864 it stated that:

We do hereby consent to sell to the Government all the pieces of land belonging to us which lie between the rivers Waipa and Horotiu. By this (Agreement), the title and authority of that land reverts (passes away) to the Government; and it is at their disposal at the present time for (carrying on) their system of settlement (*i.e.*, placing men upon it).

When the sale of the lands above mentioned is completed, if we are desirous for any eel-fishery or other place, we consent to purchase such of those lands as may be conceded (agreed to) for us, according to the rate of payment which

¹³³⁸ *New Zealand Herald*, 27 May 1864.

¹³³⁹ *Taranaki Herald*, 11 June 1864.

may be fixed upon by the Government – but on the condition that a Crown grant be attached to such lands as may thus be taken (purchased) by us.¹³⁴⁰

The document went on to note that the signatories had received from Turton the sum of £50 ‘as a binding and making sacred of this our agreement to sell those pieces of land to the Government’.

Turton’s May 1864 agreement in fact followed on from long-running efforts to acquire the Waipa-Waitetuna lands, dating back to Ngati Mahanga’s initial offer of the land to the Crown in 1858.¹³⁴¹ Those efforts had been beset by opposition from other customary claimants to the lands, as well as by a more general Kingitanga opposition to the alienation of land within its heartland. Finally, in September 1864 the agreement was finalised when a deed was signed by the ‘Chiefs and People of the Tribe Ngatimahanga at Raglan’ and the sum of £1500 agreed in full settlement of their claims on the land. But although it was described as a purchase, this whole arrangement at the same time clearly also involved elements of compensation. For one thing, a primary motivation had been to enable the military settlers to move on to the lands. Secondly, it is patently obvious that the lands would not have been purchased if the Crown had deemed Ngati Mahanga to be ‘unsurrendered rebels’. At the risk of pointing out the obvious, a purchase which took place in the Waikato district in 1864, months after the last bloody engagement with Crown troops, occurred in an altogether different context to one, say, completed ten years earlier. But if the purchase could be said to have compensatory elements to it, on the other hand it hardly mitigated the confiscation of the interests of those who were not signatories to the deed. And although the purchase itself preceded formal confiscation, Imperial troops had already seized de facto possession of the area. Again, that was hardly a normal Crown purchase situation.

Something of this context was conveyed in a further letter from Turton sent in July 1864 in relation to the township at Ngaruawahia. In a letter perhaps aptly

¹³⁴⁰ Agreement of the Neutral Natives of Raglan and Waipa to dispose of their Claims on the Waikato Delta’, 24 May 1864, AJHR, 1864, E-4, pp.1-2.

¹³⁴¹ See Leanne Boulton, ‘Hapu and Iwi Land Transactions with the Crown and Europeans in Te Rohe Potae Inquiry District, c.1840-1865’, report commissioned by the Waitangi Tribunal, September 2009, ch.6.

misaddressed to ‘the Minister of War’ (Thomas Russell, the Minister of Colonial Defence), he stated that:

In reply to your inquiry as to the Native proprietorship of the small block of land comprised within the township at Ngaruawahia, I have the honor to inform you that after making due investigation both there and at Raglan and elsewhere according to the special instructions of the Government to that effect, I have arrived at the opinion –

1. That by far the greater portion of the town site belonged to the rebels, many of whom are on board the hulk.
2. That the small remainder is claimed by Wiremu Nera, old Kaniwhaniwha and Wm. Barton, with their several people, and
3. That there are no other claimants to that piece in this District beyond those whose consent to sell I have obtained. What other claims may be proffered by-and-by from distant places (if any) can easily be dealt with as they arise.

I have other lists from Aotea and Kawhia lately received, assenting to my arrangements to purchase their claims on that delta as soon as I can with justice both to themselves and the Government; so that I feel well assured, from the peculiar character of Native titles, that every claimant of the least importance is represented fully in the list of signatures obtained.¹³⁴²

Turton thus admitted that ‘rebels’ owned the bulk of the Ngaruawahia site included in the purchase from Wiremu Nera and other members of Ngati Mahanga. But there was no suggestion that their interests would be purchased. It remained an unstated assumption that the Crown claimed these on the basis of de facto conquest, to be followed up at some point in the future by legal confiscation. The only loose end had been to acquire ‘loyalist’ interests by means of purchase.

¹³⁴² Turton to Russell, 4 July 1864, AJHR, 1864, E-4, p.2.

In fact, the final Waipa-Waitetuna deed was not signed until 17 September 1864,¹³⁴³ some eight days after the auction of 80 acres at Ngaruawahia had realised the staggering sum of £8350 for the Crown.¹³⁴⁴ As noted in an earlier section, that was sufficient to prompt the commanders of the various Imperial regiments involved in capturing Ngaruawahia to petition for a share of the proceeds. Prior to the auction Governor Grey had suggested that a portion of the township should be set aside to meet future demands from Maori claimants who might be scattered throughout the country.¹³⁴⁵ It is by no means clear whether that recommendation was implemented.

6.4 The Legislative Basis for Compensation

The process by which compensation was to be awarded to those ‘loyal’ or neutral Maori whose lands were included in any confiscation were set out in the New Zealand Settlements Act of 1863 and subsequent amendments. The details of this legislation and its background were outlined at some length in an earlier chapter, as a result of which the pertinent points regarding the compensation process are merely summarised here. In short, the Settlements Act provided for compensation to be awarded to all those persons whose lands had been confiscated under the Act, except for those who had levied war against the Crown since 1 January 1863, or who had committed other acts specified in section 5. Although the New Zealand legislature at no point provided a legal definition of ‘rebellion’, in practice ineligibility for compensation under this clause became the practical test, even though (as we saw earlier) a much lower threshold was set for exclusion for compensation than actual involvement in rebellion. Section 6 went on to provide for the governor to proclaim that any ‘Native Tribe or individuals’ should be called upon to submit to legal trial for any of the ‘offences’ specified in the previous section by a specified date, with those refusing or neglecting to do so also accordingly deemed ineligible for compensation (even though it is by no means automatically apparent that all of the acts outlined in section 5 would have been contrary to the criminal law in place at the time).

¹³⁴³ Boulton, ‘Hapu and Iwi Land Transactions with the Crown’, p.326.

¹³⁴⁴ *Daily Southern Cross*, 10 September 1864.

¹³⁴⁵ Grey, Memorandum, 5 July 1864, AJHR, 1864, E-4, p.2.

Section 7 stipulated that no claim to compensation was to be entertained unless preferred in writing to the Colonial Secretary within six months of the land being taken. It also stated that 'Compensation shall be granted according to the nature of the title interest or claim of the person requiring compensation and according to the value thereof'. The ambiguity of the first part of this sentence was noted earlier. But the second part of this was also open to different interpretations. If compensation was to be determined according to the 'value' of the land how was this to be determined and by what yardstick? Did 'value' refer simply to the monetary value of the land (as would seem to be implied) and if so on what basis would this be assessed? Would it include compensation for improvements, for example, and how would factors such as river frontage, or customary usages be factored into the sum assessed, if at all?

At least the remaining sections setting out the machinery of compensation were a little clearer. Section 8 provided for Compensation Courts to be established, with judges to be appointed and removed by the governor-in-council (section 9) and required to take an oath of office (section 10). Every Compensation Court was to be held before one such judge, whose jurisdiction was to be specified by letters patent at the time of his appointment (section 11). Section 12 provided for judges of the Compensation Court to have the same power to compel witnesses to attend hearings and to make rules for the conduct of the Court as Resident Magistrates had (but failed provide any sanction or penalty for non-attendance). An alternative path to compensation was provided for under section 13, which stipulated that a claimant could require the amount of compensation to be determined by the award of two 'indifferent Arbitrators', to be appointed by the claimant and Crown respectively, with any claim not decided within two months from the date of referral to be settled by the award of an umpire previously chosen for this purpose. It is unclear whether this provision was ever implemented. In the case of standard Compensation Court cases, the judge was to grant every claimant found to be entitled to compensation a certificate specifying 'the amount thereof and describing the land in respect of which the same is granted and the nature of the Claimant's title interest or claim therein (section 13), with such a certificate to entitle the person to receive from the Colonial Treasurer the amount named in the certificate as payable to them (section 14). These last two clauses reinforced the notion that the officials who had drafted the legislation envisaged compensation as being payable solely in monetary terms.

Later amendments modified aspects of the compensation process. The New Zealand Settlements Amendment Act of 1864 (section 2) gave the governor-in-council power to award compensation in cases where this has been rejected by the Compensation Court or to increase the level payable as it saw fit. This and a time limit placed on the operation of the Act had been prompted by Cardwell's conditional assent to the original legislation.

More sweeping changes introduced under the New Zealand Settlements Amendment and Continuance Act of 1865 appeared to reflect the actual procedures of the Compensation Court to that time. It provided for the governor-in-council to make regulations for the practice and procedure of the Compensation Court (section 3), which were to be gazetted (section 4), as well as requiring that every claim for compensation was to specify the names of the claimants and the interests in respect of which claims were made (section 5). A more significant clause provided for the Crown to abandon its right to take land for which compensation had been sought, subject to whatever costs and conditions the Compensation Court should decide in the case of claims already referred to it for investigation (section 6). Section 7 appears designed to have clarified any doubts which had arisen with respect to the Compensation Court's jurisdiction to determine whether any person claiming compensation had committed any of the 'offences' or acts specified in section 5 of the 1863 legislation. What those offences were precisely continued to be left unstated. Section 9 provided for the Crown to agree with any claimant to make compensation payable either wholly or in part by way of land, which could be 'granted accordingly out of any land within the same Province subject to the provisions of the said [New Zealand Settlement] Acts.' The next section gave the Crown an apparently unilateral right to determine at any point prior to an award of the Compensation Court or arbitrators that compensation should be given in land, with the Court or arbitrators to decide on the extent of land to be granted.

The same Act modified the timeframes for filing applications for compensation. Under the 1863 Act these had been six months from the date of the confiscation in the case of applicants living in New Zealand, and eighteen months for those outside of the colony. Section 11 of the 1865 amendment modified this to a period of not less than

three months nor more than six months after due notice that claims were invited had duly been advertised by the Compensation Court (with the Crown able to refer additional claims for a further 12 months after the deadline had passed if it chose to do so). Other clauses provided for all orders and awards of the Compensation Court to be transmitted to the Colonial Secretary in writing (section 12) with no claimant entitled to demand payment or transfer of their compensation until a period of three months had elapsed from the time of the original award (section 13).

The New Zealand Settlements Acts Amendment Act of 1866 made yet further changes to the compensation regime. Section 3 gave the Colonial Secretary complete discretion to elect to award compensation either wholly or partly in land either before or subsequent to any judgment or award. Meanwhile, section 4 provided for the first time for land scrip to be given in compensation in lieu of money, while retrospectively deeming any scrip previously granted by any agent of the general government to have been issued under the Act and to be valid from the date of issue. Not for the first time with confiscation, it seems, the legislation was following rather than preceding actual developments on the ground. Mistakes or omissions could always be covered by subsequent legislation, and that applied to section 6 of the 1866 Act, which (as was discussed in a previous chapter) sought to validate virtually every act, award, grant or proceeding of the governor, the Compensation Court, or any judge thereof, with respect to confiscation or compensation under the Settlements Act.

The Confiscated Lands Act of 1867 gave the governor power to grant reserves to those refused compensation by the Compensation Court or awarded less than appeared just and reasonable (section 2). Significantly, as is discussed in the next chapter, the same Act also made legislative provision for the first time for lands to be awarded to ‘surrendered rebels’ (section 4). For all of the prior reassurances to the Colonial Office as to the overriding intention to provide ‘generous’ reserves for those who came in, it had taken four years and a plethora of prior legislative amendments before it had evidently occurred to Crown officials to give legislative authority for confiscated lands to be used in this way.

6.5 The Establishment of the Compensation Court

On 11 January 1865 Native Minister Walter Mantell wrote to Francis Dart Fenton to inform him that:

...the Governor has established a Compensation Court for the whole Colony, under “the New Zealand Settlements Act, 1863”, and has been pleased to appoint you with Messrs Rogan and Mackay to be Judges thereof, you being regarded as the Senior Judge and charged with the duty of administering the Department.

It is important that the eight blocks of land set apart for Settlement by Order in Council published in Gazette no 51, of last year, should be dealt with by the Court as quickly as possible, and you will please give your early attention to clearing off all claims on these blocks.¹³⁴⁶

Mantell had got not only the year of the *Gazette* notice, but also its number, completely wrong. The ‘eight blocks’ referred to were all confiscated by *Gazette* notice of 5 January 1865 (no.1 of that year, rather than no.51 of 1864) and were all located in the Waikato district, including the crucial Military Settlements block. Mantell obviously wanted to ‘clear off’ all Maori claims on these lands in order to remove any potential obstacles to the scheme of military settlements and the sale of other unallocated lands. In fact, the instructions to Fenton were the clearest indication to date that compensation was to be strictly limited to money. Fenton was instructed that:

The orders of the Court will be for a certain sum of money, to be paid to certain persons named in the order without power of transferring and should be sent or presented by the holder to the Colonial Treasurer, or Sub-Treasurer, who will receive instructions to honor them.

¹³⁴⁶ Mantell to Fenton, 11 January 1865, IA 1/1866/2595, Archives NZ, RDB, vol.111, p.42904.

There will be appointed an Agent of the Crown to appear before the Court and (when necessary) resist the claims set up, for the office of the Court will be to judge in fact between the Crown and certain owners or alledged [sic] owners of soil who may claim to be entitled to Compensation upon the compulsory taking of that land by the Crown, on the ground that they have remained loyal during the insurrection. You will of course see the justice of not awarding any sum of money to a claimant, or in fact holding any Court without in each case informing the Crown Agent, so that the Crown's interests may be protected.¹³⁴⁷

Fenton's appointment as Senior Judge of the Compensation Court came just days after he was also appointed as Chief Judge of the Native Land Court. In fact, the two appointments were so close together that they were both announced in the same *Gazette* on 14 January 1865.¹³⁴⁸ But although the letter notifying Fenton of his appointment as Chief Judge of the Land Court has apparently not been located by historians,¹³⁴⁹ if the tone of the letter cited above is any indication then we should perhaps be wary of suggestions that Crown officials necessarily viewed either new entity as strictly autonomous and independent of the government. From the outset, it would seem, officials sought to put Fenton in his place. However, as we shall see later, it was not all one-way traffic: the pompous and vain Fenton endeavoured to jealously guard his independent authority, and the result was a long period of squabbling and disputes with Crown officials over all manner of issues.

Fenton was one of three judges appointed to the newly-established Compensation Court at the same time. One of the other two, John Rogan, was a former surveyor, Land Purchase Commissioner and Resident Magistrate. He was also (along with a number of Northland rangatira) one of the inaugural Judges of the localised Native Land Court which had been established under the Native Lands Act of 1862. Following the abolition, in December 1864, of this runanga-based model of title

¹³⁴⁷ *ibid.*, p.42905.

¹³⁴⁸ *New Zealand Gazette*, no.2, 14 January 1865, p.13. According to the separate notices, Fenton was appointed Chief Judge on 9 January 1865 and made a judge of the Compensation Court on 12 February 1865.

¹³⁴⁹ There is no reference to such a letter in the well-travelled report of Dr Loveridge on the origins of the Court, for example. Donald M. Loveridge, 'The Origins of the Native Lands Acts and Native Land Court in New Zealand', (report commissioned by the Crown Law Office), October 2000, pp.220-223.

adjudication in favour of a centralised and European-controlled Native Land Court under the direction of Fenton, Rogan was reappointed to the new Court by the same *Gazette* of 14 January 1865 by which his appointment to the bench of the Compensation Court had also been announced.¹³⁵⁰

That left James Mackay Jnr. as the odd man out. The third inaugural appointee to the Compensation Court, he was the only one of the three who was not at the same time made a judge of the Native Land Court. That was because Mackay, officially Civil Commissioner for the Hauraki district,¹³⁵¹ was already a fully-fledged public servant. In fact, his appointment to the Compensation Court was specifically intended, it would seem, to ensure official Crown representation on the bench. Mackay, as we will see, became a key figure in negotiating various out-of-court settlements in respect to compensation arrangements. On the other hand, there is some inconsistency here. In the Bay of Plenty, J.A. Wilson was appointed as a ‘special commissioner’ to the Compensation Court.¹³⁵² Other Crown agents to appear before it (including Henry Hanson Turton and William Smith Atkinson)¹³⁵³ were not appointed to the Compensation Court. Winston Churchill’s famous line about the Soviet Union might just as easily be applicable to much of the Compensation Court’s history. It was, he declared, ‘a riddle, wrapped in a mystery, inside an enigma’.

Table 1: Judges of the Compensation Court

Name of Judge	Date of Appointment	Gazette reference
Fenton, Francis Dart	12 January 1865	14 January 1865, no.2
Lyon, William Charles	26 June 1866	29 June 1866, no.39
Mackay, James Jnr.	12 January 1865	14 January 1865, no.2
Mair, William Gilbert	26 June 1866	29 June 1866, no.39
Maning, Frederick	17 January 1866	26 January 1866, no.6
Monro, Henry Alfred H.	10 August 1865	11 September 1865, no.36
Parris, Robert	24 August 1866	24 August 1866, no.48

¹³⁵⁰ O’Malley, ‘Runanga and Komiti’, pp.65-68.

¹³⁵¹ ‘Mackay, James’, from *An Encyclopaedia of New Zealand*, edited by A. H. McLintock, originally published in 1966, Te Ara - the Encyclopedia of New Zealand, updated 22-Apr-09
URL: <http://www.TeAra.govt.nz/en/1966/mackay-james/1> (accessed 16 February 2010); Scholefield, *Dictionary of New Zealand Biography*, vol.2, p.20.

¹³⁵² Waitangi Tribunal, *Ngati Awa Raupatu Report*, pp.79-80.

¹³⁵³ Bauchop, ‘The Aftermath of Confiscation’, pp.48-50.

Rogan, John	12 January 1865	14 January 1865, no.2
Smith, Thomas Henry	26 November 1866	12 December 1866, no.64

Source: Raupatu Document Bank, vol.100, p.III

The answer to that mystery appears clear enough: there was no grand conspiracy involved. Instead, policy was being made on the hoof (and just as quickly reversed or contradicted in another district) by officials who had not taken the time to think through the full implications of the compensation process or to design a system that would best cope with these demands. And nor were Maori needs necessarily uppermost in the thoughts of officials – ‘clearing off’ Maori claims appears to have been accorded a higher priority throughout than actually doing justice to them. As was noted above, initially it was envisaged that compensation would be payable solely in money. The 1865 amendment Act enabled the option of land to be given instead, and this was signalled earlier in the same year. An order-in-council of 16 May 1865 (gazetted on 7 June 1865) provided new rules for the disposal of lands taken under the New Zealand Settlements Act. Among these was the stipulation that ‘sufficient land’ was to be set apart for (*inter alia*) ‘compensation to persons entitled to, and in lieu of, money compensation’.¹³⁵⁴ For these purposes, any duly authorised agent of the government could agree with any claimant to compensation that this would be received in land in lieu of money compensation.

Precisely why that shift had come about is not entirely clear. Certainly there was no shortage of complaints from Waikato Maori when they first learnt of the policy of providing compensation solely in money. As Timata Titoko wrote to Fenton in August 1866 (referring to an earlier Compensation Court award):

I said in Court that is to the person who asked me that I did not want money. My children cannot live upon money – but on the land – because I have not received a portion of the lands of my parents & brothers. It is my own individual piece that I ask to be given me. Because I am not a person who makes a false claim because when my father died he died without crime. Listen to me I do not want that money, because myself and children have no

¹³⁵⁴ *New Zealand Gazette*, no.19, 7 June 1865, p.171.

land here at Auckland. My children are the servants of the Queen and of peace. And they have been robbed without cause whilst living peaceably.¹³⁵⁵

Earlier, in August 1865 Te Pahi Whareturere had written from Tamahere to similar effect, declaring that:

I have heard from the Maoris here they say that the pieces of Waikato that the awards will be in money & that the Governor will not award land for the land of the persons to whom the land belongs. It is not a good thought of the person who says that the awards will be made in money alone.¹³⁵⁶

It was difficult to argue against the merits of such complaints. As Barry Rigby notes, Grey's proclamation of December 1864 had been unequivocal with respect to the lands of 'loyalists', declaring that 'The lands of those Natives who have adhered to the Queen shall be secured to them' and repeating this message for good effect: 'To all those who have remained and shall continue in peace and friendship the Governor assures the full benefit and enjoyment of their lands.'¹³⁵⁷ Logically this clearly suggested that compensation for all 'loyal' and neutral Maori would be by way of return of the full extent of the lands which they claimed. Anything less than the full restoration of the lands of 'loyalist' and neutral Maori would breach the Crown's own publicly stated position, but this was nevertheless the awful reality for many Waikato whanau, hapu and iwi.

But the original compensation process was even worse than this: not only would 'loyalists' not receive the full restoration of their lands, but potentially they stood to receive none, being forced to accept cash instead. While there were undoubtedly some claimants who desired to receive at least part of their compensation in money (especially given the grievous damage that had been done to their once thriving economy as a result of the British invasion of their district), forcing all Maori to receive all of the compensation to which they were found to be entitled to accept this in cash was another matter altogether.

¹³⁵⁵ Timata Titoko to Fenton, 26 August 1866, MLC-A52 File 89, box 39, Archives NZ (Akl), RDB, vol.101, p.38895.

¹³⁵⁶ Te Pahi Whareturere to Fenton, 26 August 1865, DOSLI Hamilton 4/28, RDB, vol.106, p.40799.

¹³⁵⁷ *New Zealand Gazette*, no.49, 17 December 1864, p.461; Rigby, 'Hauraki and East Wairoa', p.50.

Fenton commented on this situation during a sitting of the Compensation Court at New Plymouth in 1866. Attempting to ‘discover whether it was the intention of the Legislature that the Government should oust Native owners who had remained loyal from their portion of the tribal estate, and place Military Settlers thereon’, Fenton and his fellow judges commented that:

The Court [at first] had no power to order land in compensation. The Act was clear and stringent. After the Act came into operation and land was taken thereunder, and the Compensation Court had held some sittings, the Government began to discover (at least this is our view of the matter) that the Act was unnecessarily and injuriously stringent not only as respects the Native claimants, but also as affecting the interests of the Crown; accordingly we find that in the Regulations made, of the 16th of May, 1865, for the disposal of the Confiscated Lands, an attempt was made to modify the stringency of the Act. Possibly the Government was moved to make this attempt either by the large money orders which had issued from the Compensation Court on account of the Pukekohe and other blocks, or possibly by the discovery that they were prevented by the strict letter of the Act from keeping the promises which they had entered into with the loyal Natives, and which had been expressed in the most solemn manner known to our form of administration, viz., by Proclamations under the Great Seal of the Colony. We accept the latter reason as the more fitting for Courts of Justice to believe in on the strength of Lord Coke’s great maxim: “The honor of the Crown is to be preferred to its profit.”¹³⁵⁸

Whether the decision to allow land to be granted in compensation reflected a desire to do justice to the claimants or had been driven primarily by the perceived need to reduce financial demands at a time of great difficulty for the colonial administration is less than clear. In fact, the two things might even been seen as connected in the overall scheme of things, especially as formerly ‘loyalist’ groups, angered at the confiscation of their own lands, threatened to make common cause with their

¹³⁵⁸ F.D. Fenton, Statement of the Proceedings of the Compensation Court at the Sittings held at New Plymouth, from the first day of June, to the twelfth day of July, 1866, AJHR, 1866, A-13, p.9.

Kingitanga kin, promising to prolong the war and therefore increase the financial burdens on the Crown. Preventing such an outcome through returning at least some lands to the 'loyalists' might have been seen as a prudent investment in the circumstances.

Within Auckland province, some officials assumed from the outset that land would be a necessary component of the compensation process, while others argued that this was best confined to monetary payments, thus clearing the way for the lands to be dealt with without hindrance. In December 1864 Joseph Newman reported to the Auckland Superintendent that:

The friendly natives will be entitled to all the lands they can claim by native title, but to promote their future advancement in society I would seek to induce them to alienate a large portion, and give them a crown grant for the remainder; deferring the payment of the purchase-money over a long period of time, but under any circumstances, let them have "*Crown Grants*" for all they claim.¹³⁵⁹

By contrast, some months later Charles Knight took quite a different tack. He informed the Colonial Secretary in April 1865 that:

It seems to me quite clear that if anything effectual and final is to be done towards the settlement of the Waikato, it will be best for the Government, in order to facilitate its action, to take the legal construction of the Act, - that no claim of any kind can legally interfere with the settlement of confiscated lands, - to treat the claims of the natives on the basis of compensation, and to deal with the land without reference to any incumbrances [sic] for money compensation. The proclamation of the Governor in Council has absolutely confiscated the lands within the boundaries specified, whether held under Maori tenure or Crown grant, and leaves the claims of the previous owners to be settled entirely by compensation...The Government can still deal with the natives on equitable or political grounds, by reserving from sale for the

¹³⁵⁹ Newman to Superintendent, 26 December 1864, *Journals of the Auckland Provincial Government*, Session XVIII, 1865, A-1, p.13.

occupation of friendly natives, lands to be conveyed to them under a Crown grant, and the value deducted from the amount of compensation money.¹³⁶⁰

In other respects, though, the government was slow to action with respect to compensation matters. Despite the first hearings of the Compensation Court being held in May 1865, it was more than a year later before anything resembling a comprehensive set of rules for the Court's procedure were advertised. A set of 'Rules and Regulations for the practice and procedure of Compensation Courts', passed by order-in-council on 16 June 1866 and gazetted four days later, stated that:

1. All rules and regulations heretofore made for the practice and procedure of Compensation Courts established under the said Acts are hereby rescinded, and the following substituted in lieu thereof.
2. No Court shall be held until two months notice of the intention to hold the same shall have been advertised in the General Government *Gazette*, and one or more newspapers of the Province wherein the Court is to be held.
3. In every case before the Court, the claimant shall be deemed the plaintiff, and the Crown the defendant, and either party may appear by counsel or duly authorized agent.
4. The practice and procedure of the Court, and of counsel and agents, shall be as nearly as possible similar to that of a Resident Magistrate's Court in civil cases.
5. On the application of either party for an adjournment for the purpose of procuring evidence, the Court shall grant an adjournment for the time applied for, or until the next sitting of the Court after the expiration of such time, provided the period of such adjournment do not exceed three months.

¹³⁶⁰ Charles Knight to Colonial Secretary, 21 April 1865, *Journals of the Auckland Provincial Government*, Session XVIII, 1864-65, A-1, p.64. The same report went on to claim that Waikato Maori were of the same view, and were not claiming the return of lands in any block – a patently misleading assertion.

6. All evidence given in Court shall be taken down in writing, and a copy thereof, together with the particulars of judgment or award, shall be transmitted without delay to the Colonial Secretary.

7. Upon the application of either party, the Governor in Council may grant a re-hearing of any case, before any three Judges of the Court, provided that when possible two at least of the three Judges in such re-hearing shall not have sat upon the first hearing of the case.

8. The orders or certificates issued by the Court shall be in the forms set forth in Schedules A.B. and C. hereunto annexed.

9. In all cases where a certain amount of land is awarded in compensation, the land shall be selected by the person to whom such compensation shall have been awarded and the agent for the Crown: provided that if they do not agree upon such selection within six months from the date of award, the Court shall decide between the parties in such manner as to it shall seem meet.¹³⁶¹

Whereas the Native Land Court was consciously modelled on the Supreme Court, the Compensation Court was thus more modestly based on the Resident Magistrate's Court procedures after June 1866 (perhaps reflecting Fenton's perception as to the relative status and importance of the two different Courts for awarding title to Maori). However, the June 1866 rules and regulations were not the first to be gazetted. Briefer guidelines dated 23 April 1866 were published in the *Auckland Provincial Government Gazette* on 22 May 1866 in the name of Fenton, as Senior Judge of the Compensation Court. These declared that:

Under the authority of the "New Zealand Settlements Act, 1863," the order dated the 12th day of April, 1865, for regulating the proceedings of the Compensation Court is hereby annulled, and it is ordered as follows:-

¹³⁶¹ *New Zealand Gazette*, no.36, 20 June 1866, p.250.

The proceedings of the Compensation Court with respect to Addresses and Precedence of Council [sic], Examination of Witnesses, and other matters attending the hearing of a Claim, shall, as nearly as circumstances will permit, follow the course of proceeding obtaining in the Supreme Court.

The claimant in each case shall be considered the plaintiff, and the Crown the defendant. In all cases of opposing claimants, the counter-claimant to the person whose case is being heard shall be considered as a defendant.¹³⁶²

The earliest guidelines for the conduct of the Compensation Court, dated 12 April 1865, and duly annulled by virtue of the May 1866 notice, stated that:

Under the authority of the New Zealand Settlements Act 1863, I hereby order that the business of the Compensation Court shall be conducted, as nearly as circumstances will admit, in the same manner and subject to the same rules as provided with respect to the performance of the duties of Justice of the Peace by Act of the Imperial Parliament...¹³⁶³

Perhaps Fenton had later had second thoughts about setting up two rivals to the Supreme Court by the time of the June 1866 guidelines. One was good, but two might be seen as greedy. Either way, the same highly legalistic and formal set of procedures was apparent in both the Native Land Court and the Compensation Court. In both cases Pakeha legal processes dominated over anything more sympathetic towards Maori tikanga or custom and little thought was given to practical details. There was no logical reason, for example, why newspaper notices of hearings should be confined to the same province in which the Court was to be held, as suggested by the June 1866 rules and regulations, since provincial boundaries hardly coincided with tribal ones. On the contrary, hapu and iwi from as far away as Nelson or Auckland claimed interests in Taranaki and Waikato.

¹³⁶² *Auckland Provincial Government Gazette*, no.17, 22 May 1866, p.127. See also the likely draft version of this (in Fenton's handwriting). Fenton, Notice, 23 April 1866, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton, 5/31, RDB, vol.107, p.40962.

¹³⁶³ *Auckland Provincial Government Gazette*, no.6, 19 April 1865, p.54. Curiously, Fenton's name appeared beneath this, along with the title 'Chief Judge', rather than his correct designation in this context as 'Senior Judge'.

These regulations were revised and replaced in September 1867. The new rules were substantially the same, with the exception of a tightening up of the procedures around appeal applications, perhaps reflecting a level of dissatisfaction with the progress of hearings to that time. Appeals now had to be received within 60 days of the original sitting of the Compensation Court and could not be entertained in any case where a rehearing had already been rejected by the governor.¹³⁶⁴

Neither set of regulations had stipulated the process by which applications for compensation were to be made, but forms for this purpose were drafted and printed for distribution to potential claimants (though how widely they were actually distributed in practice, especially to areas not yet seized by the British, remains unclear). These stated that:

Ko aku hoa i uru ki taua wahi, Ko

He kupu whaakaatu tenei naku kia koe mo toku piihi whenua ki roto ki nga rohe o te whenua kua tangohia e te Kanawa mo te hara o nga iwi o Waikato. E hiahia ana hoki ahau kia whakawakia e te Kooti Whakarite toku tikanga ki taua pihī. He oti ano Na to hoa.

My friends who claim that piece of land in common with myself are,
This is a word to inform you of my land within the boundaries of the land which has been taken by the Governor for the sins of the Waikato tribes. For I am desirous that my claim to the piece in question be investigated by the Compensation Court. That is all, your friend.¹³⁶⁵

Dr Rigby notes, in his report on the East Wairoa confiscation, that ‘Hauraki claimants must have puzzled over the implication that they were to be held responsible “for the sin of the Waikato Tribes”’.¹³⁶⁶ But there was also a broader significance to this seemingly innocuous-looking form. It compelled claimants, at the point of entering

¹³⁶⁴ *New Zealand Gazette*, no.46, 9 September 1867, pp.346-348.

¹³⁶⁵ [Translation of printed compensation claim form], 18 February 1865, MLC-A52, File 90, Box 40, Archives NZ (Akl), RDB, vol.100, p.38331.

¹³⁶⁶ Rigby, ‘Hauraki and East Wairoa’, p.53.

the Compensation Court process, to acknowledge that their customary lands had been confiscated in the first instance because of wrongdoings against the Crown. Those eligible to apply for compensation under the requirements of the New Zealand Settlements Act had, in legal terms, not acted against the Crown in any manner during the wars, but the wording of the form implied that any lands returned could almost be viewed as an act of benevolence on the part of the government rather than a rightful restitution of ancestral property. Nevertheless, given that this was the only method open to claimants, many completed their forms and waited for the announcements of Court hearing dates.

Even as the Crown returned a small fraction of Waikato to Maori (who may or may not have had ancestral ties with the land they received) it sought to impose its version of recent history on them. The Waikato War had been fought not because of the white man's anger or greed, but because of the sins of Waikato. At least, that is what the forms said.

Table 2: Waikato Confiscated District Compensation Court Sitings¹³⁶⁷

Date of Sitting	Confiscation Block	Hearing Location	Judges
17-18 May 1865	Tuhimata	Auckland	Mackay
22-25 May 1865	Pokeno	Auckland	Mackay
26 May 1865	Wairoa	Auckland	Fenton, Mackay
12-13 February 1866	Ihumatao	Mangere	Fenton, Rogan, Monro
20 April 1866	Ihumatao	Orakei	Fenton, Rogan, Monro
16-17 February 1866	Kirikiri	Mangere	Rogan, Monro
21 April 1866	Kirikiri	Orakei	Fenton, Rogan, Monro

¹³⁶⁷ As the detailed discussion of Compensation Court sittings in respect of Waikato will highlight, this table from the Raupatu Document Bank is far from entirely accurate. No attempt is made here to correct it, however, given the incomplete nature of the available evidence with respect to where and when the Court sat.

17 February 1866	Pukaki	Mangere	Rogan, Monro
20-21 April 1866	Pukaki	Orakei	Fenton, Rogan, Monro
21-23 February 1866	Te Akau	Port Waikato	Fenton, Rogan, Monro
26 February 1866	Opuatia and Whangape	Port Waikato	Fenton, Rogan, Monro
3-7 March 1866	Onewhero	Port Waikato	Fenton, Rogan, Monro
10 March 1866	Te Apunga to Te Karaka	Port Waikato	Monro
23 April 1866	Mangere	Orakei	Fenton, Rogan, Monro
25, 27-28 April 1866	Ihumatao, Pukaki and Kirikiri	Orakei	Fenton, Rogan, Monro
7 January 1867	Kupakupa, Rangiriri, Mangawhara, Central Waikato	Ngaruawahia	Fenton, Rogan, Lyon
17 January 1867	Central Waikato	Ngaruawahia	Fenton, Rogan, Lyon
14 January 1867	Military Settlements Block	Ngaruawahia	Mackay
17 January 1867	Military Settlements Block	Ngaruawahia	Mackay
11-14 February, 1, 5-7 March 1867	Ngaruawahia	Ngaruawahia	Rogan, Mackay (Crown Agent)
1-16 July 1868	Ngatitipa claims to Waikato	Auckland	Rogan

Source: Raupatu Document Bank, vol.100, pp.V-VI

6.6 The First Waikato Hearings

At the end of January 1865 notification to claimants wishing to seek compensation in respect of the first eight Waikato blocks confiscated was published. All claims were to be made in writing to the Colonial Secretary within six months of the proclamation under which the land was taken if the claimants resided within New Zealand and within eighteen months if they did not. The notice did not stipulate those eligible for

compensation, but merely repeated the relevant provision from the Settlements Act which outlined those who were not eligible under section 5. Claim forms were to be obtained from the office of the Native Land Court in Auckland or from any Resident Magistrate or Native Assessor.¹³⁶⁸

The first Compensation Court hearings in the Waikato were, however, held in May 1865 in respect of the Tuhimata and Pokeno blocks – before the six month period for receipt of claims had expired.¹³⁶⁹ That timing had been the cause of some debate amongst officials. In February 1865 Crown agent Hanson Turton wrote to Fenton on the subject. He stated that:

You speak of holding a “Compensation Court” on the “Pukekohe” Reserve within a month from this date. After returning from Rangiaohia (especially if I try to visit the Horotiu, as well), I shall have no time at all to attend to Pukekohe before it comes into Court.

With all due deference to the opinion of the Compensation Commissioners, I wld. suggest that no Court be held or judgmt. given, before the expiration of the *6 months* allowed to claimants. As otherwise, the first lot of claimants being paid & satisfied, will have no inducement to keep out any other claims (however invalid), since the compensation money will be so much more decided [?] from the Govt. to the family or tribe concerned. And in such cases, I shall never be able to acquire contradictory evidence. Hence, I believe, the longest road will turn out the shortest; & the extra time can be well spent in investigation. (1)

Yours &c. H. Hanson Turton

(1) To be more definite – The Natives will imagine, that the Court (like a Land Purchase Commissioner), will be allowed by the Govt. to expend a certain amount over a certain Block; and hence, if there be only one inquiry into that land, each claimant will feel it his interest to keep out all others. But if there is

¹³⁶⁸ *New Zealand Gazette*, no.3, 31 January 1865, pp.20-21.

¹³⁶⁹ Parsonson, ‘Tainui Claims’, p.194, fn.356.

more than one investigation, as to any particular Block, then, the first party, having been paid, will urge on all members of the Tribe to put in any claim they can, during the 6 months; to which, of course, no Native objection will be raised.¹³⁷⁰

Prior to this Fenton had also signalled his own opposition to the Compensation Court sitting prior to the six-month deadline for local claims to be received, informing the Native Minister in February 1865 that:

By the New Zealand Settlements Act a period of 6 months is allowed for the sending in of claims[.] I think therefore that it will not be advantageous to hold Courts until the expiration of that period in order that all claims may be considered together.¹³⁷¹

If both Fenton and Turton opposed convening the Court until the six-month period for receipt of claims had expired, then who had been responsible for calling the May 1865 hearings in advance of this timeframe? And if it was Fenton, what exactly was it that had caused him to change his mind? The answers to these questions seem unclear on the basis of existing sources (though research for the present report has obviously focused on those areas much further south in the confiscated area, of more immediate interest to Rohe Potae claimants).

What is clear is that this first sitting set a pattern for later ones in providing remarkably short notice of hearing. The Tuhimata hearing opened in Auckland on 17 May 1865 but was not actually notified in the *Auckland Provincial Government Gazette* until 8 May 1865, providing barely more than a week's notice to potential claimants. And in one later case, the Te Akau block hearing held at Port Waikato in February 1866, notice of the hearing was actually published in the *Provincial Government Gazette* one day after the hearing started.¹³⁷² No doubt there were other mechanisms by which notice of hearings was also given, including (it is presumed)

¹³⁷⁰ Turton to Fenton, 21 March 1865 (draft), MLC-A52, File 90, Box 40, Archives NZ (Akl), RDB, vol.99, pp.38247-38248.

¹³⁷¹ Fenton to Native Minister, 20 February 1865, MLC-A52, File 90, Box 40, Archives NZ (Akl), RDB, vol.99, p.38264.

¹³⁷² *Auckland Provincial Government Gazette*, no.5, 22 February 1866, p.42. The notice itself was, however, dated 1 February 1866.

the distribution of printed notices within the district. Yet even so, as we will see later, even Crown officials were frequently exasperated by the insufficient notice of hearings received.

In the case of Tuhimata, Fenton (sitting with Mackay) declared that the case was a ‘very intricate’ one and that if the Compensation Court was called upon to make a decision as to the respective rights of the different claimants it might well make a mistake. He instead called upon the parties to reach an out-of-court arrangement with the Crown agent.¹³⁷³ An agreement in respect of monetary compensation payable to the different groups was subsequently announced, while in the case of Pokeno the Court itself made various awards (and Wairoa was also heard).¹³⁷⁴

Fenton, before ending the session, gave a closing address which hinted at a none too smooth opening hearing of the Compensation Court. He told those assembled that:

This Court, which has now been sitting for many days consecutively, will soon break up for the present, the tracts of land confiscated by the first order in Council having been dealt with, except the military settlement blocks. Before the suitors disperse I am anxious to express on behalf of the Court our great satisfaction at the orderly and proper way in which they have all behaved, and I thank them for rendering the discharge of the duties of the Court as easy as it was possible considering the nature of the subject dealt with, and this, too, notwithstanding influences exercised by persons of the European race, intended to inflame the minds of the Maoris attending this Court against its decisions, and the conduct of its business.¹³⁷⁵

Fenton did not specify who these Europeans were, but went on to link the work of the Compensation Court with that of the Native Land Court. He declared that:

This is the first effort that has been made since the foundation of the colony to bring the main tenures of the land under the cognizance of courts of justice,

¹³⁷³ *Daily Southern Cross*, 22 May 1865.

¹³⁷⁴ *Daily Southern Cross*, 22 May 1865, 29 May 1865.

¹³⁷⁵ *Daily Southern Cross*, 29 May 1865.

and almost simultaneously have commenced the operations of the Native Lands Acts. One would have thought that every civilized man in the community would have desired the success of this great object, and would have rendered whatever assistance he could in removing the difficulties from, and furthering the progress of our proceedings. It is, therefore, with much surprise and great regret that we have found that such has not been the case during the sittings just closed. Any person who has attended these investigations will have felt the great difficulty of arriving at a decision at all in the mass of conflicting testimony that is placed before the Court in every case; and it will doubtless happen that decisions may have been wrong – that good claims have been overlooked and bad claims recognised. And in every case, whatever may have been the result, there is unquestionably necessarily a feeling of disappointment in the hearts of those whose claims have not been affirmed, or have received less consideration than the makers thought them justly entitled to. It is to be lamented that there could be found a member of the civilized race who, at that trying moment, would step in and inflame this disappointment into a feeling of suspicion of the Court, and irritation against the Government and its institutions. The Maori will never be induced to resort to and place confidence in our tribunals so long as for party purposes, or from still less unworthy motives, they are thus practised upon by designing or unreflecting persons. That such has been the case here is known to the Court, and may have been guessed by any who read in a newspaper translations of letters purporting to have been written by dissatisfied natives complaining of our decisions. It has therefore become a duty of the Court to decide whether public policy, and a due regard to the initiative under favourable conditions of this great experiment, would allow further courts to be held in a place where such practices can be carried on; and they have reluctantly come to the conclusion that courts solely or principally devoted to the decision of claims of Maoris to their lands, or for the defence or assertion of their rights, must for the present at least be held at a distance from this town.¹³⁷⁶

¹³⁷⁶ *ibid.*

Fenton's threat not to convene the Compensation Court in Auckland again in order to avoid unwelcome attention from the press was not carried out, and later hearings were held at Mangere and Orakei, besides other locations. Meanwhile, the Senior Judge was at least more positive with respect to the legislation under which the Court sat:

And now I desire to say one word with reference to the Act which it has been our duty to administer, the New Zealand Settlements Act. After some experience in its practical working, we find it, although with some defects of detail, in our judgment, a very fair and just measure. Considering the propriety of asserting the sovereignty of the Crown over the Maori land; the necessity of inflicting punishment on their owners, who have become insurgent; and the peculiar difficulties presented by the communal terms in which the land is held by the claimants, I say, with the experience we have had, that this Act appears to be more tender of the claims of those members of tribes who have remained loyal than the statutes of George I. I think it right to state this result of our experience, because previously I held a different opinion. Perhaps I attached too much importance to the maxim, "stare super antiqua vias." [stand one's ground] Reverting for one moment to the subject to which I first alluded, I must express a feeling of great conviction that the application of judicial forms of investigation to the territorial rights of the natives is feasible and full of hopeful promise. Those who have been present during the proceedings just brought to a close must coincide with the Court in admiring the temper and self control which the Maoris have displayed sometimes in circumstances of considerable excitement, such as the examination of the question as to the conquest and partial extermination of a witness's tribe by the tribe of a person then cross examining him.¹³⁷⁷

The cause of Fenton's own obvious anger was articles which had appeared in the *Daily Southern Cross* during the course of the hearing. It published English translations of two letters from unnamed Maori, and although both referred to the

¹³⁷⁷ *ibid.*

‘Land Court’, everyone, it would seem (including Fenton and the newspaper’s editors) took them as being directed at the Compensation Court.¹³⁷⁸

In the first of these, the author (whose pen name was given as ‘One Who Has Suffered Wrong’) wrote:

Listen, my friends in Auckland, - This is to give you notice that you may know what the Land Court is about in Auckland. We have seen the wrong committed by this Court. The owner of the land gets nothing, and the man who has no land is awarded money by the Court. We believe we shall [lose?] our land by this means. If there was a mixed court of Europeans and Maoris it would be fair; but if this mode is continued I will not hide my protest against this Court. Its proceedings are altogether wrong. I am the owner of the land, and I get nothing; and to the man who does not own the land the Court makes an award. This is a great wrong committed by this Court. And judges, do you make just awards, lest we get you put down; for your decisions you will be proved whether you are right or wrong.¹³⁷⁹

The writer’s call for a ‘mixed court’ of Pakeha and Maori does raise an interesting point. Although the domination of the Native Land Court by Pakeha judges after 1865, and the far more limited role accorded Maori in the title adjudication process, has often been criticised by historians and others (including previous Tribunal reports), the complete exclusion of *any* decision-making role for Maori in the Compensation Court for the most part passes without comment. And yet, as Fenton’s comments at the inaugural hearing indicated, it too was vitally interested in questions of customary title. In order to award compensation the Court first needed to satisfy itself that the claimants concerned had valid claims over the lands in question. That required a similar level of understanding of matters of customary Maori land rights to that which might have been useful in the Native Land Court. But whereas the Native Land Court accorded Maori a thoroughly inadequate role in the process of deciding titles, the Compensation Court gave them none at all.

¹³⁷⁸ Quite correctly, it would seem, given the reference in one of the letters to the Court awarding money to claimants, something the Native Land Court was not in the habit of doing.

¹³⁷⁹ *Daily Southern Cross*, 22 May 1865.

The second letter had raised similar grievances regarding the Compensation Court's interpretation of land rights, alleging that 'The man who has no claim on the land is allowed to derive a benefit from it, and the actual owner of the land is treated as if he had nothing to do with it.'¹³⁸⁰ For all of Fenton's words at the closing session, it would seem that at least some claimants were less than happy about the way that the Court had dealt with their claims, and sought a process with at least some Maori input into deciding matters of custom. Meanwhile, the *Christchurch Press* (edited by none other than J.E. FitzGerald) took the *Daily Southern Cross* to task for suggesting that the burden of proof in the Compensation Court ought properly to fall on Maori to prove their innocence (rather than on the Crown to establish their involvement in rebellion) before being entitled to receive compensation.¹³⁸¹ But the *Southern Cross* defended its stance. Maori ought 'not be allowed to cheat the colony by taking advantage of every legal quibble which a smart lawyer can think of', and as the newspaper added, Maori were supposedly well known as a 'nation...[of] consummate cheats'.¹³⁸²

Following this initial round of hearings in Auckland in May 1865, there was a long delay before the next Compensation Court was convened in respect of the Waikato district in February 1866. The reason for that delay, notwithstanding the earlier perceived urgency of the situation, is not at all apparent, though the fact that the boundaries of the confiscated lands in Waikato continued to be modified and extended throughout 1865 in a series of new proclamations must surely have been a factor. In December 1865 Fenton wrote to the Native Minister to point out that there had been no hearings of the Compensation Court for some time, a situation evidently resulting from a government request for there to be an 'interval' before these resumed. Fenton now desired to know whether 'there is any reason why further progress should not be made in settling the claims of loyal Natives on confiscated Blocks of Land', and was informed in response that the Native Minister was unaware of any reason for delaying any longer the sittings of the Court.¹³⁸³

¹³⁸⁰ *ibid.*

¹³⁸¹ *Daily Southern Cross*, 25 May 1865 (reproduced from *Press*).

¹³⁸² *Daily Southern Cross*, 26 May 1865.

¹³⁸³ William Rolleston (Native Under Secretary) to Fenton, 13 December 1865, MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, pp.38513-38514.

Meanwhile, a substantial number of claims for compensation had been received by the Colonial Secretary's office. In December 1865 a list of 'Claims for Compensation of Land in the District of Waikato' was published in the *Auckland Provincial Government Gazette*. Fenton's accompanying notice stated that these had been transmitted to the Compensation Court for hearing and that:

Notice is hereby given, that the said claims will be heard and determined by the said Judges, or one of them, during the ensuing summer, at times and places in the District of Waikato, to be hereafter published, and of which due notice will be given.¹³⁸⁴

In fact, some of the claims were heard in Auckland once again, rather than the district of Waikato, while others were not heard at all over the forthcoming summer but took until 1867 to be heard in the case of the Military Settlements, Central Waikato and other blocks.

And yet the list itself is an invaluable historical document considering how little is known about the work of the Compensation Court. While in its published form the list was less than clear as to which confiscated districts it encompassed, the original version included a second covering letter from Fenton in which he described it as a 'notice of claimants for compensation under the New Zd. Settlements Act 1863 in account of the confiscation of the land of Waikato South of the detached blocks'.¹³⁸⁵ It included, in other words, all of the districts of interest for this report, excluding only the smaller 'detached' blocks north of the Waikato River.

The list itself, containing in all some 1900 or so names, merely consists of three columns: the name of the claimant; their residence; and the land claimed. The former category consists solely of the names of individuals. There are no hapu or iwi listed, even though from the latter two columns it appears obvious that many of the claims have been received or grouped in such a way as to reflect different hapu and iwi. Not

¹³⁸⁴ *Auckland Provincial Government Gazette*, 20 December 1865, p.316, RDB, vol.133, p.51082.

¹³⁸⁵ Fenton to Colonial Secretary, 7 December 1865, IA 1/1865/3441, Archives NZ, RDB, vol.100, p.38437.

only was a strict individualised approach adopted towards the claims, but they were also (as we shall see) dealt with by the Compensation Court in a similar manner, rendering it virtually impossible to provide a meaningful overview of its operations in broad tribal terms. Sticking with the list of claims for a moment, it seems apparent that those listed are intended as the heads or representatives of their respective whanau groups. How the 1900 or so named individuals stacks up against Fenton's pre-war population estimate of 10,319 is impossible to say, especially given the latter figure excluded districts such as Hauraki and South Auckland which were at least partly included in the Waikato confiscated district. And nor would it have included absentee owners.

Many of those named in the list were resident at Otaki and claiming land at Maungatautari and other places (including Rangiaowhia). These appear to match various claims for compensation filed by Ngati Raukawa resident in the south, along with others from related or allied groups including Ngati Kauwhata and even Ngati Toa.¹³⁸⁶ Other claims were more scattered, coming from places as wide apart as Nelson and Auckland. Bearing in mind that Fenton and other officials had previously received a claim to Rangiaowhia and other areas from a Maori man in England,¹³⁸⁷ the list went to show just how dispersed the Waikato Maori population had become in the wake of the war. There had always been travellers and sojourners, of course: just not quite so many, and not under circumstances in which choice was constrained by the realities of war and confiscation.

There were no claims from Maori resident at Te Kuiti or Hangatiki, but there were a number from Kawhia, where (as we saw previously) a 'loyalist' community remained resident in the post-war years, along with others from Aotea. In a further obvious indicator of the extent of Maori displacement, only a relatively small number of claims were received from Te Awamutu and Rangiaowhia (and none at all from

¹³⁸⁶ See Compensation Court: Claims and Correspondence: Ngati Raukawa Claims (Maungatautari District), 1864-1866, DOSLI Hamilton 4/25, RDB, vol.106.

¹³⁸⁷ Aperahama Pungatara (or Pangatara) had departed Rangiaowhia in 1857 to attend a Catholic school in Auckland, later ministering to soldiers in Taranaki before travelling to Sydney and finally, in March 1863, departing for England. He sought the return of lands in his home village taken from him and his family. Cardwell to Grey (and enclosures), 26 November 1864, G 1/59, Archives NZ; CO 209/187, pp.478-493, Archives NZ; 'A Maori Petition', *London Review of Politics, Society, Literature, Art and Science*, 10 December 1864, pp.632-633.

Kihikihi), both of which had just a few years prior to this been home to bustling Maori communities.

With such an extensive list of claims published, the expectation was now that the Compensation Court would move swiftly to deal with these. Fenton, though, who had earlier informed his old enemy Donald McLean that the Compensation Court was ‘the toughest job ever I had in my life’ (an admission that surely pleased McLean immensely!),¹³⁸⁸ had other concerns. In December 1865, the same month that the list of claimants was published, he wrote to the government to complain that the New Zealand Settlements Amendment and Continuance Act, passed into law in October 1865, was unworkable. In particular, and tellingly, he complained that the requirement for the ‘extent and particulars’ of the land claimed to be specified was not realistic. Such information, he suggested, ‘can only be given in the usual vague way of Maori claims’.¹³⁸⁹

With land officially available as compensation following the 1865 Act a further issue which arose was exactly how such lands should be awarded. Although it had almost been universally assumed from the outset that any lands returned to Maori would be by way of Crown grant, in February 1866 Native Minister A.H. Russell threw a curve ball of his own. Fenton was informed that:

Colonel Russell is of opinion...that it will be well generally for the Crown to abandon the land and let the Natives then elect to retain the land under the Native Title or to go into the Native Land Court if they wish to sell.¹³⁹⁰

But if the land was to be simply abandoned, how could the Crown assure it went to ‘loyalists’, and how could any of the awards of the Compensation Court be upheld? And how, for that matter, would such an approach further advance the tenurial revolution promoted by Fenton and others? As T.H. Smith wrote in another context:

¹³⁸⁸ Fenton to McLean, 23 May 1865, McLean Papers, MS-Papers-0032-0267, ATL.

¹³⁸⁹ Fenton to Native Secretary, 22 January 1866 (draft), MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, p.38511. (Fenton is responding to a letter of 29 December 1865 in response to his initial letter of 21 December 1865 pointing out various requirements of the 1865 legislation that were not able to be complied with).

¹³⁹⁰ Rolleston to Fenton, 13 February 1866, MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, p.38578.

In the case of Waata Kukutai for instance and the loyal tribes in Waikato who have not joined the rebellion so far from any injury being done, these Grantees are getting nothing but benefit. They lose not an acre of land and obtain Crown titles without any cost. Compensation is a word that does not apply to them.¹³⁹¹

In Fenton's view, the Compensation Court was a boon to Maori, especially when it served to eliminate native title in favour of Crown grants. Curiously, however, he purported to agree with Russell's suggestion, writing in March 1866 that:

...your proposal to abandon the land referred to entirely coincides with my views of the justice as well as convenience of the case. In fact at the suggestion of the Court this course has already been taken in many instances in Waikato. The Compensation Court was instituted to adjust rights between the Crown and a portion of her subjects, not between the different sections of those subjects. This latter function peculiarly belongs to the Native Land Court.¹³⁹²

Abandonment would have required revoking the original act of confiscation, such as occurred in 1867 in respect of Taranaki lands south of the Waitotara River.¹³⁹³ From Fenton's perspective the obvious appeal of such a step was that the lands would then become subject to the normal operations of the Native Lands Acts.

In the case of the south Taranaki lands abandonment was made pursuant to section 6 of the New Zealand Settlements Amendment and Continuance Act of 1865, which provided that:

¹³⁹¹ T.H. Smith ('in the absence of the Senior Judge') to Native Minister, 22 February 1866, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/32, RDB, vol.107pp.40992-40993.

¹³⁹² Fenton to Native Minister, 13 March 1866, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/32, RDB, vol.107, pp.40999-41000.

¹³⁹³ *New Zealand Gazette*, no.15, 15 March 1867, p.112.

In every case of claim for compensation the Colonial Secretary on behalf of the Crown may if he shall think fit at any time before judgment or award by notice in writing to the claimant delivered to or addressed by post to him or her delivered to his or her agent or attorney abandon the right of the Crown to take the land in respect of which compensation is claimed and after such notice of abandonment such land shall be excluded from the operation of the said Acts and of this Act. Provided that if the Crown shall abandon its right after the claim shall have been referred to the Compensation Court such abandonment shall be subject to such conditions as to payment of costs as the Court shall think fit.¹³⁹⁴

It would appear, therefore, that there was no legal requirement for any abandonment to be publicly proclaimed, only that the claimants to compensation were to be notified in writing of such a decision. That would seem extraordinary given the effect of such an abandonment was to reverse the confiscation process, allowing the land to revert to native title and become subject to the normal operations of the Native Land Court. While a public proclamation was issued with respect to the lands south of Waitotara in South Taranaki, it does not appear that there were similar notifications gazetted in respect of the Waikato district, even though there is evidence that some lands in the area were formally abandoned under section 6 of the 1865 Act.¹³⁹⁵

The lack of any requirement to publicly proclaim such abandonments makes it difficult to quantify the area of land involved. However, a return of confiscated lands ‘awarded to, reserved for or abandoned to Natives, within the Districts of Manukau and Waikato’ to 30 June 1866 provides some clues. It lists an area of 45,000 acres located at ‘Taupari to Opuatia’ which were described as having been abandoned by the Crown in favour of Waata Kukutai and Ngati Tipa. A further 1555 acres in five much smaller blocks were similarly described as having been abandoned in favour of various parties.¹³⁹⁶ Whether there were any later lands abandoned is not clear from the

¹³⁹⁴ *New Zealand Statutes*, no.66, 1865.

¹³⁹⁵ See, for example, ‘Waikato Confiscations: Proceedings of the Compensation Court’, DOSLI Hamilton 2/13, RDB, vol.104, pp.39873-39878.

¹³⁹⁶ Approximate Return of Confiscated lands, awarded to, reserved for or abandoned to Natives, within the Districts of Manukau and Waikato, Province of Auckland, under the Provisions of the New Zealand Settlements Act 1863, and the New Zealand Settlements Amendment and Continuance Act 1875 – to the 30th June 1866, Le 1/1866/6, Archives NZ.

available sources, though it would seem unlikely that the mechanism was a significant one in the area of interest for this report.

What is clear is that this process was quite a different one from that which saw lands awarded through the normal processes of the Compensation Court and subsequently Crown granted under the New Zealand Settlements Act. Fenton made that point plain with respect to certain lands at Taranaki, when he informed the Native Minister in July 1866 that:

...I have received a written document from the Compensation Court purporting to be an agreement between the Crown and certain loyal claimants to compensation over the Waitara South block by virtue of which their claims before the Compensation Court appeared to have been withdrawn in consideration of the cession by the Crown to them of certain lands within the block, the apportionment of which land amongst themselves is to be made by the Native Land Court. This agreement extensively signed, will operate as a claim under the Native Land Act, and I am so prepared to treat it but I must call your attention to the fact that the land referred to is at present Crown Land, and to render it Native Land subject to the operations of the Land Court an abandonment by the Crown under the 6th Section of the New Zealand Settlements Act Amendment Act 1865 is necessary.¹³⁹⁷

As soon as the land was formally abandoned the Compensation Court thus ceased to have any jurisdiction with respect to its ownership. As Robert Parris pointed out in the case of the Waitara South lands, such a step had major ramifications. He wrote that:

...I presume it would be possible [as a result of abandonment] for the land to revert to the original owners who so far as has been decided at present, may have been in rebellion, and forfeited it to the Government, which has awarded it to loyal Natives subject to being divided among them in fair proportions

¹³⁹⁷ Fenton to Native Minister, 25 July 1866, Le 1/1867/105, Archives NZ, RDB, vol.7, pp.2280-2281.

without regard to original title. To set aside that award would be doing an injustice to the Natives concerned.¹³⁹⁸

Those kinds of considerations appear to have resulted in a significant cooling of support for the process of abandonment among government officials,¹³⁹⁹ and it seems likely that the provision was used in the case of Waikato only in respect of groups considered solidly 'loyalist' or where the lands in question were already held under Crown grant by the Church Missionary Society or Pakeha settlers. At the same time the question is a complex one and would benefit from closer analysis than has proven possible here.

In February 1866 the Compensation Court opened at Mangere for the purpose of hearing claims to the small South Auckland blocks of Ihumatao, Kirikiri and Pukaki. These cases, located in an area in which Ngati Whatua claims overlapped with, and sometimes competed against, those of various Tainui groups, need not concern us here.¹⁴⁰⁰ The same applies in respect of most of the other hearings held between February and April 1866, most of them under Judges Fenton, Rogan and Monro.

6.7 The Te Akau Block

The sole exception to this is the Te Akau hearings held at Port Waikato under Fenton, Rogan and Monro between 21 and 23 February 1866. According to one report in advance, the hearings were to be held in the large colonial government building adjacent to the wharf and were expected to attract a crowd of between 500 and 600 Maori over several weeks (with Te Akau – the southern portion of which has been included in the Rohe Potae inquiry district, though only in respect of the claims of particular groups – just one of the areas to be investigated).¹⁴⁰¹ In fact, the Te Akau

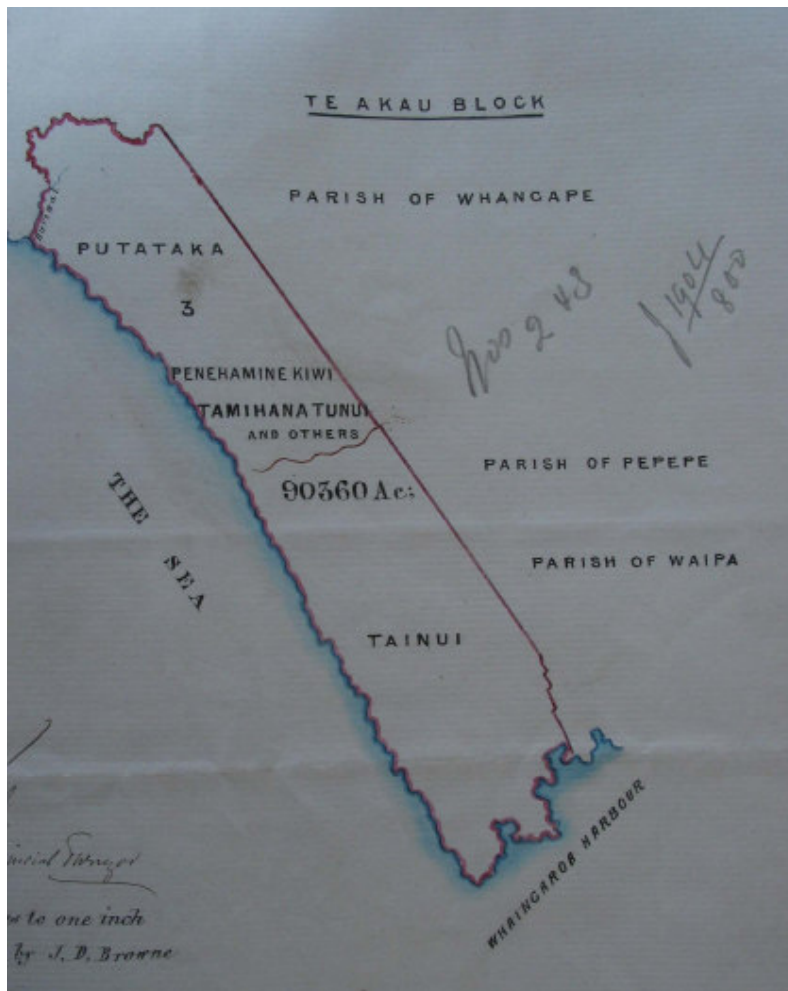
¹³⁹⁸ Parris to Native Minister, 12 October 1866, Le 1/1867/105, Archives NZ, RDB, vol.7, pp.2285-2286.

¹³⁹⁹ Bauchop, 'The Aftermath of Confiscation', pp.110-120.

¹⁴⁰⁰ However, it is an interesting insight into the attitude of some officials that Crown agent Hanson Turton advocated that 'the only plan will be to oppose one party against another as before', besides recommending the use of a Crown counsel as 'The amount of land saved will be immediately greater than the costs incurred.' H.H. Turton, memorandum, 8 February 1866, AGG-A 1/45/66 (box 1), Archives NZ (Akl).

¹⁴⁰¹ *Daily Southern Cross*, 24 February 1866.

case, involving lands along the west coast between Port Waikato and Whaingaroa, was the case mentioned earlier in the report in which notice of the Compensation Court sitting was actually published in the *Auckland Provincial Government Gazette* one day after the hearing itself started, though this was adjourned for a day for reasons not explained in the minutes.¹⁴⁰²



(Source: LINZ)

Figure 13 Te Akau block

A later report from the *Daily Southern Cross* published a few days before the Port Waikato hearings ended on 10 March 1866 noted that since 22 February:

¹⁴⁰² *ibid.*

...the Land Compensation Court has been sitting at Port Waikato, assiduously getting through the claims of friendly Maoris. The business was expected to be closed on Tuesday, and the judges, being required at courts to be held elsewhere, have had to put off the claims on the land to the east of the river Waikato till another place and time.

The coast land between Waikato and Raglan has been mostly allowed to the friendlies. About two-fifths, or 60,000 acres, are being taken as the proportion owned by the rebels. The Whangape, Opuatia, and Onewhero, which all belonged to the Ngatipou, a very few of whom remained friendly, has been all confiscated, with the exception of some 6,000 or 7,000 acres. The Court was on Monday to hear the claims of the Ngatinaho and Ngatitipa tribes, the majority of both of which have been our allies throughout the war. The Maoris seem to think that the awards of the Court are liberal beyond what they anticipated, and they, at least, have no reason to complain of that fabled monster, sometimes depicted to applauding crowds at Exeter Hall, as the grasping colonist of New Zealand!¹⁴⁰³

The *Daily Southern Cross* was hardly a reliable barometer of Maori opinion, however, and as the Te Akau block amply demonstrates, the hearing was not without contention. In fact, ownership of Te Akau was still being contested in the early twentieth century, and although full treatment of its convoluted history cannot be attempted here, a broad outline is at least provided.

Estimated to contain 158,600 acres, the Te Akau block hearing opened in earnest on 22 February 1866 before Fenton, Rogan and Munro, with Mackay acting as Crown agent. Tamihana Tunui of Ngati Tahinga opened by describing part of the boundaries of the land, followed by Te Raku and Henare Ngatai, who gave further evidence on their portion of these. Ngatai told that the Court that Ngati Tahinga and Tainui were 'on this land'.¹⁴⁰⁴ They were followed by Manahi Kiwi, who stated that he had never

¹⁴⁰³ *Daily Southern Cross*, 7 March 1866.

¹⁴⁰⁴ 'Te Akau Block (Copy of Judges' Notes)', pp.1-2, MA 14/15, Archives NZ, RDB, vol.103, pp.39500-39501.

heard the boundary outlined by the other speakers having been disputed. Cross-examined by Mackay, he also told the Court that:

The tribes in this boundary are the Ngatitahinga and Tainui. The names of the Hapus in Tainui [sic – Te Akau?] are, Tainui and Ngatitahinga. There are no other hapus. There were about sixty of the Tainui hapu before the war commenced. There are now about Forty, that is, unless the others died of influenza. Some of our tribe went to the war. Those who went were Rapana, Reupene, Pehimana, Kereopa and Tikapa.¹⁴⁰⁵

If his evidence was correct, then the tiny Tainui tribe, who lived on the margins of the Waikato war zone, had suffered a staggering one-third drop in their population in the space of a few years.

Tunui, who was recalled (along with Henare Ngatai) was then cross-examined by Mackay, who evidently put to him a number of names of Ngati Tahinga tribal members believed to have fought in the war. In some cases Tunui admitted their involvement and in others he denied it or gave supplementary or different information as to their tribal affiliations. That pattern was followed by a number of subsequent witnesses, with Mackay taking a prominent role in proceedings. Beyond close questioning as to the involvement of various tribal members of Tainui and Ngati Tahinga in the war, he appears to have been equally keen to elicit information as to the extent of their land interests. In other cases the Judges also followed this lead, with Fenton questioning Te Wetini Mahikai regarding the alleged involvement of his people in the Kingitanga, prompting the following reply:

I was not present at any Runangas held for the purpose of setting up a king. Ngatitahinga were never present at any. They never made over their land to the King. They were only present when the flag was raised. There was never any talk among us about handing over our lands to the King.¹⁴⁰⁶

¹⁴⁰⁵ 'Te Akau Block (Copy of Judges' Notes), p.3, MA 14/15, Archives NZ, RDB, vol.103, p.39502.

¹⁴⁰⁶ 'Te Akau Block (Copy of Judges' Notes), p.8, MA 14/15, Archives NZ, RDB, vol.103, p.39507.

If Fenton did not somehow equate evidence of involvement in the Kingitanga as tantamount to proof of ineligibility for compensation then it is difficult to see why he would have pursued such a line of questioning.

Another witness, Mita Karaka, who declared that he was a surveyor living in Auckland was asked about the Whangape block, which had evidently been set aside for Maori occupation, and told Mackay that:

I know that a block of land at Whangape has been set apart by the Govt. to locate surrendered rebels upon. I have seen the Proclamation of the 16th. May 1865.¹⁴⁰⁷ That block contains 19,400 (acres). I have never heard that the Maoris were placed upon it. I don't know whether or not the Natives objected to going there because of the bad quality of the land.¹⁴⁰⁸

The government had intended to set aside Whangape for returning Maori but the land was patently unfit for permanent occupation and the offer was for the most part refused. Even Crown official William Searancke described the bulk of Whangape as 'exceedingly poor, bleak and sterile, clay hills and swamp bottoms, on the Western or inland portion the fern lands are a little better but not capable of growing food for man.'¹⁴⁰⁹ It was so poor, in fact, that it was probably one of those areas whose confiscation arguably failed to comply with the legal requirements of the New Zealand Settlements Act (being unsuitable for settlement). Searancke spoke with a number of Maori, many of them 'not in any way compromised by the War' and endeavoured to convince them of the government's 'liberality' in setting aside the Whangape land for their use and occupation. Yet all but the land's customary owners (Ngati Pou, most of whom were deemed 'rebels') stated that they could not live there and would risk starvation if they attempted it. Searancke added that 'They complained of the poverty of the soil[,] of the cold and bleak district which they say & I believe truly, never was occupied except in summer months for the lake eels.'¹⁴¹⁰ He had

¹⁴⁰⁷ *New Zealand Gazette*, no.19, 7 June 1865, pp.169-170. The 'Wangape' block of 19,400 acres was among those confiscated by order-in-council dated 16 May 1865.

¹⁴⁰⁸ 'Te Akau Block (Copy of Judges' Notes)', p.9, MA 14/15, Archives NZ, RDB, vol.103, p.39508.

¹⁴⁰⁹ Searancke to James Mackay, 8 July 1865, William Searancke Letterbook, vol.2, NZMS 885, Auckland City Library.

¹⁴¹⁰ Searancke to James Mackay, 5 August 1865, William Searancke Letterbook, vol.2, NZMS 885, Auckland City Library.

warned the tribes against persisting in planting and cultivating crops on confiscated lands, notwithstanding bringing to the attention of James Mackay ‘the state of starvation that most of them are in’.¹⁴¹¹

Other issues raised during the Te Akau hearing included various Crown and private purchases, boundaries with neighbouring iwi and the quality of lands in different parts of the block. Detailed whakapapa evidence does not appear to have been called for and nor does one get a meaningful sense of the traditional history of the area from the Compensation Court records. It appears the Court was more concerned with finding evidence of ‘rebellion’ than evidence of ownership.

Reflecting this emphasis, the final part of the hearing was dominated by detailed lists of those who had and had not participated in the war. Although the hearing is described as lasting from 21 to 23 February, on the first day the case had been adjourned straight away, and there is no evidence from the Court’s own records that proceedings went into the 23rd. For all of its considerable flaws, it is difficult to imagine the Native Land Court disposing of a 158,000 acre block in less than a day.

The outcome of the day-long case was that 77 ‘loyal’ and 44 ‘rebel’ Maori were deemed to have owned the block.¹⁴¹² That is, approximately 63.6% of the owners were considered ‘loyal’. This conclusion deviated even more from custom than the Native Land Court usually did in that it made no allowance for the rights of female owners.¹⁴¹³ Nevertheless, based on figures for men only supplied by James Mackay, the Compensation Court ruled that 94,668 acres would be returned to Maori and the balance of 63,932 acres would be retained by the Crown.¹⁴¹⁴ It is worth noting that if the land was to be allocated between the Crown and Maori strictly in proportion to the ratio of ‘loyal’ men then Tainui and Ngati Tahinga were short-changed by this arrangement, since 63.6% of the total block comes to 100,869 acres – some 6201 acres more than the owners were to receive.

¹⁴¹¹ *ibid.*

¹⁴¹² AJHR, 1904, G-1, p.3.

¹⁴¹³ *ibid.*

¹⁴¹⁴ James Mackay to Whitaker, 6 August 1866, IA 1/1866/2895, Archives NZ.

On 24 February 1866 the Compensation Court delivered its judgment after attempts to broker an out-of-court arrangement evidently failed. Mackay told the Court that he had offered the claimants 30,000 acres in land and payment at the rate of 2 shillings 6 pence per acre for a further 60,000 acres. That was refused by the claimants, who ‘demanded that their land should be secured to them, declining to take any money.’¹⁴¹⁵ Fenton later informed the Colonial Secretary that:

When the case...was closed on both sides, the Court postponed its decision for the purpose of giving the Crown Agent and the claimants an opportunity to settle the matter out of Court. When we again met it was announced by Mr. Mackay that the attempt at settlement had failed and that it now remained for the Court to decide between the parties. We accordingly gave our decision, and as soon as we had done so Mr. Mackay asked for an adjournment of the Court.¹⁴¹⁶

In a later letter to the government Mackay made it clear that the reason for the request was not that he objected to the area of land awarded the claimants (since the Court had adopted his own figures in the case) but rather:

- 1st. Because in my opinion the Court had no power to fix the boundary.
- 2nd. Because the Natives had all the beach frontage given to them and the Government had all the inaccessible back country left for them.
3. Because I deemed it probable that the Government desired to form a settlement on the coast between Raglan and Port Waikato.¹⁴¹⁷

According to Mackay, the Court overruled the first two objections, insisting that it had the right to fix both the quantity and boundaries of the land to be awarded. On the third point, he added, the Court made it clear that ‘they would require evidence on oath, that land was required for settlement, and not the mere statement of Crown

¹⁴¹⁵ Fenton to the Colonial Secretary, 8 August 1866, IA 1/1866/2895, Archives NZ.

¹⁴¹⁶ *ibid.*

¹⁴¹⁷ James Mackay to Whitaker, 6 August 1866, IA 1/1866/2895, Archives NZ.

Agent.’¹⁴¹⁸ Mackay then applied for an adjournment so that he could proceed to Auckland to consult the Agent for the General Government, but as it was late in the day, Fenton insisted that the Court would hear the arguments on this the following sitting day. By that time, though, Mackay had already left for Auckland, and the arguments of his assistant Charles Marshall failed to persuade the Court. Fenton later recalled that ‘from 400 to 600 persons had assembled who were...already in some distress for want of food’ and that he was fully aware that any adjournment of the Court would cause many of the claimants ‘great hardships.’¹⁴¹⁹ When Mackay returned from Auckland he made no further application for adjournment. Yet according to Fenton, had the Crown sought one in the case in order to allow further time to prepare a response he was fully prepared to grant this request in accordance with an earlier arrangement made with Whitaker.¹⁴²⁰

The land was duly awarded to members of the Ngati Tahinga and Tainui tribes, along with Honana Maioha of Ngati Mahuta.¹⁴²¹ However, the Maori portion was reduced on survey to 90,360 acres, partly, it would appear, as a contribution to surveying costs.¹⁴²² According to Fenton, upon returning to Auckland he was informed by Whitaker that the government had previously advanced £100 on the block and had gone to some expense in surveying roads, despite which no evidence of a purported Crown purchase was advanced during the case (the payment is discussed further below). The block had, however, already been reduced by about 60,000 acres due to ‘doubtful title’, with the land in question later determined as belonging to Ngati Pou (‘who are all in rebellion’, Fenton wrote).¹⁴²³

This was far from the end of the matter, though, and the convoluted subsequent history of Te Akau is best summarised from the report of a 1904 Royal Commission into the block. The members of that commission were none other than H.A.H. Monro, one of the three Compensation Court judges who had delivered the Te Akau judgment

¹⁴¹⁸ *ibid.*

¹⁴¹⁹ Fenton to the Colonial Secretary, 8 August 1866, IA 1/1866/2895, Archives NZ.

¹⁴²⁰ *ibid.*

¹⁴²¹ AJHR, 1904, G-1, p.3; ‘Te Akau Block (Judgment)’, p.1, MA 14/15, Archives NZ, RDB, vol.103, p.39514.

¹⁴²² AJHR, 1904, G-1, p.3.

¹⁴²³ Fenton to the Colonial Secretary, 8 August 1866, IA 1/1866/2895, Archives NZ.

in 1866, along with former Crown agent James Mackay. In their report they noted that:

A list of the seventy-seven loyal owners was made at the time, and the Crown Agent would, as in other cases, have caused a Crown grant to be prepared in their favour. The Natives, however, desired to lease the land to Europeans, and, in order to save trouble in executing deeds, wished to have a Crown grant issued to fourteen of their number in trust to divide the land among themselves and the other owners, and with power to lease it for a term not exceeding thirty years. In March, 1868, the Crown Agent instructed his assistant, Mr. Charles Marshall, to proceed to Rangikahu, on the Akau Block, and ascertain the views of the Natives on the question. Owing to the absence of Honana Maioha from the meeting, nothing was accomplished. In July, 1868, Mr. H.C. Young leased the Akau Block for twenty-seven years, at a rental of £800 per annum. A grant, with the names of fourteen trustees, was prepared, but was objected to by the Attorney-General. The Crown Agent had resigned his appointment and left the service of the Government, but in reply to a letter from the Hon. Dr. Pollen, in 1872, he recommended that “the best manner of arranging the difficulty would be for the Native Land Court to investigate the case, and subdivide the land among the various owners, when Crown grants might issue to them.” Chief Judge Fenton then requested Mr. R.S. Bush, Clerk of the Resident Magistrate’s Court at Raglan, to call a meeting of the Natives interested in the Akau Block, and prepare a list of the loyal Natives whose names were entitled to be inserted in the Crown grant of it. This was done, and some fifteen additional names were added to the list which had been made at the Port Waikato Court in 1866...Considerable correspondence passed in reference to the issue of the grant; but eventually, on the 23rd October, 1874, a grant was made by His Excellency the Governor in favour of eighty-seven persons of the Ngatitahinga and Tainui Tribes, and Honana Maioha, of the Ngatimahuta Tribe, being eighty-eight persons in all.¹⁴²⁴

¹⁴²⁴ *ibid.* It is not clear why, if 15 names were added to the list, the total number of owners only increased by 11, though an appended report (p.11) from Bush suggests some of the new names may have encountered objections.

In essence then the named owners of the block from both the Tainui and Ngati Tahinga tribes had sought a form of title that would provide for a form of ongoing communal management through named trustees, but found this stymied by Crown objections.¹⁴²⁵ Ironically, if the land had passed through the Native Land Court the owners would have been able to apply for a title under section 17 of the Native Lands Act of 1867 that might have come close to what they were seeking to achieve, even though that provision did not protect the lands from the later impact of individualisation and alienation.

One 1873 memorandum in fact indicated some of the sensitivities surrounding the block by this time. Daniel Pollen wrote in that year that:

It is not, for political reasons, a favourable moment to reopen a vexed question on which Native feelings would be excited, and I think therefore that it may properly be allowed to stand over. It can I think be best settled by reference to the Native Lands Court under the Act of 1870. Mr. Fenton had, and has, strong objection to act as Judge of a Compensation Court, for the reason that Natives confounded the jurisdiction of the Courts, and that in the Native mind the obloquy which attached itself to the “land-taking Court” as they called the Compensation Court rested also upon the Native Lands Court – the error was fostered by the circumstance that the Judges were the same in each.¹⁴²⁶

If Fenton’s true thoughts on this matter were accurately conveyed by Pollen then they are indeed revealing. The Compensation Court, in the ‘Native mind’, was essentially a ‘land-taking Court’. That view prevailed even though the Compensation Court in fact restored lands rather than took them away. But perhaps it restored so few lands, or in such a different state with respect to title, that in the Maori conception it was inextricably linked with the actual confiscation (as, indeed, it was, since there was no need for compensation without confiscation).

¹⁴²⁵ See ‘Copy of Correspondence in the Native Land Court Office at Auckland relative to the issue of a Crown grant for Te Akau Block’, MA 14/15, Archives NZ, RDB, vol.103, p.39514.

¹⁴²⁶ Pollen to O’Rorke, 20 May 1873, MA 76/2A, Archives NZ, RDB, vol.46, p.18001.

In the case of Te Akau, although a relatively large block was being returned, formerly fluid and overlapping rights had been reduced to something more fixed and final. Title was finally issued to 88 owners in 1874. That Crown grant was the focus of an 1878 petition from Tamihana Tunui and others. H.T. Clarke, who testified before the Native Affairs Committee with respect to the petition, explained that the Te Akau compensation award had been made ‘not to individuals, but to the loyal members of certain tribes.’¹⁴²⁷ When the owners applied for a Crown grant for the land the matter had been referred to the then Attorney-General, James Prendergast, along with the Solicitor-General, both of whom decided that it was necessary for the names of every person interested to be listed on the title. Fenton was not able to furnish the names as required and James Mackay was no longer in government service by this time, so the matter had been referred to Charles Marshall for inquiry. After a long and careful inquiry he had returned a list of names and the Crown grant was duly prepared. Clarke rejected allegations contained in the 1878 petition that individuals had been admitted into the title who belonged to another tribe, declaring that they might well ‘belong to the very tribe who were the original proprietors of the block on the mother’s side.’¹⁴²⁸ On the other hand, he did concede that the inclusion of owners listed merely as ‘Hohepa’, for example, was less than desirable, since ‘there may be a dozen Hohepas in the tribe.’¹⁴²⁹ Nor could he confirm that the list of owners was a complete and correct one, it being quite possible that some names had been omitted.¹⁴³⁰

Although Clarke stated that it was not unknown for Crown grants to be cancelled if found to be faulty, he believed in this instance the petitioners were aiming not merely to rectify certain names in the grant but to have a new title issued that was to tenants in common rather than joint tenancy.¹⁴³¹ The Native Affairs Committee declined to offer any opinion on the petition, or an apparently similar one from Wirihana Tikapa Teaooterangi and 12 others which also called for the Te Akau grant to be cancelled.¹⁴³²

¹⁴²⁷ Native Affairs Committee, Minutes of Evidence, 16 September 1878, Le 1/1878/6, Archives NZ, RDB, vol.2, pp.396-397.

¹⁴²⁸ *ibid.*, p.399.

¹⁴²⁹ *ibid.*, pp.399-400.

¹⁴³⁰ *ibid.*, p.401.

¹⁴³¹ *ibid.*

¹⁴³² AJHR, 1878, I-3, pp.7, 10.

In 1891 a Native Land Court hearing was held to subdivide and partition the block. The Court partitioned the block into 19 pieces, but objections from some of the Tainui owners resulted in a rehearing being held in 1894. On this occasion the Native Appellate Court overturned the previous partitions and instead subdivided Te Akau into just three blocks. Petitions to Parliament concerning this decision prompted the appointment of a Royal Commission in 1904 consisting (as was noted above) of James Mackay and H.A.H. Monro. In their report the pair summed up the position of the parties to appear before them as ‘Honana Maioha *versus* the Ngatikoata (lately styled the Tainui) Tribe; the Ngatitahinga Tribe *versus* the Tainui Tribe.’¹⁴³³

Whether they liked it or not Tainui were thus essentially placed in the position of defendants. In this respect it has to be said that, with much of the case revolving around what was said and agreed in 1866, the make up of the commission itself was extraordinary. Mackay and Monro might have been invaluable as witnesses but as commissioners were clearly inappropriate appointments.

It quickly became apparent that the commissioners also had little time for Tainui. They claimed that ‘the Tainui Tribe did not actually lose more than 1,000 acres by confiscation’, compared with 60,000 acres taken from Ngati Tahinga. By contrast, they pointed to evidence raised during the Compensation Court hearing that out of 32 adult male members of Tainui, 20 had remained loyal during the war and another 12 had taken part on the ‘rebel’ side.¹⁴³⁴ That was consistent with one of the grievances raised, namely that in the 1894 partition ‘people who went to fight against the Queen received (or were awarded) larger interests [on the subdivision or allocation of relative interests] than those who remained (loyal) to look after the lands derived from our ancestors.’¹⁴³⁵

Honana Maioha’s claim to Te Akau was based on a long and complex history, none of which was at all apparent at the original Compensation Court hearing, with its overriding focus on rooting out ‘rebels’ from titles. The commissioners described it as ‘a question of *mana* (suzerainty) and old Maori custom affecting a semi-conquered

¹⁴³³ AJHR, 1904, G-1, p.4.

¹⁴³⁴ *ibid.*, p.5.

¹⁴³⁵ *ibid.*, p.4 Interpolation in original.

tribe', and an issue which they approached with 'considerable diffidence', recalling a statement from Fenton as to how the then Surveyor General Charles Ligar had been 'nearly shot about it in 1852.'¹⁴³⁶ Summarising the evidence they had received, the commissioners stated that Ngati Tahinga had originally owned the entire Te Akau block but when an inadequate feast was given for members of Ngati Koata at Waiwhara, at the south end of the block, prompting the chief Riki Korongata to offer the land in satisfaction for the slight. Thus, according to the commissioners:

...Ngatikoata acquired a right to a portion of Te Akau Block. Afterwards, the Ngatitahinga killed Whare and Te Paue, of Waikato, and fighting ensued, in which Riki Korongata was killed. After this, Ngatikoata (Tainui) killed a Waikato woman named Wiri. In consequence, a fight took place between Waikato and Ngatikoata at Huripopo. The Ngatikoata were defeated, Huia and others of their chiefs being killed. Ngatikoata then fled to Kawhia, and joined Te Rauparaha and the Ngatitoa Tribe. In 1817 they were again attacked by the Waikato Tribes, and Te Rauparaha, with the people of Ngatitoa and Ngatikoata, occupied the Arawi and Whenuapo Pas, south of Kawhia. Te Wherowhero (afterwards known as King Potatau) sent some of his Waikato chiefs to induce the Ngatikoata to leave the pas before the attack, and come to Waikato. One portion did so, but about one-half elected to remain with Te Rauparaha. The Arawi Pa was assaulted and taken by the Waikato Tribes. Te Rauparaha, with the survivors of the Ngatitoa and Ngatikoata Tribes, then proceeded to the southern part of this Island, where they acquired lands by conquest on both sides of Cook Strait. The portion of the Ngatikoata who were led away by the Waikato chiefs went to Matakitaiki, near Alexandra, at Waipa, Waikato, where they remained until Hongi and his people of Ngapuhi in 1822, assaulted the Matakitaiki Pa, and slaughtered hundreds of its defenders, among whom were several of the Ngatikoata Tribe. On the withdrawal of Te Rauparaha, the Ngatitahinga Tribe went to Kaipara, from which place they were brought back by some of the Waikato chiefs. The Ngatimahanga Tribe, under the warrior chief Wiremu Neera Te Awaitaia, occupied the lands on the south side of Raglan Harbour, extending to the Aotea Block. Te Wherowhero

¹⁴³⁶ *ibid.*, p.5.

(Potatau) and some of his tribe Ngatimahuta took possession of Kawhia, and Paratene Maioha (father of Honana Maioha) and others of his people of Ngatimahuta occupied Horea, on the north side of Raglan Harbour. Riki, the father of Te Wetini Mahikai, and Kiwi Huatahi were allowed to live on land in the neighbourhood of Horea. Hami Kereopa, of Tainui, in his evidence before the Commissioners, said “Riki and Kiwi Huatahi were spared by the Waikato because of their connection with Waikato and Ngatitoa. Had it not been so, they would have been killed. If they had been killed, Waikato would have taken possession of the land”...¹⁴³⁷

The point of quoting this lengthy account of the traditional history of Te Akau is not to endorse it as necessarily a correct rendition of events, since different groups would no doubt have their own interpretation of these. Rather, it again serves to remind how little of this complex history was brought out in the Compensation Court. In theory, it ought to have operated as a sort of Native Land Court plus, deciding customary entitlements as a prelude to awarding compensation. In practice, however, it appears to have been too fixated with finding ‘rebels’ to do the former job properly (though there were, of course, obvious limitations on its ability to do this, including the absence of many customary owners deemed ‘rebels’ and the coercive context in which hearings took place).

The commissioners added that the situation in 1840 was that Honana Maioha and a few of his Ngati Mahuta relations were living in the neighbourhood of Horea, along with some Ngati Koata (Tainui). According to Honana Maioha, ‘the Tainui were there in the capacity of vassals to Ngatimahuta. The Tainui on the other hand, assert that they were living there in their own right, and as the owners of the land.’¹⁴³⁸ Disputes between the parties continued to be waged in the post-1840 era, prompting the intervention of Crown officials. In particular, Ligar made a payment to Ngati Mahuta in 1849 which Maioha declared was merely intended ‘to stop the fighting’, while Tainui argued that it was a purchase by the Crown of Ngati Mahuta interests. Both the Te Akau Commission and Leanne Boulton’s more recent research suggest that the

¹⁴³⁷ *ibid.*, pp.5-6.

¹⁴³⁸ *ibid.*, p.6.

Crown did not claim a valid purchase on the basis of this payment.¹⁴³⁹ That is, of course, not quite the same thing as assuming the payment was not intended or perceived as extinguishing Ngati Mahuta interests in the lands. If there were multiple customary owners to an area of land then purchasing the rights of one party would not have been sufficient to convey that land to the Crown. That would have required the extinguishment of all remaining interests. This is not to argue either way in terms of the payment constituting a valid purchase of Ngati Mahuta interests. It is merely to note that such a transaction was not necessarily incompatible with the block remaining in Maori ownership.

Maioha, according to the commissioners, freely admitted that he had left the area in the wake of Ligar's payment, though he claimed that he had 'left representatives there in the shape of vassals.'¹⁴⁴⁰ Mackay and Monro further stated that:

The occupation by some of the Tainui Tribe of a portion of the southern end of Te Akau Block is not disputed; but it is an established fact that the majority of the people of that tribe reside on and cultivate lands to the southward of Raglan Harbour. After the fighting, Wiremu Neera Te Awataia [sic] fixed a boundary between his people of the Ngatimahanga Tribe and the Tainui at Opouturu Creek, in the Raglan district. The same chief also subsequently sold to the Government large areas of land in that neighbourhood.¹⁴⁴¹

One Ngati Tahinga witness, Para Haimona, went further than this, declaring that 'the whole of Te Akau belonged to Ngatitahinga, but it was confiscated on account of the Tainui having gone into rebellion. Consequently we lost our lands through the sins of others. The Tainui had sold their lands to the Government before the war. Their lands were south of Whaingaroa (Raglan Harbour).'¹⁴⁴²

Relying on what today might be viewed by some as a simplistic and outmoded view of customary rights, the commissioners concluded that in the 'period of unrest and warfare...immediately after the commencement of the nineteenth century, the

¹⁴³⁹ *ibid.*; Boulton, 'Hapu and Iwi Land Transactions with the Crown', p.345.

¹⁴⁴⁰ AJHR, 1904, G-1, p.6.

¹⁴⁴¹ *ibid.*

¹⁴⁴² *ibid.*, p.7.

Ngatitahinga and Ngatikoata Tribes seem to have been worsted in fighting with the more numerous and powerful tribes of Waikato.¹⁴⁴³ They concluded that a portion of Ngati Koata had come under the 'lordship' of Ngati Mahanga, and asked:

...if the Ngatikoata, on the south side of the Raglan Harbour, had become the vassals of Wiremu Neera te Awaitaia and the Ngatimahanga Tribe, how could a smaller division of them, occupying land on the northern side of Raglan Harbour, not a mile distant, be other than the vassals of Paratene Maioha and the Ngatimahuta Tribe?¹⁴⁴⁴

Based on this view of things, the commissioners recommended changes to the respective allocations in favour of Honana Maioha (increased from 600 to 1485 acres) and Ngati Tahinga (73,703 acres, up from 61,608 acres) at the expense of the Tainui tribe.¹⁴⁴⁵

While the Royal Commission clearly provided the opportunity for a more comprehensive consideration of customary rights in the lands than had been the case before the Compensation Court in 1866, the choice of commissioners and their obviously Native Land Court-influenced emphasis on conquest and overlordship as primary determinants of ownership remain open to question.

6.8 Raupatu and Compensation

Claims in respect of what would later become the Central Waikato confiscation district had meanwhile been received by Fenton by early March 1865, even though there had been no legal steps taken to proclaim the land as confiscated. Despite this, Fenton informed Native Minister Walter Mantell that:

The Natives (and in point of fact the bulk of the Europeans) understand that proclamation [of 17 December 1864] as Confiscating the land described

¹⁴⁴³ *ibid.*, p.8.

¹⁴⁴⁴ *ibid.*

¹⁴⁴⁵ AJHR, 1904, G-1, *ibid.*, pp.4-10.

therein and the Waikato loyal Natives seem so to have understood it, and have made up their minds to accept it, and have sent in their claims.

It has not appeared to me politic to return these claims and tell the Claimants that I had no jurisdiction as the land was not yet confiscated, the proclamation of December having no legal operation, as such a course would again unsettle the Native mind and reopen the question.¹⁴⁴⁶

Fenton went on to urge that the entire area subject to the December 1864 notice should be proclaimed under the Settlements Act in order to give 'legal validity' to the taking, which was more or less the effect of the September 1865 proclamation in respect of Central Waikato. That proclamation had been driven in part by Native Minister J.E. FitzGerald's belief that a blanket taking of this nature was necessary to convince the Waikato tribes that the confiscation was irreversible. Days before publication of the notice, FitzGerald sent a confidential letter to Daniel Pollen, the Agent for the General Government in Auckland, advising him of the government's intentions and the rationale behind the steps to be taken. The Native Minister wrote that:

The Government has taken into its most anxious consideration the present state of the Waikato. It appears that the Natives are gradually returning to that district and settling down upon the lands, and that in a state of great poverty, requiring both food and seed. This unauthorised and irregular reoccupation of the country which has been conquered is a matter of great anxiety and is incompatible with the settlement of the country in the manner proposed by the policy of the last two years. The Government feel that a rapid and final settlement of the Waikato country ought to be made. They have therefore advised His Excellency to issue proclamations confiscating the whole of the territory previously brought under the operation of the New Zealand Settlements Act. They have taken this step because in the conflict of claims

¹⁴⁴⁶ Fenton to Native Minister, 4 March 1865, Maori Land Court, Whangarei, Compensation Court Correspondence, RDB, vol.111, pp.42995-42996.

and titles to Land in that District, a speedy and satisfactory settlement of the country is impossible.¹⁴⁴⁷

FitzGerald claimed that having taken this decision to confiscate the whole of the area previously brought under the Settlements Act, the government had as its first object 'to settle down on the Land all the former proprietors who will come in, accept Grants of land under the Crown, and consent to live in peace under the protection of the Law.'¹⁴⁴⁸ For these purposes Pollen was to be appointed as a special commissioner charged with overseeing such a settlement. He was, though, reminded that:

We wish as far as possible to leave the Natives who have come back and are quietly settled down on the Land at peace, only insisting that they shall take Crown Grants for the land they consent to occupy and shall clearly understand that they are living under the laws of the Queen. In marking out blocks of land for the Natives, it is of course desirable not to abandon to them more than is necessary for their wants, not only because to have them in possession of large tracts of country which they cannot use is no kindness, but because by the speedy sale and settlement of the remainder their own lands will become more valuable, and the settlement and occupation of the country will be effected.¹⁴⁴⁹

It apparently did not occur to FitzGerald to consider how the Waikato tribes would benefit from the rising value of lands if they were to receive as reserves no more than was strictly necessary for their own requirements. Clearly, he had other concerns, informing the Agent for the General Government that:

...the Government feel that the matter of first importance in the permanent pacification of the country is to induce the Natives finally to accept the fact that the land is confiscated and to consent to hold what is now returned to them under Crown Grant. To attain this end the Government would sanction a far more liberal disposition of land to the Natives than would on other considerations be desirable. The one great thing which they desire to see done

¹⁴⁴⁷ FitzGerald to Daniel Pollen, 3 September 1865, AGG-A 1 (box 1), Archives NZ (Akl).

¹⁴⁴⁸ *ibid.*

¹⁴⁴⁹ *ibid.*

is to induce the Natives to accept their position as final and irrecoverable, and if by liberal concessions to them of blocks of land under Crown Grant you can bring about this result, the main object of the confiscation will have been attained.¹⁴⁵⁰

FitzGerald's time in office as Native Minister was fleeting, however, as a result of which his definition of 'liberal concessions' was never tested in practice.¹⁴⁵¹ Prior to his elevation to the office of Native Minister he had been an outspoken critic of confiscation, condemning the New Zealand Settlements Act during its passage through Parliament as an 'enormous crime'. Such was his philo-Maori reputation, that news of FitzGerald's appointment as Native Minister was greeted by stunned silence in Parliament.¹⁴⁵² But critics who had feared, amongst other things, a sudden surrendering up of the confiscated lands need not have worried. On the contrary, FitzGerald, by his September 1865 proclamation, was responsible for the single greatest act of confiscation undertaken in New Zealand. Rather than a generous return of confiscated lands, the Compensation Court procedures set out in the New Zealand Settlements Act and its amendments were followed.

FitzGerald, though, had also authored the Outlying Districts Police Act, and it appears that he may also have contemplated its application in the Waikato district, or at least the adoption of similar principles, while also envisaging that Maori might be speedily settled on blocks previously set apart for these purposes. Informal Maori occupation of other areas had, however, complicated these plans. He informed Pollen that:

It appears from letters before the Government that the Whangape block has been set apart for the returned Natives, but that for some reason they do not like to occupy it. It seems that considerable numbers are settled down about Taupari [sic]. My feeling is that in such a case as this if you can get them finally to accept the position which they have fixed on, it is most undesirable to move them at all. What is wanted is peace and speedy settlement.¹⁴⁵³

¹⁴⁵⁰ *ibid.*

¹⁴⁵¹ FitzGerald was Native Minister in the Weld Ministry from 12 August 1865 to 16 October 1865.

¹⁴⁵² Edmund Bohan, *'Blest Madman': FitzGerald of Canterbury*, Christchurch: Canterbury University Press, 1988, p.267.

¹⁴⁵³ FitzGerald to Daniel Pollen, 3 September 1865, AGG-A 1 (box 1), Archives NZ (Akl).

He went on to note that:

...the Government has determined to set aside considerable blocks of land in the several districts included in these confiscations and to put them into trust, so that they may be let on lease for the purpose of providing an immediate revenue for the payment of a rural police force, for maintaining the peace of the District...The remainder of the lands after the settlement of the Natives and the reservation of these Police Endowment blocks will be thrown into the market at convenient times, unless the Province should desire to make some arrangement for taking them from the General Government.¹⁴⁵⁴

Pollen was further instructed that it was ‘most desirable that communications should be at once made to all the Waikato Natives, explaining to them the object and policy of the Government in making these confiscations.’ Evidently referring to the proclamation of 17 December 1864, FitzGerald added that:

The Government is not under any...apprehension that fresh irritation will be occasioned because they are informed that the Natives already regard the lands included in the first proclamation as confiscated. They (the Natives) do not distinguish between bringing the land under the operation of the Act and taking it for settlement. But lest there should be any such feeling you will take every possible means to inform them that the object of the Government is to get rid of all difficulty and dispute about claims and titles and to settle them down on land which they will hold on Crown Grants for ever.¹⁴⁵⁵

FitzGerald must surely have been seriously deluded if he thought that confirming the largest land-grab of all would bring about a state of peace. It had hardly worked a treat in the case of his own ancestral homeland of Ireland. But the sordid business of confiscation had a way of corrupting or at least polluting all those who became involved in it, and FitzGerald, it would seem, was no exception.

¹⁴⁵⁴ *ibid.*
¹⁴⁵⁵ *ibid.*

6.9 The Dispute between Fenton and Government Officials

In other respects the compensation process was also beginning to turn toxic. Fenton had likely only agreed to take on the role of Senior Judge of the Compensation Court in an effort to prevent the emergence of any rival centre of authority to his position as Chief Judge of the Native Land Court. As Alan Ward notes, the expectation at the time of his appointment to these two offices was that the combined workload would not be great – it was even assumed that Fenton would be able to continue in private practice.¹⁴⁵⁶ But as the magnitude of the work confronting the Compensation Court alone became apparent, Fenton appears to have increasingly resented his involvement, while also regularly finding himself in dispute with Crown officials evidently prone to see the Court as little more than another arm of government.

While Fenton was likely to strike out at almost anyone, it appears that there was a particular personal antipathy between him and James Mackay. The origins of that conflict are unclear, but (as we will see later in the chapter) by 1867 Fenton was denouncing Mackay's role in the Waikato hearings. Earlier than this, in February 1866, Frederick Whitaker, with whom Fenton also had a strained relation at times, used his role as Agent for the General Government at Auckland to upbraid the Senior Judge for interfering in matters more properly the province of others. Fenton had asked, on behalf of the Compensation Court, what provision was to be made for the survey of the boundaries of lands set apart for loyal Maori within the Central Waikato district confiscated by order-in-council dated 5 September 1865. Whitaker, in response, declared that:

It appears to me, and I beg most respectfully to submit to the Court, that it is exceeding its functions. I do not find that it possesses any power to run arbitrary lines and make divisions of land formerly the property of loyal and rebel natives jointly, nor can the Court as I understand the order in Council award Land which may be necessary for the security of the Country. The declaration at the end of the order in Council, that no land of any loyal inhabitant will be taken, except so much as may be absolutely necessary for the security of the country, and that in such cases compensation will be given

¹⁴⁵⁶ Ward, *Show of Justice*, p.180.

appears to me to convey a promise on the part of the Government, but not to make a law to be interpreted by the Compensation Court.¹⁴⁵⁷

Whitaker further asserted that the declaration applied solely to lands owned outright by 'loyalists' and not to that which was the joint property of 'rebels', for which no provision had been made, and again noted that determination of the positions deemed necessary for the security of the country was not a matter that rested with the Compensation Court. The government did not wish to deprive 'loyal' Maori of any lands, but in cases where these were owned jointly with 'rebels', the matter was one to be adjusted by way of negotiation and if this failed further power would need to be obtained from the General Assembly before the Compensation Court would have the power to deal judicially with such lands. Whitaker advised that the government could not therefore acquiesce in any proceedings of the Court contrary to this understanding nor make arrangements for surveys.¹⁴⁵⁸

The battle of wills between Fenton and officials was given further vent in periodic disputes over expenses. These included the Senior Judge's response to a March 1866 directive limiting travelling expenses to one shilling per mile. Days before a scheduled Compensation Court sitting at Orakei in April 1866 Fenton wrote to Whitaker to complain that such a rate was insufficient for him and his fellow judges to secure conveyance to the venue for themselves and their necessary books and papers.¹⁴⁵⁹ When Whitaker pointed out that he was unable to overrule the decision of the Native Minister on this issue,¹⁴⁶⁰ Fenton took matters into his own hands, adjourning the hearing from Orakei to Auckland, and writing to the Native Minister that he had been 'compelled' to take this step 'in order to avoid a daily loss of money'. At the same time, he added that this was a 'step which we deeply regretted being obliged to take, for about three hundred people had assembled and we were reluctant to put them to the trouble of travelling every day to Auckland and to the

¹⁴⁵⁷ Whitaker to Fenton, 26 February 1866, Compensation Court: Claims and Correspondence: Correspondence of James Mackay Jnr., DOSLI Hamilton 5/37, RDB, vol.106, pp.41234-41235

¹⁴⁵⁸ *ibid.*, p.41237.

¹⁴⁵⁹ Fenton to Whitaker, 13 April 1866, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/31, RDB, vol.107, pp.41011-41012.

¹⁴⁶⁰ Whitaker to Fenton, 15 April 1866, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/31, RDB, vol.107, pp.41009-41010.

expense of maintaining themselves there, besides bringing them in the neighborhood of the public houses'.¹⁴⁶¹

A group of more than 300 Maori were thus used more or less as pawns in order for Fenton and his fellow judges to score a point regarding their expenses. Similar tactics continued to be employed at later hearings. Maning, Mackay and Rogan all refused to attend Compensation Court hearings in New Plymouth, citing various reasons including inadequate expenses and the press of other business.

In June 1866 the Native Under Secretary wrote to Fenton in respect of one of his many threats or attempts to resign as a member of the Compensation Court. Fenton was informed that the government understood his reasons for tendering his resignation to be:

1st The reduction made by the Native Minister in the rate of travelling allowance

2nd The understanding with the Government that the appointment was but for a limited period, and until the Native Lands Court should permit sufficient occupation for the Chief Judge.¹⁴⁶²

On the first point the government had already relented, accepting the word of Fenton that the bench of the Compensation Court had accepted office on the basis of a 15 shillings per day travelling allowance when away from home, even though there appeared to be no written confirmation of such an undertaking. Native Under Secretary Rolleston added that:

The second question however is of a more important character – you state in your letter no.144 as follows – “In December 1864 I accepted the office of Chief Judge of the Native Land Court but after a few weeks consideration, and experiment, I became aware that until the Act was amended there would not

¹⁴⁶¹ Fenton to Native Minister, 23 April 1866, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/31, RDB, vol.107, pp.41008, 41014.

¹⁴⁶² Rolleston to Fenton, 14 June 1866, MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, pp.38831-38832.

be enough work to occupy my whole time. In January 1865 the Government were hesitating as to whom they should appoint as Senior Judge of the Compensation Court which it had become necessary to set in operation and on Mr. Sewell and Mr. Mantell asking me if I would act until the Native Land Act should become so far developed as to occupy all my time I at once acceded to their request without asking for any pay and Messrs Rogan and Mackay were appointed with me.

At that time the larger confiscations which have since taken place were not contemplated and I did not suppose that my office in the Compensation Court would be required after the then next session of the Assembly at the farthest when the Native Land Act would be amended. I have since continued to hold the office although the duties of the Native Land Court have largely increased and for months past have afforded abundant occupation for me. Indeed some things such as the Rules and Regulations which I ought to have made have been unavoidably neglected. After a sitting of the Compensation Court I am compelled to occupy myself for many days at my own house until very late in the evenings to get through the arrears of administrative work that have accumulated.”¹⁴⁶³

As most historians who have studied this question closely would acknowledge, Fenton’s statement with respect to his acceptance of the office of Chief Judge in December 1864 (prior to his formal appointment in January 1865), and his determination from the outset that the legislation under which the Native Land Court sat required substantial change, is very significant in terms of the historiography of that institution, even if not evidently noted in the main research reports dedicated to the topic. But more importantly, in terms of the present report, Fenton’s comments also provide an important insight into his assumption regarding the Compensation Court. He had, Fenton claimed, accepted office prior to any wholesale confiscations being proclaimed (if we ignore the December 1864 statement with respect to Waikato, which as we noted much earlier, was ambiguous in meaning and unlikely to constitute a legal act of confiscation) and on the assumption that the workload of the

¹⁴⁶³ *ibid.*, pp.38833-38835.

Compensation Court would be extremely light. That soon proved to be far from the case, and Fenton's temporary appointment showed no signs of being the short-lived and undemanding one he might have imagined at the outset.

Still harbouring grievances, whether real or imagined, over expenses and other unspecified issues, Fenton, having outlined once again his workload, added that:

I should still have striven to have discharge[d] the combined duties until the compensation Court was no longer needed but the recent communications of the Honourable the Native Minister one of which ignored the arrangement (and which you still partially ignore) made by the Government with me when I accepted office of Judge of the Compensation Court and the effect of which would be to put me to considerable expense in discharging its unremunerated labours and the other depriving me of all assistance except that of Mr. Monro combined with other circumstances which have been very unsatisfactory to me have forced me to the conclusion that my services in the Compensation Court are lightly esteemed by the Government and in fact are valued as what I receive for them.

Under these circumstances I am naturally anxious to be relieved from my office and shall be glad to hear before the 28th that my place is filled up and if the Government cannot make its arrangements before that time I hope that they will remember that I have now acted for a much longer period than I ever contemplated and I beg that my resignation may be accepted as soon as they can make it convenient.¹⁴⁶⁴

Calling Fenton's bluff, the government offered to lay his resignation before the governor should he continue to desire this, prompting this to be swiftly withdrawn.¹⁴⁶⁵

The government's patience with Fenton had perhaps already been partly exhausted as a result of an earlier dispute over the length of notice given of sittings of the

¹⁴⁶⁴ *ibid.*, pp.38836-38838l.

¹⁴⁶⁵ See Fenton's draft response at p.38831; Rolleston to Fenton, 31 July 1866, MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, pp.38829-38830.

Compensation Court. It would seem that the issue had been raised previously, but by February 1866, when officials received barely a fortnight's warning of a sitting scheduled for Mangere later that month, matters reached a head. Whitaker, the government's Auckland agent, was instructed by the Colonial Secretary to inform Fenton with reference to the notice, that:

...from the short notices given as to the Sittings of the Compensation Court notwithstanding repeated requests that due notice should be given in order that steps might be taken to protect the public interest the Government is forced to the conclusion that he does not desire to admit of such protection being afforded. In future a duplicate notice of all Sittings of the Court presided over by Mr. Fenton and his brother Judges is to be sent to the Government Agent and Superintendent of the Province.¹⁴⁶⁶

Fenton demanded to know what prior letters had been sent to him requesting longer advance notice of hearings, prompting officials to discover that, although many internal minutes had been penned on the subject, it was not until February 1866 that the Compensation Court had officially been written to on the issue.¹⁴⁶⁷ Typically, Fenton took offence, writing to the Colonial Secretary Edward Stafford that:

...I think I ought to acquaint you with my great disappointment in finding that you have not thought fit to express any regret for such a grievous suspicion as you gave expression to in that minute. Permit me to remind you of the nature of the conduct which you said the Government was "almost forced" to impute to me – Malversation in a judicial office is an offence of a character shocking to an honorable mind punishable also in our Criminal Courts with fine and imprisonment.¹⁴⁶⁸

¹⁴⁶⁶ Fenton to Colonial Secretary, 9 April 1866, MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, p.38985.

¹⁴⁶⁷ William Gisborne, Colonial Under Secretary, to Fenton, 26 April 1866, MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, pp.38981-38982.

¹⁴⁶⁸ Fenton to Colonial Secretary, 3 May 1866, MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, p.38977.

He requested that the minute be officially ‘expunged’ from the official record and defended the length of notice given, which was, he claimed, ‘half as long again as is required by the rules of the Supreme Court’.¹⁴⁶⁹

In a lengthy reply from the Colonial Under Secretary, Fenton was ‘fully acquitted’ of any intention to embarrass the government but at the same time reminded that ‘the practice with respect to these notices has been, since the establishment of the Compensation Court, very unsatisfactory.’¹⁴⁷⁰ The Supreme Court, it was further pointed out, met in accordance with a fixed, and widely known, schedule, and often dealt with civil cases in which the Crown had no interest, whereas the Compensation Court sat ‘at most irregular intervals, the duration of which, measured sometimes by months, and sometimes by days, has been left entirely to your discretion’.¹⁴⁷¹ Taking the point further, the Colonial Under Secretary declared that:

Any comparison, moreover, between the procedure and duties of the Supreme Court and those of the Compensation Court would, on other grounds, be quite fallacious, as there is not the slightest analogy between the powers and general action of the two Courts.

The function of the Compensation Court is to assess Claims to Land taken for public purposes, and, as the Government has to satisfy awards made with respect to these claims, it is necessary that ample notice should be given to the Government in order to enable it to combat unreasonable and unfounded claims. If this notice be not given the result is both embarrassing to the Government and most prejudicial to public interests.¹⁴⁷²

Despite this, official records indicated that during the past year there had been no regular notice given to the government at Wellington concerning sittings of the Compensation Court, even though with the passage of the New Zealand Settlements Amendment and Continuance Act in 1865 it was more essential than ever that

¹⁴⁶⁹ *ibid.*, p.38978.

¹⁴⁷⁰ Colonial Under Secretary to Fenton, 23 May 1866, MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, p.38968.

¹⁴⁷¹ *ibid.*, p.38969.

¹⁴⁷² *ibid.*, pp.38969-38971.

adequate notice be provided 'inasmuch as in many cases important action might probably devolve on the Colonial Secretary under that Act with respect to the abandonment of land, and...the payment of compensation in land'.¹⁴⁷³ On the contrary, however, the government found:

...that in the case of the Sittings of the Court held this year, a very restricted notice was given. In the case of Mangere your letter dated the 24th January, and received here on the 5th February, notified a Sitting to be held on the 12th of that month. In the case of Lower Waikato your letter was dated the 1st and was received on the 9th of February, while the Court was to sit on the 21st of that month. In neither case was there scarcely more than time to write to the Government Agent at Auckland by return of post, and obviously none for that deliberation and inquiry on which the instructions to him in such important matters should be based.¹⁴⁷⁴

But if the government found the notice provided inadequate then one can only imagine how potential claimants felt about the issue. And indeed, the relatively large number of claimants for compensation who were struck out of awards for failing to appear at Compensation Court sittings suggest not only that it was vital that those interested in receiving compensation should attend the hearings in person, but also that, for whatever reason, many found it impossible to do so. It would seem a reasonable assumption to make that at least some of those non-attendances were likely to have been linked with inadequate notice of the hearings. But while the government's primary concern was to protect its interests, and Fenton remained fixated with defending his personal honour and integrity, there was scarcely any attention at all devoted to this aspect of the situation. If ever there was a time when there was a need for a Protector of Aborigines to be in place to defend and protect Maori interests then the 1860s was it. But that office had long since been abolished, and Maori were more or less on their own, save for the occasional well-meaning if largely ineffectual interventions of figures such as Sir William Martin.

¹⁴⁷³ *ibid.*, pp.38972-38973.

¹⁴⁷⁴ *ibid.*, pp.38973-38974.

Fenton, meanwhile, continued to do battle with Crown officials. In November 1866 he tendered his resignation once more, explaining that this had been prompted by ‘pecuniary loss in consequence of attending to the judicial duties of the office which I hold and have now held for two years without remuneration of Senior Judge of the Compensation Court.’¹⁴⁷⁵ De facto Native Minister J.C. Richmond minuted in response that ‘I hope you will reconsider this letter. Assuming the pecuniary loss referred to, to be the damages in the case *Fletcher v. Fenton*. I cannot help thinking that there was *laches* on your part and that the result was not fairly attributable to official trammels [?].’¹⁴⁷⁶ Fenton agreed to withdraw his resignation after having read Richmond’s minute.¹⁴⁷⁷ Somewhat bizarrely, *Fletcher v Fenton* was a civil case heard in the Resident Magistrate’s Court a few months earlier, in which Fenton had been ordered to pay £15 in damages for shooting a dog belonging to Fletcher on the ordnance reserve. The plaintiff had testified at the time that ‘Mr. Fenton said he shot the dog because he had a valuable bitch in heat, and my dog was coming after her.’¹⁴⁷⁸

Fenton’s relations with the government hardly improved much after 1866. Indeed, periodic disputes over fairly trivial expense claims were matched by another bigger (and again rather odd) clash. Seemingly determined to make a point, Fenton had a form letter printed which he used to regularly advise the government when accounts were outstanding.¹⁴⁷⁹ At a time when the vast bulk of government correspondence remained handwritten this was more than a little strange, and officials were not slow to take offence. One minute in response declared that ‘Mr. Fenton seems to delight in finding fault with the Govt. & apparently omits no opportunity of evincing his contempt for it.’¹⁴⁸⁰ Officials angrily talked of refusing to accept Fenton’s latest resignation as Senior Judge of the Compensation Court in favour of a more

¹⁴⁷⁵ Fenton to Native Minister, 8 November 1866, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/32, RDB, vol.107, p.41044.

¹⁴⁷⁶ Richmond, minute, 10 November 1866, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/32, RDB, vol.107, p.41044. *Laches* is a doctrine concerned with delay in performing a legal duty or obligation.

¹⁴⁷⁷ Richmond, minute, 13 December 1866, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/32, RDB, vol.107, p.41044.

¹⁴⁷⁸ *Daily Southern Cross*, 6 July 1866.

¹⁴⁷⁹ For an example see Fenton to Native Minister, 29 March 1867, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/33, RDB, vol.107, p.41118.

¹⁴⁸⁰ [Author unknown], Minute (4 April 1867) on Fenton to Native Minister, 29 March 1867, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/33, RDB, vol.107, p.41118.

humiliating outright dismissal, along with more modest measures such as returning the letters and refusing to pay the printing costs involved,¹⁴⁸¹ although it appears that calm was eventually restored, at least for a time. But it was in the context of the events described above that the Compensation Court's hearings into the Central Waikato and Military Settlements blocks got underway in the early months of 1867.

6.10 The 1867 Compensation Court sittings in respect of Central Waikato and the Military Settlements Blocks

Although the earliest sittings of the Compensation Court had been arranged with great haste, it was not until January 1867 that the Court sat at Ngaruawahia for the purpose of hearing claims in respect of the Central Waikato, Kupa Kupa, Rangiriri, Mangawhara and Military Settlements blocks. If nothing else had come out of the long-running dispute between Fenton and officials, the former had, it would appear, at least relented somewhat on the question of providing adequate notice of hearing. Notification for the hearing scheduled to open on 7 January 1867 was dated 1 October 1866 and published in the *Auckland Provincial Government Gazette* on 6 October.¹⁴⁸² Unlike most of the other Waikato hearings (but in common with Compensation Court sittings in other parts of the country), notice of the sitting was also included in the *New Zealand Gazette*, this time on the 15th of the same month.¹⁴⁸³

One report from a few days prior to the hearing described Ngaruawahia as being in a state of 'some little excitement, in consequence of a large gathering of the natives to discuss the merits of land compensation.'¹⁴⁸⁴ According to a report from the *Daily Southern Cross* correspondent present at the hearing:

Our quiet township has been unusually enlivened by the presence of between four and five hundred natives, from all parts of the district, to attend the sitting of the Compensation Court, which was advertised to sit on the 7th instant, but,

¹⁴⁸¹ William Rolleston, Minute (4 April 1867) on Fenton to Native Minister, 29 March 1867, Compensation Court: Claims and Correspondence: Papers and Correspondence of Chief Judge Fenton, DOSLI Hamilton 5/33, RDB, vol.107, p.41119.

¹⁴⁸² *Auckland Provincial Government Gazette*, no.31, 6 October 1866, p.283.

¹⁴⁸³ *New Zealand Gazette*, no.55, 15 October 1866, pp.390-391.

¹⁴⁸⁴ *New Zealand Herald*, 9 January 1867 (report dated 4 January 1867).

in consequence of the non-arrival of the senior Judge, F.D. Fenton, did not commence its work until the morning of the 9th – his Honor (the senior Judge), and a rather formidable suite of clerks, having arrived on the previous evening by the Government steamer ‘Rangiriri.’ Mr Mackay, Civil Commissioner, acting as agent for the Government, had arrived a week previous without a suite, and had been actively engaged in attending the great meeting at Taupiri on the 3rd, visiting Raglan, and getting up evidence for the Court: and...the Compensation Court was opened by the senior Judge in the large building here, known as the Colonial Hospital. One of the large rooms was fitted up with tables, seats, and stools borrowed from one place or another; the tables were covered with official-looking papers and ornaments; and near them were seated a perfect phalanx of the “noble army of martyrs,” alias Government officials; and the borrowed seats and stools were filled by a numerous body of natives, all eagerly desirous of getting hold of the much-to-be-desired compensation.¹⁴⁸⁵

Matters hardly got off to the smoothest of starts, however, with Fenton suffering from gout and forced to return to Auckland after two days, delaying the resumption of the hearings until 17 January.¹⁴⁸⁶ The death of prominent Ngati Tipa rangatira Waata Kukutai at Port Waikato on 8 January also brought the initial day’s hearing to a close, and doubtless drew many Maori away to the tangi.¹⁴⁸⁷

Despite the presence of a supposedly ‘formidable suite of clerks’, nothing resembling official minutes of the January 1867 hearings at Ngaruawahia appear in the Compensation Court records available in the Raupatu Document Bank. We are therefore left to reconstruct the hearing as best as possible using some occasionally quite detailed, but incomplete, newspaper reports. Commenting on the adjournment so soon after the opening, the *Southern Cross* correspondent noted that:

These continual adjournments are very serious to the natives of this district, who have to provide food for those coming from a distance. If the Government

¹⁴⁸⁵ *Daily Southern Cross*, 16 January 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34326.

¹⁴⁸⁶ *Daily Southern Cross*, 23 January 1867.

¹⁴⁸⁷ *Daily Southern Cross*, 16 January 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34326.

do not step in and render some assistance, the crops of our native neighbours will have to be gathered before they come to maturity, in order to feed the people now present. And with the prospect of the investigation lasting a month or six weeks after the Court again meets, it is anything but a pleasant state of affairs to contemplate.¹⁴⁸⁸

As we will see below, later reports also suggested significant hardship resulting from such delays.¹⁴⁸⁹ Meanwhile, the Crown agents, James Mackay, and assistant (and long-time Waikato settler) Charles Marshall, were taking full advantage of the delay by 'endeavouring to settle as many of the claims as possible out of Court, and it is this alone which prevents a most serious dissatisfaction among the natives now waiting here.' While those out-of-court arrangements were subsequently taken before the Compensation Court for ratification, there is little to no indication from the available documentary sources as to the process by which they had been negotiated. In this respect, at least, claims decided in the Compensation Court were at least marginally more transparent.

When the Court opened at 10am on 9 January, Mackay proceeded to explain various changes to the northern and eastern boundaries of the Central Waikato block. He advised that the claims of the 'loyal' Maori at Thames had been arranged by him, and with no appearance from the named claimants from area when their names were called, they were marked off the list accordingly. Meanwhile, the rest of the day was taken up by claims from others such as Wiremu Te Wheoro who also claimed into the eastern area as a result of tribal connections with the Hauraki tribes. The Court was then adjourned at about 3pm, when news of Kukutai's death was received by telegram, and resumed at 10am on the following day.

An application had been made by Bishop Selwyn for a case in which he was interested to be heard first, and this took up the whole of the second day. Crown agent James Mackay admitted the right of the Reverend Heta Tarawhiti to lands at Rauwhitu, in common with other members of the Ngaungau tribe, but objected to his

¹⁴⁸⁸ *Daily Southern Cross*, 23 January 1867.

¹⁴⁸⁹ Crown agent James Mackay also reported that the adjournments were 'very unfortunate, as the Natives are short of food, and the Government will be compelled to supply some.' Mackay to Native Minister, 10 January 1867, AJHR, 1867, A-20, p.41.

claim for compensation on the basis that Tarawhiti had ‘committed offences within sub-sections 2 and 3 of section 5 of the New Zealand Settlements Act, 1863.’¹⁴⁹⁰ Selwyn then complained that if the Crown agent had intended to bring a charge of such a grave nature against Tarawhiti then he ought at least to have furnished him with the particulars, and a list of the witnesses to be brought against him. The Bishop had known nothing of the case until he heard that two Resident Magistrates had been employed to prosecute it and he had come up to give evidence in support of Tarawhiti. The case, he added, was a most serious one, entailing forfeiture of lands and loss of character, and no opportunity had been given for the accused to prepare his defence.¹⁴⁹¹ Mackay, though, pointed out that there was no requirement under the New Zealand Settlements Act for him to give any notice of allegations to be levelled against claimants for compensation, and this was confirmed by Fenton, who added that he had always objected to this law, which was ‘a very hard one’.

Mackay had a further victory when he successfully objected to a further intervention from Selwyn on the basis that the Bishop ought not to be allowed to appear as both counsel and witness for Tarawhiti. After various evidence was heard regarding Tarawhiti’s movements during the Waikato War, Mackay called for an adjournment in order to procure further evidence. Although Fenton agreed with Selwyn that the Crown had had ample time to prepare its case against Tarawhiti, the requested adjournment was nevertheless granted, but the Bishop’s own evidence was heard before the session closed. One report noted with respect to this case that:

The only claim of any general interest which has yet been investigated is that of Heta Tarawhiti, a recently-ordained native minister of the Church of England, now residing at the Rev. Mr. Ashwell’s mission station, who appears, from the evidence, to have abandoned the place before the fight at Rangiriri, and, in his ministerial capacity at least, to have aided and comforted the rebels, which no Christian can object to; though it seems strange that his wife and family should accompany him, as no damage appears to have been done to the house or the stock on it.¹⁴⁹²

¹⁴⁹⁰ *Daily Southern Cross*, 23 January 1867.

¹⁴⁹¹ *ibid.*

¹⁴⁹² *Daily Southern Cross*, 16 January 1867.

This report prompted a sharp rebuke from Benjamin Ashwell, who wrote in response that Heta Tarawhiti had left the station in order to accompany his heavily pregnant wife to Kirikiriroa (Hamilton). He queried the decision of government officers to level charges against Tarawhiti and claimed that both General Cameron and Commodore Wiseman had spoke of him in the highest terms.¹⁴⁹³ But the close questioning of witnesses that day on the part of Crown agent James Mackay was far from the end of the matter and the case was adjourned for a further hearing at Auckland scheduled for 10 March 1867. One report claimed that Fenton had issued an ‘interlocutory judgment’ before the adjournment,¹⁴⁹⁴ though a more detailed account of the day’s events makes it clear that, following a half-hour adjournment, Fenton had explained that:

...the Court will, to save both parties trouble, state a portion of its views in this case. This Court cannot allow it to go forth that a minister of religion is not at liberty at all times to visit the sick, the dying, and the afflicted, whether European or native, loyal or rebel. Even in the dark ages such visits for spiritual ministration were allowed, and on a much higher principle than that laid down in any earthly law. This Court therefore, without expressing its opinion as to the other part of the case, decides that the Rev. Heta Tarawhiti was quite right in visiting Te Wharepu when he was dying. A minister of religion is at all times at liberty to visit any one whether rebel or loyal, so long as he strictly confines himself to the duties of his office.¹⁴⁹⁵

Following this statement from the Senior Judge, Captain Clare of the 3rd Waikato Regiment was called upon by Mackay to give evidence that ‘certain lands confiscated, and within the block under investigation, had been taken up for military settlement, although not included in the block specially set apart, and known as the Military Settlement Block.’¹⁴⁹⁶ This evidence in respect of lands at Waikare and Rauwhitu was

¹⁴⁹³ *Daily Southern Cross*, 17 January 1867. For a letter to the editor in defence of Mackay’s actions see *Daily Southern Cross*, 26 January 1867.

¹⁴⁹⁴ *Daily Southern Cross*, 16 January 1867, in MA 24/26, Archives NZ, RDB, vol.89, pp.34326.

¹⁴⁹⁵ *Daily Southern Cross*, 23 January 1867. Pene Te Wharepu, it may be remembered, had been mortally wounded at Rangiriri and spent his remaining weeks alive in a desperate but ultimately fruitless effort to broker peace with the Crown.

¹⁴⁹⁶ *Daily Southern Cross*, 23 January 1867.

then repeated by Captain East of the 4th Waikato Regiment in respect of lands allotted to the regiment at Mangawhara, Rahui Pokeka and Waikare, the occupation of which was described as ‘absolutely necessary for the security of the country, as they guarded the great water approaches to the Waikato.’

It is difficult to see why the Crown agent would have deemed such evidence necessary other than as a means of satisfying the Compensation Court that the confiscation of these lands complied with the requirements of the New Zealand Settlements Act. That was presumably a response to already highlighted concerns regarding the extent to which the blanket confiscation proclamations complied with the terms of the legislation, though in the absence of official minutes explaining the reasons for the evidence or the Court’s response to it this is difficult to confirm.

Ngati Te Ata, Ngati Pou and Ngati Hape claims to Puketutu were then briefly dealt with by the Court before adjourning for a week.¹⁴⁹⁷ With Fenton’s abrupt and unscheduled departure for Auckland, and the apparent decision that his fellow Judge Colonel Lyon was incapable of continuing to hear the remaining cases alone, John Rogan was despatched to Ngaruawahia as quickly as possible, arriving in time for the Compensation Court to resume its sitting on 17 January 1867. Mackay, though, had been far from idle in the interim. As one report, penned a few days after the hearing had resumed, described things:

The excitement occasioned in our hitherto quiet town, by the presence of so large a number of Maoris, still continues; and, from the slow progress of the proceedings in the Compensation Court, is likely to continue some weeks longer.

Mr. Rogan, who arrived last Friday, per the ‘Waipa,’ to carry on the proceedings, necessarily, but unseasonably, interrupted by the illness of Mr. Fenton, re-opened the Compensation Court, in conjunction with Colonel Lyon, and confirmed the arrangements entered into by Mr. Mackay, for all the land from Maungatawhiri to Mangawhara.

¹⁴⁹⁷ *ibid.*

The claims for land further south, which present no difficulties, are still being settled by Mr. Mackay out of Court, who, contrary to the orthodox official hours of from 10 to 4, seldom ceases his labours till close upon midnight.

With the exception of one claim of 20,000 acres, of which 14,000 were allowed, the majority do not, on an average, receive more than one-tenth of the quantity claimed – even less, as I know of one for upwards of 700 acres, for which Mr. Mackay offered from 30 to 50 acres, which was accepted.

The Ngatimahuta tribe, Lower Waikato, withdrew all claims on receiving 1,365 acres; and the Ngatipou, Ngatitu, and Ngatihene, did the same for 2,950 acres.

That Mr. Mackay has done all in his power to save the Government from being victimised may be inferred from the fact that the Maoris, who are particularly apt in seizing on any prominent characteristic, have named him the “Land-robber.”¹⁴⁹⁸

The Crown agent’s new epithet was arguably an apt one considering unequivocal government promises to loyal Maori in the Waikato just a year before this that all of their lands would be exempted from confiscation. Now, the ‘land robber’ was pressuring groups to accept deals amounting to less than one-tenth of the area they claimed. The correspondent for the *Daily Southern Cross* may have issued the familiar charge that ‘loyalist’ claims were being exaggerated (‘William Barton claims the whole of Ngaruawahia, and a half-caste, of the name of Hughes, the whole of Kihikihi; in fact every place, likely to progress, seems to have had loyal owners’) but for ‘loyalists’ deprived of more than 90% of the land they had been solemnly promised by the Crown ‘land robber’ was perhaps a mild term.

¹⁴⁹⁸ *ibid.*

A further report purported to describe the process by which Mackay entered arrangements with the owners, but in fact only served to facetiously emphasise its argument that the claims were being exaggerated. According to this:

A claim for a large block of land is put in, and it then becomes the duty of Mr. Mackay, in which he is ably assisted by Mr. Marshall, to ascertain whether it is just. In doing this, he finds that the block, although claimed by one, originally belonged to a dozen. Of these, six may have gone into rebellion, and thus half the block is forfeited. Of the remaining six, all are dead save the claimant, who possibly may represent all the deceased, but it is equally possible that children or other relatives survive, and are entitled; and it is in ascertaining all these circumstances that Mr. Mackay's time is so much occupied; for the natives, although not as harmless as doves, are certainly as wise as serpents, and it is by no means uncommon for a Maori, knowing the absence of the legitimate owner with the King, to claim the land of the absentee; and although in Messrs. Mackay and Marshall they find a party as cute as they are themselves, yet there can be but little doubt that the action of this Court will be to give a title to land to many natives having as much right to it as her Majesty has to France.¹⁴⁹⁹

While the newspaper's Ngaruawahia correspondent happily editorialised about such matters it would seem he was less keen on actually attending Compensation Court sittings this time around, since after the 10 January session detailed reports of the actual proceedings dry up. There is thus no detailed account of the one-day session held on 17 January 1867. It appears to have confirmed out-of-court arrangements negotiated by Mackay in respect of the Military Settlements block and at least part of the Central Waikato. However, a report from late January suggested that arrangements in respect of the latter were still very much incomplete, with the Ngaruawahia correspondent observing that 'The Maoris are gradually clearing out; but as the arrangement of their claims has not yet proceeded further than Hopuhopu, and Pepepepe on the opposite bank, it is probable that at least three weeks more will

¹⁴⁹⁹ *Daily Southern Cross*, 30 January 1867.

be required to complete the investigation.¹⁵⁰⁰ A report a week later also noted that 'The claims are still being arranged out of Court, and have, at present, proceeded no farther than the west bank of the Waipa, opposite Ngaruawahia.'¹⁵⁰¹

Fortunately when the Compensation Court resumed its hearings at Ngaruawahia (this time before Rogan alone) on 11 February 1867 reasonably detailed officials minutes were kept and have survived.¹⁵⁰² The Court opened by dealing with what was described as the Ngaruawahia block, which was presumably that part of the Central Waikato confiscation district from Ngaruawahia south not previously dealt with. Mackay, once again appearing as Crown agent, told the Court that as yet no offer had been made to Maori concerning the Waipa military settlements block.¹⁵⁰³ Honana Te Maioha, who featured prominently in the earlier Te Akau compensation hearings, then testified in support of his claims through Ngati Mahuta to Ngaruawahia. He was subject to lengthy cross-examination from Mackay, who asked him about his former role as a 'clerk' to the King (which Maioha stated he had abandoned in 1861) and grilled him about the land rights of various Ngati Mahuta prisoners captured at Rangiriri.¹⁵⁰⁴ Takerei Te Rau and Wi Te Wheoro also spoke in support of their own claims. Te Wheoro was re-called the next day, and was followed by various other claimants to the Ngaruawahia lands.

On the third day, 13 February 1867, Colonel Lyons was recorded as also sitting on the bench. The Ngaruawahia case continued into a fourth day of hearings, with many witnesses asked by Mackay about their lands being made over to King Potatau. Presumably the inference was that if their ownership had been transferred to the King then claims for compensation could be voided on at least two grounds: firstly, that the customary owners had previously given up their rights to the lands in question; and

¹⁵⁰⁰ *ibid.*

¹⁵⁰¹ *Daily Southern Cross*, 7 February 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34332.

¹⁵⁰² Rogan some months later wrote a private letter to his friend Donald McLean in which he complained that it was a 'farce' for the government to 'form compensation courts, settle the business on paper only and not give them even what the Govt. promised or the Court awarded.' This was 'clearly wrong' and would serve the interests of 'Hauhau' proponents who would argue that those who went to the Courts came back empty-handed. Part of his concern appeared to stem from delays in surveying lands awarded in compensation, as a result of which the titles to these could not be finalised. Rogan to McLean, 14 August 1867, McLean Papers, MS-Papers-0032-0542, ATL.

¹⁵⁰³ Compensation Court, minutes, 11 February 1867, Proceedings of the Compensation Court, DOSLI Hamilton 2/11, RDB, vol.103, p.39708.

¹⁵⁰⁴ *ibid.*, pp.39711-39713.

secondly, that Potatau's successor would, in the unlikely event that he chose to apply for compensation, have been ineligible under section 5 of the New Zealand Settlements Act. But most witnesses drew a distinction between the transfer of symbolic authority over the lands to Potatau and their actual ownership and possession, which remained with the customary right holders. On the other hand, some witnesses, referring to a pre-Waikato War land deed signed with the Crown, alleged that pressure had been placed on them to agree to the conveyance in order to avoid being branded 'Kingites'.¹⁵⁰⁵ Others, including Wi Te Wheoro, stated that they did not wish to accept monetary compensation for the land because they had ancestors buried upon it and 'it would be against our customs to do so'.¹⁵⁰⁶ There were urupa and other wahi tapu located throughout the confiscated area, of course, and their protection or otherwise was a matter of prime consideration for many Maori, as will be discussed in the later chapter concerning Maori responses to the raupatu.

Although the Court's minutes state that the hearing was adjourned at the close of the session on 14 February 1867 until the following morning, there is no evidence to suggest that it did re-convene on the 15th. Instead, the minutes indicate that the next sitting was held at Ngaruawahia on 2 March 1867. After Thomas Power, the European husband of a claimant, had appeared to withdraw his wife's claim in favour of a direct approach to government, several hundred other claimants were called, nearly all of whom were listed as failing to appear. It would seem that such non-appearance was probably attributable to out-of-court settlements negotiated with Mackay. Meanwhile, the only other business of any substance was a statement from Meta Karaka with reference to the Te Akau block. He stated that Ngati Tahinga and the Crown agent had reached agreement over the award. James Mackay had insisted that the 94,668-acre portion allocated Maori should be reduced to 88,000 acres on account of £100 advanced to some of the owners as well as in recognition of the expense the government had been put to in surveying the block.¹⁵⁰⁷ While it was recorded that Karaka and Hohua Te Moanaroa had agreed to these terms, it is unclear

¹⁵⁰⁵ Compensation Court, minutes, 13 February 1867, Proceedings of the Compensation Court, DOSLI Hamilton 2/11, RDB, vol.103, p.39762.

¹⁵⁰⁶ Compensation Court, minutes, 14 February 1867, Proceedings of the Compensation Court, DOSLI Hamilton 2/11, RDB, vol.103, p.39778.

¹⁵⁰⁷ Compensation Court, minutes, 2 March 1867, Proceedings of the Compensation Court, DOSLI Hamilton 2/11, RDB, vol.103, p.39784.

the extent to which other owners (including Tainui) were consulted and consented to Mackay's demands.

But although the newspaper reports of the hearings became quite cursory in their coverage of the Compensation Court's activities by this time, there is sufficient evidence to suggest that the minutes provide not only an incomplete picture of its activities, but in some cases a quite misleading one. Take the case of Thomas Power noted above. Although the minutes merely noted his appearance in order to withdraw his wife's claim, the *Daily Southern Cross* provided an altogether different outline of events. In a report from the newspaper's Ngaruawahia correspondent dated 4 March 1867, it was stated that:

The proceedings of the Compensation Court were somewhat diversified on Friday by the first appearance of a Maori lawyer, who at its opening addressed the Bench, stating that he had appeared as counsel on behalf of Mrs. Power, a Maori woman, married to a European, whose case on the previous day had been conducted by her husband, who was also a principal witness. Mr. Mackay, the Crown Commissioner, while cheerfully recognising her right, contended that, should she avail herself of legal assistance, her husband could then only be heard as a witness, but that otherwise, although unusual, he should not object to her husband still acting in the combined character of counsel and witness, provided he gave his own evidence first.

Probably the spirit of an Englishman could not brook the degradation of being represented in her Majesty's Court by a Maori; and Power therefore elected to conduct his own, or rather his wife's case, as previously. This may be but the beginning of the end, and the time may yet come when an Englishman will receive legal assistance from a Maori; but, thank Goodness, it won't be in this generation.

In your last issue you state that a few days more will finish the proceedings of the Compensation Court – perhaps but a few weeks is nearer the truth, if the progress latterly made is to be taken as a criterion. Power's case occupied the

great part of two days, and there are at least 150 Maoris still here, most of whom are interested in claims, which have not yet been arranged.¹⁵⁰⁸

One would be hard pressed to find anything in the Court's own minutes to suggest that Power's case occupied more than about five minutes of its time, rather than the better part of two days noted above. Those minutes, it would seem, can hardly be taken as anything like a reliable guide to proceedings. No wonder the Compensation Court remains, in many respects, a total mystery, given that even something as basic as where and when it sat remains open to some speculation.

When the Court resumed on the morning of 5 March 1867, it appears to have been chiefly occupied with various out-of-court arrangements presented to it for confirmation. Most of these concerned unspecified claims within the Military Settlements block, which were settled either in land or money compensation (or in one case both).¹⁵⁰⁹ The minutes for the sitting on 6 March 1867 are even briefer. According to these, Mackay applied on behalf of the Crown for an adjournment to enable him to complete arrangements with claimants to Mangaharukiki, Mangawhara and other places. The Court accordingly adjourned until 7 March but there is no indication from the minutes that it did meet that day. With the exception of further hearings held in Auckland to consider the case of Reverend Heta Tarawhiti's eligibility for compensation (discussed below), and an 1868 sitting in respect of Ngati Tipa claims, this appears to have been the final session of the Compensation Court in respect of Waikato lands, though given the woeful state of its own records the possibility of further unrecorded (and unreported) hearings cannot be altogether eliminated.

It may be virtually impossible to reconstruct a detailed and accurate account of the Court's activities, but what of its impact on those Maori communities in attendance? Here there is a little more to go on. The *Daily Southern Cross* correspondent at Ngaruawahia was, for example, critical of many aspects of the Compensation Court process. In February 1867 he observed that:

¹⁵⁰⁸ *Daily Southern Cross*, 6 March 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34348.

¹⁵⁰⁹ Compensation Court, minutes, 5 March 1867, Proceedings of the Compensation Court, DOSLI Hamilton 2/11, RDB, vol.103, pp.39797-39800.

It is more than probable that the present is also the last time when so large a number of Maoris will be peaceably gathered together in this place; and the question naturally suggests itself – For what motive have they been so assembled? Was it absolutely necessary? Could not the Compensation Court have arrived at equally sound conclusions if it had been peripatetic? and would it not have shown more consideration for the onward progress of the Maoris to have moved the Court, consisting of some seven or eight individuals, to the different parts of the Waikato, where the claimants resided, rather than to have from 400 to 500 Maoris encamped here in idleness for at least two months?¹⁵¹⁰

The correspondent laced his further comments with heavy doses of sarcasm, writing that:

Perhaps, however, it is considered a master-stroke of policy to keep so large a number peaceably on one spot, who, if scattered throughout the Waikato, now that Thompson is dead, might have sown the seeds of violence and rebellion broadcast throughout the district, which is at least peaceable, if nothing more – and that possibly from sheer exhaustion only. It is doubtless also more pleasant for the officials to remain in a comfortable hotel than to undergo the fatigue of a continual change of residence. However, from whatever cause, the ultimate effect cannot but be prejudicial, for our guests have been withdrawn in large numbers from their own cultivations, which, in consequence, will yield nothing, and, like locusts, are clearing all before them belonging to their hosts, for so long as a Maori has anything he shares it with those of his own people who have none, and, therefore, on the arrival of winter, both host and guest will be starving.¹⁵¹¹

This criticism of the fondness of Pakeha Judges for holding hearings in European towns, rather than on or near to the lands in question was, of course, also levelled at the Native Land Court at this time. In this respect, it would appear likely that many of the negative socio-economic consequences of the Land Court and its processes

¹⁵¹⁰ *Daily Southern Cross*, 7 February 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34332.

¹⁵¹¹ *ibid.*

commented on by contemporary observers may also have been evident in the Compensation Court.¹⁵¹²

Other aspects of its operations are also open to speculation. There were at least some contemporary suggestions, for example, that former ‘rebels’ were being admitted into Compensation Court awards. In February 1867 it was reported that:

Its proceedings are causing much dissatisfaction among the natives, who complain that those who were fighting against Government are getting the largest grants, while those who always befriended the pakeha are given next to nothing; and there is some appearance of justice in their complaints, for loyal chiefs, with but a few followers, in many cases have obtained only a small portion of land; while notorious rebels, with a numerous tribe at their backs, have been awarded large and valuable blocks. It is, however, unjust in appearance only. Thus, a loyal chief with 10 followers gets, we will say, 1,000 acres, or 100 acres each; a rebel with 100 followers is awarded 3,000 acres, or only 30 acres each. The natives do not look at it in this way, but say those who were disloyal are rewarded with thrice as much as the loyal ones.¹⁵¹³

The suggestion that the Compensation Court in fact awarded any land at all to former ‘rebels’, if correct, would, however, be of great significance. There is nothing to support this purely anecdotal report, and the Auckland newspapers have been described as being ‘notoriously unreliable in their reporting of Maori news.’¹⁵¹⁴ It is also worth noting that the 1904 Te Akau Commission investigated and dismissed for want of evidence suggestions that ‘rebels’ had been admitted into the title of that block.¹⁵¹⁵ The extent to which ‘rebel’ Maori were able to participate in the Compensation Court hearings and subsequent awards is difficult to assess. There is, however, some further evidence on this issue available from the newspaper reports. As will be discussed further in the next chapter, prior to the passage of the Confiscated Lands Act in October 1867 no legal provision had been made for

¹⁵¹² On this theme see Kaye Turner, Te Rohe Potae, Oral and Traditional Hui 3, Poihakena Marae, Raglan, 12-13 April 2010, p.70.

¹⁵¹³ *Daily Southern Cross*, 20 February 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34340.

¹⁵¹⁴ Parsonson, ‘Te Mana o te Kingitanga Maori’, p.v.

¹⁵¹⁵ AJHR, 1904, G-1, p.9.

surrendered ‘rebels’. Yet James Mackay was reported to have informed the Ngaruawahia Compensation Court, ‘crowded with Kingites’ during a March sitting that:

...although, by their adherence to the King, they had forfeited all their land, yet that the Governor, in his great mercy, had decided on giving portions to them all; that chiefs would have 50 acres each, men and women 40 acres each, and widows with more than three children 10 acres for each additional child; that most probably the Crown grants would not be issued for two years, and not then unless they remained loyal. Some chiefs could not understand why their portion should be so little in excess of the common men of their tribes, and indignantly repudiated the gift, but were silenced, if not convinced, when they were told that they were getting as much as the white man who had fought throughout the war for his Queen and country, and in many cases had to support a wife and half a dozen children on that acreage; but I have not heard that in a single case they carried out their threats, for all pressed forward eagerly to subscribe their names as claimants for a Crown grant.¹⁵¹⁶

We know that Rewi Maniapoto and other leading Kingitanga figures did not go to the Compensation Court and were not admitted into the titles of lands returned by this method, but it is altogether more difficult to reach any firm conclusions about this issue as a whole. A detailed comparison of, say, the list of prisoners captured at Rangiriri with the schedule of awards of the Compensation Court might prove a fruitful point of comparison but is beyond the scope of the present report. In the absence of any official list of those individuals deemed ineligible for compensation under section 5 of the Settlements Act, the Rangiriri prisoners might at least present a large enough sample to begin to provide a meaningful analysis.

What we do know is that the claims for compensation were investigated in a hostile environment in which many settlers *assumed* ‘rebels’ were being admitted into titles and viewed every acre given back to Maori as one less available for settlement by Europeans. In many respects the former assumption reflected an unwillingness to

¹⁵¹⁶ *Daily Southern Cross*, 13 March 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34352.

accept the notion that there were any Maori in Waikato not implicated in the supposed 'rebellion'. As one *New Zealand Herald* report thundered:

From what we can learn, the claims to land overlap one another; so that, indeed, were the whole of these Waikato lands returned back to natives, there would be even some disappointed claimants among these rebels; for rebels to all intents and purposes these Waikato natives have been and are, whatever Pakeha-Maori hocus pocus process of whitewashing may be applied to them. We should like to see the Waikato native of whom it could be truly said that he neither took part in the rebellion nor aided and fostered those who did. All have been more or less rebels, and not one of them is deserving of more than forty acres as a maintenance, which quantity of land, if thought sufficient for a white immigrant, is surely sufficient to supply the wants of a rebel Maori.¹⁵¹⁷

Rival Auckland newspaper the *Daily Southern Cross* meanwhile expressed another concern. It believed that the sheer volume of claims for compensation would lead to lands being sold to settlers 'subject to native claims'. Referring to a forthcoming auction scheduled for mid-March, it stated in a February 1867 editorial that:

Notwithstanding the diligence and despatch used in the Compensation Court, so numerous and extensive have been the native claims preferred to land in the Waikato, that it will be impossible for the Court to adjudicate upon them all before the day of sale; and we believe, that anything like a right estimate of the quantity of land required to satisfy the claimants cannot yet be arrived at. Consequently the new condition of sale must be annexed. It might have been better if the sale had been postponed until these claims had been settled, when the Government could have sold the balance with a clear title... .

We leave our readers to judge of the effect this condition will have upon the sale. It certainly is not a tempting offer to capitalists, and holds out no inducement to the intending agricultural and pastoral settler. For what is it they are asked to buy? Is it land which they may set about improving, and for

¹⁵¹⁷ *New Zealand Herald*, 15 February 1867.

which they will receive Crown grants; or is it the chance – the remote chance – of obtaining the land which they may select, and which may never pass into their possession? We think it is the latter; and to our judgment, intending buyers will look at their money a long time before they part with it to the Government of the colony on any such risky terms.

We think it will be found, before the proceedings at the Compensation Court at Ngaruawahia are over, that the land which will be required to satisfy the just claims by natives, will absorb very nearly all the available good land left in the Waikato. The Government will then have left for sale the refuse and unavailable land – limited in quantity, and valueless as a marketable commodity. This result will be brought about by the instructions of the Colonial Government, which are to the effect that compensation to natives shall be in land instead of money. By this simple process the natives will get back a large portion of the Waikato, and the Government of the colony will lose an available asset in the money the confiscated land would otherwise fetch.¹⁵¹⁸

We can only guess as to whether it was pure coincidence or not that the Ngaruawahia Compensation Court hearings ended just days before the scheduled auction on 12 March 1867, despite reports suggesting that it still had several weeks' worth of work ahead of it.¹⁵¹⁹ However, one subsequent hearing certainly shed some light on this question.

On 10 March 1867 the Compensation Court, consisting of Fenton and Monro, opened in Auckland to resume their adjourned inquiry into the compensation claims of Anglican priest Heta Tarawhiti. It appears that we are once more reliant solely on newspaper reports to reconstruct this hearing. Reverend Tarawhiti had, by his own admission, been with the 'rebels' up until at least the fall of Rangiriri, but had gone to them in order to preach peace rather than fight. Despite this, it was alleged by Mackay

¹⁵¹⁸ *Daily Southern Cross*, 13 February 1867.

¹⁵¹⁹ It appears that the Agent for the General Government at Auckland also published some kind of notice prior to the auction, aimed at dispelling rumours among potential buyers that the lands were to be sold subject to Maori claims. Whitaker to the Colonial Secretary, 28 February 1867, AGG-A 3/1/1867/788, Archives NZ (Akl).

in opposing his claims for compensation that he had supplied sheep to some of the Kingitanga.¹⁵²⁰

Soon after the hearing opened Mackay applied for a further adjournment on the grounds that he had had insufficient time to summons the witnesses he intended to call. Interestingly, in making this application he pointed out to the Court that ‘the awards of lands in the Waikato district had only been settled last week, and selections had to be made before the sale took place which was advertised to be held at the Waste Lands Office that day. If they were neglected a serious difficulty might arise.’¹⁵²¹ His comments here certainly add weight to suggestions that the government was conscious of the need to resolve the compensation claims prior to the auction. In effect, it would seem, Mackay had been racing the clock in order to get these sorted, and the Compensation Court closed down, before the sale of remaining lands to would-be settlers and speculators went ahead.

Fenton, though, declared that the sale of the Waikato lands was not in itself a valid reason for adjourning the case once again, but subsequently granted this on the basis of Mackay’s difficulties in getting Maori witnesses to the hearing. Before closing, however, the Court heard from Ashwell, who was about to depart for England. Mackay quickly left the hearing to attend the land sale, having sent for a lawyer to stand in for the Crown in the meanwhile. Ashwell told the Court that he knew nothing calculated to impugn Tarawhiti’s loyalty or to suggest disaffection to the Queen’s government, after which the case was adjourned until 12 April 1867.¹⁵²²

In effect, the whole case turned on the definition of a ‘rebel’ and on this point the Compensation Court (after hearing further detailed testimony concerning Tarawhiti’s conduct during the war on 12 April) held in its judgment, delivered a few days later, that ministering to the Kingitanga could not be deemed rebellious in itself, whilst dismissing for want of evidence more specific allegations regarding supplying sheep

¹⁵²⁰ *Daily Southern Cross*, 13 March 1867, in MA 24/26, Archives NZ, RDB, vol.89, pp.34352-34353.

¹⁵²¹ *ibid.*, p.34352.

¹⁵²² *ibid.*, p.34353.

or leading prayers for the Maori King.¹⁵²³ More generally, Fenton and Monro declared that:

It would almost appear to be an omission in the Act that no provision is made for a claimant being informed of the charges to be brought against him when his claim is intended to be contested on the ground of practices described in section 5 of the Act. It does not appear to the Court that any difficulty would have been created if the Act had provided that the Crown, after it has received a claim, should, a certain time before the sitting of the Court thereupon, give the claimant notice of the facts to be proved against him. If charges under section 5 are intended to be made, it is not consonant to the spirit of English law that an accused person should remain in entire ignorance of what is to be brought against him until the time when the trial is on, and this absence of specific charges is scarcely less a hardship upon the Court than upon the party; for, the Crown not having put its accusations into form, the Court is reduced to the necessity of framing them itself from the mass of the evidence. Thus in the case before us a large amount of testimony has been placed before the Court, from which it is called upon to deduce specific offences which may bring the claimant under section 5 of the Act.¹⁵²⁴

The Court went on in its judgment to express ‘its extreme surprise that when, on the conclusion of the first adjourned sittings, the learned counsel for the claimant called upon Mr. Mackay to state succinctly what the charges against his client were, Mr. Mackay declined to bind himself to anything, or even to state decisively the times and places where the acts to be proved were committed.’¹⁵²⁵ Either Mackay knew the offences of which Tarawhiti was to be accused, the Court suggested, or he did not, in which case he ought not to have asked for a further adjournment.

The judgment of the Compensation Court in the case concluded with some highly critical remarks concerning the failure of Mackay to avail himself of earlier opportunities to withdraw the case against Tarawhiti. Fenton stated that:

¹⁵²³ *Daily Southern Cross*, 13 April 1867; *Daily Southern Cross*, 19 April 1867, in MA 24/26, Archives NZ, RDB, vol.89, pp.34431-34432.

¹⁵²⁴ *Daily Southern Cross*, 19 April 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34431.

¹⁵²⁵ *ibid.*

It was the hope of the Court, when the case was closed, that the Crown Agents, having discovered that the circumstances which appeared to them suspicious had been disproved or explained away, would have gracefully withdrawn the whole of the charges, and admitted the right of this claimant to the compensation which the Legislature has provided for loyal citizens, whose property has been taken under the power of the New Zealand Settlements Act, 1863. This course was not taken. The Court therefore feels itself called upon to conclude by adding that the Rev. Heta Tarawhiti leaves this Court with his name untainted as a loyal subject of her Majesty, and with his character high in our estimation as a good and courageous clergyman. We are unable to see, in the matter before us, any grounds of reasonable suspicion even. And the Court is entirely at a loss to discover any grounds for the remarkable pertinacity with which Mr. Mackay has pushed this case, nor can it regret that that officer on the occasion of the second adjournment, refused the very reasonable request of Mr. MacCormick, the counsel for the claimant, for a statement of the charges against his client. It ought to add that this is the only instance of the kind, during a series of sittings, extending now over two years, that has come under the experience of either of the Judges present.¹⁵²⁶

Fenton's final statement here was somewhat ambiguous. He might have been suggesting that Tarawhiti's case was the only instance in which the Compensation Court had been called upon to formally determine whether a claimant was ineligible for compensation under section 5 of the Settlements Act, or he might merely have been making the narrower point concerning the failure to provide a statement of charges. The incomplete nature of the Court's own records make it difficult to determine whether there were other cases in which it was required to make a decision about eligibility in this way. What we do know is that many witnesses were questioned closely concerning their own or their relatives involvement in the war and with the Kingitanga and although there were many cases withdrawn after out-of-court settlements were reached with Mackay, who is to say there were not others withdrawn

¹⁵²⁶ *ibid.*, p.34432.

when the Crown agent made it clear he would oppose them in Court if they were persisted in? Like so much else about the Compensation Court, it is difficult to know.

Fenton's final comments prompted the *Southern Cross* to enter the fray. In a lengthy editorial published shortly after the judgment, it deplored the 'very uncalled-for attack' on Mackay, even while agreeing with the Court's finding.¹⁵²⁷ The judges had, it declared, 'exceed the functions of their high office to deal a thrust at a public servant, who on more than one occasion...has shown that he is zealous for the Crown, in thwarting any arrangement, under cover of law, which would denude it of its just rights'. It was also critical of the comments on other grounds. As the editorial added, 'The Maoris watch the proceedings in the Native Compensation Court very narrowly; and it is beyond a doubt that the judgment of the Court as it now stands must tend to weaken Mr. Commissioner Mackay's influence amongst them.'¹⁵²⁸

The controversy did not end there. In May the Compensation Court sat again, this time to determine the amount of compensation that Tarawhiti should be awarded. But before it could consider the matter Tarawhiti's counsel announced that an out-of-court settlement had been reached whereby he would receive 300 acres of land of fair quality to be selected by both parties along with £50 monetary compensation. The lawyer conjectured that 'the harsh treatment to which he had been subjected had influenced the Government to some extent in dealing so liberally with him', while expressing gratitude towards the Court 'for having shielded his character when impugned, and relieved him from the grave charges brought against him by the Crown.'¹⁵²⁹

That outcome prompted the *Daily Southern Cross* to revisit the case a few days later, once more accusing the Court of directing unwarranted animus towards Mackay, while agreeing with its conclusion that the treatment received by Tarawhiti had been 'harsh and unjust.'¹⁵³⁰ After outlining the provisions of the New Zealand Settlements Act and explaining the difference between the Compensation Court and the Native Land Court, the newspaper noted that:

¹⁵²⁷ *Daily Southern Cross*, 20 April 1867.

¹⁵²⁸ *ibid.*

¹⁵²⁹ *Daily Southern Cross*, 10 May 1867.

¹⁵³⁰ *Daily Southern Cross*, 15 May 1867, in MA 24/26, Archives NZ, RDB, vol.89, pp.34415-34416.

These are immense powers to be placed in the hands of the Government, and there is no doubt that in exercising these powers the Government may seem to the natives, at least, to act occasionally in an arbitrary and wanton spirit. For instance, the Act was passed, as the preamble tells us, to take lands for the purposes of military settlements; but it would be hard to justify the taking of the Ihumatao, Mangere, Pukaki, and Kirikiri blocks on the ground that these lands were taken for such purposes. The Maoris, from their point of view, may not look upon the Government in carrying out this policy as having always acted in the spirit of a merciful ruler, compelled to punish, but even in punishing, still acting with a single eye for the good of his people; but rather, look upon the Government as sometimes acting more in the spirit of a common informer, who seeks to live on the crimes of others.¹⁵³¹

The newspaper went on to add that ‘the Government has large powers in the Court itself’:

It is the Government which appoints the Judges; and they are the sole arbiters of both the right to compensation, and the amount of compensation; and it is the Government which frames the mode of procedure in the Court. We do not think that the natives have anything to dread from the fact of the Judges being appointed by the Government, for no one can accuse the Judges of the Native Courts of having shown a leaning to the side of the Crown in their decisions; but the claimants have cause to complain of the mode of procedure in the Native Compensation Court, as there is much more care shown for the interests of the Crown than for the interests of the subject.¹⁵³²

It further concluded that the Reverend Tarawhiti had been ‘harassed with repeated adjournments, obtained by the Government to prove these charges, which either fell to the ground for want of evidence or were laughed out of Court.’¹⁵³³

¹⁵³¹ *ibid.*, p.34416

¹⁵³² *ibid.*

¹⁵³³ *ibid.*

The outcome of the case continued to be subject to lively correspondence even after compensation had been agreed. One letter to the editor, which may have been written by CMS missionary Robert Maunsell (under the pen name ‘Anglo-Maori’), denied suggestions that Tarawhiti had been treated liberally. The author of the letter, who declared that the Reverend Tarawhiti had come to him for advice as to what to do, rejected suggestions he had merely had a general tribal right to 3000 acres, declaring that ‘30,000 acres would have been nearer the mark.’¹⁵³⁴ He added that:

Heta was not a whit less loyal than Waata Kukutai. Waata received, as he deserved, a large block as a gift, of very nearly 1,500 acres. Te Oriori, a rebel captured at Rangiriri, received, as Maori report says, 600 acres. This loyal man has received 100 acres of sandy soil. This chief, in a tribe of high standing in Waikato, is told that his share in its patrimony is only 350 acres [sic – 300 acres], and £50. This is Government justice! They wield their power to crush their friends; frame laws the errors in which are a subject of complaint to their Judges, and a handle for their agents to hamper defendants; and appoint the same man to be in one part of the case a prosecutor, in another part a judge.¹⁵³⁵

Another writer queried the suggestion that Tarawhiti ought to thank Mackay for bringing charges against him, because it had provided an opportunity to prove his loyalty beyond doubt, asking rhetorically ‘[a]lthough he left the court without any stain of disloyalty attaching to his character, would he, think you, leave it with undiminished respect for the Crown and the pakeha?’¹⁵³⁶

Heta Tarawhiti’s own thoughts on the outcome of the case are unrecorded, as indeed are Maori responses in general to the Compensation Court in Waikato. We can only imagine that figures such as Rewi Maniapoto and other so-called ‘unsurrendered rebels’ who had nothing to do with the compensation process would have seen this as merely an extension of the confiscation of their lands. But those who took part in the process hardly had any real choice in the matter, other than of participating and hopefully receiving some compensation or missing out altogether through non-

¹⁵³⁴ *Daily Southern Cross*, 16 May 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34417. An unknown official scrawled on the Native Department copy of the letter ‘Mr. Maunsell’.

¹⁵³⁵ *ibid.*

¹⁵³⁶ *Daily Southern Cross*, 29 April 1867.

involvement. Their real feelings about the process are hardly any less difficult to capture, although a couple of letters published in the *Daily Southern Cross* later in 1867 provide some insight. In the first of these, the author (pen-named 'an owl') declared:

Listen, all the people who dwell in New Zealand, to how the Government finally disposed of the land which they took for the sins of Waikato; they took the land of some of those who lived quietly with the rest. This was how it was managed by those who had to do with the matter. Some of the people who lived quietly and were the possessors of land, and thought in their hearts that they would get large tracts, only got 100 acres. The half-castes, whose mothers were bearing arms, were awarded large blocks, some 1,000 acres. Also the women who were living with pakehas, and of low degree, were awarded thousands of acres. And why? To strengthen the pakeha side and make the Maoris smaller or weaker. Look also, some young chiefs remained well disposed, and the parents followed evil like the half-castes; they were also called persons who had borne arms. If it had been so from the beginning, when the people commenced to live well, they would not have remained peaceful, they would have followed their parents to do evil. Where are the proclamations of the Governor where he says, the land of those who remain peaceful will be protected? They are a delusion!

You are not a prophet; you are the same as I am. Look at some of the doings of those who have the management of these things – they intimidate, so that the claimants may make haste to agree. They will perhaps deny this when they are asked about it; but you can make inquiries among the Maori kaingas, and you will hear the same.

Whakarongo e nga iwi e noho nei i tenei motu i Nui Tireni i etehi whakaritenga whenua i tangohia e te Kawanatanga mo te hara o nga iwi o Waikato tangohia tahaitia ake nga whenua o etahi tangata ata noho; i peneitia hoki te whakaritenga a nga kai whakarite. Ko etehi tangata i ata noho he whenua ano tana kite whaka-aro iho a tona ngakau te putanga mai kia ia nui te whenua kotahi ano kau eka e puta mai. Ko nga awhekaihe ko a ratou whaea i

roto ite mau patu whakanuia ake nga eka ma ratou taki kotahi mano me nga wahine e moe ana i nga pakeha ke tutua nei ano he man eka e puta ana kia ratou. Ko te take e whakanui ana i te taha pakeha e whakaiti ana ite Maori titiro hoki i noho ano etehi tamariki rangatira i runga i te pai; ko nga matua i te kino penei me nga awhekaihe nei karangatia iho ratou he mau patu ano mei penei i mua i te ti matanga o te noho ata tangata o te noho ata tangata i te pai kihai rawa i noho te tangata kua haere ano i tona matua whaea ranei ki te kino.

Kei whea ra nga panuitanga a te Kawana i kinei ka tiakina nga whenua o te hunga ata noho kaore he whakapati. E hara hoki koe i te tino tohunga he penei ano koe me au nei titiro hoki ko te tehi mahi a nga kai whakarite he whakawehiwehi kia horohoro ai te whakaae; tera pea e whakawareware enei kai whakarite ana pataia, otira tikina mai tirohia e noho nei i nga kainga Maori.¹⁵³⁷

This letter elicited a strong response, from someone who chose the resonant pen-name ‘Te Pihoihoi Noho Mokemoke’ (The Lonely Sparrow), recalling Gorst’s fateful newspaper. The author of this wrote:

O friend, “The Owl,” salutations to you. I have seen your letter in the newspaper, in which you say that the mothers of the half-castes are bearing arms. O friend, according to my view, your words are very incorrect. You say that a thousand acres have been awarded to each half-caste. Friend, I was at the Land Court held at Ngaruawahia; I am a grandson of Tukorehu [a great warrior chieftain of the Ngatimaniapoto, coadjutor of Te Rauparaha, Te Waharoa, and other Maori celebrities]. I am a half-haste; my wife is a half-caste. The land awarded to me would not be a mote in the eye of a miromiro [a small native bird about the size of the blight bird]. You said that the half-castes got a great number of acres. O “Owl,” there were many half-castes at Ngaruawahia, but I did not see one of them who received land amounting to a thousand acres.

¹⁵³⁷ *Daily Southern Cross*, 22 August 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34469.

Another thing you say is, that women of mean birth who married Europeans received many acres of land. O friend, this is a question asking you to reveal the names of the plebeian women whom you witnessed receiving a thousand acres each. Friend, I cannot understand your words in relation to these plebeian women. Friend “Owl,” cease your talking about us half-castes; we are like yourself. I know the reason why you have spoken – your piece was not large; hence your grumbling at us half-castes. Our claim upon the land of our mothers was great. Friend, the Europeans are not to blame with respect to the land; it was our own people, the Maoris, who caused evil in the matter of the land. Therefore are you grieved about your piece. Do not suppose that you are the only one in sadness; there are many persons annoyed about their lands, which were taken as payment for the sin of the people. Even though you reside amongst the Europeans, your thoughts are towards your people. O “Owl,” cease your talking about us half-castes. In relation to your discomfort about your land, keep your grief to yourself. Don’t interfere with us half-castes.

E hoa, e te Ruru Koukou, tena koe; kua kite au i to reta i roto i te nupepa e ki ana koe ko nga awhe-kaihe kei te mau patu ora tou whaea. E hoa, ki taku titiro ki o korero kanui te he e ki nei koe kotahi mano eka e puta ana ki te awhe-kaihe kotahi. E hoa, i te whakawa whenua aui Ngaruawahia; he mokopuna au na Tukorehu; he awhe kaihe au me taku hoa wahine; nga eka ia au e kore e pura te karu o te miromiro. E ki nei koe ko nga awhe-kaihe i nui nga eka. E Ruru Koukou he nui nga awhe-kaihe i Ngaruawahia kaore au i kite i te mea kotahi i tae nga eka ki te mano. Tetehi e ki nei koe – nga wahine tutua i moe i te pakeha i nui nga eka. E hoa he patai atu tenei kia – koe kia wh[a]kaaturia mai nga ingoa o nga wahine tutua i kite koe i ae nga eka ki te mano. E hoa kaore au e mohio ki te ritenga o to kupu mo te wahine tutua. E hoa e Ruru kati te korero mo matou mo nga awhe-kaihe i pena tahi matou me koe. E mohio ana au ki o korero kaore i nui tou pihi me to amuamu kia matou ki nga awhe-kaihe he nui te matou mana ki runga ki te whenua ki nga whenua o nga o matou whaea. E hoa, e hara i te pakeha te he ki te whenua, na to taua iwi na te Maori i whakahara te whenua, no kona ka pouri ki tou pihi kei ki koe ko koe anahe kei te pouri he maha nga tangata kei te kinmo ki o ratou whenua i riro hei utu mo te hara o te iwi; heahakoa, noho koe i te taha pakeha e whakaaro

ana koe ki to iwi. E Ruru Koutou, kati to korero mo matou mo nga awhe-kaihe nou tou he ki tou wahi waiho to pouri kia koe; kua koe e mea kia matou ki nga awhe-kaihe.¹⁵³⁸

The authors of both letters thus expressed dissatisfaction at the amount of land returned, and though 'the Owl' took out his frustrations on the supposed 'half caste' beneficiaries of the compensation process, his respondent more correctly suggested that they should not become the scapegoats for something which had caused widespread sadness. The problem was not government favouritism towards those of mixed race but its failure to honour its clear and unambiguous promise that the lands of 'loyal' and neutral Maori would not be confiscated.

Meanwhile, there appear to have been lengthy delays in the actual payment of compensation. One curiously untranslated notice which appeared in the *Auckland Provincial Government Gazette* in December 1868 suggests that it was only then that the government finally got around to distributing monetary compensation previously awarded during the Ngaruawahia hearings held more than a year before. It stated:

Kia mohia [sic] mai nga tangata katoa. Ko nga pukapuka whakaatu moni, i puta ki nga tangata Maori i te Kooti Whakawa Whenua i Ngaruawahia i te tau 1867, mo a ratou paanga ki nga whenua kua tangohia e te Kawana i te takiwa ki Waikato; ka utua ki te moni i te Whare Moni o te Kawanatanga (Sub-Treasury) kei Akarana a te Turei, te 22 o nga ra o Tihema, 1868, tetahi utunga kei Ngaruawahia a te mane te 4 o nga ra o Hanuere, 1869. Engari me hari ana pukapuka ana here atu te tangata ki te ki te tiki i tonono moni.¹⁵³⁹

There appear to have been similar problems and delays with respect to converting land awards into clear titles, adding further to the frustrations of many of those caught up in the Compensation Court process.

¹⁵³⁸ *Daily Southern Cross*, 9 September 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34473.

Interpolations in original version.

¹⁵³⁹ *Auckland Provincial Government Gazette*, no.64, 11 December 1868, p.581.

6.11 Reviewing the Compensation Process

Richard Boast has noted that ‘we know next to nothing about the [Compensation] court’s actions’ in Waikato, and the same applies with respect to many of the allied negotiations which took place outside the courtroom.¹⁵⁴⁰ Research for the Rohe Potae inquiry district is the first time any serious effort has been made to understand the subject, but if large parts of the compensation process continue to remain confusing and perplexing then that is because they genuinely were confusing and perplexing, even to some of the parties involved. Wholly inadequate records hardly help. We have seen that not only are the available Compensation Court records incomplete but in some cases they appear to give a quite distorted impression of what went on inside the courtroom. Even accurately reconstructing a full record of where and when the Court sat is difficult, and we only know about some hearings because of newspaper coverage of these, though there may be further sittings that were not reported upon.

The many out-of-court settlements negotiated between Crown agents and claimants for compensation further complicate the picture. Although these were in theory ratified by the Compensation Court, that appears to have been little more than a rubber-stamping exercise. Thus the Crown continued to exercise a strong direct influence over the delivery of compensation, even if the process by which these agreements were entered is even murkier than the Court hearings. Whatever debate there might be about the relative independence of the Native Land Court, one key difference with the Compensation Court needs to be acknowledged. Whereas in the Native Land Court the Crown might sometimes be interested in particular blocks, whether as a result of having purchased into these or from other strategic or political concerns, in the Compensation Court it was an interested party in *every* case, from the mere fact of being responsible for paying the compensation awarded, whether it be in money, land or scrip. Cash-strapped Crown officials thus had a vested interest in minimising the awards to Maori, and often chose to do so directly, through negotiated settlements with claimants to compensation. But while we might talk of these as being negotiated or settled between the parties, there is little evidence that Maori were able to exert much agency over the process. Indeed, to judge by later complaints, the return of a small portion of their original estate was seen by many Waikato Maori north of

¹⁵⁴⁰ Boast, “‘An Expensive Mistake’”, in Boast and Hill (eds), *Raupatu*, p.158.

the aukati as better than nothing but hardly capable of erasing the effects of the confiscation as a whole.

Furthermore, just as it is almost impossible to accurately quantify the impact of confiscation on different iwi and hapu in precise acreage terms (since there was evidently no detailed inquiry into customary rights prior to the takings), similar considerations apply to the process by which compensation was awarded. We know that members of at least some hapu and iwi from within what now constitutes the Rohe Potae inquiry district participated in the Compensation Court process in Waikato and received awards, but it is much more difficult to quantify these along tribal lines. Applications for compensation and the awards subsequently made were almost always in the names of individuals or family groups, without listing the iwi or hapu affiliations of those concerned. It would require someone with a detailed knowledge of tribal affiliations to go through the hundreds of Compensation Court awards made and assign these to particular iwi or hapu in order to attempt to reconstruct how the process worked at this level.

And yet, although such a process would be a fascinating one in its own right, it would also be somewhat misleading. For one thing, as we have already seen, the Compensation Court shared many of the same flaws as the Native Land Court, including an emphasis on individual rights and claims at the expense of broader tribal and communal interests in land, along with a set of rules and procedures based on highly formal English legal processes rather than anything more sympathetic to Maori tikanga.¹⁵⁴¹ That was hardly surprising given that both Courts were presided over by Fenton, but reflected more than just individual bias. Indeed, the tenurial revolution about to get under way through the Land Court process in districts not affected by fighting was in many respects replicated at Waikato and elsewhere with respect to those lands returned to Maori, with hapu titles ignored in favour of grants made directly to individuals. William Fox later admitted that one of the aims of confiscation

¹⁵⁴¹ Rigby, 'Hauraki and East Wairoa', p.49. For the rules and regulations of the Compensation Court, see *New Zealand Gazette*, no.36, 20 June 1866, pp.250-251. Amongst other things, these declared that claimants were to be deemed the plaintiff in each case, with the Crown appearing as defendant, and that the practice and procedure of the Court and its counsel and agents were to be 'as nearly as possible similar to that of a Resident Magistrate's Court in civil cases.'

was to ensure that any lands returned to Maori should be held ‘under Crown titles and as individuals instead of under the pernicious tribal tenure hitherto existing’.¹⁵⁴²

Hapu and iwi received no land or money in compensation, but individual members of such groups did. Different figures are available for the total quantity of compensation paid. For example, ‘An Index of Native Land Compensation Awards 1867’ gives a total of just over 82,469 acres in land and £7930 in money awarded in compensation during that year.¹⁵⁴³ Such a figure is far from complete for Waikato as a whole, but appears to include all of the awards within the Military Settlements block, besides other awards. An earlier July 1866 return, had estimated that an area of 224,080 acres would be required for ‘Compensation and Reserves for Friendly Natives’, with a further 50,000 acres likely to be needed ‘for returning Rebels’.¹⁵⁴⁴ A return prepared by James Mackay listing the approximate extent of ‘confiscated lands awarded to Natives within the Districts of Manukau & Waikato’ to 30 June 1866 gave a total figure of 199,344 acres, and Mackay rather ambitiously estimated that a mere 18,050 acres more would be required.¹⁵⁴⁵

If we combine the estimated return of lands actually awarded in compensation to June 1866 with the subsequent return for 1867 then we reach a figure of some 281,813 acres.¹⁵⁴⁶ (Although not a focus of this report, the Ngati Tipa Compensation Court hearings of 1868 do not appear to have any significant impact on the total quantum of compensation.¹⁵⁴⁷) Such a figure is marginally in excess of an 1871 return of 278,891 acres ‘given, agreed to be given, or reserved for Natives, whether friendly or not’.¹⁵⁴⁸ Since no formal steps had been taken by this time to reserve lands for ‘surrendered

¹⁵⁴² Fox, *The War in New Zealand*, p.148.

¹⁵⁴³ Proceedings of the Compensation Court: Index of Native Land Compensation Awards 1867, DOSLI Hamilton 2/15, RDB, vol.104, p.39993.

¹⁵⁴⁴ Schedule showing the disposal of the Confiscated Lands and the estimated extent and value of the Lands still available for Sale, AJHR, 1866, F-2, p.4.

¹⁵⁴⁵ Compensation Court: Mackay’s Awards, DOSLI Hamilton 3/16, RDB, vol.104, p.39997.

Curiously, Mackay’s return is some 10,000 acres in excess of a second return also purporting to cover the period to 30 June 1866 and also described as being in respect of the Waikato and Manukau districts. This return, which was among the various papers considered by Parliament’s Confiscated Lands Committee in 1866, gave a figure of 189,341 acres. Le 1/1866/6, Archives NZ.

¹⁵⁴⁶ The Compensation Court did not sit in respect of Waikato claims between April 1866 and January 1867.

¹⁵⁴⁷ See Proceedings of the Compensation Court: Ngatitipa Claims, DOSLI Hamilton 2/12, RDB, vol.104, p.39859.

¹⁵⁴⁸ G.S. Cooper, for the Secretary for Crown Lands, Return of Lands Confiscated by the General Government, 9 September 1871, AJHR, 1871, C-4, p.1.

rebels' within the Waikato confiscated district, it seems likely that this return solely encompassed lands awarded in compensation. In this respect, a subsequent 1873 return appears somewhat anomalous. It listed just 181,516 acres 'appropriated to Natives (loyal)', with a further 119,705 acres 'appropriated to Natives (otherwise)'.¹⁵⁴⁹ One thing we can be reasonably certain of is that nowhere like the latter quantity of land was ever 'appropriated' for 'surrendered rebels'. On the other hand, this return appears to significantly underestimate the quantity of lands granted to 'loyalists' in compensation.

As we will see in the next chapter, it was not in fact until 1879 that any legal steps were formally taken to set aside lands for 'returned rebels'. Reserves set aside at this time amounted to just over 37,042 acres, which if combined with the earlier 1871 return (and assuming, as suggested above, that this latter figure was solely concerned with lands awarded in compensation) totals 315,933 acres. That would appear to sit within a reasonable margin for error of what the Royal Commission on Confiscation Native Lands and Other Grievances (commonly known as the Sim Commission) accepted as the figure for lands 'returned' to Maori within the Waikato confiscated district (though it does not take account of lands awarded under the Waikato Confiscated Lands Act, to be discussed in the next chapter).

The Sim Commission accepted a return put to it by the Lands Department which gave the total area confiscated at Waikato as 1,202,172 acres, of which it calculated that 314,364 acres had been 'returned to the Natives' (and with a further £22,987 paid in compensation).¹⁵⁵⁰ There would therefore seem good grounds for estimating that something in the order of 275-280,000 acres in land was awarded as part of the process of compensation, either directly through the Compensation Court or via out-of-court arrangements subsequently ratified by that body. Scarcely one-tenth of that total was belatedly set aside for 'returning rebels', but under a range of restrictions, as we shall see.

¹⁵⁴⁹ Report on Confiscated Lands, encl. in Lieut.-Col. St John to Native Minister, 12 August 1873, AJHR, 1873, C-4B, p.4.

¹⁵⁵⁰ AJHR, 1928, G-7, p.17.

Throughout this chapter various similarities between the Compensation Court and its Native Land Court ‘twin’ have been noted (along with some differences – the two were not identical). Although it is a question beyond the brief of the present report, it would not be surprising if a further similarity was the way in which the individualised titles issued by both bodies helped to facilitate and encourage the alienation of this land.

There are other aspects of the process by which lands were returned that it has not proven possible to cover here, such as the extent to which restrictions on the alienation of lands granted under the New Zealand Settlements Act were imposed (on the face of it, there would appear to have been no legislative mechanism to enable such restrictions prior to the passage of the Confiscated Lands Act in October 1867). Having taken the drastic (and draconian) step of confiscating lands in the first place, the Crown, it could be argued, had an especial obligation to protect those remaining in Maori ownership. Instead, according to the Royal Commission on Native Lands and Native Land Tenure, reviewing the situation in the early twentieth century:

The lands now held by the Waikato and kindred tribes are but a remnant of the lands they once possessed. Most of the tribal land was confiscated, and much has since been sold. The area left, considering the number of people and the quality of much of the land, is not very large.¹⁵⁵¹

The tenurial revolution imposed through the compensation process thus complemented the blanket confiscation proclamations (which were intended to remove the ‘beastly communism’ of collective land ownership at a stroke) by also providing for a form of individualised and alienable title held from the Crown. That was precisely the outcome long hoped for by European advocates of the ‘enfranchisement’ of Maori lands, as they euphemistically called it, who believed that such a form of title would prove much more readily open to alienation than lands remaining under communal management and control. Confiscation, and its accompanying process of compensation, may thus be seen as not only effecting a

¹⁵⁵¹ AJHR, 1909, G-1A, p.2, cited in Ward, *National Overview*, vol.3, p.112.

massive transfer of lands to the Crown, but also perhaps providing a basis for further alienation of much of the lands ‘returned’.¹⁵⁵²

Besides the nature of the titles issued, other possible reasons for later alienations which might be seen to have their origins in the period of war and confiscation might also be perceived. In some cases, the serious socio-economic disruption resulting from the invasion of the Waikato may have contributed to the decision to alienate lands, given the damage done to a once thriving district. Economic options would have been limited for those who remained in the district after 1864, and land was one of the few assets that could readily be sold in order to meet every day living expenses. Certainly the era of supposedly lavish government loans, gifts and subsidies – dubbed the ‘flour and sugar’ policy by its critics – was well and truly over by the mid-1860s. Moreover, although the lack of detailed information as to the tribal basis of applications and awards makes it difficult to properly assess, if lands were ‘returned’ to Maori who did not have strong customary associations with these, then they were inherently more likely to alienate such lands. On the other hand, the sale of lands granted in compensation cannot be taken, in itself, as evidence of a lack of customary links to these, since as noted above, there were a range of factors that may have contributed to alienation.

6.12 Conclusion

Notwithstanding clear and unequivocal early promises that the lands of those not implicated in ‘rebellion’ against the Crown would be secured to them in full, such areas were subsequently included within the sweeping takings proclaimed at Waikato. That move was made possible by redefining the original promise so as to exclude lands owned jointly with supposed ‘rebels’, a sleight of hand that (thanks to the complex and interwoven nature of shared whakapapa and customary rights) rendered the original undertaking more or less meaningless. Maori anxious to secure the return of customary lands might find themselves out of luck if these were required for

¹⁵⁵² Meanwhile, even Crown officials admitted that delays in actually issuing titles resulted in ‘the Certificates issued by the Court...being sold by the Natives at a very great discount’, resulting in ‘much dissatisfaction on their side.’ Pollen to Richmond, 10 January 1868, AGG-A 3/2, Archives NZ (Akl).

military settlements or other purposes and would be required to prove their 'loyalty' before becoming eligible for compensation in money or later land. And if land was received (and it happened to coincide with the former tribal estate) it was usually a fraction of what the claimants once owned, and was (with the exception of a few cases in which the original confiscation was abandoned) nearly always awarded to named individuals to be held under Crown grant rather than reverting to customary title.

The primary mechanism by which money or land was awarded to those able to establish their 'loyalty' was the Compensation Court, an institution whose procedures in other districts have often been described as confused, confusing, chaotic and woefully documented. Analysis of the Compensation Court's operations at Waikato serve only to reinforce such impressions. However, many deals took place out-of-court as well, while in one instance (the Waipa-Waitetuna deed) a problematic Crown purchase initiated in the late 1850s had assumed strong elements of compensation by the time of its completion in September 1864. The process by which formal compensation was to be awarded was first outlined in the New Zealand Settlements Act of 1863 and was subsequently modified in subsequent amendments. Whereas the original Act seemed to envisage compensation solely being payable in monetary terms, this was amended in 1865 to allow either money or land (or a combination of both) to be awarded claimants.

It seems clear that one reason the Crown confiscated a great deal more land than it envisaged retaining was the desire to impose a kind of tenurial reform similar to that instituted through the Native Land Court upon those districts caught up in the wars. It was probably little coincidence therefore that many of the Land Court judges received corresponding appointments to the bench of the Compensation Court or that the procedures of both bodies were similar. Indeed, as we saw, the Compensation Court was at least in theory supposed to operate as a kind of Native Land Court plus, firstly establishing that the claimants had customary rights within the confiscated lands before then determining their eligibility for compensation under the provisions of the New Zealand Settlements Act. However, in practice the Compensation Court does not appear to have placed much emphasis on the first part of this equation. And meanwhile, as we also saw, whereas Maori were accorded a thoroughly inadequate

role in the title-adjudication process that took place in the Native Land Court, in the Compensation Court they had no decision-making role at all.

Initial Compensation Court sittings within the Waikato district began in May 1865 and were at first confined to the northernmost confiscated blocks. But as with most subsequent hearings, many cases were settled by means of poorly documented and less than transparent out-of-court agreements between the Crown agent and claimants. Those agreements, it was argued, were ones in which Waikato Maori were more or less entirely on the back foot by default. It was not a situation in which they sat down and negotiated what would be given up to the Crown, but rather one in which Maori already dispossessed of their lands sought to secure the return of at least a portion of these (or received some monetary compensation instead). That was hardly a position of strength when it came to negotiating with Crown officials.

An alternative procedure, but one seemingly used rarely in Waikato, was for the Crown to abandon the confiscation of particular lands, allowing these to revert to their former customary title status. Instead, more than 1900 individuals were listed as claimants to compensation in the Waikato district. At least some of these were claimants to the Te Akau block, the southernmost portion of which is partially within the Rohe Potae inquiry district. Claims to the block, estimated to contain 158,600 acres, were heard at Port Waikato in February 1866. Despite the convoluted and contested nature of customary claims on the land, the day-long proceedings appear to have been more focused on unearthing any evidence of ‘rebellion’ than evidence of ownership. An area of around 90,360 acres was subsequently awarded to the Tainui and Ngati Tahinga claimants, with the balance going to the Crown, supposedly to reflect the full extent of ‘rebel’ ownership in the block. But the relative areas to be allocated to the two iwi (along with a third individual claimant from Ngati Mahuta) was still being contested in the early twentieth century, due in part to the failure of the Compensation Court to properly inquire into these matters the first time around.

Claims in respect of the huge Central Waikato confiscation district took longer to resolve. That large taking had been intended to convince Maori of the finality of the confiscations, especially in view of evidence that some families were informally resettling on parts of the confiscated territory. Bitter disputes between Fenton, the

Senior Judge of the Compensation Court, and officials hampered proceedings. While the government's primary concern throughout was to protect its own interests, and Fenton was frequently fixated with defending his personal honour and integrity at all costs, there was no one available to protect and defend Maori interests in the whole process of confiscation and compensation.

It was not until the early part of 1867 that claims to compensation in respect of the Military Settlements and Central Waikato lands were finally considered. Periodic delays and adjournments of proceedings appear to have caused significant hardship for Maori, though the very incomplete official minutes make it difficult to even reconstruct a full list of Compensation Court sittings. Much of the real action in any case once again took place out of court, with reports that the Crown agent, James Mackay, had been dubbed the 'land robber' by Maori for the niggardly area of land he was prepared to grant claimants, described as being typically no more than one-tenth of the quantity claimed. While reports suggested that former 'rebels' were admitted into some titles, the evidence on this issue is incomplete. What we do know is that many Maori deemed 'rebels' did not participate in the compensation process, and the hearings in respect of those claims that were filed took place in a hostile environment in which many settlers assumed 'rebels' were being included on the titles and resentfully viewed every acre awarded to Maori as one less available for settlement.

At least some Maori claimants also appear to have resented the whole compensation process, participating in it not because they condoned the confiscation of their lands but because they had little real choice in the matter if they wished to receive back a small portion of these upon which to live. And although we know that members of some Rohe Potae hapu and iwi appeared before the Compensation Court, the individual nature of the awards makes it difficult to reconstruct these along tribal lines (an exercise that would in any case be somewhat misleading given the titles were individualised ones). If the history of the Native Land Court is any kind of reliable guide, then this bypassing of communal title in favour of individual ones is likely to have made the rapid alienation of many of the compensation awards a very real prospect in many cases, a situation probably reinforced by the straitened circumstances in which many Waikato Maori found themselves in the wake of the war.

7. Lands for ‘Landless Rebels’

7.1 Introduction

That adequate lands should be set aside for those deemed guilty of ‘rebellion’ and therefore adjudged liable to suffer the penalty of confiscation had been stressed in Edward Cardwell’s April 1864 despatch, and was thereafter the subject of repeated reassurances from New Zealand officials anxious to dispel any impression that the tribes would be dispossessed of every last acre in the cause of some kind of unseemly land grab. Yet as this chapter will demonstrate, that rhetoric was not always matched by deed. Indeed, it was not until the passage of the Confiscated Lands Act in 1867 that any provision was made for former ‘rebels’ to receive back a portion of the confiscated lands. And meanwhile, entitlement under this legislation was made conditional upon the persons in question having submitted to the Queen’s authority, thereby ruling out large numbers of Maori living within the Rohe Potae district. But in any case, it was a further 12 years before any steps were taken to legally set apart lands under these provisions. It will be seen that the 1879 awards provided a very limited and inadequate form of relief to some Maori, but failed to address the situation of those who had taken up refuge south of the aukati. This was an issue that, for various political reasons, the government thereafter became anxious to revisit.

Yet the Waikato Confiscated Lands Act of 1880, which made provision for additional lands to be set aside for former ‘rebels’ within a two-year timeframe from the date of its enactment, met with a relatively low response from Waikato Maori, despite the time limit subsequently twice being extended. And as officials freely acknowledged, that Waikato Maori did not rush to embrace these provisions owed much to the poor quality of the lands remaining available to select from, as well as stemming in part from a deeper reluctance to engage with the confiscation and compensation processes. Despite evidence of the significantly impoverished circumstances in which some of the tribes had found themselves by the 1880s, many Waikato Maori, it would seem, did not wish to legitimise a process that returned to them a tiny fraction of lands they still considered their own.

7.2 Confiscated Lands Act 1867

As has been noted previously in this report, notwithstanding periodic promises of generous treatment for those who chose to come in, it was not until the passage of the Confiscated Lands Act in October 1867 that any legal provision was made to provide land upon which ‘surrendered rebels’ could live upon. Section 4 of the Act declared that:

It shall be lawful for the Governor from time to time as he shall think fit by proclamation in the *New Zealand Gazette* to reserve out of lands taken...such lands as to him shall seem fit and thereout to grant such portion or portions thereof as he shall think fit to such person or persons of the Native race as shall be proved to his satisfaction to have been in rebellion and have subsequently submitted to the Queen’s authority or by warrant under his hand to set apart out of the lands so reserved as last aforesaid such portion or portions thereof as he shall think fit for the benefit of any such person or persons as last aforesaid.¹⁵⁵³

All was discretionary therefore: there was no requirement to provide lands for surrendered ‘rebels’ and not even a more precise definition of those who might be eligible to receive such lands. Presumably it did not include the vast majority of those who continued to reside behind the aukati, despite the fact that few had been involved in any military action since the Waikato War, since most communities in the district had not formally tendered their submission to the Crown. Always in such matters, however, there were borderline or unclear cases, and this legislation did little to clarify where the line was drawn. In fact, it gave the governor further discretion in section 6, which stated that:

Any grant which the Governor is hereby authorized to make may be made subject to such conditions restrictions and limitations he may think fit And

¹⁵⁵³ *New Zealand Statutes*, no.44, 1867.

wherever the Governor shall under any of the provisions of this Act by warrant under his hand set apart any land for the benefit of any person or persons of the Native race he may either in the same or in a subsequent warrant specify what if any conditions restrictions or limitations shall be attached to the grant thereof when made.

Such sweeping discretionary powers were no doubt intended to re-enforce the message that any lands made available under these provisions were given as an act of grace and charity rather than as of right, since ‘rebels’, whether surrendered or not, were deemed to have forfeited all and any rights they may have held within the confiscated districts. Likewise, it was convenient for the governor to be able to impose conditions on any lands awarded ‘surrendered rebels’ that might ensure they remained in line, or alternatively to hold these in trust for their benefit.

7.3 The 1879 Awards

In 1867 de facto Native Minister J.C. Richmond stated, during the second reading of the Confiscated Lands Bill, that the intention was to ‘plant the amiable rebel Natives on their own land again.’¹⁵⁵⁴ But while the theory was good the reality appears to have been that next to nothing was done for the best part of a decade to make any provision at all for ‘surrendered rebels’ (though at different times various ideas were floated, such as that of setting aside the Whangape block for these purposes, as mooted in 1865). In February 1877 long-time Port Waikato settler Charles Marshall forwarded the Native Department:

...a Schedule of the Ex Rebels of the Waikato tribes with the name, and sex of each individual, the area of land, the locality and number of lot given to each, or party as may be, there are some few as pointed out in the Schedule for which Crown Grants have been issued by direction of the late Honorable the Native Minister and which have in most cases been sold. Several have requested to have Crown Grants for the pieces given to them. I informed them that I believed it was the intention of the Government not to give Crown

¹⁵⁵⁴ NZPD, 26 September 1867, vol.1, p.1103.

Grants, but would as soon as the Schedule was complete have it published in the Gazette for the information of all, giving the full particulars of and defining each individuals [sic] property, which would be equal to a Crown Grant as they would not be permitted to sell.¹⁵⁵⁵

Native Minister Daniel Pollen at this point directed that the lands be proclaimed under section 4 of the Confiscated Lands Act, but uncertainty over the means by which these could be awarded solely for use and occupation delayed this for another two years.¹⁵⁵⁶ Meanwhile, Marshall reported in 1878 that in some cases (notably lands set apart for Ngati Haua in the Tauwhare block), settlers were continuing to deal with Maori for interests in these, notwithstanding the lack of any title having issued and the intention to render the lands inalienable.¹⁵⁵⁷

In July 1879 Native Under Secretary T.W. Lewis set out the situation as it stood. Following receipt of Marshall's schedule of lands in 1877, and Pollen's instructions that these should be proclaimed, the matter was referred to the Solicitor General. In May Pollen issued further orders for the proclamation to be prepared in accordance with the legal advice received, and according to Lewis:

Draft Proclamation and Warrant were accordingly furnished, and considerable trouble was taken in the preparation of the Schedule to them which supplied the names of the tribes and individuals and the locality and acreage of the awards. (The Proclamation and Warrant, with the Schedule thereto, have been in type for the last two years waiting the settlement of the legal and other questions connected with this matter.) The Assistant Law Officer gave it as his opinion that Clause 5 of "The Waste Lands Act 1876" did not empower the issuing of the Proclamation, or, at least, there was a doubt on the subject, and considered that further legislation was necessary. The matter consequently remained in abeyance until after the passing of "The Volunteer and Others

¹⁵⁵⁵ Marshall to Native Under Secretary, 19 February 1877, MA 13/10, Archives NZ, RDB, vol.70, p.27147.

¹⁵⁵⁶ Pollen, minute, n.d., on Marshall to Native Under Secretary, 19 February 1877, MA 13/10, Archives NZ, RDB, vol.70, p.27145; Parsonson, 'Tainui Claims', p.201.

¹⁵⁵⁷ Marshall to Native Under Secretary, 29 March 1878, MA 13/10, Archives NZ, RDB, vol.70, p.27119.

Land Act, 1877”, and was not brought forward until the end of the 1878. Other circumstances have delayed its settlement up to the present time.¹⁵⁵⁸

The 1876 legislation had effectively declared all remaining confiscated lands to be subject to the normal procedures governing the disposal of Crown waste lands. Section 14 of the Waste Lands Administration Act of 1876 had stated that:

The Governor may from time to time, by Proclamation in the *New Zealand Gazette*, proclaim the confiscated lands within any land district to be waste lands of the Crown; and from and after the coming into operation of this Act, no confiscated lands or any interest therein shall be sold leased or otherwise disposed of, except in accordance with the provisions of the laws relating to the sale, letting, disposal, and occupation of waste lands in force within the land district in which such confiscated lands are situated.¹⁵⁵⁹

It was only with the passage into law of the Volunteers and Others Lands Act in November 1877 that legislation was passed enabling the government to fulfil prior undertakings in respect of lands for ‘returning rebels’. Section 6 of this Act stated that:

The provisions of “The Confiscated Lands Act, 1867,” shall continue in operation, and shall be deemed to have been always in operation, in respect of any reserves promised to Natives or set apart for Natives under the said Act, at any time previous to the coming into operation of “The Waste Lands Administration Act, 1876,” but which, for want of surveys or other unavoidable causes, could not be proclaimed previous to the time last mentioned.¹⁵⁶⁰

According to the assessment of the Native Under Secretary, when writing to the Native Minister in mid-1879:

¹⁵⁵⁸ Lewis, memorandum, 28 July 1879, MA 13/10, Archives NZ, RDB, vol.70, p.27076.

¹⁵⁵⁹ *New Zealand Statutes*, no.51, 1876.

¹⁵⁶⁰ *New Zealand Statutes*, no.15, 1877.

The position of the question therefore now is, that, although several of the ex-rebels have been permitted to dispose of their awards, and some have been purchased, or, rather extinguished, by the Government, (I refer to the Tauwhare lands) under existing instructions, the Proclamation and Warrant, if issued in their present form, would render further alienation impossible. Several applications have been received from persons to whom the natives have agreed to sell or lease their awards, and, in some cases, these persons have been led to believe that grants would be issued giving power to sell. It is very desirable that the question should be decided, and, as you are aware, during your late visit to Waikato, you had many applications on the subject. I respectfully ask your instructions as to whether the Proclamation and Warrant should be issued in this present form, or other conditions introduced. In many respects it would be advantageous to introduce in them the restriction clause “except with the consent of the Governor,” which would allow the Government the opportunity of deciding in any particular case whether it was desirable to permit a sale or not. I may add that Mr. Mackay, who was Crown Agent in the Compensation Court when the awards were made...would, if desired, be available to furnish the Government with information as to the original intention with regard to these lands.¹⁵⁶¹

There is no indication as to whether Mackay did brief the government on the background to setting aside the reserves, but this final statement provides one of the few indications that these had originally been agreed upon at the same time as the Compensation Court process (a fact which may have contributed to suggestions that ‘rebels’ were being admitted into the titles of lands awarded in compensation).

Meanwhile, officials continued to debate whether the lands should be merely set apart and reserved for the use of ‘former rebels’ or alternatively should be Crown granted to them (and if the later whether alienation restrictions ought to be absolute or conditional). The eventual proclamation, which was finally gazetted in October 1879, set apart various lands described in schedule B under section 4 of the Confiscated Lands Act. It declared that promises had been made prior to 31 October 1876 (when

¹⁵⁶¹ Lewis, memorandum, 28 July 1879, MA 13/10, Archives NZ, RDB, vol.70, pp.27077-27079.

the Waste Lands Administration Act came into force) to a number of specified tribes (named in schedule A) ‘who had been in rebellion, but had subsequently submitted to the Queen’s authority’ to reserve lands for them ‘but such pieces of land, for want of proper surveys and other unavoidable causes, could not be proclaimed previous to the said “Waste Lands Administration Act, 1876” coming into operation’.¹⁵⁶²

Schedule A of the 1879 proclamation named all of the tribes who had supposedly ‘been in rebellion, but had subsequently submitted to the Queen’s authority’. The list included a number of groups with claims within the Rohe Potae inquiry district, including Ngati Raukawa, Ngati Hikairo, Ngati Apakura, Tainui, Ngati Maniapoto and other groups. The full list of 91 hapu and iwi (with original spellings) included:

Table 3 Hapu and iwi deemed to have 'been in rebellion'

Ngatipeke	Ngatikarewa
Ngangau	Ngatiapakura
Ngatimahuta	Ngatingamuri
Ngatihine	Ngatitehuaki
Ngatimaniapoto	Ngatihourua
Ngatipou	Ngatimoenoho
Ngatirewha	Ngatipare
Ngatinaho	Ngatiparehina
Ngatihape	Ngatinainai
Te Whetu Apiti	Ngatiwhetui
Ngatiraparapa	Ngatikoroki
Ngatikiore	Ngatirangiherehere
Ngatihaua	Ngatiuwerora
Ngapuhi	Ngatihinewera
Ngatiwhanaunga	Ngatipikiahu
Ngatiruru	Ngatihuakatoa
Ngatitamaho	Ngatipukauae
Ngatipango	Ngatihineuira

¹⁵⁶² *New Zealand Gazette*, no.109, 23 October 1879, p.1480.

Ngatipaoa	Ruarangi
Ngatiparetoka	Ngatiwerewere
Ngatitamainu	Ngatimaingako
Ngatiwhao	Ngatitamanga
Ngatitupaea	Ngatiwaenganui
Tainui	Ngatipehi
Ngatikoura	Ngatipurangataua
Ngatitahinga	Ngatiparehiawe
Ngatimango	Ngatipihere
Ngatiwhawhakia	Ngatitekahurangi
Ngatiteata	Ngatiteoro No.1
Ngatiamaru	Ngatiteoro No.2
Ngatimahanga	Ngatiwhaearea
Patukoko	Ngatiteohinga
Ngatitapa	Ngatitapaea
Ngatitai	Ngatimanuwakaaweawe
Ngatiwhanga	Ngatihinepare
Ngatihikairo	Ngatiwaikai
Ngatitewhe	Ngatikura
Patupo	Ngatiwairere
Ngatikiri	Ngatitemihi
Ngatingutu	Ngatikahukura
Ngatiraukawa	Ngatikahutakiri
Ngatitangaiaro	Ngatirangituruturu
Ngatikaiaua	Ngatiparakirangi
Ngatiparewehi	Ngatihinetore
Koheriki	Ngatiparehuia
Ngatirangi	

In nearly every case the boldness of assertions that these groups had either been in ‘rebellion’ and/or had subsequently ‘submitted’ to the Queen’s authority was very much in doubt. For one thing, within most groups there could be found individuals or

whanau who had chosen to go a different way from the rest of their group. Rarely was there unanimity of action as to the best course to adopt during the war years and the curious emphasis on the actions of tribes outlined here stood in marked contrast to the individualising thrust of other government policies towards Maori. As the list itself indicated, even some groups considered among the Crown's most faithful allies included members deemed 'rebels', while conversely, as the Compensation Court's awards also showed, some supposedly notorious 'rebel' groups included some 'loyalists' among their number. The labels themselves were, of course, in many respects artificially imposed ones that failed to adequately reflect the true situation on the ground, instead merely representing the Crown's best efforts to categorise (and polarise) Maori into either being for it or against it.

Schedule B of the proclamation listed total reserves of some 37,042 acres.¹⁵⁶³ These were widely scattered throughout the Waikato confiscation district, and included some reserves adjacent to the Rohe Potae inquiry district, one of the largest being 675 acres (in 17 lots) located at Pirongia.¹⁵⁶⁴ Yet although the proclamation had listed the tribes for whom land was to be reserved, the second schedule then went on to list all of the individuals the reserves had been set apart for, 'being persons of the Native race who...have been proved to have been in rebellion, and to have subsequently submitted to the Queen's authority'. They were to be awarded the land subject to the condition that 'in any Crown grants which may be issued to the aforesaid persons, or any of them, there shall be inserted a clause restricting all alienation of the land thereby granted, whether absolute or conditional, or for a terms of years in possession, without the consent of the Governor in Council being first obtained to such alienation.'¹⁵⁶⁵ However, it did not stipulate that the lands would be Crown granted, leaving the door open for these to continue to be held in reserve for the benefit of those named. Thus for all of the debate that had passed between the initial drafting of the proclamation in 1877 and its eventual publication two years later, the issues in contention evidently remained unresolved.

¹⁵⁶³ Parsonson, 'Tainui Claims', p.201.

¹⁵⁶⁴ *New Zealand Gazette*, no.109, 23 October 1879, pp.1481-1482.

¹⁵⁶⁵ *ibid.*, p.1483.

While there had been much talk about the desirability of imposing restrictions on the alienation of lands set apart for the ‘returned rebels’, there was less explanation as to whether this perceived need was prompted by a concern that families and individuals rendered landless by the confiscation of their former property would revert to that condition if allowed to alienate the reserves or alternatively by the view that ‘surrendered rebels’ should not be permitted to profit themselves through such land sales or leases. While both of these were likely to be factors, probably the former was predominant. After all, landless ‘ex-rebels’ would not only be a potential drain on Crown resources, but might also prove a destabilising influence in a district which had long lived under the shadow of the Kingitanga south of the aukati.

There are also questions around the extent to which customary associations with particular areas were taken into account in allocating the reserves. Individuals described as belonging to Ngati Hikairo were awarded the reserves at Pirongia, for example, which was an area in which they advanced customary claims.¹⁵⁶⁶ In other instances, however, the customary association is less apparent. In many cases, of course, most especially with respect to the Military Settlements block, lands had already been allocated for other purposes, which may have impacted upon such decisions.

Marshall reported that prior to publication of this proclamation he had ‘shown and explained the object of the Schedule to two or three of the interested individuals, and they appear pleased with it, as in the absence of the Crown Grants, their claims appearing in the Gazette gives them confidence and they will now consider it a bona fide gift.’¹⁵⁶⁷ Shortly after the *Gazette* notice appeared, Lewis urged recently appointed Native Minister John Bryce that it was ‘very desirable that Crown Grants should be issued for these lands with as little delay as possible’.¹⁵⁶⁸ Bryce approved such a course and draft Crown grants were subsequently prepared. In many cases the area granted was less than that gazetted due to lands being surveyed and taken for roading prior to the title being awarded, and there were other discrepancies between

¹⁵⁶⁶ *ibid.*, p.1491; Ann Parsonson, ‘Stories for Land: Oral Narratives in the Maori Land Court’, in Bain Attwood and Fiona Magowan (eds), *Telling Stories: Indigenous History and Memory in Australia and New Zealand*, Wellington: Bridget Williams Books, 2001, pp.21-40.

¹⁵⁶⁷ Marshall to Native Under Secretary, 14 August 1879, MA 13/10, Archives NZ, RDB, vol.70, p.27054.

¹⁵⁶⁸ Lewis, minute, 28 October 1879, MA 13/10, Archives NZ, RDB, vol.70, p.27028.

the schedules and draft grants.¹⁵⁶⁹ While the grants do not appear on file, it would appear very likely that these contained some kind of restriction on the alienation of such lands.

7.4 The Waikato Confiscated Lands Acts

The 1879 awards did not specifically address the situation of those who had taken up refuge south of the aukati at the end of the Waikato War and had remained living there.¹⁵⁷⁰ Native Minister John Bryce later admitted that the provision to grant lands to former ‘rebels’ who agreed to submit to the law ‘had not been availed of to any great extent.’¹⁵⁷¹ However, legislation such as the Waste Lands Administration Act 1876 and Land Act 1877 both limited the discretion of the Crown in dealing with the confiscated lands and tied the hands of the government when it came to making further provision for such groups. The Land Act declared confiscated lands part of the Crown demesne but while the Volunteers and Others Lands Act had provided for the Crown to honour any undertakings entered into prior to the passing of the Waste Lands Administration Act of 1876 with respect to setting aside confiscated lands for specific purposes, it did not enable new arrangements to be made and the Confiscated Lands Act itself had been repealed in 1878. Further legislation would be necessary if the Crown wished to set aside additional lands for Maori who wished to avail themselves of the opportunity.

At a time when officials were anxiously seeking to ‘open up’ the Rohe Potae district to European settlement by whatever means necessary, this was enough to ensure the issue was revisited in 1880. In July of that year the Native Affairs Committee, reporting on a petition from Wiremu Waitangi and 10 others for the return of Waikato lands, stated that:

...the Committee has learned that the Petitioners were rebel Natives and now wander about from one place to another without settled homes, and the

¹⁵⁶⁹ Marshall to Native Under Secretary, 8 April 1880, 30 April 1880, MA 13/10, Archives NZ, RDB, vol.70, pp.26962, 26975.

¹⁵⁷⁰ Parsonson, ‘Tainui Claims’, p.202.

¹⁵⁷¹ NZPD, 13 June 1882, vol.41, p.423.

Committee recommends this and similar cases to the consideration of the Government, with a view to a satisfactory settlement of the Native question; and that, if needful, legislation be invited empowering a grant of land on condition of permanent occupation and loyal conduct; the Committee also thinks that all such grants should be inalienable.¹⁵⁷²

Already, applications for land were being received. In one case Charles Marshall admitted that a group of 20 Ngati Apakura had first applied for lands in 1870. Although an area of 925 acres, located in the Ngaroto Parish, had been marked off for Ngati Apakura, nothing further had evidently been done to place them on it.¹⁵⁷³ Meanwhile, the Native Under Secretary wrote in response to another application, this time from Tamati Te Haeata, that:

This is an important application & points to the secession of other Natives from the King following the example of those who previously returned & are settled at Onewhero. It would be a very good thing if some general power could be given by law to set apart confiscated & other land for settlement of this kind.¹⁵⁷⁴

Later that year a Waikato Confiscated Lands Act was passed by Parliament. In its preamble the Act declared that:

Whereas tribes and persons of the Native race formerly residing on and owning, according to their usages, lands in the district or country known by the name of Waikato, joined in the late rebellion against Her Majesty, and such lands were taken by the Crown in pursuance of the provisions in that behalf of “The New Zealand Settlements Act, 1863,” and the other Acts amending and continuing the same: And whereas some of such tribes and persons have returned to their allegiance to Her Majesty, and others are desirous of so returning, and it is expedient that the Governor should have

¹⁵⁷² Report of the Native Affairs Committee, 1 July 1880, MA 1/1910/4369 1021, Archives NZ.

¹⁵⁷³ Marshall, memorandum, 7 May 1880, MA 1/1910/4369 1021, Archives NZ.

¹⁵⁷⁴ T.W. Lewis to Native Minister, 15 June 1880, MA 1/1910/4369, Archives NZ.

power to provide lands for their residence and settlement out of such portion of the said lands as still remain unsold or undisposed of.¹⁵⁷⁵

Section 2 of the Act clarified that it did not apply to any lands already granted or subject to lawful contracts or engagement, and section 3 provided that the governor could set aside any lands within the Waikato confiscated boundaries as he saw fit (subject to an annual return of lands showing the area reserved and for whom being tabled in the General Assembly). Meanwhile, section 4 stated that out of lands so reserved the governor could ‘from time to time, grant such portions as he may think fit to such persons of the Native race as aforesaid as shall be proved to his satisfaction to have been in rebellion and to have subsequently submitted to the Queen’s authority, or their descendants; or by warrant under his hand he may set apart out of lands so reserved such portions thereof as he thinks fit, for the use and occupation of such persons.’ Subsequent clauses provided discretion for any conditions, restrictions or limitations to be placed on any such award (section 5), while stipulating that all grants made in accordance with the Act were to be ‘absolutely inalienable’. A residency clause (section 7) also provided that if grantees or their descendants failed to reside on the land in question for a consecutive period of two years the grant could be declared forfeited, in which case the land would revert to the Crown.

The Premier John Hall explained during the second reading of the Bill in August 1880 that:

...its object was to enable the Government to make provision for settling in the Waikato a number of Natives originally belonging to that district, but who left it at the time of the war, and were now residing in the King country. So long as the New Zealand Settlements Act was in force, the Government had power to dispose of confiscated land for the purpose of forming settlements to which these Natives could return; but under the existing Land Act of 1877 there was no such power. The Bill, therefore, substantially would give the Government power to do that, to the extent which was thought desirable. The last experiment of a similar kind made was in the case of the Onewhero Land

¹⁵⁷⁵ *New Zealand Statutes*, no.40, 1880.

Grant Bill,¹⁵⁷⁶ which enabled the Governor to make provision for setting apart land for a similar purpose. That experiment had been very successful; the Natives had been induced to settle down and reside peacefully on it, and to leave the King. It was believed that, if these powers were given to the Governor, it would be the means of drawing away from the King a large number of the Waikato tribes, and settling them down in the districts to which they formerly belonged.¹⁵⁷⁷

The legislation could be seen thus not merely as a belated attempt to provide lands for those wishing to return to the district, but as part of a broader strategy aimed at literally drawing away Tawhiao's supporters, thereby leaving the King isolated and Crown officials free to deal with tribal leaders considered more likely to be amenable to agree to government terms. For these purposes, and in marked contrast to the heavy emphasis placed on individualisation through the Native Land Court process, the government appears to have deemed it more politically effective to deal with hapu, requiring them to accept the confiscation and come in as a whole. Only after submission had been made at a hapu level would the emphasis switch to individualised entitlements.

Nevertheless, the Waikato chief and member of Parliament for Western Maori Wiremu Te Wheoro declared that he would support the Bill. He explained that:

There were many of these people who were roaming about in that district on the lands of others. He knew himself of about a hundred who were thus roving about unsettled on the land. Of course, he did not mean that the whole of these were Hauhaus; but there were some of them who had been separated from the Hauhaus, and who were thus travelling about and had no particular place to settle upon. When these people came and settled upon land owned by Europeans, and cultivated it, the Europeans turned them off and sowed the land with grass.¹⁵⁷⁸

¹⁵⁷⁶ Correctly titled the Onewhero Grant Empowering Act (local), *New Zealand Statutes*, no.7, 1879. It set aside the Onewhero lands on absolutely inalienable terms for members of the Ngati Pou tribe who wished to reside there.

¹⁵⁷⁷ NZPD, 24 August 1880, vol.36, pp.607-608.

¹⁵⁷⁸ *ibid.*, p.608.

Some members wanted to know how much land the government was promising to return by means of the Bill before they would consider supporting it. William Swanson, though, declared that:

The position was this: There were a great many of these Natives scattered all about who were landless men, and who were likely to be very troublesome. They were heavy guests to the people with whom they were living, and who no doubt would be very glad to get rid of them, while they themselves would also be very glad if they had places to which they could go.¹⁵⁷⁹

There was little further debate on the Bill, though with the benefit of hindsight Swanson's unsuccessful suggestion that it be permitted to remain in operation for longer than the two-year limit from the date of its passage stipulated in section 3 seems enlightened.

Initially there were problems with a faulty translation into te reo Maori of the Act, requiring this to be withdrawn, corrected and reprinted.¹⁵⁸⁰ But more fundamental difficulties were also soon apparent. Charles Marshall noted, with respect to applications under the Act, that:

...it should be borne in mind that there is but little land available, the principal part of that inferior and rejected by the Europeans and the Natives themselves. There is a block of about 20,000 acres in the Parish of Waipa where they might be placed and kept together thereby not militate [sic] to the progress of the European Settlers by being mixed amongst them. There will be I have no doubt a number of applications from Natives who having been slaves had no status in their Tribes prior to the rebellion, and consequently no interest in the Waikato lands. I know several who had no claim in the Waikato lands prior to the rebellion, but now as Returned Rebels have their fifty acres each, and in

¹⁵⁷⁹ *ibid.*

¹⁵⁸⁰ Lewis to W.G. Mair, 22 December 1880, MA 1/1910/4369 1021, Archives NZ.

some cases have claimed an interest in the lands of the tribes from which they emanated.¹⁵⁸¹

Meanwhile, it seems that ongoing land sales to Europeans saw what good land was potentially available being reduced in quantity all the time. In September 1881 one official wrote that ‘in view of our present relation with the King people it is very important that no act should be taken by the Crown Lands Depart. which would prejudice the liberal dealing with lands available still unsold & in the Waipa for the purposes of the Confiscated Lands Act 1880.’¹⁵⁸² According to another estimate a total area of some 110,000 acres was potentially available for settlement under the Act, though much of that was, as officials readily conceded on a number of occasions, either of inferior quality if not in many instances entirely unfit for settlement.¹⁵⁸³

A handful of applications meanwhile continued to trickle in, including one dated December 1881 sent:

...from us the members of the Ngatitu Tribe for we are the tribe owning the land Rangiaohia [;] we lived there previous to the breaking out of the war and built houses but in consequence of the war we abandoned it.

In accordance with a certain Act passed by the Parliament in the year 1880 which provides that land may be returned by the Crown to those tribes owning lands within the boundary of the lands confiscated by the Crown we and our hapu now apply that there may be returned to us land out of the land of ours.¹⁵⁸⁴

There was, however, no attempt to deal with the issue of providing lands for those eligible to receive them in any kind of comprehensive way and in 1882 the government passed a further Waikato Confiscated Lands Act, this time extending the

¹⁵⁸¹ Charles Marshall to Auckland Civil Commissioner, n.d., MA 1/1910/4369 1021, Archives NZ.

¹⁵⁸² William Rolleston, memorandum, 28 October 1881, MA 1/1910/4369 1021, Archives NZ.

¹⁵⁸³ ‘W.S.’ to Mair, 28 October 1881 (draft), MA 1/1910/4369 1021, Archives NZ.

¹⁵⁸⁴ Karautu Te Kurupae and others to Rolleston, 9 December 1881, MA 1/1910/4369 1021, Archives NZ.

operation of the original legislation by a further two years.¹⁵⁸⁵ On 9 June 1882 Major Te Wheoro asked in the House what provision the government intended making with reference to the application of certain hapu for lands in the Waikato confiscated territory. Bryce, in response, stated that:

...the Waikato Confiscated Land Act was passed for a period of two years, and the object of it was to enable the Government to give back pieces of land to returned rebels. However, it became apparent to the Government that such return ought to take place in respect to hapus rather than in respect to individuals. He believed that a considerable number of applications had been received from individuals, and also one or two in respect to hapus. At any rate, nothing as yet had been done in the way of giving land back in the manner proposed by the Act. The Act would expire at the end of the present session, but there was upon the Order Paper a Bill which proposed to extend the Act for two years more. He was of opinion that the time was particularly appropriate for carrying the intention of the Legislature into effect, and he would be in favour of making such arrangements as would secure the attainment of the objects contemplated by the Act.¹⁵⁸⁶

Given that even King Tawhiao himself had by this point symbolically laid down his gun before Major Mair at Alexandra in July 1881, marking an end to his period of exile, the time no doubt seemed a propitious one to reopen the question of resettlement of other Waikato Maori on some of the confiscated lands. Now that peace had been restored, a place to live had to be found for those Maori who had taken up shelter beyond the aukati. There was more to this than mere altruism on the government's part. Indeed, the ongoing presence of such 'refugees' within the King Country could only complicate efforts to 'open up' the district to European settlement and the North Island Main Trunk Railway.

Days after responding to Te Wheoro's query, Bryce introduced the second reading of the Bill extending the operations of the Waikato Confiscated Lands Act for a further

¹⁵⁸⁵ *New Zealand Statutes*, no.6, 1882.

¹⁵⁸⁶ NZPD, 9 June 1882, vol.41, p.373.

two years. He declared that although ‘a considerable portion’ of the Waikato district had been confiscated on account of the rebellion of the tribes’:

...it had been held right at the time of confiscation to make provision to give friendly Natives compensation, and for making a grant of land to those rebels who returned and submitted to the law, and were prepared to reside on the land given to them. Those provisions had not been availed of to any great extent. There was, indeed, one remarkable case of a hapu being brought back with great success and settled in this way, and it was in view of that successful instance that the Act of 1880 had been passed. That Act had not, however, produced much, if any, fruit. A considerable number of applications had been made by Maoris during the currency of that Act to come under its provisions; but it was thought that the thing should be done upon a complete and extensive scale if it was done at all: that was to say, it was not so desirable that isolated cases of individuals should be dealt with as those of hapus; large sections of tribes should be taken in a body for the purpose of locating them on the confiscated land. A number of applications, however, had been made, and it appeared to the Government likely that a considerable number more would shortly be made – that was, that the time was now, or very shortly would be, opportune to give effect to what the Act of 1880 contemplated.¹⁵⁸⁷

Although the government could previously have entered into such arrangements without fresh legislative sanction, Bryce explained, it could not do so after the Land Act of 1877 had declared the confiscated territories to be Crown lands that could not be dealt with except under the standard land regulations. Though the government now sought a two year extension on the operation of the Waikato Confiscated Lands Act, he hoped that matters would be settled well before then. Nevertheless, the Native Minister warned that:

...the quantity of really good land still left for disposal in the way contemplated was perhaps not very large; there was a considerable quantity of land, but much of it was not suitable for Maori settlement. However, there

¹⁵⁸⁷ NZPD, 13 June 1882, vol.41, p.423.

were pieces of land available, and he begged to assure the House that nothing would give the Government greater pleasure than to see what was contemplated by this Act carried out, that was to say, to see those Natives who had been in rebellion return to settle on such suitable pieces of land as could be found for them near their former settlements.¹⁵⁸⁸

Subsequent speakers from both sides of the House warmly endorsed the measure. Former Native Minister John Sheehan believed it likely that ‘the power proposed to be given the Government would be very quickly availed of, and, when the Natives showed a wish to come under it, it was desirable the Government should be able to deal with them there and then.’¹⁵⁸⁹ Whitaker, meanwhile, revealed something of the thinking behind the measure when he stated that he had supported the 1880 Act for the same reasons for which he supported the present Bill:

...namely, that it might be found, in the course of coming to a settlement with Tawhiao, requisite to return to him a portion of the land confiscated under the Act of 1863. Of course it was sometimes undesirable that Native locations should be very near European settlements; but he was informed that in this instance the portion of land that would be required was on the west bank of the Waipa, where there was at present very little European settlement. He was bound to admit that there were some lands which ought not to be included in this Bill – for instance, the lands round the Township of Ngaruawahia, some in the township itself, and others which abutted on European settlements.¹⁵⁹⁰

Whitaker added that it would be a mistake to oppose the Bill ‘simply on the ground that the Maoris would be contiguous to the European settlements.’ Clearly, however, to the extent that those hapu and iwi forced into exile after the war were to be encouraged to return north, it was also hoped by at least some that they would be located away from the main European settlements.

¹⁵⁸⁸ *ibid.*, pp.423-424.

¹⁵⁸⁹ *ibid.*, p.424.

¹⁵⁹⁰ *ibid.*

Although Bryce had referred to the limited response to the original Act, Te Wheoro stated that:

The House must not think that the Natives had been slow to take advantage of the provisions of the first Act, as their tardiness in coming forward was owing to the first applicants not having received replies from the Government; and he thought this had been the reason why those who had already made applications had urged the others not to apply. Their requests had not been granted, and that was why others had not taken advantage of the Bill and sent in applications. He had himself seen an application made by Ngatihinetu of Rangiaohia, and also Ngatahine [sic] of Waikato, and of Te Koheriki, belonging to Hauraki. These were applications which he considered should have received favourable consideration.¹⁵⁹¹

Sir George Grey, one of the original architects of the confiscation policy, also endorsed the measure, as did the member for Northern Maori, Hone Mohi Tawhai, who thought it ‘afforded the best means of bridging over the difficulties which had existed between the two races.’¹⁵⁹²

The 1882 Act had once more included a two-year time limit on the granting of lands from the date of its enactment, placing the onus on Crown officials to work swiftly. And with government negotiations with Rohe Potae leaders intensifying during this period, it appears that there was significantly more activity related to attempts to implement the measure. Premier Frederick Whitaker wrote in March 1883 that:

The Waikato Confiscated Lands Act was passed originally in the year 1880, having a duration of two years from that date. The present Act extends its operation for a period of two years longer. The Act enables the Governor to provide lands in Waikato for the residence and settlement of natives driven out of the Waikato in the late war, and who for the most part have been living an isolated life in what has been known as “the King country.” Various causes have been operating for some time past to break through the isolation of the

¹⁵⁹¹ *ibid.*

¹⁵⁹² *ibid.*, p.425.

King's party, and it has been the policy of the Government, as expressed in this Act, to afford facilities to those who may desire to avail themselves of them to settle among the European population on the confiscated lands. The course which the Government is taking to give effect to the provisions of the Act promises to be attended with satisfactory results.¹⁵⁹³

Government agent G.T. Wilkinson's annual report for the 1882-1883 year provides further insight into the efforts made on the ground. Wilkinson reported that 'At present...it looks very much like as if [sic] Ngatimaniapoto were content to leave Tawhiao and his Waikatos to be provided for by the Government under the Waikato Confiscated Lands Act, or in any other way that it may see fit.'¹⁵⁹⁴ He added that:

As the allocation of Natives under the Waikato Confiscated Lands Acts also forms part of my duties, I may here state that during the last seven months considerable effort has been made to get some of the landless Waikatos who principally form Tawhiao's following, and who come under the category of ex-rebels, to accept portions of Government land within the confiscation boundary, and occupy and cultivate the same. These efforts have been, on the whole, fairly successful, but not to the extent that they would have been had the land that was available for them been of good or even fair average quality. Unfortunately it is not so, being mostly either bald fern hills or mountainous timber land, which is not at all the kind of land likely to prove attractive enough to draw the Waikatos from living where they are at present, even if it were possible for them to get a subsistence out of it, which they could not.¹⁵⁹⁵

Wilkinson's comments here were unusually blunt. The land was not even suitable for subsistence purposes, making it little wonder that there had hardly been a rush to take advantage of the provisions. There was, however, more to it than this, in his view. Wilkinson added that:

¹⁵⁹³ Whitaker to Governor, 21 March 1883, GBPP, 1883 [c.3689], p.65.

¹⁵⁹⁴ Wilkinson to Native Under Secretary, 11 June 1883, AJHR, 1883, G-1, p.2.

¹⁵⁹⁵ *ibid.*, pp.2-3.

The poorness of the land under offer to them is not, however, the only reason that keeps them from accepting this offer of land from the Government. The other reason – and I am not at all sure that it is not the main one – is that the time has hardly arrived yet at which they feel justified or even have a desire, to desert the King, the principles they profess, and their present style of living. Sufficiently troublous times have not yet come upon them: they do not realize the fact that Ngatimaniapoto will most likely separate from them and cast them off without an acre. The advent of Europeans in their midst has not yet been in such numbers as to make apparent to them their own weakness and helpless minority; in fact, the shoe does not pinch enough yet. When it does, I think there will then be no difficulty in getting them to accept lands at the hands of the Government; but, when that time does arrive, I am of opinion that it will be necessary to secure, by purchase or otherwise, a large block somewhere in the Waikato District, which shall combine a sea-frontage, with land inshore of a quality suitable for occupation and cultivation, and which also has timber for building purposes and firewood upon it.¹⁵⁹⁶

In Wilkinson's view, then, the tribes had yet to be shown their place. Once they had, grinding poverty and their own socio-economic and political marginalisation would soon see them keen to take up offers of land from the government.

In the meanwhile, the government agent noted, that:

As proof that the majority of the King Natives will not yet accept land from the Government, I may mention the fact that when, in December last, Mr. F.D. Fenton and myself accompanied representatives of the King people down the Waipa and Waikato Rivers, for the purpose of pointing out to them certain blocks of land which were open for their occupation, they would not in any way give us to understand that they intended to occupy them, or that they even appreciated the gift. They merely consented to go on shore and view them, with the apparent intention of claiming them at some future time when they shall think fit. Seeing their demeanour in connection with this matter I took the

¹⁵⁹⁶ *ibid.*, p.3.

precaution to inform them that, under the Waikato Confiscated Land Act, unless they occupied the land, or if they absented themselves from it for two years, they would forfeit all right to it. They mostly, however, received my announcement with indifference.¹⁵⁹⁷

That supposed indifference doubtless had something to do with the poor quality of the lands remaining available for Maori occupation. Wilkinson, though, believed that another factor was the new-found fondness of the King and his followers for travel. He added that:

A great deal was, at the commencement, thought and made of the fact that, these lands under offer to them being part of what once formed their ancestral territory, they would therefore gladly return and settle upon them, but I am satisfied now that such an idea is a fallacy: it may hold good in exceptional cases, but certainly not as a whole. If any further proof of this were required we have only to look at the failure of endeavours during the last fourteen years to get ex-rebels of the Ngatihaua tribe to desert the king and occupy the Tauwhare Block, near Hamilton, which they originally owned, to see that it is only in particular cases and under exceptional circumstances that they have an ardent desire to return and occupy the territory which they have lost, unless it be given back to them as a whole, without any restrictions – in fact, a sort of abandonment of it on our part into their hands.¹⁵⁹⁸

Wilkinson was no doubt on to something here. Were the tribes of Waikato supposed to be happy to be offered a tiny fraction of their original estate – the worst of it, in fact – encumbered by all sorts of restrictions, when their remaining lands had been confiscated? Indeed, might their acceptance of such lands have been seen as almost condoning the confiscations? These were precisely the same sorts of questions that had been played out in the larger negotiations between Tawhiao and Crown officials (discussed in Chapter Nine). While government offers to return lands west of the Waipa River were seen as tempting by some, others viewed acceptance of such a

¹⁵⁹⁷ *ibid.*
¹⁵⁹⁸ *ibid.*

settlement as tantamount to recognising the raupatu of the remainder. That was something that most Waikato leaders could not bring themselves to do.

And yet, for all of the various complications, Wilkinson noted that ‘notwithstanding all these drawbacks, the endeavours to settle the Natives on confiscated lands have...been fairly successful.’ Ngati Mahuta and Ngati Hine had, or were likely to, come to terms, and:

Matters are also in progress with regard to certain members of the Ngatiapakura tribe, who have expressed a desire to settle on some unoccupied Government land in the vicinity of Alexandra and the Puniu River, and they will be located thereon in a few days. They will also take a portion of the available land at Kaniwhaniwha, on the western bank of the Waipa River.¹⁵⁹⁹

By way of further excuse for not making further progress than he already had with settling these various matters, Wilkinson noted that:

In connection with this matter of giving land to Natives there is great difficulty in discriminating as to which of the people claiming are the proper persons who can be recognized under the Waikato Confiscated Lands Act as ex-rebels. If the work to be done consisted merely in giving land to those who asked for it, I could have had, long before this, all the available land allocated to applicants – but then they would have consisted in many cases of those, some of whom had no right at all, and some of whom had already been provided for by Compensation Court awards or from other sources, and who, having since sold what was then given to them, would, if allowed, do the same with what they might get now, that is, if they were successful in getting it. My endeavour has been, and is, to only allot the land to those for whom it was intended by the Waikato Confiscated Lands Act.¹⁶⁰⁰

By way of context, given Wilkinson’s suggestion that ineligible Maori were attempting to claim lands under the provisions of the Waikato Confiscated Lands Act

¹⁵⁹⁹ *ibid.*
¹⁶⁰⁰ *ibid.*

(even though, by his own admission, these were not even adequate for subsistence purposes) we should note a later section of the same report, in which he wrote that:

The social condition of the Natives in the Waikato District is at a very low ebb. They are poor in pocket, poor in possessions, and, worse than all, they are poor in health.¹⁶⁰¹

A schedule of reserves offered at the time of Wilkinson's journey through the Waikato with Fenton in 1882 or subsequent to this indicated a number of reserves varying in size from 20 to 5000 acres, not all of which had been occupied.¹⁶⁰² Wilkinson did not compile the schedule until 1889, and noted that he did so on the basis of incomplete information. A number of the sections listed did not have any acreage attached to them, but those that did totalled approximately 28,875 acres. It would require more detailed block-level analysis than is possible in this report to calculate the extent of lands actually awarded to 'returned rebels', as opposed to the (obviously larger) area offered them.

Wilkinson's actual report on his and Fenton's journey through the Waikato was forwarded to the Native Department in January 1883. In it Wilkinson noted that upon reaching Alexandra in late November, he discovered that Fenton had already held meetings with some of the residents of Whatiwhatihoe, and several had expressed a willingness to go and inspect the lands available for their occupation provided they first received Tawhiao's sanction to do so. The King was then visiting Kawhia, however, and when no answer was received to a letter sent to him, representatives were selected to inspect the lands. Some 26 representatives in all accompanied Fenton, Wilkinson and others onboard a steamer specially chartered for the trip.¹⁶⁰³

Much of Wilkinson's very lengthy report consisted of detailed descriptions of the various locations inspected, along with lists of the names it was proposed should occupy different spots. In some cases he noted that large numbers of tribal members

¹⁶⁰¹ *ibid.*, p.6.

¹⁶⁰² 'Schedule of blocks of Crown Land within the Waipa, Raglan, Waikato, and Manukau Counties, offered to Natives under "The Waikato Confiscated Lands Act 1880" and Amendments thereof', 9 December 1889, BAAZ 1108/116 2666 Survey Files – Land Grants to Rebel Natives, 1889-1903; Parsonson, 'Tainui Claims', p.208.

¹⁶⁰³ Wilkinson to Native Under Secretary, 20 January 1883, MA 1/1910/4369 1021, Archives NZ.

were occupying small areas of land actually awarded to just a handful of grantees through the Compensation Court process. In many cases, the landless Maori in question had applied for lands to be awarded to them in their own right, but it had yet to be determined whether they qualified for consideration under the provisions of the Waikato Confiscated Lands Act.¹⁶⁰⁴ Ironically, the process of allocating lands to supposedly ‘surrendered rebels’ thus served, amongst other things, as a stark reminder of the inadequate nature of the Compensation Court awards to ‘loyalist’ or neutral Maori communities. That point was reinforced in a much shorter report from Fenton on the trip in which he informed the Native Minister that many of the ‘loyalists’, having sold all of the lands awarded them through the Compensation Court, were now endeavouring to be included in the latest allocations. Fenton believed that it was greatly to be regretted that the Compensation Court awards were not made inalienable.¹⁶⁰⁵

Wilkinson concluded his report with some more general remarks in which he declared that:

...I cannot help thinking that an error was made in not impressing more fully upon the minds of the Natives, that this proposed gift of land was being made to them, not to propitiate or curry favor, or because the Government admitted that they (the Natives) had been wrongly treated in the past, or suffered unjustly through losing their lands, but, simply because it recognised that many of them were literally landless, and are living upon the lands of other tribes, who now show signs of refusing to provide for them; therefore the gift of land was made in order that these Natives might have land upon which to live, cultivate and call their own.

From observations made during our week’s intercourse together, I feel satisfied that more of the former and less of the latter idea has taken possession of the minds of the Natives.¹⁶⁰⁶

¹⁶⁰⁴ *ibid.*

¹⁶⁰⁵ Fenton to the Native Minister, 16 December 1882, MA 1/1910/4369 1021, Archives NZ.

¹⁶⁰⁶ Wilkinson to Native Under Secretary, 20 January 1883, MA 1/1910/4369 1021, Archives NZ.

He went on to laud Fenton's contribution to the process, rather backhandedly as it turned out, since he then added that:

...in making this offer of land to them on behalf of the Government, it appears to me...that the importance of the gift was not made sufficiently apparent, and the necessity of the land being occupied and cultivated without delay, was not sufficiently impressed upon them. It does very much appear to me, that, all through the transaction, the Natives looked upon the Government as being forced into the action that it is now taking, not so much from a desire to benefit the Natives themselves, but, because it could not help itself; and that the late Sir Donald McLean's promises of land, and Tawhiao's claim to have Waikato restored to the Natives, was now being brought about by some[thing] other than human agency. That the Natives do not fully appreciate the gift I am quite satisfied, as, in cases where I thought it was my duty to inform them...that they would have to occupy and cultivate the land under view, otherwise they would not be allowed to have it, they replied "kia ahatia kei te Kawanatanga te whakaaro, nana ka kore e ho-mai, hei aha ma wai" "(it matters not, Government can please itself if it does not choose to give us the land, Who cares?)"[;] another reason that I have for doubting whether they are prepared to accept the gift in the spirit in which I understand it was intended to be made, is, their objection, and in some cases direct refusal, to give in names of their people who are to be considered as owners. In one case, when asked by me as to who were to be the owners of a certain block, they replied "Tawhiao," and in another case they said the fixing of the names rested with Tawhiao; and in nearly all cases conveying the idea that they accepted the land on behalf of the Maori King, and can occupy it or not as they think proper.¹⁶⁰⁷

Wilkinson added that there were some exceptions to this attitude, and went on to recommend that notices be printed and distributed, setting forth the requirements of section 7 of the Waikato Confiscated Lands Act for the lands to be occupied. He believed, however, that the clause was a 'very indefinite' one that might allow tribes

¹⁶⁰⁷ *ibid.*

to carry out its letter while entirely evading the ‘spirit’ of the clause, through, for instance, leaving just a token number of people in occupation of the lands awarded them.

He also considered that before final allocations were made it was necessary to ensure that all of those named on the awards were representative of their tribes and that there remained suitable lands for others who had yet to come in. On this point, Wilkinson noted that:

After what I have seen of the available land owned by Government in the Waipa and Waikato districts, including the blocks proposed to be awarded, I am of opinion, that, taking it as a whole, it is of inferior quality, and if these awards are made as proposed, there will be very little left that is of any value at all for Native settlement.¹⁶⁰⁸

Perhaps revealing even more something of the true motivation behind the Waikato Confiscated Lands Act, he added that in many cases the lands had been awarded to tribes which had long forsaken the King cause, so that ‘the main principle of the Act has yet to be carried out, viz the drawing away of certain of the landless Waikato Natives who are still living with Tawhiao on Ngatimaniapoto lands (more or less).’ In the event that those people did come in, he warned, it would be necessary to find further lands for them. In addition, Wilkinson noted that he had received a further fifty or more applications for land that still required to be dealt with, though most of these could not be recognised. He added that:

Great care will have to be taken to see that no Natives who have originally had lands awarded to them are allowed to participate in the lands proposed to be given, unless they first surrender their titles to lands previously awarded to them. And I think this should only be allowed in exceptional cases.

If I understand the matter rightly, the reasons why land is now proposed to be given to certain tribes are entirely different to the reasons why land was

¹⁶⁰⁸ *ibid.*

awarded to Natives by the Compensation Courts that sat at Ngaruawahia in 1866-7. In the latter case lands were awarded to Natives who were supposed *not* to have been in rebellion, as compensation for their territory that had been confiscated. In this case it is because they *were* in rebellion and lost everything, that a gift of land is proposed to be made to them, not as a matter of compensation, but as an act of grace.¹⁶⁰⁹

Wilkinson cautioned that the constant changing of Maori names would require great vigilance to ensure those who had previously received land did not participate in the current process and added that:

There is one other idea that the Natives have formed concerning this matter, and which I think is a mistaken one, viz. that in all cases they are to have given back to them the lands which they originally owned. It will not I think be possible to do this in other than a few cases. Some of the lands owned by certain tribes have entirely passed out of the Government hands. (Ngatiapakura and Ngatihinetu lands near Rangiaowhia and Kihikihi).¹⁶¹⁰

This report thus made even clearer not only the ulterior motives behind the Waikato Confiscated Lands Act, but also the derisory nature of the whole process. It also made it clear that many of the hapu and iwi concerned, despite their landlessness and probable poverty, refused to accept the terms laid down by Fenton and Wilkinson.

Native Minister John Bryce wrote in response that the report was an intelligent one that confirmed his faith in Wilkinson's ability to complete the job now commenced. He added that:

As for Tawhiao it is a very natural thing that the Maoris should consult him as a Chief, or perhaps I should say, the Chief of the Waikatos whom it is now proposed to settle under the Waikato Confiscated Lands Act of last session,

¹⁶⁰⁹ *ibid.*
¹⁶¹⁰ *ibid.*

and to this I see no objection although of course I cannot recognise the right of that chief to debar Maoris from accepting the benefits of the Act.¹⁶¹¹

Wilkinson was advised to ensure that the available lands considered most valuable or desirable were not monopolised by particular groups. Bryce went on to note that:

The objects of the work which he is to carry out are 1st. to provide land as a home for those natives who have been rendered landless by the confiscation of the territory formerly owned by them or their tribe, and to see that they actually settle or reside upon it.

2nd. to detach them from the position of dangerous isolation which they at present occupy, and which leads them to rest their hopes on Tawhiao in the delusive opinion that the authority he claims over several tribes may give them a title to some of the lands of those tribes. This may be called the political motive for it is unquestionable that while the present position continues it will present elements which from a colonial point of view cannot be recognised without uneasiness.¹⁶¹²

The Native Minister further advised that Wilkinson should refer to the earlier instructions issued when Fenton had first been approached to assist in the task.¹⁶¹³ In that earlier document, Fenton had been advised that:

The only special instructions he has to give will be to point out how desirable it is that the persons to whom the land is allocated should immediately occupy it – that the allocations should be to Hapus rather than to individuals, and that the Natives should be located as far as possible near where their old settlements were.

¹⁶¹¹ Bryce, memorandum, 26 February 1883, MA 1/1910/4369 1021, Archives NZ.

¹⁶¹² *ibid.*

¹⁶¹³ *ibid.*

The Native Minister considers that from thirty to fifty acres per individual would be a fair quantity to allocate but this can only be taken as a rough guide as five acres in one place may be as valuable as fifty in another.¹⁶¹⁴

It was very desirable, Bryce wrote in response to the report of the December 1882 negotiations, that allocations should commence as soon as possible, even though it was not the planting season. Wilkinson was to be further reminded that he was to focus solely on implementing the provisions of the Waikato Confiscated Lands Act and in particular was ‘by no means to do any thing which would have the effect of [re] opening the Compensation Court awards.’ If ever the latter was to be carried out, which was ‘highly improbable’, it would necessarily have to be done in a distinct and separate way. Likewise, the greatest care was to be taken before committing the government to exchanges of land, as each would require separate validating legislation, while the move might also be interpreted as reopening Compensation Court titles. Bryce expected that there would no doubt be attempts on the part of Maori who had previously had their claims settled by means of that Court to also claim under the provisions of the Waikato Confiscated Lands Act, and that would need to be carefully watched and guarded against.¹⁶¹⁵

There was little doubt, however, of the broader political objectives underlying the Waikato Confiscated Lands Act. Indeed, the *New Zealand Herald*, in reporting on Fenton’s initial meetings at Whatiwhatihoe, described these as ‘the commencement of a proceeding which may seriously weaken Kingism, and ultimately extinguish it.’¹⁶¹⁶ It added that:

Any considerable acceptance of those lands on the part of the Waikatos would tend greatly to solve this tough problem of Kingism, because Tawhiao would be left alone in the midst of a tribe which accords him only a very slight allegiance. Taonui was, we are told, the principal chief present at the meeting, but as a Ngatimaniapoto, and a great landowner in the present King country, he can have nothing to do with the offers now made by the Government. The

¹⁶¹⁴ T.W. Lewis to Fenton, 16 November 1882, MA 1/1910/4369 1021, Archives NZ.

¹⁶¹⁵ Bryce, memorandum, 26 February 1883, MA 1/1910/4369 1021, Archives NZ.

¹⁶¹⁶ *New Zealand Herald*, 24 November 1882, in MA 1/1910/4369 1021, Archives NZ.

Waikatos have no kingly dignity to keep up; they must feel their position keenly as a landless people, and would naturally rejoice to regain possession of some of their ancestral lands.¹⁶¹⁷

Local newspaper the *Waikato Times* adopted a similar line. It declared that:

The step is undoubtedly one in the right direct. The attitude of the natives towards the Europeans since the wars is the result solely of the influence which the dispossessed Waikatos have exerted on the other tribes. The Waikatos have been animated with the feelings of forced exiles towards their supplanters, and have nursed their hatred to keep it warm. The return to them of some portion of their patrimony, sufficient to provide them with a home of their own, would greatly soften, if it did not entirely eradicate these acrimonious feelings, while it would also remove the sense of wrong entertained by the Ngatimaniapotos, who consider that the Europeans have compelled them to keep the Waikatos during the past twenty years.¹⁶¹⁸

Meanwhile, other factors complicated arrangements. Te Kooti, who had taken shelter in the King Country since 1872, was another for whom land had to be found, following the government's Amnesty Act of 1882 and subsequent 'pardon'. Although he was keen to take up land at Orakau, officials initially failed to identify anything considered suitable, and instead turned their attention to section 69, in the Parish of Mangapiko, close to the township of Kihikihi. It contained just over 129 acres, and according to Wilkinson had been identified by the Inspector of Surveys as a Native reserve, but had not been Crown-granted and nor was it known to whom it had been promised. Reporting on the prospects of this being offered to Te Kooti and his followers, Wilkinson noted that:

The question...arises as to whether this land could be given to Te Kooti and people under "The Waikato Confiscated Land Act, 1880" as they had no claim to it, neither did they occupy it before the war, although there is no doubt as to their being ex-rebels. If it could not, and there is any other Act by which it

¹⁶¹⁷ *ibid.*

¹⁶¹⁸ *Waikato Times*, 28 November 1882.

could, I think this piece would meet their case; the only objection (that I am aware of) being the locating them so near to the European settlement at Kihikihi, and their residence there might be looked upon with distrust by their European neighbours. This piece was one that some of the Ngatiapakura tribe...were anxious to get because of its value and proximity to Kihikihi Township; but I refused to allocate it to them, as they showed, and still show, much delay and dislike to occupy the pieces that have already been pointed out to them.¹⁶¹⁹

Although plans for the section to be offered to Te Kooti were quickly abandoned, the refusal to countenance the claims of Ngati Apakura (who, unlike Te Kooti, did have customary interests in the area) revealed very much a 'take it or leave it' approach on the part of Crown officials. Ngati Apakura may well have been hoping to maximise the future economic opportunities available to them through occupation of a site close to the township but would not be permitted to do so.

Mika Tuia and 19 other member of Ngati Apakura subsequently applied to Wilkinson for land at Ohaupo, but there was nothing available in the area other than swamp. That led Wilkinson to highlight another possible location (section 361, Parish of Ngaroto), which had originally been offered to the Ngati Raparapa section of Ngati Apakura, who had not occupied the land (and were in his view unlikely to do so 'until the King question is settled').¹⁶²⁰ The original offer of land was accordingly deemed to have lapsed in consequence of the failure to comply with the occupancy rule, and the land in question instead offered to the second group of Ngati Apakura.¹⁶²¹ It is worth noting that the section in question, though of unknown quality, was a mere 60 acres in extent, thus providing just three acres per person among the group who had applied for land. In another case, Te Matenga Reweti and 12 others, also of Ngati Apakura, had taken up a block of just 36 acres (lot 37, Parish of Ngaroto).¹⁶²² Both allocations were well below the thirty to fifty acres per individual set out by Bryce as a guide. Even the Native Land Act 1873 had stipulated that fifty acres for every man, woman and child should be considered the minimum requirement for Maori to live

¹⁶¹⁹ G.T. Wilkinson to Native Under Secretary, 28 August 1883, AJHR, 1884, G-4A, p.2.

¹⁶²⁰ Wilkinson to Native Under Secretary, 1 November 1883, MA 1/1910/4369 1021, Archives NZ.

¹⁶²¹ Wilkinson, marginal note, 8 January 1884, MA 1/1910/4369 1021, Archives NZ.

¹⁶²² Wilkinson to Native Under Secretary, 5 September 1883, MA 1/1910/4369 1021, Archives NZ.

upon. Perhaps it was no great surprise, therefore, that Mika Tuia and party also failed to occupy the land.¹⁶²³ In fact, according to Wilkinson, there were several blocks of land offered to members of Ngati Apakura at Mangapiko and Puniu, close to Alexandra, but Te Matenga Reweti's case was 'the only one of their having as yet thought fit to occupy any of the land given to them.'¹⁶²⁴

In the case of a group of Ngati Mahanga offered lands at Tunaekē, Wilkinson reported that, though he was confident that they fully intended to occupy the section in question, practical constraints involving the lack of seed potatoes and the need to provide fencing for their cultivations would likely delay such occupation.¹⁶²⁵ Occupying and developing rural sections was a capital intensive affair and it seems likely that poverty was another barrier to taking up the lands in some instances.

For various reasons, then, it was perhaps hardly surprising if there was no great enthusiasm for the Waikato Confiscated Lands Act among those hapu and iwi who had suffered as a result of the confiscation of their lands. The 1882 extension appears to have been little more successful than the original legislation, and in 1884 yet another Waikato Confiscated Lands Act was passed, once again extending the provision to make reserves for another two years.¹⁶²⁶ This time the Act stipulated that there would be no further extension, but in at least some instances lands offered to groups under these Acts were, owing to a communications failure between government agencies, instead sold to settlers.¹⁶²⁷

John Ballance, by this time Native Minister, told the General Assembly that although the timeframe had previously been extended 'still the Natives had not taken advantage of its provisions. The Act had therefore not been a success.'¹⁶²⁸ He quoted Wilkinson's 1883 report as to the reasons for this, but curiously omitted that part

¹⁶²³ 'Schedule of blocks of Crown Land within the Waipa, Raglan, Waikato, and Manukau Counties, offered to Natives under "The Waikato Confiscated Lands Act 1880" and Amendments thereof', 9 December 1889, BAAZ 1108/116e 2666 Survey Files – Land Grants to Rebel Natives, 1889-1903

¹⁶²⁴ Wilkinson to Native Under Secretary, 5 September 1883, MA 1/1910/4369 1021, Archives NZ.

¹⁶²⁵ *ibid.*

¹⁶²⁶ *New Zealand Statutes*, no.16, 1884.

¹⁶²⁷ Parsonson, 'Tainui Claims', pp.207-208.

¹⁶²⁸ NZPD, 7 October 1884, vol.49, p.249.

which laid great stress on the inadequacy of the lands available to Maori. Nevertheless, Ballance added that:

Under all the circumstances, the Government had decided to ask the House to extend the operation of the Act for another two years. There was some hope that during the next two years a large number – or perhaps he should rather say a considerable number – of these people might be induced to accept the terms which were offered to them. At any rate it was thought only right to give them another opportunity. If they accepted the terms, so much the better: if they did not, no harm would have been done by the Act, and the Legislature would know that it had done its best in the matter.¹⁶²⁹

The only other speaker during the debate, Ebenezer Hamlin, took a different tack. In addition to the reasons for the relative failure of the previous efforts as noted in Wilkinson's report, he claimed that:

A large portion of the land which had been reserved for returned rebels had been surrounded by European settlers, and these Natives disliked coming into contact with their European brethren, as he knew, being very well acquainted with the district. By passing this measure they would simply be retarding the progress of the country. A number of people were anxious to purchase these lands, but as long as this measure was in force the Government would be prevented from having the land cut up and sold. The Natives had had ample time to come in during the four years that the two previous Acts were in force, and, as they had not done so, he did not think the time should be extended.¹⁶³⁰

Native Under Secretary T.W. Lewis had argued without success that a two year extension was insufficient, and suggested that this ought to be at least doubled. He added his own take on the failure of the legislation hitherto, when informing the Native Minister that:

¹⁶²⁹ *ibid.*
¹⁶³⁰ *ibid.*

It will be seen that very little success has up to the present attended Mr. Wilkinson's efforts at locating the Natives – arising I think first from the fact that circumstances have not up to the present compelled the Waikatos with Tawhiao to seek land which they can consider their own - & secondly because the bulk of the land available under the Act is too poor in quality to tempt them to apply for it before necessity compels them to do so.¹⁶³¹

In 1886, shortly before the expiry of the latest and final deadline for resolving the issue, Wilkinson again commented on the implementation of the Waikato Confiscated Lands Act. He informed the Native Department in his annual report that:

Very little has been done during the past year in connection with the settling of ex-rebels on any of the balance of the available confiscated lands. There are several reasons for this, and I have referred to them in previous reports. One of the principal reasons is the extremely poor quality (with here and there an exception) of the land available for occupation; but the main reason of all has been, and is yet, that the King party – amongst whom are most of the ex-rebels who it is desired should occupy these confiscated lands – have not yet arrived at the stage in which they consider it is incumbent upon them to, as they think, humour the Government by breaking up their present political home at Whatiwhatihoe, and splitting themselves up into small bodies for the purpose of taking up isolated positions on land which it is doubtful whether they could get a subsistence from.¹⁶³²

The inadequacy of the lands on offer was thus again a major sticking point. The Waikato tribes were in this case being offered crumbs from the white man's table, but (compounding the insult) from a loaf originally stolen from them. Indeed, Wilkinson now began to doubt whether it was even necessary to offer the crumbs back. He observed that:

Since the investigation of the title to the large Maungatautari Block I have doubted very much whether it is necessary for Government to provide any of

¹⁶³¹ Lewis to Native Minister, 27 September 1884, MA 1/1910/4369 1021, Archives NZ.

¹⁶³² Wilkinson to Native Under Secretary, 25 May 1886, AJHR, 1886, G-1, p.8.

the at-present-landless ex-rebels with Crown lands to live upon. I find, on referring to the Native Land Court lists of owners of the different subdivisions of Maungatautari, that a number of Natives whom I had looked upon as landless either proved their ownership to certain portions of the block, or else were put in out of compliment by the real owners. Be that as it may, the fact remains that they, with others, were awarded land, and in all probability it was land of as good if not superior quality to that which they could get from the available Crown lands in the Waikato district at the present time. In a very few weeks the whole of that large area known as the King country will in all probability be before the Native Land Court; and, from what I know of the intricacies of Native title to land through occupation, intermarriage, gift, &c. (leaving out the great title of conquest), I am of opinion that, by the time the title to the whole of that area (some three million acres) has been investigated, there will be very few Natives at present looked upon as landless who have not been able to acquire an interest, small or great, in part of it. And as when that time arrives the “Native difficulty” will be practically settled, there need not, I think, be any political reason why the Government should give up its Crown lands to Natives unless it should be shown that there are some even at that time who have failed to obtain an interest in any land that has been before the Court, and are therefore landless, and must be provided for. As you are aware, “The Waikato Confiscated Land Act, 1884,” expires in November next, and I would suggest that, instead of renewing it for another term, the Natives be notified through the *Kahiti* and by circular that, unless they take advantage of the Act already in force, and which will continue in force until November, after that date the opportunity to become possessed of Crown lands will have passed away. It will be seen during the time between the present and the next sitting of the House whether it is advisable or necessary to bring the Act into force again or not.¹⁶³³

There is a level of cynicism to Wilkinson’s communication here that, though entirely in keeping with the nature of the Waikato raupatu as a whole, hardly seems consonant with the Crown’s obligations to Maori. Essentially, his message was that, because

¹⁶³³ *ibid.*, pp.8-9.

Ngati Maniapoto and other Rohe Potae groups were expected to include landless Waikato Maori in their titles out of aroha and through whakapapa connections (as had been the case with Mangatautari), the Crown was thereby freed from any obligation to continue offering wretchedly poor lands to them in the hope that they would settle on these.

Such cynicism was compounded by a level of incompetence within and miscommunication between various government departments. In 1889 Wilkinson was instructed by the Native Department to inform Maori who had been offered lands under the provisions of the Waikato Confiscated Lands Act that if they failed to occupy these they ran the risk of losing the sections awarded them. Wilkinson wrote in reply that he had not had time to give this matter much attention but reminded his superiors that he had repeatedly pointed out:

...that the Auckland Crown Lands Department appear never to have been informed that lands were at any time offered to natives under the Waikato Confiscated Land Acts, and that although the offer of such lands to natives was understood at that time to have been made by the Government in perfect good faith, nothing appears to have been done to reserve any lands so offered from being dealt with by the Crown Lands Dept. as ordinary Waste Lands of the Crown, the result has been that one, if not more of the blocks that were offered to natives and accepted by them and which are at present in occupation has been disposed of to Europeans under the provisions of the Waste Lands Acts. It would appear therefore to be fortunate perhaps, after all, that the Natives did not avail themselves to the extent it was hoped they would, of the offers of land that were made to them in 1882, and subsequently. Had they done so the difficulties that would have arisen through the Crown Lands Dept. never having been informed as to what lands were under offer to natives, would have been very considerable, because in all probability much larger areas in the occupation of natives could have been disposed of by the Board.¹⁶³⁴

¹⁶³⁴ Wilkinson to Native Under Secretary, 9 December 1889, DOSLI Hamilton 9, RDB, vol.99, p.37959.

Although Wilkinson was aware of just one case in which land occupied by Maori had been sold in this way, he cautioned that ‘as the Crown Lands Department are entirely ignorant of any native claims over lands in the Waikato District generally, it is just possible that other blocks under offer to natives, and upon portions of which they may be at present living, may have been disposed of to Europeans.’¹⁶³⁵

Wilkinson considered it preferable, prior to issuing the requested reminder to the tribes, that the Crown Lands Department again be communicated with on the matter and asked not to deal in any way with land previously offered to Maori. He feared that such a warning to Maori could prompt some to attempt to occupy lands promised them, only to discover that these had been disposed of to Europeans and that ‘This would at once cause them to think that the Government offer of land to them was not a genuine one.’¹⁶³⁶ He added that ‘What those think who have been in bona fide occupation ever since the land was given to them, and now find that it is being sold over their heads (so to speak) to Europeans, I would not like to say.’¹⁶³⁷ He had suggested to the Survey Office an alternative course of action, specifically that he:

...send to Wellington a list of the sections or blocks that have been offered to natives within the Waipa, Raglan, Waikato and Manukau Counties, and that the same, or a copy thereof should be forwarded by the Native Dept. to the Crown Lands Department at Auckland and that the Crown Lands Ranger (who lives at Pukete within the Waikato County and who knows the district well) could then be instructed to visit the different localities and report as to the number of natives, if any, at present in occupation, also the extent of their cultivations, number of houses etc. Upon this report more especially as regards numbers found in occupation – Government could decide as to what steps should be taken with regard to the area that it will give the people who are in bona fide occupation, and also whether the whole of the balance of land should be thrown open to the Public under the provisions of the Waste Land Acts, or not.¹⁶³⁸

¹⁶³⁵ *ibid.*

¹⁶³⁶ *ibid.*, p.37960.

¹⁶³⁷ *ibid.*

¹⁶³⁸ *ibid.*

It thus appears that a further opportunity was taken to reduce the area of land available for landless 'ex-rebels' and their descendants, though the documentary record would seem to dry up at around this point.

What is, sadly, all too clear is the resounding failure of Crown officials to make adequate provision for the victims of raupatu, and more especially those deemed 'former rebels' and subject to the Waikato Confiscated Lands Act regime. This failing is fully highlighted by a 1900 report tabled in the House of Representatives. It listed 3549 'Landless Maoris in the Waikato, Thames Valley and Tauranga Districts who lost their land by confiscation.'¹⁶³⁹ More than 3000 of those listed were from the Waikato.¹⁶⁴⁰ A number of the hapu and iwi groups under which the names of landless persons appeared are involved in the Rohe Potae district inquiry. There were, for example, some 199 members of Ngati Apakura listed, which was surely a very high proportion of the total population. Ngati Te Kanawa and Ngati Hinetu were among other groups listed. In all, the report provided a powerful indictment of the very real and human consequences of the raupatu.

Those consequences were also apparent from a 1913 petition forwarded by Pura Kangaahi and 23 others of Parawera, Kihikihi, to Prime Minister William Massey. 'This is a petition', they wrote:

...from us landless ones none of whom owns a single acre. Our lands have been confiscated, as follows: Rangiaowhia, Ohaupo, Rukuhia, Ngaroto, Mangapiko, Te Rore, and Roto-o-rangi. None others owned these lands, they were ours of the tribe of Ngata-apakura [sic]; and we are young, there is not an old person amongst us. Let these explanations suffice.

We earnestly pray of you, as Premier of the Colony of New Zealand, and of your ministerial colleagues for relief. Because you, you and the Governor, have been appointed by the Lord to act as a parent for the orphan and the

¹⁶³⁹ AJHR, 1900, G-1.

¹⁶⁴⁰ Parsonson, 'Tainui Claims', p.209.

destitute; such as us who are without land. Therefore we pray to you and the Government to gratify our desires by providing us with some Crown land.¹⁶⁴¹

The petitioners listed a number of specific lots within the Ngaroto, Puniu, Rangiaowhia and Tuhikaramea parishes as Crown lands which were available for these purposes and declared:

Therefore, this [is] notification to you and to the Government that we will occupy these, we who have not a single acre to-day. And we earnestly entreat of you all to agree to let us have these lands.¹⁶⁴²

Besides the 23 names listed in the petition, it was further explained that ‘most of our tribe are wandering we know not where.’¹⁶⁴³

The government’s response to this request was brief to the point of being curt. One month after the original petition to Massey, Pura Kangaahi and the others were informed that:

In reply to your letter of the 3rd ultimo applying on behalf of yourself and others for certain areas of Crown land, on the ground that you are landless, I have to state that there is no legal power to grant your request.¹⁶⁴⁴

This was the full extent of the government’s response. The lack of legal power to grant the request was, of course, hardly a fatal objection, since governments could and did amend laws all the time, including the by now annual ‘washing up’ Bills by means of which numerous matters pertaining to Maori lands administration were addressed. But what the response appeared to confirm was a deep reluctance to address the substance of the grievance.

¹⁶⁴¹ Pura Kangaahi and 23 others to Massey, 3 July 1913, AADS W3562 22/959 (box 296) pt.2, Archives NZ.

¹⁶⁴² *ibid.*

¹⁶⁴³ *ibid.*

¹⁶⁴⁴ F.T. O’Neil, Under Secretary, Lands and Survey Department, to Pura Kangaahi and others, AADS W3562 22/959 (box 296) pt.2, Archives NZ.

There were at least some tentative steps to address aspects of the reserves question. In 1914 Michael Gilfedder, a Native Land Court Judge, and the Commissioner of Crown Lands, Henry Haszard, were appointed to a commission of inquiry to consider various matters relating to the administration of reserves within the Waikato-Maniapoto Native Land Court district, all of which had evidently been set apart for landless 'rebels', as well as various matters pertaining to the implementation of the South Island Landless Natives Act 1906. Among the questions they were required to consider was:

Whether any and, if so, what lands not vested in the Public Trustee have been set apart or reserved in the Waikato-Maniapoto Native Land Court District for the benefit of landless Natives, and in what manner and by what means such lands may be best made applicable for the purposes for which they were so set apart or reserved.¹⁶⁴⁵

At the same time the commission under which Gilfedder and Haszard were to inquire into these matters was carefully circumscribed. They were specifically instructed that 'the subject-matter of the inquiry hereby required to be made is the existing reserves and the disposition thereof, and not the persons entitled to the benefit thereof or the sufficiency of the reserves'.¹⁶⁴⁶ Any and all requests or claims for additional reserves were therefore strictly excluded from the scope of the inquiry.

The commissioners subsequently reported that the Waikato reserves in question had been set apart 'for the use of ex-rebels, under certain conditions of occupation.'¹⁶⁴⁷ They further concluded that:

The evidence of witnesses shows that some of these lands have been occupied under promises made by various Government officers, such as Mr. Bush (late S.M.), the late James Mackay, and the late George Wilkinson, Government Native Agents, while others have been lying idle for forty years and are

¹⁶⁴⁵ 'Reserves for Landless Natives: Report of the Commission of Inquiry in Regard to the Existing Reserves for Landless Natives in the South Island and in the Waikato-Maniapoto Native Land Court District, and as to the Disposition Thereof', AJHR, 1914, G-2, p.2.

¹⁶⁴⁶ *ibid.*

¹⁶⁴⁷ *ibid.*, p.5.

becoming overgrown with noxious weeds. The Natives who are in occupation are desirous of having their holdings individualized and titles issued in order that they may protect their improvements. By section 11 of the Native Land Amendment Act, 1912, the Governor is empowered to have inquiry made as to who are the beneficial owners of the reserves, and in some cases such inquiries have already been made by Judges of the Native Land Court, and the individual shares ascertained. It would appear, however, that at present there is no power inherent in the law to complete the matter by the issue of certificates of title.¹⁶⁴⁸

The commissioners recommended legislative provision be made for titles to be issued in the case of those lands found to be occupied, and added that '[t]he other reserves, with which nothing has been done, could then be freed from restriction, and treated as ordinary Crown lands to be offered for settlement.'¹⁶⁴⁹ Although there were a number of obvious reasons why Maori may not have been occupying such lands at this time, including the problems inherent in attempting to develop or access finance capital for lands to which one did not have a title, these recommendations appear to have been adopted by the government, as some later petitions refer to the sale of such lands to settlers at this time.¹⁶⁵⁰

In 1920 H.M. Skeet, Chief Surveyor in the Lands and Survey Department, wrote a lengthy memorandum concerning the 'many applications made to the Department by Natives claiming to be entitled to Crown Lands alleged to have been previously set aside or reserved for them.'¹⁶⁵¹ He observed that 'The lands to which these claims refer are, generally speaking, small lots situated in various parts of the Waikato District, and, in the aggregate, represent [a] considerable area.'¹⁶⁵² All of the lands in question had been surveyed and were shown on plans as having been reserved for

¹⁶⁴⁸ *ibid.*

¹⁶⁴⁹ *ibid.*

¹⁶⁵⁰ See MA 1 5/13/201, Archives NZ, RDB, vol.67, pp.28880-28915. Evidence from this file indicates that there had, in fact, been lands reserved for 'landless rebels' but no longer deemed necessary for these purposes sold to Europeans since at least 1910. The specific example of three Mangapiko parish lots, located just to the north of the Puniu River, is discussed later in the context of Ngati Maniapoto claims regarding the confiscation of their lands.

¹⁶⁵¹ Chief Surveyor to Under Secretary, Lands and Survey Department, 1 November 1920, AADS W3562 22/959 (box 296) pt.3, Archives NZ.

¹⁶⁵² *ibid.*

Maori, even though in some cases, he claimed, Maori claims on such lands had been ‘disposed of.’ Describing the claims received, Skeet noted that some of these had been received from the descendants of:

...friendly Natives claiming fulfilment of some alleged promise made under the New Zealand Settlement[s] Act of 1863 and its amendments, but the larger number are by returned rebels or their descendants, in some instances asking for the completion of proceedings supposed to have been commenced under the Waikato Confiscated Lands Act, 1880. In many cases it is difficult to determine under what Act the claim originated, and in others they are made without any prior claim whatever, simply because the land is lying idle and is shewn as a Native reserve on the County maps. These claims are generally made so as to enable the Natives to whom the lands may be awarded to dispose of them. The “land for landless Natives” cry is only a pretext: it should really only be money for improvident Natives.¹⁶⁵³

Given such an outlook, it was not surprising that the Chief Surveyor revealed himself to be largely unsympathetic towards those who were now advancing claims on the lands. In the case of claims made on behalf of ‘friendly’ Maori or their descendants, Skeet asserted that although most of the relevant papers had been lost or destroyed:

I think it may be taken for granted that in any cases of this description, even though the land was surveyed and the name of the Native Grantee marked in pencil in our allotment books, full and sufficient reasons must have existed to justify the Department’s action in withholding the Crown Grant.¹⁶⁵⁴

Since Skeet had no idea what those reasons were, and indeed had no way of knowing whether the failure to grant the lands in question was nothing more than a simple case of oversight, this was a very large leap of faith that he was insisting upon.

When it came to the claims of supposed ‘rebels’ or their descendants, Skeet again observed that ‘the information available is quite fragmentary’. Despite this, he

¹⁶⁵³ *ibid.*
¹⁶⁵⁴ *ibid.*

acknowledged that the Waikato Confiscated Lands Act 1880 ‘appears to have failed to give effect to the purposes for which it was drafted’. The government nevertheless held a convenient out clause in the case of many of these claims, since it was ‘obvious that with respect to the unoccupied lands any promise made to the Natives is void through non-fulfilment of the residential clause of the [1880] Act’.¹⁶⁵⁵ He recommended that the Crown Lands Ranger be instructed to prepare a series of reports as to which of the reserves were occupied so that the outstanding claims could finally be disposed of and all unoccupied lands made available for disposal by the Crown.

Yet although this recommendation was subsequently endorsed, some of the sensitivities around these issues was apparent from a 1922 telegram from the Minister of Lands, David Guthrie, concerning lands within the Whangamarino parish which had been set aside for Maori occupation but more recently proclaimed a provisional state forest. Guthrie cited a confidential telegram from fellow Cabinet Minister and MP for Western Maori, Maui Pomare, in which the latter had confided that ‘The whole of the Waikato Tribe blame me and the government which I represent for reconfiscating their lands.’¹⁶⁵⁶ Pomare predicted that he would lose his seat in Parliament in the forthcoming general election unless the proclamation was reversed, indicating just how sensitive the whole issue of the reserves for ‘landless rebels’ had become. Officials within the Lands and Survey Department meanwhile reassured their own minister that the proclamation had merely been intended to allow timber to the value of more than £500 to be removed from the land.¹⁶⁵⁷ Now that it had – and the land had literally been stripped of its value – it could be made available for ‘landless natives’, even if officials continued to view their claims as at best doubtful (though perhaps with a view to easing Pomare’s anxieties, the possibility that the money might eventually be handed over to those awarded ownership was also floated).¹⁶⁵⁸

¹⁶⁵⁵ *ibid.*

¹⁶⁵⁶ D.H. Guthrie to J.B. Thompson, 29 November 1922 (telegram), AADS W3562 22/959 (box 296) pt.4, Archives NZ. In the interests of readability the all-upper case lettering of the original telegram has been modified here.

¹⁶⁵⁷ J.B. Thompson to Guthrie, 29 November 1922 (telegram), AADS W3562 22/959 (box 296) pt.4, Archives NZ.

¹⁶⁵⁸ *ibid.*; Thompson to Guthrie, 27 November 1922 (telegram), AADS W3562 22/959 (box 296) pt.4, Archives NZ.

In another case, that of lands located within the parish of Tamahere, the Native Department strongly rejected the suggestion of the Under Secretary for Lands that these should be disposed of in the normal way, pointing to a record of promises dating back at least as far as 1867. In 1877 Native Minister Pollen had rejected a proposal to impose a time limit on former ‘rebels’ who wished to apply for the lands in accordance with Sir George Grey’s earlier undertaking to Wiremu Tamihana, describing such a proposal as ‘one confiscating the rights and claims of the persons entitled’.¹⁶⁵⁹ Despite this, the Waikato Confiscated Lands Act had effectively imposed such a time limit, and although a list of allotments had been sent to the Lands Department in 1883 it was presumed in the light of incomplete records that nothing had been done to carry out the reservation. ‘In the absence of such a reservation’, it was added, ‘the Natives it will be observed could have done nothing more than they did, namely, return to their allegiance, have lands allocated to them, and wait for the Crown to act.’¹⁶⁶⁰ The statutes authorising the Crown to take action having been repealed complicated matters but did not deprive Maori of any rights already accrued.

A clause in one of the annual ‘washing up’ Bills (section 6, Native Land Amendment and Native Land Claims Adjustment Act 1922) was finally used to enable the question of whether there were any claims to the reserves remaining in Crown hands to be referred to the Chief Judge of the Native Land Court for inquiry.¹⁶⁶¹ Judge MacCormick produced a number of interim reports, including one in June 1926 in which he noted that he had hoped to conclude his investigation at his most recent sitting at Ngaruawahia ‘but owing chiefly to the indifferent attitude of the Natives themselves was not able to do so.’¹⁶⁶² Most of the sections he reported on were located at Tamahere, but his general comments in relation to these are of interest. The Judge observed that:

I find myself in a considerable difficulty as to these. There is little definite information about them to be obtained from official records. And there is a

¹⁶⁵⁹ Native Under Secretary to Under Secretary for Lands, 5 November 1922, AADS W3562 22/959 (box 296) pt.4, Archives NZ.

¹⁶⁶⁰ *ibid.*

¹⁶⁶¹ Native Under Secretary to Under Secretary for Lands, 5 August 1924, AADS W3562 22/959 (box 296) pt.4, Archives NZ.

¹⁶⁶² Judge MacCormick to Chief Judge, 1 June 1926, AADS W3562 22/959 (box 296) pt.4, Archives NZ.

good deal of confusion and uncertainty as to what actually took place between the Commissioners under the New Zealand Settlements Act 1863 and other Government officers and the Natives. A considerable area was obviously intended to be returned both to loyal Natives and rebels and according to information supplied me by the Lands Department nearly 17,000 acres were actually granted to Natives in Tamahere Parish.

It seems quite clear that the intention of the Government was to induce the rebel Natives to return and settle upon their lands, but it is equally clear that they did not return. But the question of these lands was never settled. In 1882 Mr. R.S. Bush, R.M. was instructed to hold an inquiry which he did at Cambridge...The list of claimants supplied to Mr. Bush...comprised 109 persons. Very few appeared, Mr. Bush gave only 10 certificates altogether. None of these was acted on.

Apparently the lands now in question remained unoccupied for many years but in more recent years various Natives have squatted on them here and there, in some cases effecting improvements and erecting houses though not of any great value.

The whole question is one of policy on which I think there should be some expression of opinion by the Government or Parliament. It is not a judicial question at all. The land would in my opinion, have gone to the Natives if they had returned to it but they did not do so. The Crown, however, took no steps and the position has become complicated by the squatting which has taken place wholly unchecked by the Crown.

A further question was raised. A section of Ngatihaua, claiming to be the representatives of loyalist Natives only, urged that the land should be returned to them only, to exclusion of what they termed the rebels. I am not in accord with that. Apart from the practical difficulty of now ascertaining after the lapse of so many years who were really loyal it seems to me that the time has gone by for such distinctions. And probably only the neglect of the rebel Natives to apply for land prevented them getting most of the land now in

question. Apart from special claims I consider that if the land is returned it should be to Ngatihaua generally.¹⁶⁶³

Judge MacCormick's refreshing rejection of the 'rebel' and 'loyalist' labels as outdated stands in marked contrast with the contemporaneous Sim Commission's continued insistence on their relevance in its own inquiries (as we shall see in a later chapter). And although we should be wary about drawing large conclusions from specific examples (especially when they are beyond the brief of the present report), at the very least the Tamahere case suggests that the lands set aside for 'ex-rebels', though dismissed by even one key Crown official in the 1880s as wholly inadequate even for subsistence purposes, may have assumed added importance over time, especially as the brutal realities of poverty and landlessness began to sink in. Other examples of early twentieth century agitation in relation to such lands is noted in a later chapter.

7.5 Conclusion

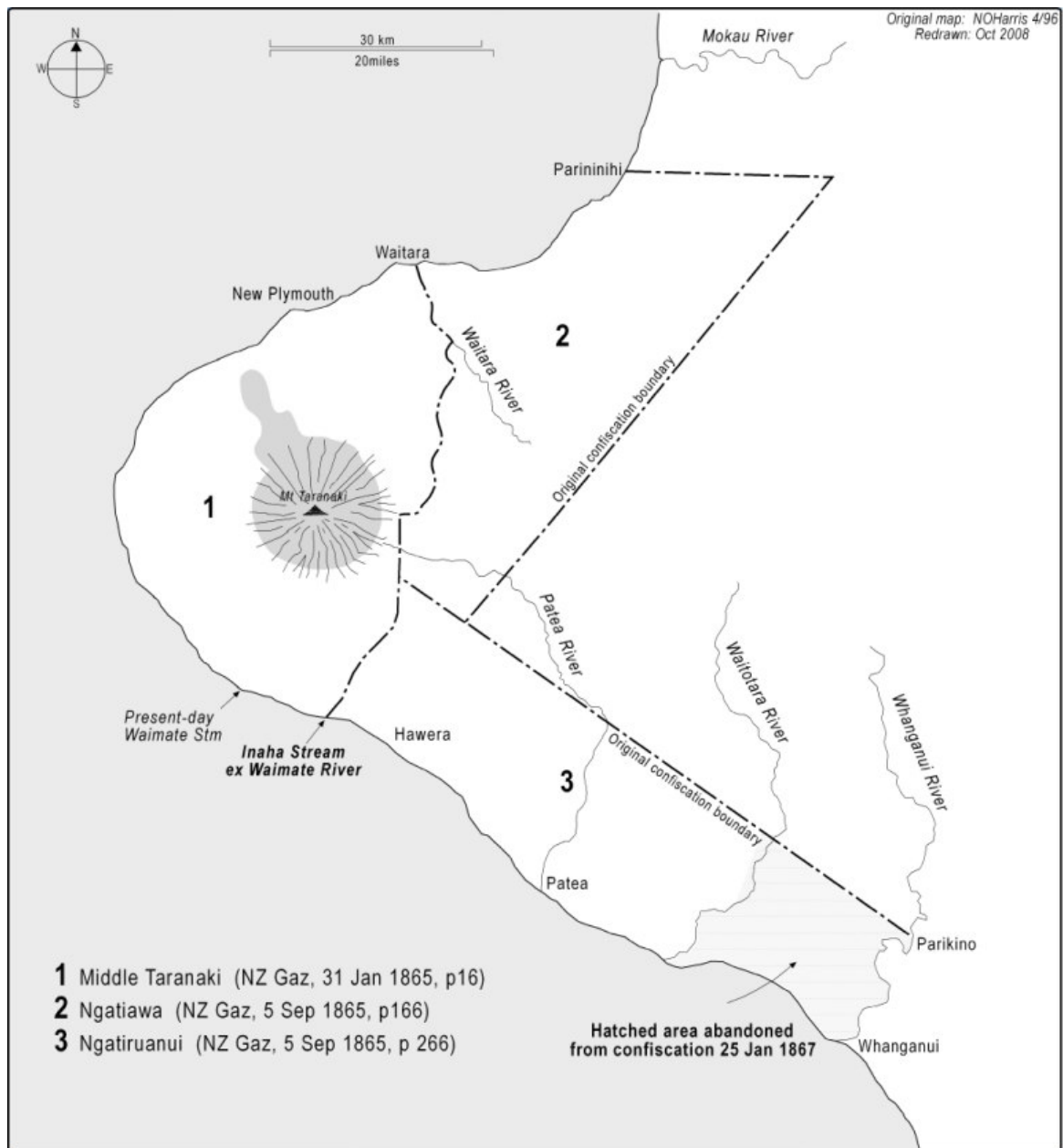
While officials promised that former 'rebels' would be generously treated with respect to allocating them lands to live on, no steps were taken to make any legal provision for them prior to 1867. The Confiscated Lands Act passed that year finally enabled the governor to set aside lands for these purposes. But an even lengthier delay followed, and it was not until 1879 that any legal steps were taken to set aside lands under the legislation passed 12 years earlier. The 1879 awards, encompassing an area of around 37,042 acres, constituted an inadequate and incomplete response to the situation. However, the government remained keen to lure Waikato Maori out of the Rohe Potae district in order to remove one potential impediment to its 'opening up' to European settlement, and therefore enacted the Waikato Confiscated Lands Act in 1880 in order to allow further lands to be offered to 'returning rebels' who might wish to take advantage of its provisions.

The 1880 Act met with a poor response for two reasons, the first being the deep reluctance of many Waikato Maori to participate in any process that might potentially

¹⁶⁶³ *ibid.*

be seen as in some ways condoning or legitimising the land confiscations, and secondly, on a more practical level, because of the often woefully poor quality of the lands remaining available to select from. A two-year time limit on the operations of the Act was twice extended but with little additional progress. Although some tribes (including some sections of Ngati Apakura, for example) did engage with the process and received small areas of land subject to ongoing occupation, others refused to accept the terms set out by Crown officials, despite their own landless and impoverished circumstances.

By the late 1880s, the issue no longer appears to have been a priority one for officials, who now argued that the actions of Ngati Maniapoto and other iwi in including landless Waikato Maori in the titles to their own blocks out of aroha freed the Crown from any obligation to provide for them. Bureaucratic blunders also saw some lands previously offered to landless 'ex-rebels' instead sold to settlers, and the ultimate failure of the government's efforts towards such groups was all too clearly revealed by a 1900 return of more than 3000 Waikato Maori rendered landless by the confiscations. Despite this clear evidence of an ongoing need to address the legacies of raupatu in the Waikato, many lands set apart for the benefit of landless former 'rebels' were subsequently sold by the Crown.



(Source: Waitangi Tribunal)

Figure 14 Taranaki Confiscation Districts

8. The Taranaki Confiscation and Rohe Potae Interests

8.1 Introduction

Thus far this report has focused more or less exclusively on the Waikato district broadly defined. In this chapter we turn our attentions to the Taranaki district, examining the confiscation of lands in that province. These are considered more briefly than the Waikato confiscation for two reasons. Firstly, significantly more research has already been completed in relation to Taranaki than Waikato, and a Tribunal report was released in 1996 in respect of the claims of iwi and hapu active in that inquiry; secondly, the focus in this chapter is solely on the manner in which Rohe Potae interests within Taranaki were dealt with at the time. Groups such as Ngati Maniapoto were not involved in the Tribunal's previous Taranaki inquiry, and the existing research barely touches upon their interests.

A subsequent urgent Tribunal inquiry and report (released in 2001) dealing with objections from some Ngati Maniapoto groups to the terms of a proposed Crown settlement with Ngati Tama provided a little more acknowledgment of such interests, but was mostly focused on contemporary policy issues in relation to Treaty settlements and less so on the historical foundations for the Ngati Maniapoto claim within Taranaki.¹⁶⁶⁴ It also tended to be more concerned with resolving a boundary dispute between the groups, rather than considering the broader issues arising from Ngati Maniapoto claims extending much deeper into Taranaki. Much of the evidence relating to the basis of those claims to an interest (though not necessarily an exclusive one) extending as far south at least as the Sugar Loaf Islands will be presented in the report concerning political engagement in the period to 1863. Although some of that material is briefly summarised here, the chapter should therefore be read in conjunction with the political engagement report. It should also be noted that although this chapter traverses (in more abbreviated form than will be the case in the political engagement report) evidence relating to the assertion of rights within the Taranaki district and the extent to which Crown officials recognised such claims, the full nature

¹⁶⁶⁴ Waitangi Tribunal, *The Ngati Maniapoto/Ngati Tama Settlement Cross-Claims Report*, Wellington: Legislation Direct, 2001.

and extent of such rights is a matter best left to others more qualified to comment on this subject.

8.2 The Taranaki Confiscation and Rohe Potae Claims

The same proclamation of 17 December 1864 by which the governor announced his intention to confiscate much of the Waikato district also declared that in the province of Taranaki ‘such land belonging to the Rebels’ as the governor saw fit to take would also be confiscated.¹⁶⁶⁵ Prior to this the terms upon which lands would be granted to military settlers in Taranaki had been announced in July 1863,¹⁶⁶⁶ but it was not until 31 January 1865 that the first confiscations were proclaimed.¹⁶⁶⁷ An area stretching from Waitara south to the Waimate Stream was proclaimed as the Middle Taranaki confiscation district, and within this two sites (Waitara South and Oakura) declared as eligible sites for settlement under the 1863 confiscation legislation.¹⁶⁶⁸ This was followed by further proclamations in September 1865 whereby the area stretching from Waitara north to Parininihi was declared the Ngatiawa confiscation district and the area between Waimate River and Whanganui became the Ngatiruanui confiscation district (see figure 14). Within these areas all lands not previously set aside for the purposes of settlement (that is, actually confiscated) were now taken, though the confiscation of the area between Waitotara and Whanganui rivers was eventually abandoned in January 1867 (see figure 15).¹⁶⁶⁹ In total, some 1,199,622 acres were proclaimed confiscated, of which an area of 214,675 acres was eventually ‘returned’ to Maori, either through the Compensation Court process in the 1860s or the more extensive West Coast Commission of the 1880s.¹⁶⁷⁰

¹⁶⁶⁵ *New Zealand Gazette*, no.49, 17 December 1864, p.461.

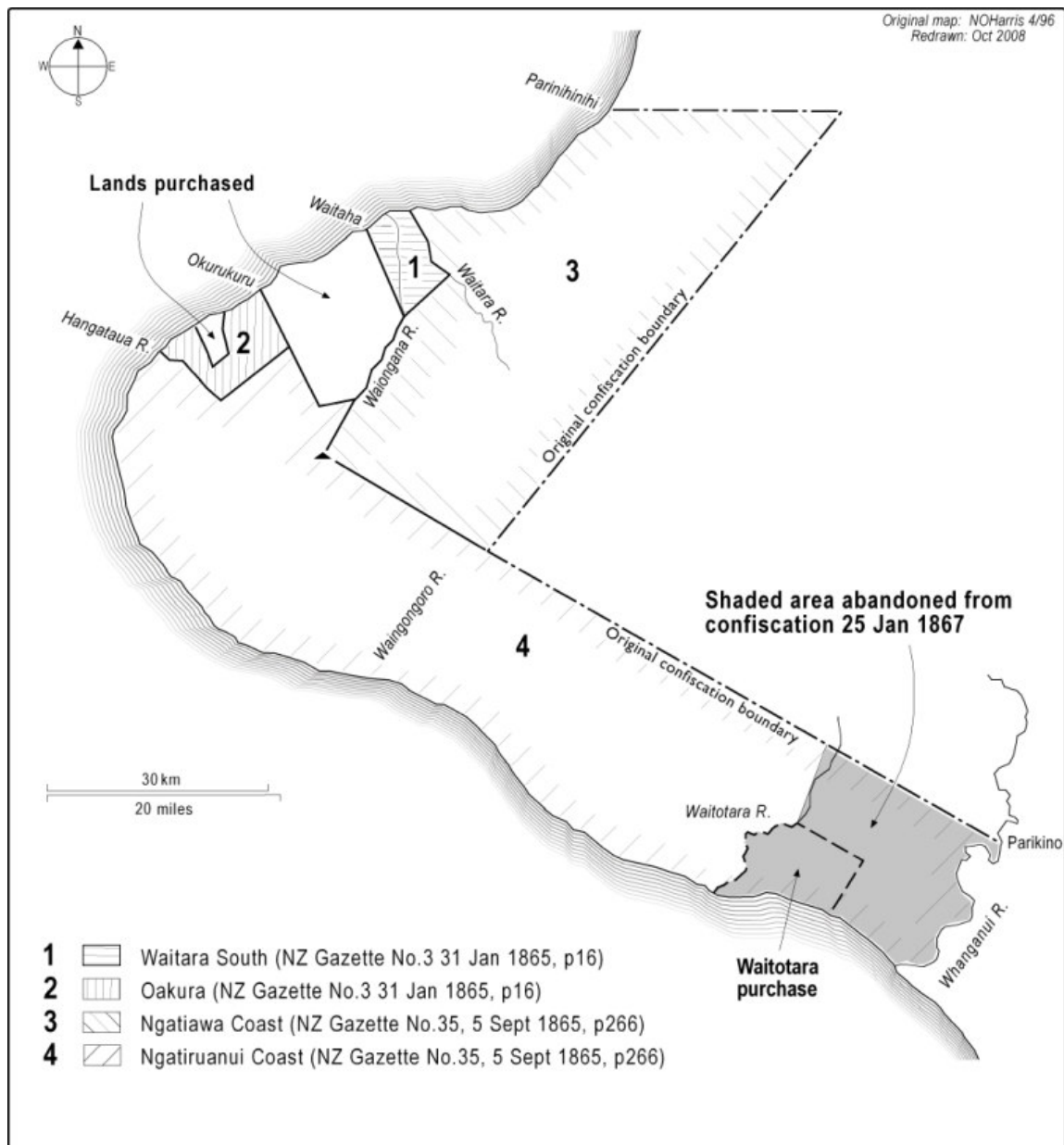
¹⁶⁶⁶ *New Zealand Gazette*, no.27, 6 July 1863, p.265.

¹⁶⁶⁷ *New Zealand Gazette*, no.3, 31 January 1865, pp.16-17.

¹⁶⁶⁸ *ibid.*, pp.15-17.

¹⁶⁶⁹ *New Zealand Gazette*, no.35, 5 September 1865, pp.265-267; Waitangi Tribunal, *Taranaki Report*, pp.122-124.

¹⁶⁷⁰ Ward, *National Overview*, vol.3, p.173.



(Source: Waitangi Tribunal)

Figure 15 Taranaki Lands Confiscated as Eligible Sites for Settlement

These, then, are the basic facts of the Taranaki confiscation, and since the subject has been the topic of extensive research (by comparison with Waikato, anyway) and has previously been reported on by the Tribunal, it would appear unnecessary to examine these matters in further detail here. The interest in these issues, for the purposes of this project, is (as stated above) in any case more narrowly focused on the interests of Rohe Potae hapu and iwi within the Taranaki confiscation district and the extent to which such claims were recognised by the Crown at the time and if so how they were dealt with. For the sake of convenience, such claims can probably be considered to fall under two distinct though related categories.

The first of these is the generic Ngati Maniapoto claim to interests extending south about as far as New Plymouth (or more specifically to the Sugarloaf/Ngamotu islands) arising out of involvement in the defeat of the Taranaki tribes during the musket wars. In October 1839 Colonel William Wakefield claimed to have purchased some 20 million acres of central New Zealand, extending from the south head of the ‘River or Harbor of Mokao [sic]’ in the North Island all the way to the Hurinui River in the South Island, from Te Rauparaha and a handful of other chiefs.¹⁶⁷¹ That purported purchase was so preposterous that even the New Zealand Company abandoned any serious claims to land by virtue of it.¹⁶⁷²

Subsequent to this, on 15 February 1840 Wakefield entered into two more deeds with a group of Maori at New Plymouth. The Nga Motu deed purported to transfer to the Company lands between the ‘Wakatino’ (Mohakatino) River and Hauranga on the coast, while the second deed extended south as far as Stony River.¹⁶⁷³ Both deeds were entered into after the Crown claimed to have acquired a pre-emptive right of purchase by virtue of the Treaty of Waitangi signed on 6 February 1840, and subsequent to William Hobson’s proclamation of 30 January 1840 that all private purchases entered into after that date would be considered null and void. However, for our purposes of greater interest is the response of Ngati Maniapoto and other Waikato

¹⁶⁷¹ Turton’s Deed No.429, <http://www.nzetc.org/tm/scholarly/tei-TurOldP-t1-g1-g14-g6.html> (accessed 5 March 2010).

¹⁶⁷² Waitangi Tribunal, *Taranaki Report*, pp.22-23.

¹⁶⁷³ Turton’s Deed No.420, <http://www.nzetc.org/tm/scholarly/tei-TurOldP-t1-g1-g13-g2.html> (accessed 5 March 2010).

tribes to these arrangements. New Zealand Company naturalist Ernst Dieffenbach, who spent more than two months at Taranaki during the signing of the various deeds, observed that at Sugarloaf Point, or Ngamotu, there were only about 20 Taranaki Maori. Upon encountering Dieffenbach and Company translator Richard Barrett:

In a singing strain of lamentation they related their misfortunes and the continual inroads of the Waikato. The scene was truly affecting, and the more so when we recollect that this small remnant had sacrificed everything to the love of their native place. I perceived in the evening how much they stood in dread of the Waikato. A fire had been observed in the direction of Kawia [sic], and the fear that the Waikato were again on their way to Taranaki kept them awake during the greater part of the night.¹⁶⁷⁴

Dieffenbach reported that in January 1840 two Taranaki Maori who had been captured and enslaved by Waikato arrived back in the district from Kawhia. Besides bringing news of developments further south at Waikanae, Dieffenbach recorded that:

They also told us that the Waikato were prepared to make an immediate descent on us, in order to prevent the natives of Taranaki from selling any of the land, which they regarded as their property.¹⁶⁷⁵

He subsequently found it impossible to sleep in consequence of constant speculation as to the anticipated attack from Waikato, and although this did not follow, their ongoing claims in respect of Taranaki remained very much in evidence. Furthermore, former Wesleyan missionary William White had gone so far as to enter into a deed of purchase for the whole of the lands between the Whanganui and Mokau rivers in competition with the New Zealand Company. The signatories to his agreement, which was signed on 28 January 1840, were chiefs of Waikato and Ngati Maniapoto.¹⁶⁷⁶ Among the signatories to the deed signed at Kawhia were Haupokia Te Pakaru and Rangituatea, Kiwi of Ngati Mahuta, Muriwhenua and Wiremu Nera Te Awaitaia of

¹⁶⁷⁴ Ernst Dieffenbach, *Travels in New Zealand, With Contributions to the Geography, Geology, Botany, and Natural History of that Country*, 2 vols, London: John Murray, 1843, vol.1, p.138.

¹⁶⁷⁵ *ibid.*, pp.163-164.

¹⁶⁷⁶ Angela Caughey, *The Interpreter: The Biography of Richard 'Dicky' Barrett*, Auckland: David Bateman, 1998, pp.129-131.

Ngati Mahanga and Ngati Hourua from Whaingaroa.¹⁶⁷⁷ They received goods to the value of £30 out of a total promised payment of £1000.¹⁶⁷⁸

White meanwhile managed to win over the support of Wesleyan missionary John Whiteley through an agreement to grant the mission any land in Taranaki they were able to pay for, while in another unusual condition of the deed the signatories agreed that Catholic missionaries would be permanently excluded from Taranaki.¹⁶⁷⁹ New Zealand Company representative Colonel William Wakefield was also warned off further dealings in Taranaki. White informed Wakefield that:

...he had bought the land bounded by the *Wanganui* and *Mokau* rivers, and a line between their sources, from the *Waikato* and *Ngatimaniapoto* tribes; and that if we persisted in buying this district from the resident natives, those former conquerors had determined to recommence hostilities, or to claim the protection of the British Government in securing their rights.¹⁶⁸⁰

Ann Parsonson comments that the only effect White's deed with Waikato and Ngati Maniapoto chiefs in respect of Taranaki could possibly produce 'was an ineradicable determination in Ati Awa to complete their own sale as soon as possible – and to extract more payment from the Company.'¹⁶⁸¹ As noted above, further deeds were entered into between the Company and Taranaki Maori in February 1840, while White never completed his own purchase. He received a valuable piece of land in return for surrendering all of his land claims, but meanwhile further Waikato claims were stirred up by these events. Te Wherowhero, in particular, was said to have been greatly irritated by the share of White's payment previously offered him, and continued to press for further recognition.¹⁶⁸² By the mid-1840s large numbers of former Taranaki captives were allowed to return to their homes by Waikato and Ngati Maniapoto chiefs in what Parsonson describes as a 'series of competitive grand

¹⁶⁷⁷ Ann R. Parsonson, 'He Whenua Te Utu (The Payment Will Be Land)', PhD thesis, University of Canterbury, 1978, p.232.

¹⁶⁷⁸ *ibid.*, p.233.

¹⁶⁷⁹ *ibid.*

¹⁶⁸⁰ E.J. Wakefield, *Adventure in New Zealand, From 1839 to 1844; With Some Account of the Beginning of the British Colonization of the Islands*, 2 vols, London: John Murray, 1845, vol.1, p.169.

¹⁶⁸¹ Parsonson, 'He Whenua Te Utu', p.234.

¹⁶⁸² *ibid.*, pp.234-237.

Christian gestures'.¹⁶⁸³ Those gestures were not, however, without strings. According to Parsonson, the Waikato and Ngati Maniapoto chiefs reasoned that the presence of their former taurekareka (captives or slaves) at New Plymouth would serve to remind all of Te Atiawa of the nature of Waikato interests in Taranaki.¹⁶⁸⁴

Waikato claims over Taranaki were also acknowledged by Crown officials after 1840. Whiteley recorded in his journal in July 1841 having encountered a chief named Te Waru:

He has just returned from Auckland where he has seen the Governor and a great many things new and strange to him. He, the Governor, says, the Taranaki land belongs to the Waikato tribes and in the summer he shall come here with a vessel and after assembling the chiefs, shall proceed with them to see the place.¹⁶⁸⁵

Forwarding the Chief Protector's half-yearly report to the Secretary of State for the Colonies in December 1841, Governor William Hobson highlighted this claim, declaring that the 'extremely powerful' Waikato tribe under Te Wherowhero had:

...conquered and drove away the Ngati-awas from Taranaki in 1834, leaving only a small remnant, who found refuge in the mountains of Cape Egmont; and having pretty well laid waste the country, and carried off a large number of slaves, they retired to their own district on the banks of the river Waikato.

Some five years later, he explained, 'Colonel Wakefield visited the country, and bought a considerable portion of it from the few Ngati-awas who had resumed their habitations on the retreat of Te-whereo-whereo':

Now Te-whereo-whereo claims the country as his by right of conquest, and insists on it that the remnant of the Ngati-awas are slaves; that they only live at Taranaki by sufferance, and that they had no right whatsoever to sell the land

¹⁶⁸³ *ibid.*, p.236.

¹⁶⁸⁴ *ibid.*

¹⁶⁸⁵ John Whiteley, Journal, 6 July 1841, p.138, MS-Copy-Micro-0769, ATL.

without his consent. In illustration of his argument, he placed a heavy ruler on some light papers, saying, “Now as long as I choose to keep this weight here, the papers remain quiet, but if I remove it, the wind immediately blows them away; so it is with the people of Taranaki;” alluding to his power to drive them off.¹⁶⁸⁶

In Hobson’s view, Te Wherowhero ‘certainly has a claim to the land, but not a primary one, as the received rule is, that those who occupy the land must first be satisfied.’ But, Hobson added, ‘he is the most powerful chief in New Zealand, and I fear will not be governed by abstract rights, but will rather take the law into his own hands.’¹⁶⁸⁷ Hobson had earlier informed the Secretary of State for the Colonies that ‘At Taranaki the powerful tribe of the Waikato threatens to dislodge the settlers, as they did not buy the land from them, who claim it in right of conquest.’¹⁶⁸⁸ In December 1841 a party of Waikato Maori led by Te Kaka travelled to New Plymouth to press their claims, their presence in the district causing considerable alarm among some of the settlers.¹⁶⁸⁹

Hobson reluctantly decided to encourage Te Wherowhero to accept ‘a moderate compensation’ for his claim, and on 31 January 1842 the Waikato chief and his brother Kati, also known as Takiwaru, consented to accept, ‘on behalf of the tribes of Waikato’, the sum of £150 cash, along with two horses, two saddles, two bridles, and 100 blankets, for their interests in an area extending from Tongaporutu River in the north to Waitotara in the south.¹⁶⁹⁰ In a letter from Te Wherowhero to some of the leading chiefs of Te Atiawa written in 1844, Te Wherowhero explained that his exclusion from the original transaction had prompted the demand for payment. He also went on to warn the Taranaki tribes not to interfere with the settlers but instead to calmly await the governor’s decision with respect to their unresolved claims.¹⁶⁹¹

¹⁶⁸⁶ Hobson to Secretary of State for the Colonies, 15 December 1841, GBPP, vol.3, 1835-1842 (238), p.188.

¹⁶⁸⁷ *ibid.*

¹⁶⁸⁸ Extract from Despatch from Hobson to Secretary of State, 13 November 1841, AJHR, 1861, C-1, p.167.

¹⁶⁸⁹ B. Wells, *The History of Taranaki: A Standard Work on the History of the Province*, New Plymouth: Edmondson & Avery, 1878, pp.76-77.

¹⁶⁹⁰ Deed of Sale from Te Wherowhero, 31 January 1842, AJHR, 1861, C-1, pp.167-168.

¹⁶⁹¹ Te Wherowhero to Te Puke and Poharama, 27 March 1844, McLean Papers, MS-Papers-0032-001, ATL.

This was far from the end of all contention with respect to interests in the Taranaki district, however, and Governor Thomas Gore Browne observed many years later with respect to the deed that:

It does not appear that Governor Hobson obtained any formal cession of their rights from the Ngatimaniapoto chiefs, who, with Te Wherowhero, were the joint conquerors of the Ngatiawa; but Tamati Ngapora, Te Wherowhero's brother, told me not long since that the Ngatimaniapoto got the whole payment, and that his brother was very angry, and said he would have been satisfied with even a blanket as a token of recognition. During his visit to the Ngatimaniapoto chiefs at Kawhia in April, 1842, Governor Hobson acquainted them with his purchase, and gave them permission to occupy a part of the land within the boundary, distinctly warning them at the same time that they were not to interfere with the European settlement at New Plymouth, and desiring the Resident Magistrate there to point out to them the English boundary.¹⁶⁹²

Browne's statement constitutes important official recognition that whatever interests Ngati Maniapoto may have had in Taranaki had never been formally acquired by the Crown. This is significant when it comes to considering the impact of the Taranaki raupatu on Rohe Potae hapu and iwi, since it is clear that any unextinguished customary interests inside the raupatu boundaries were effectively confiscated in the 1860s. Nor is it at all apparent from Governor Hobson's April 1842 visit to Kawhia,¹⁶⁹³ that his promise to allow Ngati Maniapoto a right of occupation inside Taranaki (subsequently clarified to extend as far south as Urenui) had any impact on those rights, other than constituting an implicit form of recognition of their existence.

Indeed, an 1844 report from Protector of Aborigines T.S. Forsaith makes it quite clear that such rights continued to be asserted in unequivocal fashion. He reported 'the sentiments of the Kawhia and Ngatimaniapoto Chiefs' as conveyed to him shortly before departing for New Plymouth:

¹⁶⁹² Browne to Colonial Secretary, 4 December 1860, Turton (comp.), *Epitome*, F. On the Tenure of Native Lands, p.33.

¹⁶⁹³ For a brief account see Hobson to Captain King, 25 April 1842, GBPP, 1846 (203), pp.70-71.

You are now going to Taranaki; listen to our parting words. That land is ours. We claim it by right of conquest, and some part of it by possession. We have power to enforce our claim if we choose, but our inclination is for peace, not war. The Governor who is dead [Hobson] professed to buy the interests of the Waikatos in the lands of Taranaki, and paid Te Wherowhero for them. Te Wherowhero had a perfect right to sell his own or his tribe's interest, but not ours; he was not the principal man in subjugating Taranaki, many were before him; we do not recognize his sale; we might insist on our right to a payment equal to Te Wherowhero, but we are not so very anxious about that; we want Europeans. You have told us that the Governor will do all in his power to send them to us: now we will wait a reasonable time: if they come, well; if not, we must go to them. We hold the late Governor's permission to locate any of the lands at Taranaki, provided we do not go south of Urenui.¹⁶⁹⁴

With respect to the tribes of Taranaki, Forsaith was further reminded that:

We sent the present occupants of Taranaki home to the land of their fathers; we did so from the influence of Christian principles, but we did not send them back to assume the airs of superiority they have done, or to molest the Europeans. They have Europeans, but do not know how to treat them; we, who would treat them well, cannot get them. We are therefore determined, in the event of no Europeans coming to us, to go back and resume our rights. We shall not go in hostile mood, though we shall be prepared to resist opposition. If kindly received and treated with respect by our former captives, we shall simply arrange for our joint occupation of the land; but on the contrary, if opposed, we shall take the matter into our own hands, and settle their disputes with the Europeans in our own way. Go and tell the Ngatiawa (Taranaki Natives) that the Waikato Chiefs remind them that the land is theirs, and advise them to settle their dispute with the Europeans [sic], or the Waikatos will settle it for them.¹⁶⁹⁵

¹⁶⁹⁴ T.S. Forsaith to Governor FitzRoy, 22 October 1844, GBPP, vol.12, 1861 (2798), p.215.

¹⁶⁹⁵ *ibid.*

Ngati Maniapoto, then, remained adamant that they continued to have legitimate interests in Taranaki. And as alluded to previously, Governor Browne explicitly acknowledged these interests in an 1860 memorandum in which he endeavoured to assert that ‘the Ngatiawa title had been superseded by the right of the conquerors.’¹⁶⁹⁶ While Browne’s purpose was to call into question Wiremu Kingi’s customary rights at Waitara, his statements nevertheless constituted a clear acknowledgement of ongoing interests in the Taranaki district on the part of Ngati Maniapoto. And although contemporary critics argued, no doubt with considerable justification, that conquest alone would not have conveyed customary rights to the land unless backed up by occupation, there is evidence of at least intermittent Ngati Maniapoto occupation of lands at Taranaki after 1840. This topic is more fully traversed in the political engagement report for the period to 1863, but for now perhaps we could do no better than to quote F.D. Bell’s rejoinder to the comment of Sir William Martin that ‘The Waikato invaders did not occupy or cultivate the Waitara valley.’¹⁶⁹⁷ Drawing upon a variety of sources, Bell wrote in response that:

It is not said on what authority Sir William Martin makes this statement. There is reason to doubt its accuracy. “At the time of the conquest,” says Chief Commissioner McLean, “many acts of ownership over the soil had been exercised by the Waikato. The land was divided among the conquering chiefs, the usual customs of putting up flags and posts to mark the boundaries of the portions claimed by each Chief had been gone through.” – “I know,” says the Rev. Mr. Buddle, “that a large party of the Waikato people belonging to the Ngatimaniapoto tribe under Niutone Te Pakaru, went to Waitara several years ago, and cleared a large piece of land there for cultivation in order to exercise their rights.” – “I am decidedly of opinion,” says the Rev. Mr. Whiteley, “that Archdeacon Hadfield is wrong and that Mr. McLean is right.”¹⁶⁹⁸ Certainly the Ngatimaniapoto came to Waitara and had a *kainga* and cultivations there.”

¹⁶⁹⁶ Browne to Newcastle, 4 December 1860, in Turton (comp.), *Epitome*, F, p.34.

¹⁶⁹⁷ William Martin, *The Taranaki Question*, London: W.H. Dalton, 1861, p.11.

¹⁶⁹⁸ Hadfield wrote that ‘Waikato never took possession of Waitara, or cultivated any portion of it. This is vaguely denied by Mr. M’Lean and others; but until they can mention the names of the persons who did take possession and cultivate, as well as point out the particular portions of land asserted to have been cultivated by them, and specify the time when such occupation took place, their mere denial of notorious facts is not to the purpose.’ Octavius Hadfield, *One of England’s Little Wars*, London: Williams & Norgate, 1860, p.5.

“The titles of the Waikatos [to Taranaki,]” said Chief Protector Clarke in 1844, “is good so far as they have taken possession.” “The land is ours,” said the Waikato Chiefs in 1844; “we claim it by right of conquest, and some part of it by possession.” – “But as some of the Waikato,” says Mr. White, “under Rewi and others, were still cultivating in the vicinity (for the crops then in the ground) this was given as an excuse by Wiremu Kingi (1848) for asking Teira and Ihaia to be allowed to come over to the South side of Waitara river.”¹⁶⁹⁹

Perhaps it is necessary at this point to draw a distinction between evidence of Ngati Maniapoto/Waikato rights within Taranaki and their recognition by the Crown highlighted during the Waitara controversy and on the other hand the cynical attempts by Crown officials to use such material to justify the notorious Waitara purchase. That purchase can and has been rightly condemned by a wide range of authorities over many years. Evidence of Ngati Maniapoto interests hardly negates such condemnation of the transaction. At the time most Pakeha figures who argued the merits of the transaction tended to see this issue in stark either/or terms: either the Waikato tribes owned Waitara by virtue of conquest (before subsequently selling it to the Crown) or Te Atiawa did. But actual customary tenure was often much more nuanced than that and it was possible for multiple interests to the same area to be accommodated in different ways. Members of Ngati Maniapoto and the other Waikato tribes had, after all, gone to Taranaki in the early 1860s to fight in defence of Wiremu Kingi’s claims on the land.

In this respect it is telling that in response to criticisms from Crown officials regarding the supposedly unwarranted interference of some Waikato and Ngati Maniapoto Maori in defence of Wiremu Kingi’s rights, Wiremu Tamihana openly challenged their status as outsiders. As he informed Browne in 1861:

With reference to the going of the Waikatos to Taranaki, for which we are reproached by the Pakehas. Hearken, and I will tell you. It was Potatau who

¹⁶⁹⁹ F.D. Bell, *Notes by the Governor on Sir William Martin’s Pamphlet Entitled The Taranaki Question*, Auckland: New Zealand Government, 1861, p.11. [The pagination provided mirrors the extracts from Martin’s work being critiqued.] Bell added that ‘Wiremu Nera Te Awaitaia, one of the greatest Waikato warriors, and next in rank as a Chief to Potatau Te Wherowhero, was one of the conquering party who made a partition of the land at Waitara, and struck a musket into the ground to denote the boundary of what he intended to claim.’

fetches Wiremu Kingi from Kapiti. He was brought back to Waitara, to his place: that was how the Ngatiawa returned to Taranaki. I look therefore at this word of yours, saying that it was wrong of the Waikatos to go to Taranaki. In my opinion, it was right for Waikato to go to Taranaki. Come now, think calmly: Rauakitua, Tautara, and Ngatata were blood relations of the Waikatos. It was not a gratuitous interference on the part of Waikato. They were fetched.¹⁷⁰⁰

As will be more fully evident in the political engagement report, it was never a case of Ngati Maniapoto and other Waikato tribes turning up at Waitara in 1860 out of the blue. They had been a strong, if not necessarily constant, presence in the district since 1840. Indeed, their intervention at Taranaki was on several occasions actively solicited by the Crown, and welcomed with open arms by settlers reassured by the assistance of these tribes. Members of Ngati Maniapoto had interceded in Taranaki affairs in this way as recently as 1858.¹⁷⁰¹ Just as importantly perhaps, Crown officials were well aware of ongoing assertions of interest at Taranaki on the part of these groups, and at various times acknowledged the validity of their claims.

And yet, although the extent of such rights had been a major point of debate throughout the Waitara dispute waged in the early 1860s, by the time of the confiscation proclamations in 1865 any acknowledgement of such rights appears to have been long forgotten, as even the name of the northernmost confiscation district ('Ngatiawa') further reinforced. There is nothing in the official record that even hints at an awareness of any kind of interest on the part of Ngati Maniapoto. Perhaps it may have been assumed that the 1842 deed signed with Te Wherowhero and his brother had extinguished all such claims. Yet whatever the worth of that deed, it could in no way be construed as extinguishing any existing Ngati Maniapoto interests in the district, and Crown officials later recognised the right of members of Ngati Maniapoto to occupy lands in northern Taranaki.

¹⁷⁰⁰ Translation of the Reply of Wiremu Tamehanga Te Waharoa to the Declaration Addressed by His Excellency the Governor to the Natives Assembled at Ngaruawahia, AJHR, 1861, E-1B, p.16.

¹⁷⁰¹ Robert Parris to McLean, 26 April 1858, encl. in Browne to Labouchere, 17 May 1858, no.38, CO 209/145, pp.381-383, Archives NZ.

8.3 *The Taranaki Compensation Court*

It does not appear that any Ngati Maniapoto individuals, whanau or hapu lodged formal claims when the Compensation Court adjudicated upon the return of confiscated lands in Taranaki between 1866 and 1874.¹⁷⁰² That was hardly surprising perhaps: as mostly ‘unsurrendered rebels’ (at least in the eyes of authorities) they were not eligible for compensation.¹⁷⁰³ Indeed, it seems probable that to the extent there was any continuing recognition of Ngati Maniapoto claims over Taranaki, the effective confiscation of these was probably regarded as something of a bonus, given the widespread perception amongst officials at the time that the tribe were notorious and obstinate ‘rebels’ who had been let off very lightly in the Waikato confiscations.

On the other side of the equation, Kingitanga supporters among the Ngati Maniapoto and other Waikato tribes were unlikely to want to participate in any kind of process that could be construed as legitimating or validating the confiscations, whether at Waikato or Taranaki. And even if they did want to take part, they may not necessarily have been aware of the hearings or the process involved in filing a claim for compensation.

Possibly making matters even more difficult for potential Ngati Maniapoto claimants was the apparently greater emphasis in the Taranaki Compensation Court proceedings on deciding the merits of claims in tribal terms in the first instance. This stood in marked contrast with most of the Waikato proceedings (with some exceptions, such as Te Akau), and had apparently been based on early experiences in the Waikato. As Judge Monro wrote (evidently to Fenton) in about October 1865:

¹⁷⁰² However, the tribal affiliations of claimants are not always clear. Among a group of applications filed as ‘Claims to land found by the C.C. not to be included in the confiscated Blocks Taranaki’, for example, is one from ‘Amiria’, writing from Auckland. Her (untranslated) application appears to relate to lands at Mokau previously sold to the Crown. Amiria to the Governor, 8 March 1864, Taranaki Confiscated Lands: Applications to Compensation Court, DOSLI New Plymouth, Box 2A, RDB, vol.113, pp.43563-43564. Within this file, there are other claims to lands at Harihari, Te Akau and elsewhere, some of them evidently from Te Tau Ihu groups, including Ngati Rarua, once resident in the region. A marginal note from James Mackay on one of the claims notes that ‘The lands herein mentioned are those formerly owned by the Ngatitoa, Ngatikoata, and Ngatirarua tribes, and now held by the Ngatimaniapoto.’ Mackay, minute, 25 April 1864, Taranaki Confiscated Lands: Applications to Compensation Court, DOSLI New Plymouth, Box 2A, RDB, vol.113, p.43594.

¹⁷⁰³ Janine Ford, ‘The Decisions and Awards of the Compensation Court in Taranaki, 1866-1874’, (report commissioned by the Waitangi Tribunal), July 1991, Wai-143, #E6; Heather Bauchop, ‘The Aftermath of Confiscation – Crown Allocation of Land to Iwi: Taranaki 1865-800 – A Case Study in Confusion’, Wai-143, #I18.

I quite approve of the new arrangement you mention – curiously enough I had suggested a similar plan, in talking the matter over with Mr. Parris a day or two before I received your note, for I plainly perceived what an interminable piece of business it would be to examine every individual claimant in Court, as was done in Auckland; there the claimants were comparatively few, here their name is legion. In fact I think it will be found impracticable to go into individual claims on account of their conflicting nature; it would be easier to deal with the claimants as tribes. A fair proportion of land could be awarded to each tribe or hapu, and they might be induced to individualize their titles to this at some future time.¹⁷⁰⁴

It would appear that, although the Compensation Court and associated out-of-court settlements in Taranaki continued to deal in individual claims, there was a much greater emphasis than in Waikato on arranging these along hapu and iwi lines (though as Bauchop cautions, not entire hapu or iwi – merely those members deemed sufficiently ‘loyal’ to warrant compensation).¹⁷⁰⁵

Of the four blocks considered by the Compensation Court, Oakura and Waitara South were the first to be heard, the hearings taking place in New Plymouth between 1 June and 12 July 1866.¹⁷⁰⁶ In respect of Oakura, the claimants were variously described as belonging to either the Nga Mahanga or Ngati Tairi hapu of the Taranaki iwi.¹⁷⁰⁷ Fenton noted that:

The titles were found to be extremely simple, and indeed neither in this case nor in the Waitara Block did we meet with any of the extreme complications so great as to leave us often in doubt where the truth lay, which we have met with in our investigations in the Waikato country and elsewhere. The chief difficulties arose from the less [sic – loss] of their traditions and genealogies

¹⁷⁰⁴ Monro [to Fenton?], n.d. [c.October 1865], MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, p.38782.

¹⁷⁰⁵ Bauchop, ‘The Aftermath of Confiscation’, pp.95-96.

¹⁷⁰⁶ Ford, ‘The Decisions and Awards of the Compensation Court in Taranaki’, p.29.

¹⁷⁰⁷ *ibid.*; Waitangi Tribunal, *Taranaki Report*, p.145.

occasioned by the long dispersion and frequent wanderings of the Maori owners of these lands.¹⁷⁰⁸

Although there were no claims from Ngati Maniapoto or other Waikato groups considered, the impact of earlier conflicts between these iwi and local tribes loomed large over the proceedings of the Compensation Court. It divided the claims into six distinct categories, of which five were various absentee claimants grouped by location, and the sixth being resident claimants. It was in relation to the first group of absentee claimants, those who had taken up residence at Wharekauri, that the Compensation Court for the first time fully enunciated the '1840 rule' that would later become so important in the Native Land Court. Fenton and his fellow Judges concluded that:

Previously to the great Waikato invasion between 1820 and 1830, these Chatham Islanders formed part of the great tribe called Taranaki, and resided at Hauranga, on this block. They fled south from fear of the Waikato arms, and after various wanderings finally took possession of and settled in the Chatham Islands. There they have continued to dwell up to the present time, one or more of them having returned to visit their relations, but none of them having re-occupied or having attempted to domicile themselves on their old possessions. Many of the original refugees have of course died, but the children of these persons as well as the survivors of the original migration urge claims to their ancestral possessions. The conclusion at which we have arrived after our experience in the Compensation Court, and as members also of the Native Land Court, is, that before the establishment of the British Government in 1840, the great rule which governed Maori rights to land, was force – *i.e.*, that a tribe or association of persons held possession of a certain tract of country until expelled from it by superior power, and that on such expulsion, the invaders settled upon the evacuated territory, it remained theirs until they in their turn had to yield it to others.¹⁷⁰⁹

¹⁷⁰⁸ Statement of the Proceedings of the Compensation Court at the Sittings held at New Plymouth, from the first day of June to the twelfth day of July, 1866, AJHR, 1866, A-13, p.3.

¹⁷⁰⁹ *ibid.*, pp.3-4.

That statement glossed over a number of key questions that arose in respect of ‘the Waikato invasion’ of Taranaki. Firstly, there was the question of whether the tribes had, indeed, fled in fear to Kapiti and subsequently elsewhere such as the Chatham Islands, as the Court evidently assumed, or rather had gone in search of new economic opportunities as many Taranaki Maori later maintained. Secondly, had they gone in such numbers as to constitute a complete withdrawal from the district, or had they left a few of their number on the land to keep the home fires burning? And thirdly, had supposed conquest indeed been followed up by occupation in the case of the Waikato tribes?

The absence of any Waikato claims no doubt allowed the Court to gloss over a number of these questions. Perhaps that was why Fenton believed the cases had been so straightforward by comparison with Waikato. But the ‘1840 rule’ also helped. Fenton and his fellow Judges declared that:

We do not think that it can reasonably be maintained that the British Government came to this Colony to improve Maori titles or to reinstate persons in possessions from which they had been expelled before 1840, or which they had voluntarily abandoned previously to that time. Having found it absolutely necessary to fix some point of time at which the titles as far as this Court is concerned must be regarded as settled, we have decided that that point of time must be the establishment of the British Government in 1840, and all persons who are proved to have been the actual owners or possessors of land at that time must be regarded as the owners or possessors of those lands now, except in cases where changes of ownership or possession have subsequently taken place with the consent, expressed or tacit, of the Government, or without its actual interference to prevent these changes.¹⁷¹⁰

In justification for such an arbitrary measure, Fenton asserted that:

If greater latitude is allowed and the date of ownership is permitted to be variable the confusion will be such as to render any solution of this great

¹⁷¹⁰ *ibid.*, p.4.

question upon any principle of justice, perfectly hopeless. Thus, we know that there are claims preferred by the Otaki natives to Maungatautari and the whole of the Waikato from which countries they have been long expelled, and from which at an earlier date they themselves drove out other tribes. Again Te Rauparaha's people claim Kawhia on similar grounds and have sent in claims.¹⁷¹¹

The Judges accordingly dismissed the claims under this category, as indeed they did with all but one of 216 claims from Maori resident in the South Island, all 61 Wellington claims and all except two claims from Maori resident at Waikanae and Otaki. With respect to this latter category, the Judges noted that:

One letter from Waikanae purporting to be signed by 125 persons, asserting a title to "land from Waitaha to Mokau and from Okurukuru to Nukumaru" and protesting against the land being stolen (keia, translated "confiscated") has been referred to us by the Colonial Secretary, and we reject it as in no way being a claim, nor even purporting to be so.¹⁷¹²

The final category of absentee claims were described as emanating from 'Auckland, Waikato, Etc.', with reference to which Fenton noted that:

The claimants from the North are persons who where [sic] taken prisoners in war by the Waikato and Ngapuhi tribes and are five in number. Great numbers of prisoners of war have returned to Taranaki since the establishment of the Government. With the tacit if not with the expressed approval of the Government they have rejoined their tribes, and taken possession of their ancestral lands. These persons now appear in the ranks of the Resident Claimants, and their rights have been admitted by the Government so completely that the Land Purchase Commissioners have purchased lands from them and required their signatures to deeds of conveyance.¹⁷¹³

¹⁷¹¹ *ibid.*

¹⁷¹² *ibid.*

¹⁷¹³ *ibid.*, pp.4-5.

The claims of this group were therefore admitted, but those of ‘prisoners of war’ who had failed to return to occupy the lands were excluded.

In all, then, of 872 names submitted in respect of Oakura, 569 were rejected as absentees. The remaining 303 resident claimants were divided by the Compensation Court into ‘four great estates’, and of their number 188 in all were rejected as ineligible for compensation on the basis of section 5 of the New Zealand Settlements Act.¹⁷¹⁴ That left barely one-eighth of the original applicants deemed eligible for compensation. Their share of the 27,500 acre block, calculated on a pro-rata basis against resident Maori deemed ‘rebels’, was found to be 10,927 acres. The only problem was that, after deducting about 8000 acres of mountainous and ‘worthless’ land from the overall figures (leaving a ‘loyalist’ entitlement to about 7400 acres), all but 2500 acres of the block had been taken up by military settlers. That left the Court to contemplate the relative rights of the military settlers as against the original owners of the lands.

Commenting on the 1865 amendment to the Settlements Act which for the first time explicitly authorised compensation to be in the form of land, the Judges observed that ‘It appeared to us that the Legislature intended by this clause to enable the Government to redeem its solemnly and often repeated pledges to protect and save harmless those Natives who should remain loyal, in the possession and enjoyment of their lands, although included in confiscated blocks, what these lands were, being left for the Compensation Court to discover and decide.’¹⁷¹⁵ Fenton then recounted a number of ‘very clear and very solemn’ promises made in respect of the lands of ‘loyalists’. As he added, ‘the words are very distinct. Those Native subjects who should remain in peace and friendship were assured the full benefit and enjoyment of their lands, not lands of equal value somewhere else, but their own ancestral territory.’¹⁷¹⁶ It was added that:

Having thus arrived at the (to us) unavoidable conclusion that the claimants before us were entitled to 7,400 acres of good lands in this block, and having

¹⁷¹⁴ *ibid.*, p.5.

¹⁷¹⁵ *ibid.*, p.10.

¹⁷¹⁶ *ibid.*, p.11.

accepted Mr. Atkinson [sic] assertions that the whole of the available land except 2,500 acres had been appropriated to Military Settlers, the question then arose: “what are we to do?”

We thought that possibly the Government were not aware of the large majority of owners of this land who had remained loyal, and reflecting on the great public calamity which would be caused, and the serious embarrassment which would occur to the Government if we issued orders of the Court extending, as they would have done, over the lands of considerable numbers of these Military Settlers, we determined to despatch one of our number to Wellington to place the state of affairs before the Government, and give them an opportunity of availing themselves of the power given to the Colonial Secretary by the ninth clause of the Act of 1865.¹⁷¹⁷

Section 9 of the New Zealand Settlements Amendment and Continuance Act provided for the parties to agree out-of-court that land would be given in compensation. That was what followed as the Crown offered the remaining lands in satisfaction of the claims, including all government reserves and lands not allotted military settlers. According to the later West Coast Commission that came to a total figure of 8700 acres, though the Taranaki Tribunal was unable to find firm evidence that anything like that amount had in fact been Crown granted to the claimants.¹⁷¹⁸

A similar agreement was reached in respect of Waitara South. It was claimed by the Puketapu, Pukerangiora and Ngati Rahiri hapu and included the Pekapeka block that had been the catalyst for the outbreak of war in 1860. In all 149 claims were disallowed on the basis of non-appearance, with a further 238 ‘absentee’ names also rejected. That left the Crown agent to reach a deal with the remaining owners, who received the balance of the lands not taken up by military settlers or proposed for them, amounting in all to just over 10,000 acres in various parcels and locations out of the 25,000-acre block.¹⁷¹⁹

¹⁷¹⁷ *ibid.*, pp.11-12.

¹⁷¹⁸ Waitangi Tribunal, *Taranaki Report*, pp.146-147.

¹⁷¹⁹ *ibid.*, p.148.

Of more interest for our purposes perhaps, and certainly of much greater size and complexity, were the various claims to compensation in respect of the Ngatiawa block. These claims, evidently filed by members of Ngati Tama, Ngati Mutunga, Te Atiawa and Ngati Maru, were once more heard at New Plymouth, this time in hearings lasting from 21-29 September and 1 to 11 October 1866.¹⁷²⁰ A total of 560 'absentee' claims were once again rejected, including 12 categorised as coming from Auckland or Waikato, and a further 403 owners were found to have acted contrary to section 5 of the New Zealand Settlements Act, leaving 575 claimants found entitled to compensation. Their claims were settled out-of-court by virtue of various agreements entered into in October 1866 (and one that followed in March 1867). These saw the Ngatiawa block divided into seven distinct parts for compensation purposes. Given that we would expect these northernmost confiscated lands in Taranaki to be those in which Ngati Maniapoto and other Rohe Potae groups might have the strongest interest, information on each of these divisions is set out in the series of tables below, which are taken from the Tribunal's *Taranaki Report*.¹⁷²¹

Table 4 'Ngatiawa' District Compensation Arrangements

Division I

District	The Pukearuhe district from Waipingao (White Cliffs) to Titoki. It was the northernmost area confiscated.
Acreage	Not given.
Hapu affected	Not given, but presumably Ngati Tama.
Total customary interests	No assessment was made of the number with interests customary interests in this district owing to an out-of-court settlement.
Apportionment	No assessment was made of the amount of land to be returned by reference to the acreage of the district, the number of admitted claimants, and the total number of persons with customary interests.
Outcome	(a) It appears to have been agreed that 12 persons should receive varying amounts between 200 and 500 acres, for a total of 3458 acres from out of the district.

¹⁷²⁰ Bauchop, 'The Aftermath of Confiscation', p.95; Ford, 'The Decisions and Awards of the Compensation Court', p.30.

¹⁷²¹ Waitangi Tribunal, *Taranaki Report*, pp.149-153.

	<p>(b) Court determinations were made on 25 March 1869 and certificates issued that those 12 were entitled to receive lands from out of the district for the given amounts.</p> <p>(c) In 1880, the West Coast Commission noted that, as at that date (14 years after the agreements were made), no Crown grants had issued and in its view nothing had been returned.</p>
Comments	<p>There was not the full inquiry that the Act required; it was never determined if there were any rebels; the proportion of land proposed for return to the total district was not given, but it seems all the land should have returned because the local hapu was not in the war; the provision for 12 only may reflect that most of Ngati Tama were out of the district at the time; no basis was given for the unequal shares; and on such evidence as exists, the whole of this district should have been secured for the hapu as tribal land and no part of it was liable for confiscation.</p>

Division II

District	From Titoki to Urenui.
Acreage	Not given.
Hapu affected	Not given, but probably Ngati Mutunga.
Total customary interests	No inquiry was made.
Apportionment	No assessment of the amount due for return was made.
Outcome	<p>(a) It was settled that 35 persons should receive some 50 to 500 acres each, for a total of 6450 acres.</p> <p>(b) By a court determination of 25 March 1869, certificates issued that those 35 were entitled to receive such areas from out of the district.</p> <p>(c) The Government later claimed that some of those entitled had participated in the Onaero-Urenui block sale of 1874, affecting part of the land intended for them, and in its view they therefore had to be taken to have forfeited their entitlements.</p> <p>(d) As at 1880, no land had been</p>

	returned.
Comments	No proper inquiry was made; it is doubtful that any land in this district should have been confiscated because there was no evidence or insufficient evidence that the local hapu had been involved in the war; the proportion of the district proposed for return is not known; most of Ngati Mutunga were not in the district at the time; if part of the land intended to be given was included in the so-called sale, then because the location of that sale is known, it can be established that the land intended to be given comprised rugged, interior hills; no basis was given for the unequal shares; and the validity of the alleged sale is questionable... .

Division III

District	From Urenui to Te Rau-o-te-Huia.
Acreage	Not given.
Hapu affected	Not given, but probably Ngati Mutunga.
Total customary interests	No inquiry was made.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	<p>(a) It was settled that 52 persons should receive 50 to 200 acres, for a total of 3450 acres.</p> <p>(b) By a court determination of 25 March 1869, certificates issued that those 52 were entitled to receive such areas from out of the district.</p> <p>(c) The Government later claimed that most of those entitled had participated in the Onaero-Urenui block sale of 1874, affecting all but 2800 acres of the land that was intended for them, and that the 2800 acres would be for those who did not participate in that sale.</p> <p>(d) As at 1880, no land had been returned.</p>
Comments	No proper inquiry was made; for lack of evidence of war complicity, it is doubtful that any of this land should have been confiscated; the proportion of the district proposed for return is not known; most of Ngati Mutunga were absent at the time;

	the so-called sale indicated that the land proposed for return was in the hills; no basis was given for the unequal shares; and the validity of the sale was questionable... .
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Division IV

District	From Te Rau-o-te-Huia to Titirangi.
Acreage	Not given.
Hapu affected	Not given, but apparently Ngati Rahiri of the Te Atiawa group.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	<p>a) An agreement of 19 October 1866 provided for all land owned by [the signatories] not taken for the Military Settlement to be returned to the 150 signatories.</p> <p>(b) Despite some pressure and offers of gifts, the hapu resisted all attempts to impose individual shareholdings for that land.</p> <p>(c) Pursuant to a court determination of 25 March 1869, a certificate issued that the 'Ngatirahiri Tribe' was entitled to 'all the land owned by them [in the district] not taken for military settlement'.</p> <p>(d) After surveying the military settlement, the Turangi block of 13,100 acres was then given over for the occupation of the hapu. To ensure that no more of their land was taken, the hapu contributed to the survey costs and agreed to road crossing the block but took no compensation for it. It was said they had become 'staunch Te Whiti-ites'. In 1879, a number were taken prisoner as a result of protest activity.</p> <p>(e) As at 1880, the land had not been formally returned. No Crown grant had issued for it, but according to the 1880 commission, the 'Ngatirahiri Block at Onaero', given there as '15,000 acres', had been allocated.</p>
Comments	No proper inquiry was made; no inquiry was made as to Ngati Rahiri's

	<p>participation in the war (they were in fact a 'loyal' hapu); the proportion of the district confiscated is not known; and if Ngati Rahiri had contributed to the survey costs, there is no reason why a Crown grant could not have issued for that land (it would then be known whether Ngati Rahiri in fact received the whole of the residue or whether the Crown kept the 'worthless' land for itself).</p>
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Division V

District	From Titirangi to Waitara.
Acreage	Not given.
Hapu affected	Not given, but presumably various hapu of Te Atiawa.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	<p>(a) It was eventually settled that 152 persons should receive varying amounts of land, for a total of 1485 acres.</p> <p>(b) By a court determination of 25 March 1869, certificates issued that those 152 were entitled to receive such areas from out of the district.</p> <p>(c) Crown grants issued for 41 sections in the Titirangi block of between five and 100 acres, totalling 1485 acres. The 152 owners were spread over the sections, with shares equivalent to between five and 75 acres.</p>
Comments	<p>No proper inquiry was made; no evidence was given as to the extent of complicity in the war; no assessment was made of the amount of land that should be returned from confiscation; the proportion of the district returned from confiscation is not known; and no basis was given for the unequal shares. This was the only case where, as at 1880, Maori had received titles to land in the Ngati Awa Coast confiscation site.</p>

Division VI

District	'Land Between Waiongaona and Mangonui.'
Acreage	Not give.
Hapu affected	Puketapu.
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	(a) By an agreement of 23 October 1866, 227 persons acknowledged that they had received a total of 10,000 acres and therefore abandoned all claims. (b) By a court determination of 25 March 1869, a certificate issued that the Puketapu Tribe was entitled to 10,000 acres. (c) The 10,000 acres were included in the Moa block sale of 1873-74, which was for 32,830 acres extending from the summit of Taranaki mountain to beyond present-day Inglewood. It can now be determined that the 10,000 acres referred to in the 1866 agreement was somewhere within that area.
Comments	No proper inquiry was made; no evidence was given as to the extent of complicity in the war; no assessment was made of the amount of land that should be returned from confiscation; and the proportion of the district returned from confiscation is not known...

Division VII

District	'Land Between Mangonui and Waitara (Pukerangiora claim).'
Acreage	Not given.
Hapu affected	Not given, but referred to later as the 'Pukerangiora Tribe.'
Total customary interests	No inquiry was made owing to an agreement.
Apportionment	No inquiry was made as to the amount due for return.
Outcome	(a) By an agreement of 15 March 1867, as later refined, 63 persons were to receive 2000 acres in all from out of the district. The shares were not defined. (b) By a court determination of 25 March

	1869, a certificate issued that the Pukerangiora tribe was entitled to 2000 acres from out of the district. (c) As at 1880, no land had been returned.
Comments	No proper inquiry was made; no evidence was given as to the extent of complicity in the war; no assessment was made of the amount of land that should be returned from confiscation; and the proportion of the district returned from confiscation is not known.

We can see from the above that the process of awarding compensation in Taranaki was an especially prolonged one. Yet despite the fact that Ngati Maniapoto had been explicitly authorised by Crown officials to occupy lands as far south as Urenui, and may in fact have been in at least intermittent occupation of selected locations around Waitara in the pre-1860 period, there appears to have been almost no acknowledgement of their presence. The contrast between the debate that took place over 1860-61, when the claims of Ngati Maniapoto and other Waikato iwi were discussed in some detail, and the almost complete silence on this point just five years later when the Compensation Court came to New Plymouth is striking. And as time went on, evidence of their claims all but disappeared. The highly stage-managed nature of the Compensation Court process in Taranaki, with most claims settled out-of-court on the basis of minimal formal evidence, combined of course with the fact that most Ngati Maniapoto at this time were likely to have been deemed ineligible for compensation as ‘unsurrendered rebels’, hardly helped matters.

In fact, the almost secret manner in which claims were settled out of court was even a matter of concern for provincial authorities. Having urged the speedy settlement of the claims for compensation, they began to have grave objections to the manner in which the government had determined to go about achieving such an outcome. As Superintendent, H.R. Richmond, informed the Colonial Secretary in February 1866:

The present arrangement, by which, if I rightly understand it, Mr. Parris (under instructions received from the late Government) is adjusting or endeavoring to

adjust the claims...in such a manner that their final adjudication by the Compensation Court may be a matter of form only, appears to me open to very grave objections, and as far as I can discover the success of the plan, in the way of satisfying the natives that justice will be done to them, is not such as to justify the continuance of so irregular a manner of proceeding.

I have great confidence in the integrity of Mr. Commissioner Parris, but I submit that the placing of the very large powers practically conferred on him by his instructions, in the hands of any person not subject to the control of public opinion, or bound by any rules of evidence or defined principles of procedure, is in itself exceedingly objectionable, and could only (if at all) be justified by the fact that the person on whom such powers were conferred was marked out by special qualifications as peculiarly fitted for so delicate and responsible a task.¹⁷²²

Although it was, in Richmond's view, impossible to believe that anything but evil could result from further delays in settling the claims, 'the private nature of the Commissioner's negotiations, and the want of information as to the powers exercised by him' created 'a feeling of great uneasiness and distrust.'¹⁷²³ Richmond added that:

...the private and irregular nature of the arrangements which the Civil Commissioner is authorised to make, places him in the greatest danger of unconsciously allowing his judgment to be influenced by partialities or dislikes, which from his manifold dealings with the natives, he may have formed towards different individuals amongst them. Any fears of this kind may, of course, be quite groundless, but I think that, without very urgent necessity, it is not right that an officer of the Government should be placed in a position so liable to a risk of this kind.

The natives, on the other hand, are perplexed and exceedingly discontented with the irregular and unsatisfactory measures hitherto taken to adjust their claims, and as a proof of the feeling entertained by them, I may state that only

¹⁷²² H.R. Richmond to E.W. Stafford, 8 February 1866, AJHR, 1866, A-2A, p.7.

¹⁷²³ *ibid.*

yesterday a party of friendly natives commenced falling timber on land which has been selected and surveyed, declaring that the land was theirs, nothing having been given to them in return for it.

The constant recurrence of disturbances of this kind, which may at any time lead to actual strife, can, I think, only be avoided by referring all their claims in an open Court and regular way to the Compensation Court, established by law, and enforcing implicit obedience to the decisions of the Court.¹⁷²⁴

A fuller and more open hearing of claims in the Compensation Court, particularly in the northern part of the Taranaki confiscation district, may have helped to shed a little more light on the handling of issues relating to Ngati Maniapoto interests in the area. But since there were apparently no formal claims filed by Ngati Maniapoto it is not possible to now outline with any certainty the extent of the interests they might have claimed under different circumstances, or the basis of those claims. On the other hand, we do know enough about the history of relations between the Taranaki and Waikato tribes to conclude that the Compensation Court was in any case likely to have been ill-equipped to deal with the complex issues at stake. It was not just the crucial question of whether ‘conquest’ was followed up by occupation, but a whole series of matters relating to subsequent events, including the impact of the 1842 deed signed by Potatau, and indeed, suggestions that Potatau, once Maori King, had formally restored the lands of tribes previously conquered by Waikato to them. Amongst other things, it would be necessary to address the extent to which Ngati Maniapoto might have been bound by any such gesture. But while it is beyond the brief of the present report to answer these kinds of questions, they were certainly not ones that were addressed in the Compensation Court either.

¹⁷²⁴ *ibid.*, p.8. Richmond subsequently wrote that he had been under a misapprehension regarding the settlement of claims, suggesting that it was the absence of any efforts in this direction which had stirred up unrest. Nevertheless, his comments about the secretive nature of out-of-court negotiations would seem highly applicable to those subsequently agreed. Other evidence suggests there had, in fact, already been key decisions made by this time. For example, an 1873 report notes that ‘In December, 1865, instructions were given to Mr. Parris that the land situated between the Mimi and Urenui rivers was to be given back to the Ngatitama and Ngatimutungu [sic] tribes, the branches of Ngatiawa which had gone to the Chatham Islands.’ Report on Confiscated Lands, AJHR, 1873, C-4B, p.4.

By the time of the West Coast Commission in the 1880s any awareness of Ngati Maniapoto interests in the confiscated lands at Taranaki would appear to have been long forgotten. Despite this, as noted in an earlier chapter, a large number of Ngati Maniapoto were present at Parihaka when the settlement was brutally invaded by government forces, headed by Native Minister John Bryce, in November 1881. They joined members of iwi from all over the country who had been attracted by the programme of passive resistance to confiscation led by prophets Te Whiti-o-Rongomai and Tohu Kakahi. But while this could hardly be construed as an assertion of customary rights in the district, it was yet another reminder of the way in which geography and shared whakapapa continued to bring Ngati Maniapoto into the Taranaki story.

8.4 The Boundary Question

It was noted above that there were two distinct though related sets of issues when it came to the nature and extent of Rohe Potae Maori claims within the Taranaki confiscated district. The first of these, discussed above, related to the generic claim to much of the district based on conquest during the 1830s. By contrast, the second category of claim on the part of Ngati Maniapoto hapu was a rather more specific one, relating not so much to general rights of conquest as to the more localised issue of where the ‘boundary’ between Ngati Maniapoto and their Ngati Tama neighbours to the south properly ran. Those issues were highlighted in the 1882 Native Land Court determinations of title to the Mohakatino-Parininihi and Mokau-Mohakatino blocks, which are to be the subject of a separate report by Paul Thomas, as well as by what has been dubbed the ‘Wahanui line’, the boundaries of the Rohe Potae described in the 1883 petition of Ngati Maniapoto and other iwi.¹⁷²⁵ The boundaries set forth in that petition were several kilometres to the south of the confiscation line at Parininihi and were relied upon by Ngati Maniapoto to assert an interest within the Taranaki confiscation district during the hearing of their cross-claim against the proposed Ngati Tama settlement (see figure 16).¹⁷²⁶

¹⁷²⁵ AJHR, 1883, J-1, p.2.

¹⁷²⁶ Waitangi Tribunal, *The Ngati Maniapoto/Ngati Tama Settlement Cross-Claims Report*, p.12; Cathy Marr, ‘The “Mokau Blocks” and the Ngati Maniapoto Urgency Claim’, (report commissioned by the Waitangi Tribunal), February 2000, Wai-788, #A1.

Although many of the issues involved here have either previously been reported on (notably in the Tribunal's *Ngati Maniapoto/Ngati Tama Settlement Cross-Claims Report*) or will be covered as part of other projects within the current Rohe Potae district inquiry research programme, there are some unique issues that do require some discussion here.

The most obvious point of interest, and an issue which existing research does not appear to address to any great extent, is the question of precisely why Parininihi was selected as the northernmost boundary of the Ngatiawa confiscation district (and the northern limit of the Taranaki confiscations as a whole). It did not correspond with the northern boundary of Taranaki province, which went as far north as the mouth of the Mokau River on the coast (approximately 20 kilometres beyond Parininihi, or White Cliffs) and even further north at its most inland point, the source of the Mokau River. Here the provincial boundary traversed the heartland of Ngati Maniapoto territory, not far to the south of Te Kuiti and through the unconquered area that came to be known as the King Country.

Clearly any confiscation proclamation which matched those provincial boundaries would have been merely nominal in the absence of a unilateral Kingitanga surrender or a second even more successful invasion. Worse than that perhaps, it risked inviting obvious attention to the disjunction between British claims to have secured a crushing victory over Ngati Maniapoto and other supporters of the Kingitanga and the fact that a substantial portion of the North Island effectively remained beyond the bounds of British control. It seems likely therefore that Parininihi was deemed the northern limit of the area conquered and controlled by the British rather than being selected on the basis that it constituted any kind of tribal boundary. Thus although no firm archival evidence has been found outlining the basis upon which the boundaries of the Taranaki confiscation area were selected, the Taranaki Tribunal was probably correct when it concluded that:

The evidence suggests that the Governor simply defined an area, being all the land for several miles inland from the whole coast, with the northern boundary fixed purely to accommodate a stockade at one frontier, the eastern boundary

running as parallel to the coast as convenient trigonometrical lines might allow, and the southern boundary being simply the most southerly point possible. The centre was taken for no greater reason, it seems, than that it fell within those northern and southern extremities. In brief, the confiscation districts bore no relationship to the theatre of the second war or to tribal aggregations according to appropriate geographic divisions.¹⁷²⁷

The ‘stockade’ in question was located at Pukearuhe, just a few miles south of Parininihi and strategically located, because of the steep cliffs along this stretch of the coastline, to control all traffic travelling south from Mokau. It was an obvious location from which to attempt to prevent Ngati Maniapoto and Waikato incursions south into Taranaki, and as the *Taranaki Herald* noted a short while before the site was occupied by the British:

The possession of the White Cliff is very important as stopping all communication from the northward by the coast, and, therefore, will be an effective check against any incursions of Ngatimaniapoto; so that the occupiers of the block, some of whom will, no doubt, be friendly natives who have possessions in it, will not only be able to enjoy their own in comparative quiet, but will give great additional security to the settlement.¹⁷²⁸

In April 1865 a detachment of the 70th Regiment, along with a company of Bushrangers, established a military post at Pukearuhe.¹⁷²⁹ Relations between Grey and General Cameron had by this time reached breaking point, precisely over the future direction of military operations in the Taranaki district,¹⁷³⁰ and Cameron wrote to the governor to complain that he had issued no orders for troops to occupy White Cliffs.¹⁷³¹ Grey, though, replied that it was his wish that a post should be held at such an important point.¹⁷³² He subsequently suggested that he had not issued orders for such a move, but added that ‘I have received information that a party of the Kawhia Natives intended at the time...to march by that route for the purpose of aiding the

¹⁷²⁷ Waitangi Tribunal, *Taranaki Report*, p.128.

¹⁷²⁸ *Taranaki Herald*, 22 April 1865.

¹⁷²⁹ Robert Parris to Native Minister, 18 May 1865, AJHR, 1865, E-8.

¹⁷³⁰ See Dalton, *War and Politics in New Zealand*, pp.226-234.

¹⁷³¹ Cameron to Grey, 3 May 1865, AJHR, 1865, A-4, p.32.

¹⁷³² Grey to Cameron, 8 May 1865, AJHR, 1865, A-4, p.33.

rebels against us in the south. It has also been long intended to occupy that position as being one of the most important points in the country.’¹⁷³³ A planned military settlement to the north of Waitara, at Tekorangi, along with settlements of ‘friendly’ Maori at Urenui and Mimi, were in large part intended to secure the Pukearuhe post.¹⁷³⁴ According to James Cowan, the Pukearuhe redoubt ‘was a continual source of annoyance to the Maoris at Mokau, for it was regarded by them as a direct challenge.’¹⁷³⁵ Indeed, reports from late 1865 had it that Rewi Maniapoto was contemplating launching an attack against the redoubt.¹⁷³⁶ In November of that same year a group of Kingitanga supporters advanced on the redoubt, resulting in a short but bloody exchange of gunfire in which one Maori was killed, and a member of the military settlers guarding the post leapt from a 150 feet cliff to save himself, breaking both legs in the process but otherwise evidently surviving.¹⁷³⁷

Into this volatile mix, the return to northern Taranaki from Wharekaui of members of Ngati Tama and some Ngati Mutunga by 1868 – part of the planned garrison intended to protect the district against incursion from the north – only added to tensions.¹⁷³⁸ In 1871 Ngati Maniapoto and Waikato were said to have agreed that Ngati Tama should return, and it was reported that Rewi Maniapoto had travelled to Mokau to formally hand over the land in northern Taranaki. It would seem that some kind of understanding had been reached late in 1870. In November of that year the Taranaki Civil Commissioner informed the Native Minister that:

In reference to the visit of the Ngatitama and Ngatimutunga Natives to Tokangamutu, from which place they have recently returned, I have now the honor to inform you, that it is reported that the Northern tribes have consented to restore to the Ngatitama the long-disputed territory known by the name of Poutama, from which they were ejected many years ago for the murder of the chief Rangihapainga. The proposal emanated from Reihana Whakahoe

¹⁷³³ Grey to Cameron, 12 May 1865, AJHR, 1865, A-4, p.37.

¹⁷³⁴ Colonel H.A. Warre to Minister for Colonial Defence, 30 May 1865, AJHR, 1865, A-4, p.55.

¹⁷³⁵ Cowan, *New Zealand Wars*, vol.2, p.304.

¹⁷³⁶ Native Secretary [to Agent for the General Government], 14 September 1865, AGG-A 1 (box 1), Archives NZ (Akl).

¹⁷³⁷ *Daily Southern Cross*, 5 December 1865.

¹⁷³⁸ See Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands*, Wellington: Legislation Direct, 2001, ch.6.

(who is a descendant from Rangihapainga), and was supported by Tawhiao, Rewi, and other chiefs, without enjoining any conditions more than a voluntary surrender of the land to the original owners; but Tikaokao (Tawhana) proposed that they should be united as one people, as a condition of the surrender of the land to Ngatitama.¹⁷³⁹

Parris added that in order to further confirm the proposal, a woman of mana named Ruriruri, the sister of Hone Pumipi Tuhoro, had accompanied the Ngati Tama party on their return from Tokangamutu to Urenui in order to make known the decision in accordance with Maori custom. However, Taranaki Maori recently returned from the Chatham Islands rejected Tikaokao's proposal, telling Parris that 'until the position of the Ngatimaniapoto in relation to the Government was satisfactorily defined, they should not go beyond the White Cliffs.'¹⁷⁴⁰

Crown officials remained deeply concerned to establish the basis upon which any return of the lands would be made, fearing it might be used as the basis for drawing Ngati Tama into the Kingitanga fold. In February 1871 Parris provided further information on this point, reporting to McLean that:

...the question between the Ngatitama *versus* the Ngatimaniapoto and Waikato, with reference to the district known as Poutama, from which the former were expelled by the latter many years ago, appears to have been settled during the late visit of the Ngatitama to Tokangamutu, when the Ngatimaniapoto and Waikato are said to have agreed to surrender the Poutama district to the Ngatitama, who are now anxious to settle at Tongaporutu.

When the first overtures were made by Ngatimaniapoto to give back Poutama, the Ngatitama declared they would never settle north of the White Cliffs until the Northern tribes had made peace with the Government; but now they say that they are afraid that if they do not take possession and occupy it, the Ngatimaniapoto will consider the agreement void, and re-occupy it themselves.

¹⁷³⁹ Parris to McLean, 22 November 1870, AJHR, 1871, F-6B, p.11.

¹⁷⁴⁰ *ibid.*

Rewi is expected soon at Tokangamutu, to formally hand over the district to Ngatitama.

It is very difficult to foresee what the result of their settling north of the White Cliffs will be, whether they will ally themselves to the King confederacy or will maintain allegiance to the Government. If the latter, it would be an advantage and security to the district south of the White Cliffs.¹⁷⁴¹

Some months later, in May 1871, Parris reported that Rewi Maniapoto had arranged to meet with members of Ngati Tama and Ngati Mutunga at Mokau the following week, for the purpose of formally handing over Poutama to them. Parris added that:

The general impression amongst the Natives of this district is, that Rewi's aim in handing over Poutama to the Ngatitama is to ally them to the Tokangamutu league; but so far as I understand the late returned Ngatitama from the Chatham Islands, they only desire to repossess themselves of the territory they were expelled from by Waikato; and once settled at Tongaporutu, if the section of the Ngatimaniapoto living at Mokau seceded from the Tokangamutu league (which there is a strong desire to do at present), they and the Ngatitama occupying the district between the White Cliffs and Awakino, on satisfactory terms with the Government, would be the most satisfactory arrangement that could be effected for that part of the Province.¹⁷⁴²

Parris travelled to Mokau early in May, but was forced by the spring tides to return to New Plymouth before Rewi and his party (who were waiting upriver for waka to come and fetch them) had reached the settlement.¹⁷⁴³

Earlier, in 1868, it was said that Ngati Maniapoto had given the mana over the Mokau lands to King Tawhiao, thus requiring his ultimate decision as to whether to permit

¹⁷⁴¹ Parris to McLean, 11 February 1871, AJHR, 1871, F-6B, p.14.

¹⁷⁴² Parris to McLean, 10 May 1871, AJHR, 1871, F-6B, p.17.

¹⁷⁴³ *Taranaki Herald*, 13 May 1871.

Ngati Tama to occupy the northern Taranaki lands.¹⁷⁴⁴ These are matters that clearly require closer examination than is possible here. What is obvious, however, is that not all Mokau rangatira necessarily shared this enthusiasm for the return of Taranaki Maori to the disputed territory. Hone Wetere Te Rerenga, in particular, is said to have vowed to keep hold of the lands himself.¹⁷⁴⁵

On 13 February 1869 Te Rerenga led 15 members of his own hapu in an assault on the Pukearuhe redoubt. A full garrison had been withdrawn from the post a year earlier, given the absence of any fighting in the district since 1866, and Pukearuhe by this time typically held no more than half a dozen military settlers.¹⁷⁴⁶ Rumours of a planned assault on the redoubt had been in circulation since at least the previous December, apparently giving rise to much internal debate within Ngati Maniapoto and prompting Rewi Maniapoto to intercept one rumoured war party before it reached Pukearuhe.¹⁷⁴⁷ Wetere, though, who had evidently been entrusted with the mission by senior chief Tikaokao, remained undeterred. The party achieved their objectives with ease. Lieutenant Bamber Gascoigne, his wife and three children were killed, along with two military settlers. The missionary John Whiteley, who arrived at Pukearuhe later that same evening, was the final victim. One early report of the attack noted that ‘The Chatham Island natives have been threatened by the Mokau Natives, so have left that district, and come this side of the Urenui.’¹⁷⁴⁸ A second report from early March 1869 noted that the incident had been fully debated amongst Taranaki Maori resident at Te Whiti’s settlement at Parihaka. Robert Parris subsequently informed J.C. Richmond that:

The late massacre at Pukearuhe by the Ngatimaniapoto, has been fully discussed at Pariaka [sic], and Enoka informs me that the only conclusion they can arrive at is, that the *take* or cause of it is the return of the Ngatitamas from the Chatham Islands; and that the Pukearuhe massacre is intended by the Ngatimaniapotos as a declaration of their intention not to surrender Poutama

¹⁷⁴⁴ Parsonson, ‘Te Mana o te Kingitanga Maori’, p.108.

¹⁷⁴⁵ Paul Thomas, ‘Mokau, including the Mokau-Mohakatino and Mohakatino-Parininihi Blocks: Scoping Report’, (report commissioned by the Crown Forestry Rental Trust), September 2009, p.44.

¹⁷⁴⁶ James Belich, *I Shall Not Die: Titokowaru’s War, New Zealand, 1868-1869*, Wellington: Bridget Williams Books, 1993, p.222.

¹⁷⁴⁷ *ibid.*, p.221.

¹⁷⁴⁸ *Taranaki Herald*, 20 February 1869.

to the Ngatitamas, a district which includes part of the Pukearuhe Military Settlers' settlement, extending nearly to the Mokau River, and which was originally owned and occupied by Ngatitama, until they were expelled by Waikato, about thirty-five years ago.

It is difficult to explain why they should murder Europeans as a warning to the Ngatitamas not to occupy any part of Poutama, but that is the decision of the whole of the Ngatiawa and Taranaki tribes. It is true that those murdered, all but the Rev. Mr. Whiteley, were living on the Poutama district, and that the Ngatitama, although they had not as yet gone on to the land, were intending to do so, which Ngatimaniapoto had no doubt heard of.

W. Kingi Rangitake and Te Whiti requested Enoke to come in this way, being much the shortest way to get to the Ngatiawas north of Waitara, the purport of his visit being to advise them to have nothing to do with Ngatimaniapoto, as they believe the *take* to be as before stated.

The returned Natives from the Chatham Islands have declared their intention to fight against Ngatimaniapoto, and I shall not be surprised if it leads to a reunion of the whole of the Ngatiawa tribes to defend their tribal rights, which would do more to break up the King faction than anything else.¹⁷⁴⁹

Taranaki Maori were thus in little doubt that the attack on Pukearuhe had been prompted by concern among Ngati Maniapoto at the prospect of Ngati Tama reoccupying the disputed lands in northern Taranaki.¹⁷⁵⁰ While some reports sought to portray the attack as further evidence of the supposedly violent tendencies of Ngati Maniapoto, and contrasted this with the peaceful inclinations of Waikato proper, that hardly withstood close analysis. It is true that King Tawhiao denounced the killings as the work of Ngati Maniapoto alone, and talked of leaving their settlement for Kawhia or Taupo.¹⁷⁵¹ But so did Rewi Maniapoto.¹⁷⁵² In fact, he had done more than simply

¹⁷⁴⁹ Parris to Richmond, 4 March 1869, AJHR, 1869, A-10, p.51.

¹⁷⁵⁰ Although another rumour had it that emissaries from Titokowaru had originally suggested the attack. William Searancke to Pollen 15 April 1869, AGG-A 1/287/69 (box 4), Archives NZ (Akl).

¹⁷⁵¹ Searancke to Pollen, 27 February 1869, AJHR, 1869, A-10, p.12. However, when Wetere met with Robert Parris a few years later, he was reported to have said that the attack on the Pukearuhe redoubt

issue a post-attack denunciation. According to Waikato Resident Magistrate William Searancke:

About the middle of February Tawhiao invited the whole of the Waikatos residing inland, also the Ngatimaniapoto tribe, to a feast at Kawhia. This invitation was, however, declined by Reihana and his party, who reside at Pukearuhe, a settlement near the head of the Mokau River; also by the Mokau Natives. On the 15th ultimo Tamati Ngapora Manuwhiri, Rewi, and a large number of Waikatos and Ngatimaniapotos, started for the feast at Kawhia, and had arrived, on the following day, within a mile or two of it, when they were overtaken by a messenger, who informed Tamati that immediately after they had left Tokangamutu, Reihana and his friends had had a meeting, and had decided to make an attack on the Europeans, one party, headed by Wetere, and subsequently joined by Tikaokao, to attack the Europeans at the White Cliffs, and the other party, headed by Reihana himself, to attack Alexandra. On hearing this, Tamati, Rewi, and party hurried on to the feast. What took place there I cannot say: the food was given them at once, but instead of remaining there a week or two they only stopped about forty-eight hours, and returning, divided into three parties of about 200 men in each party, by different routes, to intercept Reihana, and, if possible, stop Wetere and the party going to the White Cliffs. Unfortunately they were too late to do so.¹⁷⁵³

The suggestion of a simultaneous attack on Alexandra and Pukearuhe is hardly incompatible with stories that Ngati Tama's imminent occupation of the latter site had prompted the attack. But it does suggest that resistance to confiscation, as much as contested tribal claims to the land, was at least among the mix of motives for the step. Rumours circulated that Pukearuhe would be the signal for a mass uprising of Ngati

had been carried out in accordance with instructions received from Tawhiao. According to one version of events the King sent a packet of kokowai (red ochre, or war paint) to a chief at Ohinemuri. When he returned this it was instead forwarded on to Te Wahanui who 'in conjunction with Wetere, proved to be a more ready instrument in the hands of the double dealing chief of Waikato. The result was the White Cliffs murders.' *Taranaki Herald*, 13 May 1871.

¹⁷⁵² Searancke to Richmond, 27 April 1869, AJHR, 1869, A-10, p.10.

¹⁷⁵³ Searancke to Pollen, 4 March 1869, AJHR, 1869, A-10, p.12.

Maniapoto, with attacks on Alexandra, Kihikihi, Orakau and Te Awamutu likely to figure prominently.¹⁷⁵⁴ J.C. Firth wrote that:

The massacre at the White Cliffs differs from the previous massacres at Poverty Bay and elsewhere in this, that, whilst these latter atrocities were perpetrated at a distance from Tokangamutu and by unknown men of inferior rank, the White Cliffs murders were committed on Waikato territory and by men of considerable rank in the powerful Ngatimaniapoto tribe.¹⁷⁵⁵

Yet there was to be no fresh outbreak of fighting. As even Firth readily admitted, Rewi Maniapoto and many other leading Ngati Maniapoto rangatira were by this time committed to the cause of peace, reserving only the right to defend themselves if attacked by Crown forces. And despite the fact that a missionary had been killed, there was no Crown invasion of the King Country. The contrast with the government's response to the killing of CMS missionary Carl Volkner at Opotiki in 1865 could hardly have been greater.

Ngati Maniapoto gathered in force at Mokau subsequent to the Pukearuhe raid, not in preparation of a planned invasion of New Plymouth as many colonists feared, but in anticipation of a government attack on their own district which never came (unless we count four ineffectual and 'token' shots fired from a howitzer mounted on the government steamer the *St. Kilda* as it briefly cruised up the Mokau River on 9 April 1869).¹⁷⁵⁶ That it did not choose to invade their district was testament to the enduring strength of Ngati Maniapoto and other Rohe Potae iwi. Indeed, such was the improbability of ministers choosing to take on such a task that on 1 April 1869 Colonel Whitmore wrote to Colonial Defence minister Theodore Haultain outlining plans for an invasion of the Waikato – but only, it later transpired, as an April Fool's Day joke.¹⁷⁵⁷ For his part, Hone Wetere Te Rerenga later denied direct responsibility for killing Whiteley but added that 'frequent warnings had been given to the White

¹⁷⁵⁴ Searancke to Pollen, 27 February 1869, AJHR, 1869, A-10, p.12.

¹⁷⁵⁵ J.C. Firth to Pollen, 9 March 1869, AGG-A 1/236/69 (box 4), Archives NZ (Akl).

¹⁷⁵⁶ James Cowan, 'Mokau: Last Shells Fired in Maori War', Papers Relating to Mokau History, fMS-Papers-7496-1, ATL; Belich, *I Shall Not Die*, p.274.

¹⁷⁵⁷ Belich, *I Shall Not Die*, p.273.

Cliffs people to leave, but they did not heed them.’¹⁷⁵⁸ In the early 1880s his claims over at least that portion of the disputed lands outside the Taranaki confiscation boundary would be resumed, this time in the new forum of the Native Land Court. But that is another story.

8.5 Conclusion

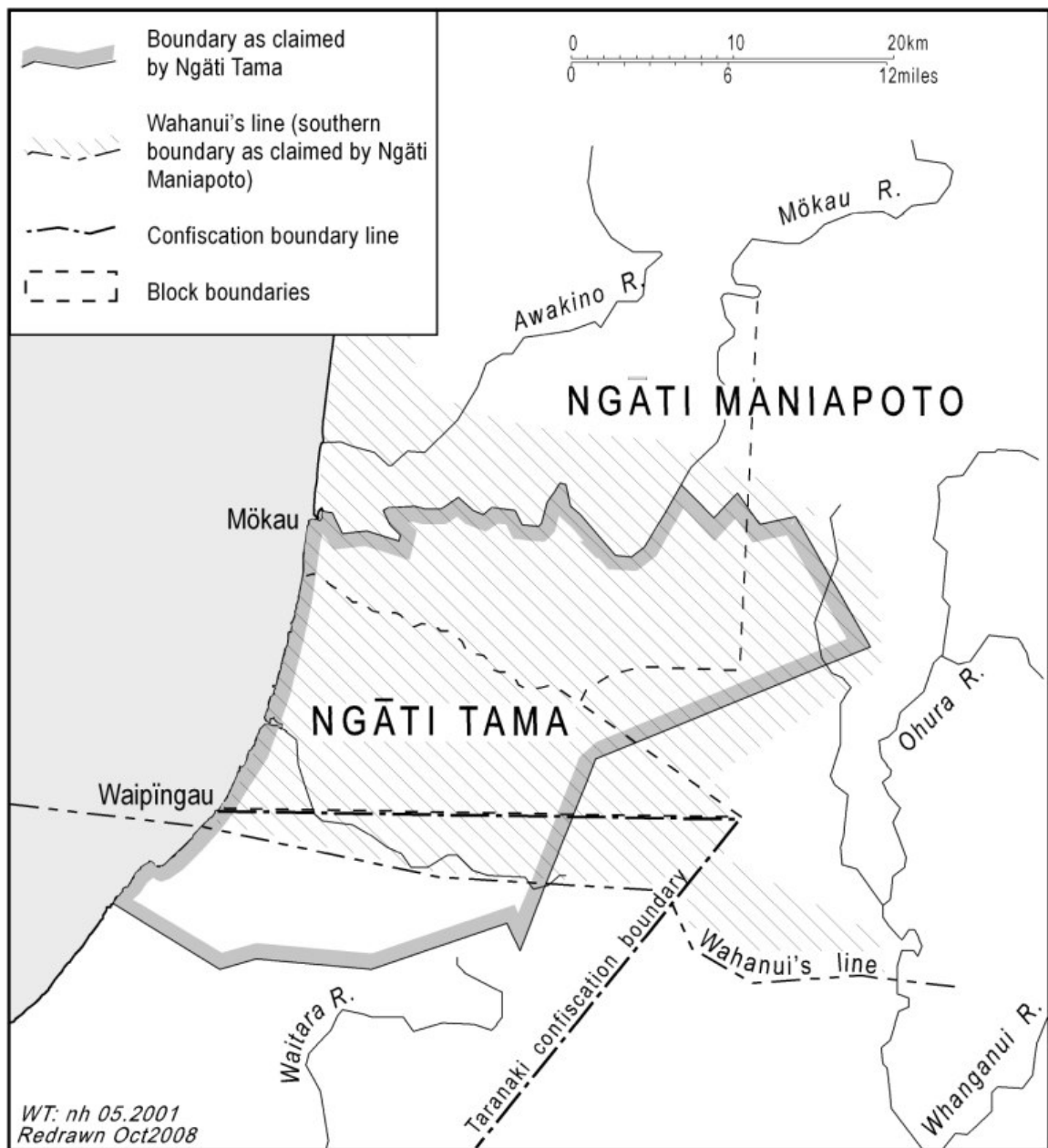
This chapter has examined the Taranaki confiscations in the specific context of the customary claims of Rohe Potae groups within that district. As the political engagement report for the period to 1863 explored at much greater length, Crown officials acknowledged the existence of claims over northern Taranaki on the part of Ngati Maniapoto and other groups from an early date, and Ngati Maniapoto’s right to occupy lands as far south as Urenui was specifically recognised. Similar forms of recognition continued to be evident right up until the time of the Waitara purchase, when Browne and his officials sought to argue that the Crown had bought the Taranaki lands from the Waikato tribe. But it had been all but forgotten by 1865, when the first confiscation proclamations were published with respect to Taranaki. Given the vehemence with which Ngati Maniapoto in particular were denounced by many officials at this time (and were deemed to have got off lightly in the Waikato raupatu), to the extent that there remained any awareness within these circles of such interests, it was perhaps regarded as a bonus that these would be confiscated.

For their part, Ngati Maniapoto appear to have abstained from the Taranaki Compensation Court process which commenced in 1866 not because they had abandoned all claims over the district but as part of a broader pattern of resistance to the confiscations. After all, many Ngati Maniapoto remained ‘unsurrendered rebels’, who would have been ineligible to receive compensation even had they been aware of the Taranaki hearings. Their interests were asserted in other ways, including the February 1869 attack on the British redoubt at Pukearuhe, to the south of Parininihi.

It was at the latter place that the northern boundary of the Taranaki confiscations had been proclaimed – not, it would seem, because officials deemed this consistent with

¹⁷⁵⁸ AJHR, 1878, G-3, p.59.

particular tribal boundaries but for the more practical reason that this broadly coincided with the limits of the area under effective British control. While some sections of Ngati Maniapoto subsequently seem to have agreed that Ngati Tama should be allowed to re-settle in northern Taranaki, it appears that at least some of the Mokau communities most interested in these lands stayed aloof from that decision, vowing to continue to assert their own rights in the area. And passive resistance to the Taranaki confiscations continued to be evident in 1881, when a substantial number of Ngati Maniapoto were present at Parihaka at the time of its invasion and subsequent destruction by government forces.



(Source: Waitangi Tribunal)

Figure 16 Overlapping Mokau Boundaries

9. Rohe Potae Hapu and Iwi Responses to Confiscation

9.1 Introduction

The history of efforts to gain redress for the confiscation of Waikato lands is a dominant feature of local hapu and iwi relations with the Crown in the period through to the late twentieth century. In this sense the topic is inextricably tied up with broader political developments, and this section of the report is best read alongside reports covering issues of Rohe Potae political engagement for the late nineteenth and early to mid-twentieth centuries. Disentangling specifically raupatu-related issues from the wider issues at stake in the various negotiations between Rohe Potae leaders and Crown officials is often a fine judgment and there will inevitably be some overlap here. It should also be noted that the project brief for this report requires Rohe Potae hapu and iwi responses to raupatu up to around 1900 to be covered. Subsequent developments will be traversed in the twentieth century political engagement report. Although brief sections on the Sim Commission and the negotiations leading to the Waikato-Maniapoto Maori Claims Settlement Act of 1946 have been included for the sake of completing the story, it is therefore expected that these will be superseded by more detailed research into these topics. Finally, not all of the petitions or other responses mentioned below came from Rohe Potae groups or referred to lands within what constitutes today's inquiry district. A wider range of responses is drawn upon since these help to shed light upon the Waikato raupatu as a whole.

9.2 Further Military Confrontations and Scares in the Period to 1872

There are many developments in the period to about 1872 which might be seen as in some ways constituting a response to raupatu. The most obvious of these, of course, was ongoing fighting with Crown forces, sometimes involving or being supported by at least some of those living within the Rohe Potae. The 1869 attack on Pukearuhe, carried out by a small party from Ngati Maniapoto, was an obvious example of this, while the decision of Rewi Maniapoto and other Ngati Maniapoto chiefs to provide

shelter to Te Kooti might also be seen as an act of resistance at a time when they themselves had for the most part abandoned armed struggle. Then there was the establishment of an aukati, discussed earlier in relation to the impact of the war on Rohe Potae hapu and iwi, and its enforcement at various times and in different ways, including the killing of selected Europeans who transgressed the line. Often less well documented were persistent, small-scale efforts to sabotage surveys and sales of confiscated lands. As we will see below, this kind of direct action was supplemented by various petitions and appeals, personal protests, letters and publications. While officials sometimes tried to suggest that the Waikato tribes accepted the confiscations as a fait accompli, the evidence often failed to back up such an assertion.

Rumours of imminent Kingitanga uprisings and a resumption of full-scale fighting in the Waikato persisted throughout the 1860s and into the early 1870s, driven in large part by the realisation that the tribes would not lightly abandon their demand for the return of the confiscated lands. The withdrawal of the last remaining British regiments from Waikato by 1867 only added to fears.¹⁷⁵⁹ Civil Commissioner James Mackay reported following the disastrous British defeat at Te Ngutu-o-te-Manu in September 1868 that Titokowaru's successes at South Taranaki had 'had a very bad effect' on both 'friendly' and 'Hauhau' Maori in the Waikato, leaving the former in a state of 'doubt and perplexity', while:

The Hauhau party were never so elated or exultant as at present, and they appear to think that they can carry everything before them. I believe the withdrawal of the European population from the Patea, or the re-taking of any confiscated lands elsewhere in the Colony, would be looked on as the signal for an immediate and almost universal rising of the aboriginal population of the Colony.¹⁷⁶⁰

The earlier warnings of Sir William Martin and British officials that confiscation was likely to prolong the war and intensify Maori resistance had been widely scoffed at back in 1863-64, but within just a few years of this had virtually become a truism. Actual involvement in such fighting on the part of hapu and iwi resident within the

¹⁷⁵⁹ *Daily Southern Cross*, 8 February 1867, in MA 24/26, Archives NZ, RDB, vol.89, p.34335.

¹⁷⁶⁰ Mackay to J.C. Richmond, 9 October 1868, AJHR, 1868, A-18, p.1.

Rohe Potae district appears to have been limited for the most part following the Waikato War, though incidents such as the February 1869 murder of Reverend John Whiteley and other Europeans at White Cliffs at the hands of a Ngati Maniapoto taua (discussed in the previous chapter) convinced many that a concerted effort to regain possession of the confiscated lands by force could be imminently expected.¹⁷⁶¹ Periodic rumours of imminent Kingitanga uprisings and attacks on the military settlements of Waikato and Taranaki were enough, however, to remind many Europeans that their possession of such lands was at best tenuous (and as suggested in an earlier chapter, probably contributed to many settlers leaving the Waikato, resulting in a depressed land market in the district and stagnant economy).

Matutaera's 1864 conversion to the Pai Marire faith of Taranaki prophet Te Ua Haumene (who named the Maori king 'Tawhiao') added another dimension to such scares. Already the Pai Marire, or 'Hauhau', religion had gained a reputation as a fanatical and bloodthirsty cult, and Tawhiao's adoption of it, followed by many other leading Waikato and Ngati Maniapoto rangatira, was viewed by some as marking a more militant phase of resistance.¹⁷⁶² Rewi Maniapoto, for example, who was another early convert, is said to have insisted that Te Ua accompany him back to Waikato to lead a further war effort, remarking that if Haumene was a true prophet they would be successful and the Pakeha would be driven from the district.¹⁷⁶³ Within a few years of this, Tawhiao had established his own Tariao religion, while Rewi Maniapoto became increasingly committed to the cause of peace. As we saw in the previous chapter, for example, he had attempted to prevent the 1869 attack on Pukearuhe.

Rumours of further planned attacks nevertheless persisted, recurring with a frequency which would make it a formidable task to attempt to outline all of these in any kind of comprehensive manner (not to mention somewhat futile, given none of the rumours came to fruition). The persistence of such reports indicated ongoing Pakeha unease, and perhaps even a recognition that the Kingitanga had not accepted either the legitimacy or the finality of the confiscations. A few examples drawn at random may

¹⁷⁶¹ Belich, *I Shall Not Die*, pp.220-228.

¹⁷⁶² It was also said that the Kingitanga had abandoned 'pa fighting' in the wake of Orakau in preference for taking to the bush, and that 'loyalist' Maori were secretly supplying 'rebels' with all that they required from the British camp stores. Captain Tisdall to Major Hills, 12 December 1864, G 16/4, Archives NZ; Hills to Captain Baker, 14 December 1864, G 16/4, Archives NZ.

¹⁷⁶³ Clark, 'Hauhau': *The Pai Marire Search for Maori Identity*, pp.60-61.

be taken to suffice. In November 1865 it was rumoured that the Waikato tribes were about to be joined by those of Taranaki, Taupo and elsewhere in a simultaneous assault upon the settlements of Raglan, Waipa, Auckland, Tauranga and elsewhere.¹⁷⁶⁴ That followed a report from a month earlier of rumoured 'hostile movements of the Ngatimaniapoto and other tribes against the settlers on the land recently confiscated in the Waikato as well as at the White Cliffs.'¹⁷⁶⁵ Just over a year later, in November 1866, it was reported that the Waikato tribes, led by Rewi Maniapoto and Kereopa Te Rau of Ngati Rangiwewehi, were about to attack Hawke's Bay to avenge the recent death of Ngati Hineuru prophet Panapa at the battle of Omarunui.¹⁷⁶⁶ That rumour proved unfounded, but according to James Cowan, Peita Kotuku of Ngati Maniapoto and Patuheuheu was among those captured during the Omarunui fight.¹⁷⁶⁷ He was exiled to the Chatham Islands and imprisoned there indefinitely without trial, along with nearly 300 mostly East Coast Maori, and their wives and children, before escaping under the leadership of Te Kooti in July 1868. He subsequently took part in the attack on Matawhero in November of that year, and was involved in several subsequent conflicts.¹⁷⁶⁸

Confirmed reports from October 1866 meanwhile described several cases of military settlers at Alexandra and elsewhere within the Waikato confiscated district being visited by small groups of Maori, who ransacked their houses, demanded rifles and ammunition and warned the families to leave the district promptly or suffer the consequences. As the commander of the Alexandra troops reported in October 1866, when referring the latest report of such an incident to his superior, 'this is the third family to my own knowledge in this Settlement which has received notice from Maoris to leave the place before harm came, as the natives would first give them fair warning to leave and then attack and reoccupy Waikato.'¹⁷⁶⁹ It would appear that the recipients of such messages took these very seriously, packing up their bags and

¹⁷⁶⁴ Aihepene Kaihau to Major Speedy, 28 November 1865, IA 1/1865/3379, Archives NZ.

¹⁷⁶⁵ J.E. FitzGerald (Native Minister) to Minister for Colonial Defence, 9 October 1865, AD 1/1865/3332, Archives NZ.

¹⁷⁶⁶ McLean to Colonial Secretary, 15 November 1866 (and enclosures), IA 1/1866/3381, Archives NZ.

¹⁷⁶⁷ Cowan, *New Zealand Wars*, p.141.

¹⁷⁶⁸ Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki*, Auckland: Auckland University Press/Bridget Williams Books, 1995, pp.135, 144, 168, 187; Tame Tuwhangai, Te Rohe Potae, Nga Korero Tuku Iho o Te Rohe Potae, 4th Oral Traditions Hui, Ngapuwaiwaha Marae, Taumarunui, 26-27 April 2010, pp.145-146.

¹⁷⁶⁹ William St. Clair Tisdall to Officer Commanding Waikato Force, 31 October 1866, IA 1/1866/3381, Archives NZ.

leaving the district as quickly as possible. Those who remained lived in constant fear. In 1870, for example, Orakau military settler William Cowan (the father of James) wrote that ‘whenever there is a panic with our wives and children we have to abandon our homes leaving them to the mercy of the Natives’.¹⁷⁷⁰

Crown agents directly implicated in implementing confiscation sometimes feared that they were particular targets for reprisal as a consequence. Hanson Turton, for example, wrote in September 1865 that:

My journeys often lead me into danger; and the Government must remember that, with the Rebels, I am a “marked man,” owing to my peculiar connexion with the Confiscation of their lands.¹⁷⁷¹

Survey parties were especially vulnerable and the deaths of Todd and Sullivan indicated that the threat of attack was not one that could be lightly dismissed.¹⁷⁷² It was said that Tamati Ngapora (Manuwhiri) had justified Todd’s death on the basis that it took place within the ‘conquered boundaries’ and that ‘the retention of confiscated land by the colonists is disapproved of by the Imperial Government.’¹⁷⁷³ Indeed, as we saw in an earlier chapter, a survey party working on confiscated land was forcibly driven off it, apparently by order of the Maori King, as late as 1877, while threats of a joint Fenian-Kingitanga uprising were perhaps not quite as far-fetched as they at first sounded. Certainly, authorities were concerned enough to take such rumours seriously.

But actual involvement in the wars after 1864 on the part of Te Rohe Potae groups appears to have been much more limited. A Waikato war party numbering several hundred men fought several sharp engagements against contingents of mainly Te

¹⁷⁷⁰ William A. Cowan to J. Williamson, 7 March 1870, McLean Papers, MS-Papers-0032-0232, ATL.

¹⁷⁷¹ Turton to Fenton, 12 September 1865, MLC-A52, File 89, Box 39, Archives NZ (Akl), RDB, vol.101, p.38799.

¹⁷⁷² The arrival of a Maori cadet surveyor and two Maori labourers at one survey site saw the Europeans there cry ‘The Maoris’, before running off to the nearest European settlement, ‘throwing away their tools, implements &c.’ Churton to Heaphy (Chief Surveyor), 25 July 1865, AGG-A 1 (box 1), Archives NZ (Akl).

¹⁷⁷³ Memorandum for His Excellency the Governor [from McLean?], n.d. [c.1871], McLean Papers, MS-Papers-0032-0049, ATL.

Arawa ‘loyalists’ in the area around Rotorua in March and April 1867,¹⁷⁷⁴ though whether any Rohe Potae hapu or iwi were involved in these conflicts does not seem clear from the available sources.¹⁷⁷⁵ Although a few members of Ngati Haua, Ngati Raukawa and other Waikato iwi may have been involved in the Tauranga Bush Campaign fought at about the same time, the rumoured en masse Waikato assault on Tauranga never eventuated (and there are similar unknowns as to possible Rohe Potae involvement).¹⁷⁷⁶ Some members of Ngati Raukawa were supporters of Te Kooti, and their settlement at Tapapa was stormed by Crown forces in January 1870.¹⁷⁷⁷ With the exception of isolated individuals, that may have been the final engagement in which any of the Rohe Potae hapu and iwi were actively involved, although the tribal affiliations of groups which participated in the wars is not always clear from the documentary sources.

Scares continued, of course, and the period from mid-1868 through to early the following year was an especially fraught one for many colonial officials.¹⁷⁷⁸ The disastrous rout of colonial troops at Te Ngutu-o-te-Manu at the hands of Titokowaru in September 1868, coming on the heels of the escape of Te Kooti and nearly 300 other Whakarau from the Chatham Islands a few months previously, gave rise to a Doomsday scenario in which the Waikato tribes might rise up in support of one or both of the prophets.¹⁷⁷⁹ It was this fear that lent a particular edge to the events at Pukearuhe in February 1869, even though Titokowaru’s formidable army had by this time abandoned their fortress at Tauranga-ika and dispersed.¹⁷⁸⁰ And the later

¹⁷⁷⁴ See the various reports from H.T. Clarke in AJHR, 1867, A-20, pp.50-57; Cowan, *New Zealand Wars*, vol.2, pp.161-173; O’Malley and Armstrong, *Beating Heart*, pp.80-81.

¹⁷⁷⁵ However, one Alexandra source stated that ‘Those Natives, Waikato’s [sic] and Ngatimaniapotos who went to Rotorua some time since...have returned, about 30 in number, and they carry with them their dead 2, and their wounded 3 in number, this loss occurred near Rotorua and was inflicted by the Arawas.’ William St. Clair Tisdall to Officer Commanding Waikato Force, 8 April 1867, AGG-A 1/286/67 (box 2), Archives NZ (Akl).

¹⁷⁷⁶ Clarke to Richmond, 29 April 1867, AJHR, 1867, A-20, p.65; John Koning, ‘The Tauranga Bush Campaign, 1864-1870’, (report commissioned by the Crown Forestry Rental Trust), April 1998, p.5.

¹⁷⁷⁷ Cowan, *New Zealand Wars*, vol.2, pp.382-383.

¹⁷⁷⁸ See, for example, James Mackay to Native Minister, 20 June 1868, AGG-A 1/428/68 (box 3), Archives NZ (Akl). Mackay reported rumours that Tawhiao was about to lead an attack on Auckland, with every tribe in the North Island (other than Te Arawa and Ngati Kahungunu) poised to rise up in support by launching an assault on the nearest European settlement.

¹⁷⁷⁹ One writer advanced what he believed was an ingenious solution to the military difficulties the colonists found themselves in at this time, suggesting that bloodhounds be employed against hostile Maori. William Thompson to the Colonial Secretary, 22 September 1868, AD 1/1868/3291, Archives NZ.

¹⁷⁸⁰ Belich, *I Shall Not Die*, pp.242-246.

agreement to provide shelter to Te Kooti, though certainly an act of defiance, hardly equated with any willingness on the part of Ngati Maniapoto to resume warfare. Indeed, it was said that Waikato exiles in the Rohe Potae taunted Te Kooti soon after his arrival there, declaring that Rewi had agreed to his coming solely ‘to keep him out of mischief’.¹⁷⁸¹ That desire to avoid ‘mischief’ or trouble was shared by many Rohe Potae Maori by this time, and as we saw in an earlier chapter, the aukati – a flexible instrument of policy rather than the kind of ‘Iron Curtain’ imagined by some historians – was primarily intended to achieve precisely such an outcome. The people of Waikato had been forced into a defensive war in 1863 and although a few took part in some later engagements, and there were many more rumours of supposedly imminent uprisings, by and large there was little real willingness to enter into another head-on military confrontation with the Crown.

For their part, influential Crown officials also appear to have shared this viewpoint. In a confidential memorandum to Cabinet penned in March 1871 Native Minister Donald McLean observed that a further war would likely strengthen the Kingitanga, attracting to it new recruits eager for ‘distinction or booty’ or otherwise inspired by ‘the fanaticism of the Hau Hau religion’.¹⁷⁸² By careful combinations, a successful blow might nevertheless be struck against the Waikato tribes, which would serve to break up their party, but McLean added that ‘such a step would be followed by the ruin of the frontier settlers in Waikato and elsewhere, would very much injure the Colonizing projects inaugurated by the Government, and would entail, even under favourable circumstances, a very heavy outlay.’¹⁷⁸³ Under these circumstances, it was ‘a question whether judicious management and care during a period of peace will not hasten the decay of the King party more than open hostilities’.¹⁷⁸⁴ The cost of a further and complete conquest was thus perceived as being greater than could be justified under the circumstances, an assessment that was no doubt influenced by the perception that the supporters of the Kingitanga remained a viable and significant military threat (if no longer perhaps to settlers throughout the North Island, then at least to those bordering areas such as the King Country.

¹⁷⁸¹ Mair to McLean, 16 June 1872, quoted in Binney, *Redemption Songs*, p.270.

¹⁷⁸² McLean to Premier (William Fox) and Ministry, n.d. [c. March 1871], McLean Papers, MS-Papers-0032-0033, ATL.

¹⁷⁸³ *ibid.*

¹⁷⁸⁴ *ibid.*

9.3 Other Forms of Early Protest

Other forms of protest against the war and confiscation could also assume many forms. Take, for example, the September 1864 sale of township sections at Ngaruawahia discussed previously. According to one account of this, prior to the auction commencing:

...a Maori female, “dressed in the prevailing fashion,” and looking unusually tidy, mounted a bench and read a protest against the sale, claiming Ngaruawahia for herself, her sons, and daughters, as peaceable loyal subjects, by virtue of the Treaty of Waitangi, and threatening to appeal to the Queen if the sale proceeded.¹⁷⁸⁵

True to form, the *Daily Southern Cross* was dismissive of the protest made, declaring that:

...seeing that the pretence of the claim was that of rightful ownership and fealty to the Crown, we wonder the female aforesaid and her pakeha husband, their sons and daughters, did not drive away the rebellious natives who so long lorded it at Ngaruawahia and held adverse possession.¹⁷⁸⁶

A more detailed report of this incident carried in the same newspaper suggested a similar response at the time of the protest. It noted that:

When she had finished her husband (a European) got up and read a translation of the protest, to the effect that it was a protest against the sale of the township of Ngaruawahia, bounded by the Waipa and Horotiu rivers, and further particularising the boundaries, and setting forth that it belonged to this woman, and to her sons, and to her daughters, who had always been peaceful subjects of the Queen; that the land was secured to them by the treaty of Waitangi; that

¹⁷⁸⁵ *Daily Southern Cross*, 10 September 1864.

¹⁷⁸⁶ *ibid.*

if the sale went on contrary to this protest she would appeal to the Queen, her great chief. The man who read this translation certified that it was a true one, and then handed it over to [the auctioneer] Mr. Cochrane, who gave the most effective reply he could give to it, by at once reading over the conditions of sale, and after answering a few queries put to him by intending purchasers, commenced the business by the usual prelude of, “Gentlemen, what shall I say for the first lot?”¹⁷⁸⁷

It is not difficult to imagine that in a situation in which peaceful protests of this kind were either ridiculed or simply ignored, those on the receiving end might quickly feel powerless to respond. There is nothing in this case to suggest that the unknown woman filed a petition to the Queen and no indication as to whether her protest was subsequently followed up in any way by Crown officials. However, the protest did come to the attention of supporters in Britain, and one wrote a letter to the editor of the *Daily Telegraph* declaring that:

Some twelve months since, when confiscated lands were selling at the new township of Ngaruawahia, a Maori woman stood up and read a formal protest against the sale, stating that she had always been a loyal subject of the Queen, claimed the land then selling as her own, and stated she would appeal to the Queen to do her justice. The natives want the power of taking a case of this kind to the supreme court, and, if not satisfied with the verdict, the further power of appealing to the Queen in the Privy Council. This they think we will not grant them; because, if they possessed this privilege, they would obtain again the lands we have taken from them. If extermination be the “inevitable lot” of the Maori people, let us still act with justice towards them while even a representative of the race exists. Let them not be enabled to call us liars and landsharks, to scorn our honour and religion, and to believe as a nation we are destitute of political honesty and the faculty of speaking the truth.¹⁷⁸⁸

The author of this letter went on to ask whether the British now ‘repent making the treaty of Waitangi, and seek to drive the natives to extremities in order to find a

¹⁷⁸⁷ *Daily Southern Cross*, 30 September 1864.

¹⁷⁸⁸ Undated *Daily Telegraph* clipping [c.September-October 1865], in IA 1/1865, 3568, Archives NZ.

pretext for declaring their pretensions as bona fide landowners absurd'. Was it to be said that they desired 'to forget our covenant altogether, and treat them as a conquered people, because they possess good pastoral and agricultural land?' Similar Treaty-based arguments had also long been made locally by European sympathisers, including, for example, one 1863 letter from Singleton Rochfort, in which the author declared that:

It is not generally known that by the treaty of Waitangi, the chieftainship of the Maori chieftains were solemnly guaranteed to them with all their incidents...The Maories have no objection to the Queen, as they have always professed; but they insist on being governed by the Queen, through their own chieftains, and not through some four or six of the colonists. They are in arms, not against the Queen, but against the illegal, corrupt and corrupting thing called "Responsible Government."¹⁷⁸⁹

Yet even Pakeha considered sympathetic to the Maori cause could feel the reproach of their Maori associates with regard to events from the war. Describing a friendship 'broken through the miseries of war', Lady Martin, the wife of retired Chief Justice Sir William Martin, recalled that:

Just before our invasion of Waikato, where Rebekah was then living peaceably in her own village, supporting herself and her children by doing washing and needlework for settlers in the neighbourhood, she came in one evening to our house, breathless with fear and excitement. She had come across the harbour to the little port of Onehunga to do some shopping, and the tradespeople had told her that the troops were soon coming to put down the Maoris. We calmed her fears, and assured her that the Government would not attack the Waikato natives unless they rose against us. Unhappily, two or three days later, on a Sunday morning, General Cameron crossed the river with a large force and the war began. Rebekah fled with her children and the rest of her people up into the King's country for refuge. There, removed from Christian influences and surrounded by malcontents, her excitable temperament made her, after a

¹⁷⁸⁹ *Daily Southern Cross*, 8 October 1863.

while, believe herself to be a prophetess. Once she wrote to me, and they were bitter words about our English people, though full of expressions of personal regard. A house had been set on fire after a skirmish, and one or two Maori women and children were, as it was believed, burnt. Of course, the men who did this only supposed the house to be a lurking-place for the enemy. She asked me whether it was part of our Christian religion to burn women and children alive.¹⁷⁹⁰

How many similar kinds of exchanges took place between Maori and Pakeha formerly acquainted with one another but subsequently torn apart by the war we have no means of knowing. And yet, while this kind of private communication can hardly be regarded as constituting a plea to the Crown for redress, it does serve as a reminder of the very real feelings stirred up by the war.

Meanwhile, there were other more public forms of written protest. In 1865 James FitzGerald arranged for the publication (in both English and te reo Maori) of a lengthy letter to him, dated November 1864. It was written by Aterea Puna, supposedly ‘for all the tribes’, and traversed the issue of war and confiscation. It should be noted at the outset that the name is not a familiar one, and there is nothing to confirm the provenance of the letter. Nineteenth-century Pakeha were sometimes in the habit of writing mock Maori letters, and more than one historian has been caught out by this before. On the other hand, there is nothing which obviously casts doubt on the origins of the letter and FitzGerald was an outspoken critic of confiscation at this time (prior to his Road-to-Damascus-like conversion upon becoming Native Minister).¹⁷⁹¹ He had plenty of contemporary enemies who would eagerly have seized on even the hint of a forged letter, but there appears no suggestion of this kind, and other historians have evidently accepted the bona fides of the document.¹⁷⁹²

The letter itself traversed much of the background to the Waitara purchase, and the first Taranaki War, including Potatau’s insistence that there should be no fighting

¹⁷⁹⁰ Lady Martin, *Our Maoris*, London: Society for Promoting Christian Knowledge, 1884, pp.161-162.

¹⁷⁹¹ The pamphlet had been published by March 1865. FitzGerald took office as Native Minister in August of that same year. *Hawke’s Bay Herald*, 11 March 1865.

¹⁷⁹² Donald M. Loveridge, ‘The Development and Introduction of Institutions for the Governance of Maori, 1852-1865’, (report commissioned by the Crown Law Office), September 2007, p.271.

with the Pakeha, and his commitment to ‘religion, love, and law’, along with Governor Browne’s promise that he would not purchase lands without the consent of the whole tribe. Browne had written to Potatau soon after that he was going to Taranaki on an errand of peace, the letter continued, but:

Not long after the utterance of this peaceful message fighting commenced at Taranaki immediately after his arrival there, and we heard, what proved to be a fact, that William King had been driven from his own land by the soldiers, his pa burnt, his horses, cows, and pigs, with other property seized [by the military]. After a lengthened war at Taranaki, on the part of Governor Browne, he left without making peace, and matters remained in confusion or disorder.

Then came Governor Grey to Auckland, and the chiefs of Waikato waited on him to ask, - “O Governor is it peace or war?” And the Governor said: - “This is the Queen’s word, ‘Go to New Zealand, and let there be nought but peace.’” “Then Tamati said to the Waikatos [*i. e.*, the chiefs who were present at Government House] – “Do you hear this word?” and they all said “Yes.”

After this Governor Grey went to Taupari, and these were the words which he uttered at the meeting there, six hundred men being present. He said, “I have come hither in peace, with feelings of good will. I shall not fight.”

After this the Governor uttered a sentence to the Chiefs of Waikato, at Kohanga. He said, “I am unwilling to make war on the Maoris; even unto 22 years I shall not be evilly disposed towards them, that is to say, I will not make war on them” [even though they incur my displeasure.]¹⁷⁹³

Governor Grey had invited some of the Waikato tribe to come and reside on the banks of the Mangatawhiri ‘to watch the evil doings of both Pakeha and Maori’, and this they had agreed to do. Mangatawhiri had been proclaimed and understood from the

¹⁷⁹³ Aterea Puna, *Letters on the Present State of Native Affairs/He Pukapuka Whakaatu i Nga Korero Mo Nga Ritenga o Tenei Takiwa*, Christchurch: Offices of the Press, 1865, pp.28-29. Interpolations in original document.

time of Governor Browne onwards as ‘the boundary between the Maoris and the Pakehas.’

Wiremu Tamihana had pleaded to be allowed to settle the matter of the Tataraimaka lands seized as an equivalent for Waitara, but this had been refused. Referring to the Oakura ambush of May 1863, Puna added that:

After this the Governor went to Taranaki with his soldiers and his implements of war to kill men [or with his men-killing implements]. Now, while the men went forward to take possession of Tataraimaka, he held in his hand Waitara. Here it was that the eight soldiers were killed, it having been proclaimed and made known by the Maoris that no Pakehas were to travel [beyond certain lines]. These were killed according to the custom of the Maoris, and this killing is not considered murder by Maoris, but is by them called “urumaranga,” or one of the incidents of war, for the war had been commenced when the soldiers went there with their guns to fight. Another point is this, peace had not been made. The Waikatos and the Ngatehauas [sic] agreed to give up Tataraimaka to the Pakehas, and William Thompson wrote a letter to Taranaki requesting that Tataraimaka be given up to the Pakehas.¹⁷⁹⁴

Letters from Rewi Maniapoto and others to Te Atiawa urging them to ‘fire’ had been used by government officials to point to the supposedly aggressive intentions of the Waikato tribes, but Puna interpreted these as suggesting that if Waitara was taken by the soldiers then this should be forcibly resisted. Moreover, the eight soldiers killed at Oakura had been avenged by the capture of Katikara pa, when 31 Maori had been killed ‘and their bodies mutilated by the soldiers after their death.’¹⁷⁹⁵

Referring to the forcible eviction of Maori from South Auckland in the days leading up to the invasion of Waikato in July 1863, Puna wrote that:

After this, the Maoris who were residing on their own estates at Mangere, Ihumatao, Pukaki, Te Kirikiri, Tuhimata, Pokeno, Patumahoe, and Tuakau,

¹⁷⁹⁴ *ibid.*, pp.30-31.

¹⁷⁹⁵ *ibid.*, pp.31-32.

were hurriedly driven away and their property seized or stolen. Some of them were captured and put into prison, and some died during their captivity.

The cause of their being driven away was not known, nor is it now known [by the Maoris]. Governor Grey said to the Maoris when they were driven away, that they must go to the other side of the Mangatawhiri stream. The Maoris thought, therefore, that the other side of the Mangatawhiri was to be *tapu* or sacred, for he had told the Maoris to go thither beyond the boundary of the Europeans, and sit down there [noho ai]. At the time of the ejectment the soldiers were the first to cross the Mangatawhiri, and the people who were driven away were behind the soldiers.¹⁷⁹⁶

Grey and other officials claimed, in justification of the invasion, that intercepted letters indicated that an imminent strike on the settlers of Auckland was planned. Crossing the Mangatawhiri was thus, from this perspective, a pre-emptive strike. Aterea Puna, though, was dismissive of this argument, adding that:

Relative to certain letters written by Maoris and Europeans stating that a plot had been formed by the Maoris to cross the Mangatawhiri, that is, to enter the boundaries of the European lands to kill [the settlers], there is no foundation whatever upon which these letters can rest, for the word of the Waikatos, Thompson's, and other tribes was, that the Pakehas should be the aggressors, and, extending to the Ngatimaniapotos, there was but one decision with reference to this subject.

According to Maori ideas, war was declared against the Maoris when they were driven off on the 9th of July from their own lands within the boundaries of the Manukau; and when the soldiers crossed the Mangatawhiri the blood of men was spilt, and a real war begun between the Pakehas and the Maoris.¹⁷⁹⁷

Since the start of the war a number of outlying settlers had been attacked and sometimes killed. Government officials described these as murders, and the

¹⁷⁹⁶ *ibid.*, p.32.

¹⁷⁹⁷ *ibid.*, pp.32-33.

perpetrators of the attacks on various named settlers were specifically exempted from subsequent peace proclamations declaring that no further action would be taken against Maori who agreed to come in and make their submission. Again, however, Puna rejected this version of events, declaring that:

Now, according to Native custom, or Native mode of warfare, there has been no murder committed by the Maoris from the commencement of hostilities, when the soldiers crossed the Mangatawhiri, even until this time. No murder has been committed by the Maoris on the Pakehas.

The Pakehas, who were killed by the Maoris, and who it is stated by the Pakehas were murdered, we say no, it was a “huaki” – a surprise. Regarding the Pakehas who were killed at Ramarama, Pukekohe, Te Iaroa, Papakura, Te Wairoa, and Mangemangeroa, they were all killed in fight.¹⁷⁹⁸

The author saved his most telling criticisms for the end, however, asserting that:

The Maori side is still endeavoring to find out the cause of the war – the reason why the Pakehas invaded the Waikato. We have thought whether it were our preventing the road being made from Auckland to Wellington – whether on account of the Maoris forming a land league to retain their own possessions – whether on account of the Maori King – whether the driving away of Mr. Gorst – or the removal of the timber from Te Kohekohe to Te Ia the land of the Pakehas – and the Maoris have discovered that the foundation of this war is a desire on the part of the Pakehas to possess themselves of the Waikato country.¹⁷⁹⁹

Having addressed the background to, and causes of the war, Puna finally turned to the question of raupatu, emphatically rejecting a key Pakeha argument used in defence of such a policy. The author wrote that:

¹⁷⁹⁸ *ibid.*, p.33.

¹⁷⁹⁹ *ibid.*, pp.33-34.

Now as to this custom of you Pakeha in confiscating land, it is not customary among the Maoris. Look, now, when did the Ngapuhis take land? In their great wars with Kaipara, Taranaki, Thames, Waikato, Rotorua and other places, no land was seized or taken by the Ngapuhis, not one piece ever so small. And the law of God says, "Thou shalt not covet any thing that is thy neighbors."¹⁸⁰⁰

FitzGerald penned an equally lengthy response, sympathising with some of Puna's complaints but insisting that Maori ought to have had resort to the law in satisfaction of their grievances and not taken up arms.¹⁸⁰¹ Others were less understanding. The *Hawke's Bay Herald*, which published the letters from Puna and FitzGerald, declared that:

...whether the Maories call these cold blooded affairs *urumaranga* or *huaki*, Englishmen call them murders, and if the perpetrators can be found and convicted they will most assuredly be hanged. Perhaps after that the natives may be induced to view the question in a different light. ...

Aterea Puna says that confiscation is unknown among the Maoris. This is simply untrue. They have been, from so long back as we get information, in the constant habit not only of confiscating land but of making slaves or *tau rika rikas* [sic] of the conquered inhabitants. They may occasionally have not thought it worth while to use their power, but whenever they felt inclined to take the conquered country, they most undoubtedly did it. In fact the beaten tribes lost everything that it pleased the winners to take, including their personal liberty.¹⁸⁰²

Public protests such as that of Aterea Puna were matched by numerous direct appeals to officials. In June 1865, for example, Mite Kerei Kaihau wrote to the Premier, Frederick Weld:

¹⁸⁰⁰ *ibid.*, p.34.

¹⁸⁰¹ *ibid.*, pp.35-47.

¹⁸⁰² *Hawke's Bay Herald*, 23 March 1865.

O Parent Salutations to you. I have a question to ask you as I have heard the Government have taken Ihumatao and Puketapapa [;] if so it will not be right, because there is no cause to enable the Governor to take my land, because I still reside in your presence. I did not go to the king. I did not kill men or plunder the Europeans or do anything to justify the taking of my land. I was residing with my father (in law) Aihepene at Waiuku, we were also the party who resided peacefully and courageously when our property was plundered by the Europeans and our canoes destroyed and the men imprisoned. There was no cause for punishing us with so many sufferings, as we had sworn truthfully to the Queen. From this I ask on what grounds my land was taken.¹⁸⁰³

The author of the letter added that she had ‘heard the Governor’s proclamation; that those who remained peacefully he would protect as also their lands and goods.’ She asked whether such protection included ‘causing the goods to be destroyed, the canoes to be broken and the men to be impoverished and the children to be starved.’

Ngawai Te Tawha (the mother-in-law of Mite Kerei Kaihau) wrote a similar letter the following month, this time to local Resident Magistrate James Speedy. She stated that:

I am searching for the reason why my lands are to be taken. I am also a woman and not a man, and am also of a quiet disposition and have not strength to quarrel. But what can be the reason why the Europeans should interfere and take my land [;] will not they be ashamed as I am a woman and an orphan, and am not willing that my land should be taken as payment for the offences of others.¹⁸⁰⁴

These kinds of letters reminding the government of the explicit promises made to ‘loyalists’ that their lands would be left untouched were no doubt the cause of considerable embarrassment for officials. Little wiggle-room was available, other than the predictable one of attempting to argue that ‘rebels’ also held interests in the lands

¹⁸⁰³ Kaihau to Weld, 30 June 1865, AGG-A 1/202/65 (box 1), Archives NZ (Akl).

¹⁸⁰⁴ Te Tawha to Speedy, 19 July 1865, AGG-A 1/202/65 (box 1), Archives NZ (Akl).

taken.¹⁸⁰⁵ But they do constitute clear evidence that Waikato Maori were aware of the undertakings the government had made and expected it to abide by these, rather than reneging on its promises.

Wahi tapu also generated much correspondence. Throughout the latter part of 1865, for example, a number of chiefs sought to have various urupa at Patumahoe, Pokeno, Pukekohe and Maketu returned to them. Officials objected when indications were that the total area involved might be in excess of 200 acres, insisting that the exact locations of the graves should be identified and only those much smaller spots returned to Maori. But Maori countered that large areas of their lands had already been confiscated and the amount they sought back was tiny by comparison. Moreover, they could do nothing if their ancestors were buried over a large area or if the exact location of some remains could no longer be identified.¹⁸⁰⁶ Resident Magistrate James Speedy nevertheless reported that:

It has been explained to all the natives concerned that these claims should have been made in the Land Compensation Court and that in no case will reserves be made unless the natives can point out the exact places in which bodies have been buried.¹⁸⁰⁷

The paucity of Compensation Court documentation makes it difficult to determine its approach to the question of reserving wahi tapu (though this report has not closely examined the South Auckland lands). What is apparent, however, is that supposedly 'rebel' owners would have been reliant upon their 'loyalist' kin to apply for the return of urupa. Secondly, it is doubtful whether the Compensation Court was able to return urupa or other wahi tapu in cases where these had already been allocated to military settlers or otherwise disposed of, as was the case with much of the Military Settlements block.

¹⁸⁰⁵ In the case of the two letters quoted above, instructions were issued to offer the claimants Crown grants in satisfaction of their full claims in the event their statements were found to be true. Rolleston (Native Under Secretary) to Pollen (Agent for the General Government, Auckland), 27 September 1865, AGG-A 1/202/65 (box 1), Archives NZ (Akl).

¹⁸⁰⁶ Ana Paora Te Iwi to Weld, 21 June 1865; Ana Aihe to Fenton and Mackay, 26 August 1865, AGG-A 1 (box 1), Archives NZ (Akl).

¹⁸⁰⁷ Speedy to Civil Commissioner, Auckland, 30 October 1865, AGG-A 1 (box 1), Archives NZ (Akl).

Other correspondence was generated in relation to the process of awarding compensation more generally. In October 1865, for example, Takerei Te Rau wrote to Governor Grey from Te Kopua. The rangatira wrote:

O Father Salutations to you that spring of thought for peace and good, for love and kindness. Mine is a word to you[.] I have not yet come into the possession of any land, therefore live I as a wanderer at Te Kopua then I bethought myself to go to the Government and speak about a piece of land for me. I saw Mr. Mackay and Dr. Pollen but they did not approve of that which I desired and I also did not like what they gave to me, because the soil was bad and lays wet – therefore have I thought to send a word to you for you have all my land [:] there was no land (of mine) left outside of your boundary which was proclaimed in the Karere Maori.¹⁸⁰⁸

His position was an interesting one. Takerei Te Rau was among those captured at Rangiriri. He appears to have acted as something of an ambassador for the Kingitanga subsequent to his return to Waikato. In October 1866, for example, he warned the local Resident Magistrate that anyone who attempted to survey lands at Pirongia which some members of Ngati Hikairo wished to take through the Native Land Court would be killed. The matter rested with the King, and he would not permit the survey to go ahead.¹⁸⁰⁹

9.4 The Petitions of Wiremu Tamihana

It would be fair to say that in the period prior to the early 1880s, the hapu and iwi who supported the Kingitanga were not especially prominent among those Maori groups who chose to lodge their grievances with the government in the shape of formal petitions to Parliament. On first glance this may seem somewhat at odds with the view of the Waikato War and subsequent confiscation as among the most traumatic and devastating events in the course of the colonial era in New Zealand. And yet, on

¹⁸⁰⁸ Te Rau to Grey, 9 October 1865, AGG-A 1 (box 1), Archives NZ (Akl).

¹⁸⁰⁹ Mainwaring to Auckland Superintendent, 23 October 1866, AGG-A 1/367/66 (box 1), Archives NZ (Akl).

closer reflection the relative absence of formal petitions hardly seems surprising. For one thing, the response to appeals from ‘unsurrendered rebels’ hardly needed to be guessed at, while the kinds of higher level political negotiations between Crown officials and Kingitanga representatives that got underway from the late 1860s – more in the nature of diplomatic talks between rival states than the kind of supplicatory appeals to Parliament favoured in other situations – appeared the most realistic course to follow.

Prior to his premature death in December 1866, Wiremu Tamihana had, however, lodged three petitions with Parliament with respect to war and raupatu in the Waikato. The first of these was written at Matamata in April 1865 and constituted a direct challenge to the confiscation of Waikato, which Tamihana held could not be justified. He wrote:

Friends, is it is true that there exists a Proclamation of the Governor which says that his fighting at Waikato is at end? If it is true that such a Proclamation exists, it is very good; but first let all other things be finally arranged, namely, let the boundary be taken back to Te Ia. This is the condition approved by me for putting an end to this war. If peace is made upon these terms of the Governor which have now been proclaimed, I shall not be thoroughly satisfied, because the root or cause of this war was the land. Now, do you carefully consider these causes, and if they are not clear to you do you inquire of me. “Oh! Wi Tamihana, what is the reason the word of the Maories is still the same, and that what they say now does not differ in the least from what they said at the beginning?”

E hoa ma. He tika ranei te Panuitanga a te Kawana e ki nei, ka mutu tana whawhai ki Waikato? Mehemea he tika, ka nui te pai. Otira, kia mutu nga mea katoa, ara, kia hoki atu te rohe ki te Ia, ki taku tikanga pai tenei, mo te mutunga o tenei pakanga. Mehemea ka mau te rongo i runga i enei putake korero a Te Kawana kua oti nei te Panui kaore i tino pai ki taku whakaaro, tatemea ko te putake o tenei pakanga ko te Whenua. Na me ata hurihuri ano enei putake koutou. A ki te kahore e marama ia koutou, ma koutou ano e patai

mai ki au, E Wi! he aha te Putake i mau tonu ai te ki a nga tangata Maori, kaore nei e rere ke ta ratou whakapapa korero o naianei i to te timatanga?¹⁸¹⁰

Tamihana proceeded to answer his rhetorical question, declaring that ‘the reason that the saying of the Native people is the same as at the first is, because we have done no wrong on account of which we should suffer, and our lands also be taken from us. The only cause that we know is that our parent has been provoking us – that is the cause of the trouble which has befallen us.’ (‘...ko te take i mau tonu ai te ki a nga tangata Maori ki to mua ki. He kitenga no matou kaore o matou hara i mate ai matou, i riro ai ano hoki to matou nei Whenua. Heoi ano ta matou nei putake e mohio nei matou, he whakapataritari na to matou matua kia matou, ko te putake tena o te mate e pa nei kia matou.’)

Six causes of provocation were then listed. They included:

1. The placing of soldiers’ redoubts on the banks of the Waikato. We told you at the time to take back the soldiers to Auckland. We were in great fear. When the people belonging to the Government said, “Do not be afraid of them; let them make the road for our mutual benefit, for that will improve our condition. The formation of a road will enable us to convey goods and provisions to distant places.” This therefore was the reason that our opposition to the work was so weak, but we were still suspicious.
2. The location of a magistrate [Gorst] in the midst of our settlements to create confusion. I spoke about that, and said “Let that man remain without doing anything in the midst of our boundaries; let him not remain and do any work.”
3. The bringing of this house to the Kohekohe. We did not in any way sanction the bringing of these things into the midst of our settlements to cause confusion. We always opposed those works.

¹⁸¹⁰ AJHR, 1865, G-5.

4. The ejection of Mohi, Te Ahu a Te Ngu and Tamati Ngapora from their own pieces (of land). There was no occasion for that.

5. The capture of Ihaka Takaanini and all his tribe. On account of this we considered that good would not come to Waikato, but evil only, which is death.

6. The crossing of the soldiers to this side of Mangatawhiri; that was the place of which we said formerly the Pakehas must not cross to this side of that river. After that crime the Proclamation of the Governor on the 9th of July, 1863; the heart was satisfied with that newspaper, and supposed it was correct. Two days after that Proclamation (was issued) the soldiers crossed to this side of that river which the Governor had pointed out. They crossed, and immediately built a redoubt. Enough. We bid farewell to the world of light at this period. Then Waikato rushed impetuously on to death.

1. Ko te homaitanga i nga pa hoia ki te taha o Waikato. I puta ta matou kupu i kona, kia hoki atu nga hoia ki Akarana ka nui to matou wehi! Katahi ka kiia e nga tangata o te Kawanatanga, kaua koutou e wehi kia ratou. Waiho kia mahi ana i to tatou huarahi ko te mea tena e rangatira ai tatou ma te huarahi ka tae ai nga taonga me nga kai ki te whenua tawhiti, heoi ko te take tenei i ngoikore ai ta matou kupu riri mo taua mahi; otira ko te tupato ia mau tonu.

2. Ko te tukunga mai i te Kai-whakawa ki waenganui i o matou kainga whakararuru ai. I puta ano aku kupu mo tena i mea “me noho maho kore taua tangata i waenga i o matou rohe, kaua ia e noho me te mahi ano.”

3. Ko te homaitanga i tana whare ki te Kohekohe, kaore a matou wahi whakapai ki nga mea e haria mai ana ki waenganui i o matou kainga whakaru ai, he riri tonu ta matou ki aua mahi.

4. Ko te peinga mai o Mohi, Te Ahi-a-te-ngu raua ko Tamati Ngapora i runga i to raua nei ake piihi. Kaore he take o tena.

5. Ko te homaitanga o Ihaka Takaanini ratou ko tona hapu katoa. No konei ka mahara matou kaore te pai e tae mai ki Waikato, engari ko te kino anake, koia te mate.

6. Ko te whitinga mai o nga hoia ki tenei taha o Mangatawhiri, ko taua wahi kua kiia e matou i mua “kaua e whiti mai te pakeha ki tenei taha o taua awa,” muri iho ko te Panuitanga a Te Kawana i te 9 Hurae, 1863, ora ana te ngakau ki taua Nupepa, ka hua e tika; e rua nga ra i muri o taua Panuitanga, kua whiti mai nga hoia ki tenei taha o taua awa i tohutohungia nei e Te Kawana, whiti tonu mai hanga tonu i te pa. Heoi, ka poroporoakina te ao marama i tenei takiwa, katahai ka torere Waikato ki te mate.¹⁸¹¹

While it does not seem that the petition had been lodged on behalf of the Kingitanga, or even necessarily with the prior knowledge of the movement, Tamihana also made it clear that he did not see himself as abandoning the King. Recalling the December 1861 meeting with Grey at Taupiri, Tamihana recalled that the governor had vowed to subdue the Kingitanga not through the sword but with ‘good works’. He added that:

When I set up that king I did not intend that his authority should be thrust upon the Europeans. No, only upon the Maories and upon the lands which remain to us. Now at that time we were urgent to elect our king, and even unto this day we still hold on (to the king). It will never be given up even unto the end. It will by no means be put an end to, whether good or whether evil (comes out of it).

Ka korero ahau i nga mea mo te Kingitanga. Na, i taku hanganga i tenei Kingi, kaore au i mea kia turakina atu tona mana ki runga i nga Pakeha, kao, engari ki runga anake i nga tangata Maori, i te taha ano hoki o te Whenua e mau ana ia matou.

¹⁸¹¹ *ibid.*

Na i taua Takiwa, kaha tonu matou ki te hapi i to matou Kingi, a taea noatia tenei ra, e mau tonu ana, ekore e mutu, a taea noatia te mutunga, kore rawa e mutu, ahakoa pai, ahakoa kino!¹⁸¹²

He had asked Grey, prior to the war, to consent to the King, and now asked the same thing of the General Assembly, a body which he had heard was possessed of great powers, 'so that good may the sooner come to our land, also to the two races.'

Evidently referring to the two or three week period following the Rangiriri battle, when Ngaruawahia was voluntarily abandoned and the prospects for peace seemed high, Tamihana added that:

You sent Wheoro to bring proposals of peace to us. When he arrived, I assented immediately to what he said. The reason why I so readily assented...was because at that time my hand had not become nerved for the fight. I was still urgent that peace should be continued amongst us. When it came to the (time of the) murder at Rangiaohia, then I knew, for the first time, that this was a great war for New Zealand. Look also: Maories have been burnt alive in their sleeping houses. Because of this, I did not listen to the words of the Pakehas disapproving of the evils of the Maories' mode of warfare, which partook of the nature of murder. When the women were killed in the pa at Rangiriri, then, for the first time, the General advised that the women should be sent to live at the places where there was no fighting. Then the pa at Paterangi was set aside as a place for fighting, and Rangiaohia was left for the women and children. As soon as we had arranged this, the war party of Bishop Selwyn and the General started to fight with the women and children. The children and women fell there. Before this time our desire was great to put away the customs of our fore-fathers – ambuscades and skirmishing, and other modes of warfare by which our enemies could be destroyed. Do not say that the words of advice are thrown away upon us. No! the words of advice are regarded by us; it was the affair at Rangiaohia that

¹⁸¹² *ibid.*

hardened the hearts of the people. The reason was the many instances of murder.

Tukua mai ana a Te Wheoro ki te homai i te maunga-rongo kia matou, tona taenga mai, whakaae tonu ahau ki tana korero. Te take o taku whakaae kia ia, kaore ano taku ringa i kaha noa ki te hapai pakanga; i taua takiwa e tohe tonu ana ano ahau kia puta te pai ki o tatou aroaro. No te taenga ki te kohuru i Rangiaohia, katahi au ka mohio he tino pakanga nui tenei, no Niu Tireni. Titiro hoki, kua tahuna oratia nga tangata Maori ki roto i to ratou whare moenga. No konei au i kore ai e whakarongo ki nga kupu whakahe o nga Pakeha ki te kino o te whawhai a nga tangata Maori, ki te ahua kohuru. No te matenga o nga Wahine ki te pa i Rangiriri, katahi ka puaki te kupu a Te Tianara kia wehea nga Wahine ki nga kainga whawhai kore noho ai; katahi ka wehea te pa hei whawhaitanga, ko Paterangi, ka waiho a Rangiaohia mo nga wahine mo nga tamariki. Ka oti tenei te whakarite e matou, katahi ka hapainga te Ope a Te Pihopa Herewini raua ko Te Tianara ki te whawhai ki te tamaiti ki te wahine. Ka hinga i reira nga tamariki nga wahine.

I mua ake o tenei takiwa, ka nui to matou hiahia kia mahuetia nga ritenga a o matou tupuna, te konihi, me to urumaranga, me era atu ritenga e mate ai te hoa riri. Kei ki koutou kaore e mana ia matou nga kupu whakamohio, kao, e mana ana ano. No Rangiaohia i poturi i te ngakau o te tangata; ko te take he nui no nga putake kohuru...¹⁸¹³

Tamihana went on to outline the many instances of ‘murder’ he had described:

First the commencement of this was Rangiriri, a murder; Rangiaohia, a murder. The subjugation of the river of Horotiu, a murder, – a murder of men, a murder of land. My reason for calling the subjugation of Horotiu a murder is, that the General said he would not carry the war into my territory. After this he brought his men to occupy my country – to fight also with my tribe. But I was not willing to fight with him; I and my tribe, and also the king, departed, and

¹⁸¹³ *ibid.*

left our land to be cut up without cause by him. I believed in his peaceable word.

Tuatahi, ko te timatanga o tenei pakanga, he kohuru ko Rangiriri, he kohuru ko Rangiaohia, he kohuru ko te rironga o te Awa o Horotiu – he kohuru, kohuru tangata, kohuru whenua, te take i ki ai au, he kohuru te rironga o Horotiu, i ki Te Tianara, ekore ia e tae mai ki te whawhai ki toku kainga, i muri o tenei, katahi ka haria mai ana tangata ki te noho i toku kainga, ki te whawhai ano hoki ki toku iwi; heoi kaore ahau i pai ki te riri ki a ia, haere ana matou ko oku iwi me te Kingi ano hoki, waihotia iho toku whenua kia kotikotia huhuakoretia ana e ia. Naku i whakamana tana kupu riri kore...¹⁸¹⁴

Tamihana added that although his former friends had accused him of carrying on the war on account of his ‘double heart’, he had quietly carried on the ‘customs of the world of light...even up to the present time of this evil of intense darkness.’ He urged the General Assembly to be energetic in responding to his pleas, so that they could be ‘freed from the causes of confusion.’ If the ‘evils’ were removed, then ‘a law will be established for both races, and life will come to this Island – to the Maoris alike and to the Pakehas’.

There was, however, no immediate response to the petition.¹⁸¹⁵ Instead, in May 1865, George Graham, a member of Parliament and outspoken critic of confiscation policy, travelled to Waikato, where he met with Tamihana, who, after ‘an earnest discussion...which lasted a day and a night’, agreed to go with Graham and make his peace with the British.¹⁸¹⁶ Tamihana and a small group of chiefs met with Brigadier-General Carey at Tamahere on 27 May 1865. Carey reported that, upon witnessing the arrival of the party on horseback:

I...walked forward to meet Thompson, who, when he saw me, immediately dismounted and came rapidly towards me uncovered. We shook hands. He

¹⁸¹⁴ *ibid.*

¹⁸¹⁵ Stokes, *Tamihana*, p.446.

¹⁸¹⁶ Featon, *Waikato War*, p.87.

then laid his “taiha” [sic] at my feet, in token of his submission to Her Majesty, and said he hoped I would accept it as his gun.

We then proceeded to the spot where the British flag was flying, where Thompson signed the covenant in the name of the king and himself, in which he was followed by the principal chiefs assembled, after which I attached my signature thereto.

The only requests made by Thompson were as follows:

- 1st. That the Governor would appoint a commissioner to enquire into his (Thompson’s) character, which he affirmed had been much maligned.
2. That he (Thompson) was most anxious to see the face of “Tiu Tamihana” again, and hoped to do so soon.¹⁸¹⁷
3. That I should let him (Thompson) know, as soon as possible, what the Governor thought of his submission.¹⁸¹⁸

While Europeans subsequently described this as a surrender, Tamihana himself preferred to describe it as ‘te maungarongo’ (the covenant of peace).¹⁸¹⁹ That was reflected in the ‘Terms of Submission’ signed by Tamihana:

Kua whakaae matou ko te ture ma te Ingiki hei tiaki mo matou ake ake. Ko te tohu tenei o te maunga o te rongo ko te ku taenga atu ki te aroaro o toku hoa riri a te Tienara Kare.

We consent that the laws of the Queen be laws for the king (Maori) to be a protection for us all for ever and ever.¹⁸²⁰

¹⁸¹⁷ A Ngati Haua emissary of the Pai Marire faith (and likely relation to Wiremu Tamihana) who had been captured at Rotoiti in February 1865 and taken to Auckland along with Ngai Te Rangi chief Hori Tupaea and others suspected of fomenting ‘rebellion’. *Daily Southern Cross*, 16 February 1865; T.H. Smith to the Governor, 13 February 1865, AJHR, 1865, A-5, pp.13-14; Colonel Greer to Deputy Quartermaster-General, 11 February 1865, AJHR, 1865, A-5, p.11.

¹⁸¹⁸ Carey to Deputy Quartermaster-General, 28 May 1865, Journals of the Deputy Quartermaster-General, p.165, WO 33/16, Archives NZ.

¹⁸¹⁹ Evelyn Stokes, ‘Te Waharoa, Wiremu Tamihana Tarapipipi ?-1866’, DNZB, vol.1, p.518.

¹⁸²⁰ Terms of Submission, 27 May 1865, Journals of the Deputy Quartermaster-General, p.165, WO 33/16, Archives NZ.

Contemporary reports following this ceremony were that both King Tawhiao and Rewi Maniapoto were expected imminently to follow Tamihana's lead and tender their own submissions. Graham travelled to Hangatiki nearly a month later, where he met with Tamati Ngapora and other Kingitanga leaders, and it was said that only an earlier misunderstanding as to the meaning of a fire signal had prevented him from also meeting with Tawhiao and Rewi. Those Graham met with said little about the confiscated lands, from which he concluded that they looked upon these as gone for ever. But at the same time that they were said to be anxious for peace, Ngapora and others were also keen to see British troops removed from their district and were deeply ambivalent about signing any document of submission.¹⁸²¹ Daniel Pollen, the Agent for the General Government at Auckland, informed the Colonial Secretary that Graham had been 'liberal' in the promises he made, while recommending that the government should avoid giving any official recognition to his proceedings at Waikato.¹⁸²²

For many European observers that Tawhiao should follow would be no surprise, given the perception of Tamihana as a dominant figure in the Kingitanga, though Rewi's possible submission was less predictable. While some newspapers speculated about the possible reasons which may have brought about this apparent change of heart, the *New Zealand Herald* warned that:

A stress has been laid upon the fact that his Excellency has declared his willingness not to confiscate the lands of Thompson and Rewi, and it is sought to be argued from this that Waikato is to be given back to the rebels. A little thought would have shown the absurdity of this conclusion. Thompson's lands were never included in the confiscated area, neither were those of Rewi. They lie beyond the boundary; and though it may be said that in making this concession his Excellency is treating some rebels with greater leniency than others, it must be remembered that the reason why the Ngatimaniapoto country was not included within the area of confiscation was, because we

¹⁸²¹ Graham to Colonial Secretary, 15 July 1865, IA 1/1865/1843, Archives NZ. Graham believed himself to be 'the first European except those resident among them, that have visited their Territory since the outbreak of this war'.

¹⁸²² Pollen to Colonial Secretary, 13 July 1865, IA 1/1865/1816, Archives NZ.

might confiscate on paper, but were not able to carry such confiscation out in action. The Governor, therefore, now is merely making a virtue of necessity, and the policy would be a very questionable one which should throw unnecessary impediments in the way of an unconditional surrender of the three principal men in the rebellion and with their surrender the fall of the king movement.¹⁸²³

Yet Tamihana's 'submission' was no more evidence of the King movement's imminent demise than it was of the chief's own willingness to accept the confiscation boundaries. He had renounced further war but not the fight for raupatu to be reversed. And with the failure of Tawhiao and Rewi Maniapoto to follow his lead, Tamihana became the most important figure conducting such a campaign within the framework of the colony's legal and political systems.

Following the ceremony at Tamahere, in July 1865 Tamihana forwarded a second petition to Parliament, this time more concerned with clearing his own name against false allegations previously levelled against him and seeking an official inquiry into his conduct both before and during the war. That followed continued doubts as to the sincerity of Tamihana's 'submission', especially as attention focused on the actual words employed, which some newspapers pointed out hardly amounted to a declaration that the Kingitanga would be abandoned.¹⁸²⁴ In the petition, Tamihana called upon the General Assembly to hearken to his words concerning the anguish he felt at the false accusations levelled against him. He had been called 'an evil man, a rebel, a murderer', and words damaging to his reputation had been written to Queen Victoria. He wished it to be left for the law to determine whether such allegations were correct, and for this purpose requested the appointment of a Pakeha arbitrator to inquire into the various matters:

Let it be for the arbitrator to determine with whom originated the cause of this war. I shall wish for my friends to be also present, *i.e.*, Mr. Maunsell, Mr. Ashwell, Mr. Brown, Sir W. Martin, the Bishop, Mr. G. Graham, to hear what is said. It was words which carried me to the fight, great was my desire to live

¹⁸²³ *New Zealand Herald*, 30 May 1865.

¹⁸²⁴ *New Zealand Herald*, 1 June 1865.

peaceably: I have many European friends (and wished) for mutual love to exist amongst us. But when I heard of the expulsion of the Natives from their settlements at Ihumatao, Pukaki, Mangere, Te Kirikiri, and Patumahoe, and of the capture of Ihaka and his people and their imprisonment; even at that time I had not taken up the gun. The burning with fire of the houses at Pokeno, even until the crossing by the soldiers of Mangatawhiri, and the subsequent death of my friends at Te Koheroa – then for the first time did I take up the gun – on account of my grief I took up my gun with my own hand to defend myself with.

...kei reira ka tukua nga mea he kia korerotia ta ratou he tukua ma te Kai-Whakawa e titiro na wai te take o tenei whawhai.

Ka hiahia ahau ki oku hoa a te ra whakawa, ara a Te Manihera, a te Ahiwera, a Te Paraone, a Te Matenga, a Te Pihopa, a Hori Kereama, hei Kai-whakarongo.

Na te korero ahau i kawe ki te whawhai. Ka nui toku hiahia ki te noho marire; ka nui aku hoa pai Pakeha e aroha tetei ki tetahi. Otira i taku rongonga i o ratou kainga i Ihumatao, i Pukaki, i Mangere, i Patumahoe, me te maunga o Ihaka ratou ko tona iwi ki te whare herehere, kahore ahau i hapai i te pu i tenei takiwa. Te weranga o nga whare o Pokeno, tae noa ki te whitinga o nga hoia i Mangatawhiri, mate noa oku hoa i te Koheroa, ka tahi au ka mau i te pu; he pouri noku. Ka hapai nga e toku ringa pu ake taku pu hei tiaki moku.¹⁸²⁵

Tamihana recalled his grief at the outbreak of war in Taranaki and his efforts to broker a return to peace in the province, which had been brushed to one side by Browne. Following this Grey had travelled to Taupiri, and Tamihana added:

When the Governor came to Taupiri did not I and my whole tribe do honor to him at that time. Did he come with his soldiers to see us, and did not he upon his return concert measures for war; did not he employ soldiers at road-

¹⁸²⁵ AJHR, 1865, G-6, pp.1-2.

making, to put up posts for telegraph, to build redoubts, to fetch soldiers and steamers also? What was the misdoing of myself and my tribe at that time that things were made.

1. Had there been one European killed at that time
2. Had there any house been burnt with fire at that time?
3. Had thefts been committed at that time that the Maoris were driven away from their settlements in Waikato? Let in be for the arbitrator to say who is the man in the wrong.

I te taenga mai o Kawana ki Taupiri, kahore koia ahau me taku iwi i whakapai ki a ia a reira? I haere mai koia ia me ana hoia kia matou? Kaore koia ia i tona hokinga atu i whakarite mea hei whawhai? Kaore koia i whakamahi i nga hoia ki te hanga rori? Ki te whakatu pou waea, ki te hanga pa, ki te tiki hoia, me nga tima hoki. He aha taku he i reira, me toku iwi hoki i hanga ai he mea:-

1. I mate koia tetahi Pakeha i reira? 2. I pau ranei tetahi whare i te ahi? [3.] I tahaetia ranei i te takiwa i aia atu ai nga Maori i o ratou kainga i Waikato? Tukua mai te Kai-Whakawa e ki ko wai ra te tangata he.¹⁸²⁶

Tamihana added that during Gorst's time in Waikato he had tried to suppress any desire for fighting. Gorst's property, and that of other Europeans in the district had been well taken care of, and he had taken care to warn Ashwell and Archdeacon Brown at Tauranga to remain on their guard. It was this last message to Brown that had been twisted in such an egregious manner as to constitute supposed evidence of Tamihana's intention to murder women and children, even though it was apparent to Brown and most others with even a cursory knowledge of the Maori language that it was nothing of the kind.¹⁸²⁷ Tamihana had no fears, however, declaring:

...hand me over to the arbitrator. Am I a man of murder? I only fought for my body and my land; I had not any wish to fight. After the fall of Rangiriri, I desired that peace be made. My letter to the General was not regarded, but

¹⁸²⁶ *ibid.*

¹⁸²⁷ Sewell, *New Zealand Native Rebellion*, p.34.

fighting was still carried on. At the time the soldiers crossed Mangatawhiri, the desire to fight was not theirs – to fight with me and my tribe – but it was he who directed them who desired to fight with me and my people. When I retired to Ngaruawahia, the fighting was still carried on; when the soldiers ceased to fight, the Maoris also left off.

Put it to the arbitrator, for him to ask who was it that made this war.

He tangata kohuru koia ahau? Heoi ano taku whawhai, he tiaki i toku tinana; me toku whenua hoki. Kore rawa toku hiahia ki te whawhai.

Ki muri i te horonga o Rangiriri kua hiahia ahau kia mau te rongo. Ko taku pukapuka kia Te Tianara kaore i rongo. Kawe tonu te whawhai.

I te takiwa i whiti mai ai nga hoia i Mangatawhiri chara i a ratou te hiahia kia kino ki au, ki toku iwi hoki: engari na to ratou Kai-whakahaere te mea i hiahia kia kino ki au me taku iwi hoki. Tae mai ahau ki Ngaruawahia, kawe tonu te whawhai. I te mutunga o te whawhai o te hoia, ka mutu hoki te Maori. Tukua ki te whakawa, mana e patai na wai i hanga tenei whawhai.¹⁸²⁸

Referring to the recent negotiations which had seen him eventually agree to travel to Tamahere in order to see Carey, Tamihana added that:

When George Graham came to make peace, he said to me, “Give it over to be decided by the one law for both the Maori and Pakeha.” I replied, “Yes, let there be one law to justify him who is right, and to condemn him who is wrong.”

When the first Governor came, what was the law that he gave to be a protection for the Maoris? Did that law protect Wiremu Kingi and Waitara? Did a law protect us, our lands and property, at that time? Were the Europeans which the Governor sent to this island – Europeans who drink spirits, curse,

¹⁸²⁸ AJHR, 1865, G-6, pp.1, 3.

speake evilly, who make light of those in authority – were these a law? Then did I say, let me set up my King, for we do not approve of the law.

But now, O friends, the law of the Queen is the law to protect my King and the whole people also. Let it be for the arbitrator to see whether the plan I have set forth for taking care of us lest evil befall us is wrong.

No te taenga mai o Hori Kereama ki te whawhau rongu, ka ki mai ki au, “Tukua ki te Ture kotahi mo te Maori mo te Pakeha.” Ka ki atu au, “Ae kia kotahi te Ture, hei whakatika i te mea tika, hei whakahe i te mea he.”

I te taenga mai o te Kawana tuatuhi he aha tana Ture i homai hei tiaki i nga Maori? I tiakina koia te Ture i a Wi Kingi me Waitara? He Ture koia i tiaki i a matou i o matou whenua, taonga, i reira? He Ture koia nga Pakeha a te Kawana i tuku mai nei ki tenei motu, Pakeha kai waipiro, kohukohu, korero kino, whakaiti rangatira? No reira ka ki ahau kia whakaturia taku Kingi, ta te mea ekore tatou e pai ki te Ture. I naianei, e hoa ma, ko te ture o te Kuini he ture hei tiaki i taku Kingi, me te iwi katoa hoki. Tukua atu ma te Kai-Whakawa e titiro ki te mea he he taku whakaaturanga o taku hei tiaki ia matou kei kino.¹⁸²⁹

Tamihana was confident that if the question of who was responsible for the war was looked into by an investigator appointed for this purpose his own ‘bewilderment’ and that of his tribe would finally be cleared up.

There really was very little prospect of the government seriously entertaining the proposals contained in Tamihana’s latest petition, however, precisely because any genuinely independent inquiry might indeed threaten to shed light on the question of who had been responsible for the war. Instead, the Waikato Resident Magistrate, R.C. Mainwaring received instructions from the one-time fierce critic of confiscation and now Native Minister, J.E. FitzGerald, to visit Tamihana with a view to securing ‘the final and permanent alliance of that influential Chief to the cause of the Queen, and of

¹⁸²⁹ *ibid.*

the law.’¹⁸³⁰ Mainwaring was informed that he was to tell Tamihana that his petitions had been laid before the House of Representatives, which had been pleased to receive them, but that:

With regard to the petitions you will acquaint him, that there is no object to be gained in instituting such an inquiry as that which he claims – that the events connected with the war have been regarded from opposite points of view by different persons – that the Government deeply regrets that it was called upon to take the steps which it did take, but which it believed to be absolutely necessary for the safety of the Colony. That the Government is quite willing to believe that he thought he was acting right; but you will at the same time point out to him that his conduct in supporting the revolt against the Queen’s authority instead of siding with the Government, and throwing his whole influence into that scale, has only helped to prolong a struggle which was utterly hopeless, to reduce the Native districts to a state of anarchy, and to involve the Native Race in inevitable destruction. He should be brought to see that if he now joins the Government, heart and soul, in the maintenance of the law and of civil order, all the charges which have been brought against him of double dealing will be entirely forgotten, and he will be honored and esteemed as he well deserves to be.¹⁸³¹

In other words, the government was still right and its critics (of whom FitzGerald had been among the most prominent almost up until the time he took office) were wrong. An inquiry would serve no useful purpose from the government’s perspective, however, since it might well conclude otherwise, or (just as embarrassing perhaps from the Native Minister’s perspective) quote his thunderous denunciations of war and confiscation from a previous life back at him. But if Tamihana really did bring the Maori people to the brink of destruction, as set out here, why did he deserve to be honoured and esteemed, as FitzGerald suggested? There is a hint here that even the Native Minister did not buy his own rhetoric when it came to Tamihana’s alleged culpability for the war.

¹⁸³⁰ FitzGerald to Mainwaring, 22 August 1865, AJHR, 1865, E-14, p.1.

¹⁸³¹ *ibid.*

Not only was Tamihana evidently supposed to simply accept the fact that there would be no inquiry into the origins of the war, but he was also, the Native Minister added, expected to take active steps along with his followers to assist in the arrest of those believed responsible for the killings of Carl Sylvius Volkner and James Fulloon in the eastern Bay of Plenty. 'The object of the Government', FitzGerald added, 'is to finally and distinctly detach William Thompson from the Ngatimaniapoto faction, by committing him to some unmistakeable course on our side'.¹⁸³²

Mainwaring subsequently met with Tamihana as ordered, but his efforts to convince the chief that no inquiry was warranted failed to have the desired effect. The Resident Magistrate reported that, after reading the second petition through:

...he inquired most earnestly whether the Government had consented to establish a Court of Inquiry into his own conduct throughout the war. I pointed out to him that the subject had had full consideration, but that the Government were of opinion that no particular good would result from such an investigation. That men occupying prominent places in every state of society were more or less liable to have their conduct and character criticised, and that if he would now stand forward as an ally of the Government, and aid in handing over certain criminals to justice, all would be forgotten, and we should one and all esteem him. He replied "I shall not rest till my conduct has been tried. Let Arney or Beckham try me. Fox wrote home to the Queen and her Ministers, and said that I made a plot to burn Auckland and murder the women and children. Let my letter to Archdeacon Brown be tried. If there is murder in that, it is right that I should suffer."¹⁸³³

When Mainwaring conveyed the request to assist in the capture of those believed responsible for the deaths of Volkner and Fulloon, Tamihana replied, 'Let not the Government think that I am now a man of influence. I have no men, all are dead. The people are angry with me for making peace. I am made the subject of songs amongst the men, women and children.'¹⁸³⁴ Mainwaring added that:

¹⁸³² *ibid.*, p.2.

¹⁸³³ Mainwaring to FitzGerald, 28 September 1865, AJHR, 1865, E-14, p.2.

¹⁸³⁴ *ibid.*

I did not see in Thompson the slightest disposition to ask anything at the hands of the Government, with the exception of the investigation into his character. He openly told me that neither he nor any other Native approved of the confiscation, and that the subject was never conversed upon amongst themselves. I inquired if there was no request he wished me to make as to his lands, but he simply replied “we have stood on Maungakawa, we looked down on Horotiu and shed tears, and now the pain is constantly gnawing at our hearts.”¹⁸³⁵

Mainwaring told Tamihana of proposals then being debated for Maori to have representation in Parliament, to which the chief replied that he had made a similar suggestion many years previously, but ‘it was only laughed at’.¹⁸³⁶ In any case, he now positively refused to have anything to do with such a proceeding ‘so long as the stain on his character remains’, illustrating his point by fastening a piece of flax to his leg and the side of his whare, and declaring that until the government broke the flax he could not do otherwise than remain hidden in his territory.

As noted in an earlier chapter in December 1865 the Auckland Civil Commissioner James Mackay travelled deep into the King Country region. While his hopes of meeting with Rewi Maniapoto at Kawhia were ultimately dashed, he did visit Wiremu Tamihana at Matamata. In the meeting which followed, Tamihana reminded Mackay of the arrangement which he believed he had come to with Graham earlier in the year:

Thompson said that when Mr. G. Graham came up he made peace, on condition that there should be an investigation as to the true causes of the war. If he was to blame, then he fully consented to lose Waikato. Again, if the Governor was in the wrong, he was not entitled to hold Waikato.¹⁸³⁷

Tamihana’s request for an investigation was rejected by Mackay, who asserted that if he had wished to settle the matter by law then ‘he should have tried that before

¹⁸³⁵ *ibid.*

¹⁸³⁶ *ibid.*, p.3.

¹⁸³⁷ *Daily Southern Cross*, 27 December 1865.

fighting – that now war had taken place, men had been killed on both sides: and, therefore, no investigation could be made.’¹⁸³⁸ Tamihana replied that although his own offence had been small the punishment had been great. Moreover, both Graham and FitzGerald had promised him that there should be an investigation. He believed that the proper persons to undertake this would be some foreign nation, and added that ‘he had set up the King for the purpose of maintaining law and order.’¹⁸³⁹ Mackay, though, rather feebly responded that:

...it was not an European custom after war to investigate the cause of it; - that we had fought with other powers and conquered land, and retained possession of it; but when peace was made no investigation ever took place. Also, that such was not the Maori custom. He instanced, Kawhia, Mokau, &c., which were taken by Waikato from the Ngatitou [sic], and Ngatikoata, and other tribes. He had never heard that any court of inquiry was held in that case, but that they retain the lands to this day.¹⁸⁴⁰

The rather desperate efforts of government officials to draw a moral equivalent between Crown confiscations in the 1860s and earlier inter-tribal wars have been discussed previously. But Mackay’s other point was just as misleading. Indeed, the Congress of Vienna (1814-1815), for example, had seen France forfeit possession of most the territories conquered and annexed by the republic during the Napoleonic wars.

Mackay, though, sought to distance the government from any promises that may have been made by Graham or FitzGerald, alleging that these could only have been issued in their capacities as private individuals. Alluding to the ultimatum to the Waikato tribes nominally dated 11 July 1863, he also asserted that Maori had clearly understood, when they ‘went to war’, that they would forfeit their land in consequence. That claim was denied by Tamihana, who stated that he had never seen the proclamation in question and who countered that:

¹⁸³⁸ *ibid.*

¹⁸³⁹ *ibid.*

¹⁸⁴⁰ *ibid.*

I find that your fighting was for the land, and not to maintain law and order. I know this, because after we proposed to make peace at Rangiriri we removed quietly to Upper Waikato. The General followed us from place to place.¹⁸⁴¹

Mackay admitted that Tamihana had asked for peace after Rangiriri, but noted that it had been made clear that the Queen's flag would first need to be planted at Ngaruawahia before any proposals could be entertained (which rather missed the point as to why the government was unwilling to enter negotiations even after that point). In any case, Tamihana was told in no uncertain terms that if he was relying upon a whakawa (investigation) to get back the whole of Waikato then he was going to be disappointed. Although the government was willing to contemplate giving Tamihana a small piece of land somewhere, on no account was it willing to return Waikato in its entirety.

Many months later, on 1 May 1866, Grey persuaded Tamihana to meet with him for the first time since the war. According to Grey's subsequent account of this meeting, forwarded to the Secretary of State for the Colonies:

He assured me that in so far as his own tribe was concerned, or those tribes under his immediate influence, no danger whatever existed of any future outbreak, but he explained that great jealousy on the part of Rewi and the Ngatimaniapoto tribe, had arisen from the fact of William Thompson having made his submission to the Government alone, and without having first consulted with Rewi, and he went on to state that Rewi with his immediate followers were at Hangitiki, about which place, and the country in its immediate vicinity, they had placed posts marking out boundaries, within which limits they intended to keep themselves in a state of complete isolation, Rewi having stated that he would never again look upon an European face. William Thompson added that his fear was lest some European, or friendly Native, who attempted to cross this line, might be murdered, and thus a recommencement of disturbances might be brought about.¹⁸⁴²

¹⁸⁴¹ *ibid.*

¹⁸⁴² Grey to Cardwell, 3 May 1866, GBPP, 1866 [3750], p.2.

The implication here would seem to be that tensions resulting from Tamihana's decision to make his own peace with the government had contributed to the imposition of the aukati in reaction. But according to the governor, Tamihana had his own grievances. Grey wrote that:

William Thompson, in his conversation, clearly showed that he was not very well disposed towards the Ngatimaniapoto tribe, in consequence of the line named by the Government, within which confiscated lands might be taken, having included a large portion of his territory, and a very small portion of the Ngatimaniapoto country, which arrangement was, in his belief, unjust, inasmuch as many acts committed by himself and his tribe were far less blameable than those perpetrated by the Ngatimaniapoto tribe...This complaint on his part was natural, and founded on fact, but he at last understood that the object of the Government in taking land was less punishment, than the intention of securing positions in the interior, the possession of which would ensure the safety of the European settlers and the future peace of the country.¹⁸⁴³

Grey's statement that confiscation was not primarily motivated by punishment once again challenges the standard assumption that this was the main purpose of such a policy. And while we only have his version of Tamihana's views with respect to relative blame and the impact of confiscation on different tribes, it is also worth remembering that the rangatira was already on record as believing the Crown culpable for starting the war, besides having rejected confiscation as fundamentally unjust.

Trying a different tack in the efforts to win Tamihana over more fully to the government side, Grey noted that:

I pressed upon him that it was a duty he owed to his tribe, and to the Native people of New Zealand, to be present at Wellington at the next meeting of the General Assembly, there to be in readiness to give evidence before any Committee of the Assembly on Native affairs, as it is possible that much

¹⁸⁴³ *ibid.*

legislation regarding Native affairs will then take place. He at first showed considerable reluctance to promise to go to Wellington, but ultimately, on considering the whole matter, he undertook to be present at Wellington when the Assembly meets; and he further agreed, on my pressing him to do so, that before the Assembly meets he will go to the Middle Island, and visit some of the leading persons there, who have always expressed themselves regarding him in a most friendly manner.¹⁸⁴⁴

Though Tamihana did not, it seems, make the trip to the South Island, he was prevailed upon to travel to Wellington, arriving there on 22 July 1866. Two days later he presented his third and final petition to the General Assembly. It was closer to the wide-ranging review of events outlined in the first petition, and commenced with an appeal for ‘Waikato to be given back to me’ [Ko Waikato kia hoki mai kia au]. He was clearly using the first person singular in the same way that many nineteenth-century rangatira did, as embodying the wider group (it was common to hear chiefs testifying in the Land Court declare ‘I defeated...’ when referring to events well before their own birth, for example) and, perhaps as Ann Parsonson suggested, in his role as the Kingmaker.¹⁸⁴⁵ Otherwise, Tamihana’s petition repeated many of the same allegations concerning events at Rangiaowhia and elsewhere as had been levelled previously. He again dwelt on events in Taranaki, including his spurned efforts to bring peace to Taranaki, and the events at Oakura:

No sooner had the Governor got there with his Pakehas than death fell upon them. I remained at home, and thought perhaps it was owing to the action taken by Rewi and Te Herewini that this evil has taken place so suddenly – then my thoughts reverted to what I had said to Wiremu Kingi, that the cases of the Waitara be investigated – to which he did not consent. I then again proposed that Tataraimaka be given up to the Governor, but this was not consented to at all by any of the Taranaki tribes. Because of this, I said this fault is not Rewi’s and Te Herewini’s – if their letters had never reached Taranaki still those Pakehas would not have been spared – inasmuch as their hands had not relaxed their hold upon Tataraimaka; that was why I felt so

¹⁸⁴⁴ *ibid.*

¹⁸⁴⁵ Parsonson, ‘Tainui Claims’, p.242.

anxious about Taranaki at that time. At the time of the return of the Governor and his soldiers, I was still endeavouring to find out about the death of the Pakehas at Taranaki – whether it was right or wrong that they should die. I came to the conclusion that it was right they should die – that it was not murder, for they themselves were carrying guns, so it occurred to my mind that they were not unwarned, and that they were aware that they would meet with Maoris.

...tae kau atu ko te Kawana ratou ko ana Pakeha ka pa mai ko te mate kia ratou, ka noho au ka mahara, na Rewi pea raua ko te Herewini i tu tata ai te paanga mai o tenei kino, ka hoki taku titiro ki taku kupu i ki atu ai au kia Wiremu Kingi kia whakawakia a Waitara, kaore i whakaae, ka mea ano au kia whakahokia mai a Tataraimaka ki a te Kawana, kaore rawa i whakaaetia e nga iwi katoa o Taranaki, ko te take tenei i ki ai au, ehara tenei he i a Rewi raua ko Herewini, mei kore ano te tae o a raua reta ki Taranaki, penei ekore ano e ora nga Pakeha, no te mea, kaore ano o ratou ringaringa i kohera i Tataraimaka ko taku take tupato tena ki Taranaki i roto i aua ra. Rokohanga iho e te hokinga mai o te Kawana ratou ko ana hoia e kimi ana ano au i te matenga o nga Pakeha i Taranaki; te pai ranei; te he ranei o to ratou matenga? Kitea ana e au, e pai ana to ratou matenga, ehara i te kohuru, na te mea he pu ano a ratou i hari atu ai, na ka mahara au ehara tena i te kore tupato, kua mohio ano ratou ka tutaki ratou ki nga tangata Maori.¹⁸⁴⁶

After lamenting the failure to restrict the war to one ‘carried on by word of mouth only’, as he had hoped, Tamihana turned to the course of these, declaring that:

O friends, I did have respect for the laws of England. Your word did come to me, saying that you were averse to ambuscades and killing those that were wounded; whereupon I exhorted my tribes to give over committing such acts. They accordingly forsook such acts, and shaped their course by the laws of England, from Meremere right on to the time of the fall of Rangiriri. Then my wives and children fell there. Then again was I condemned by the laws of

¹⁸⁴⁶ AJHR, 1866, G-2, pp.3, 5.

England because of the women and children who died with the men of strong hand that fell in the fighting pa. I then left that lesson (learnt there) in my mind; then the word of General Cameron came to me for peace to be made. I agreed, and gave up my “mere paraoa,” in token of having relinquished my weapon. I then went to Ngaruawahia. I was there; the General and his word were also there coming after me. When I saw (what that was) I gave up Ngaruawahia to lie in the peacemaking, and went on to Maungatautari. When I got there the word of England again came up after me, - “The Horotiu River will not be traversed by the steamers,” but they “will continue to sail on the Waipa in pursuit of Rewi; Ngaruawahia shall be the boundary as far as Tamehana is concerned – the steamer shall not go to Horotiu.” Was it not Bishop Selwyn who told us this? Was not this second word also spoken by his mouth?- “That the Maori people dwell quietly at their own places on the banks of the Horotiu.” So therefore the women and children, and the men also, dwelt quietly at their own places up to the time that the Bishop and his soldiers arrived before Paterangi. But I and my tribes did then go to help Rewi and his tribes; then it was I acted in accordance with the word of England, which condemned me for the death of the women who fell in the fighting pa. I divided off Rangiaohia to be a place of abode for the women and children, and I drafted off some men to carry food to Waipa – that is to say, to Paterangi. No sooner did the General see that we had all assembled there, than he turned round and commanded his soldiers to go to Rangiaohia, to fight with the women and children.

E hoa ma, i arohatia ano e ahau nga ture o Ingarangi i tae mai ano to koutou nei kupu ki a au, i mea, e kino ana koutou ki te konihi, ki te patu hoki i te kai-a-kiko, katahi au ka mea ki oku iwi, kia kati te mahi i aua mahi, na, mutu ake ta ratou mahi pera, riro ana i nga Ture o Ingarangi, no Meremere ano ka timata, tae noa ki Rangiriri, no reira ka mate aku wahine, tamariki, ki reira ka tae mai ano te ture o Ingarangi ki te whakahe i au, mo nga wahine, mo nga tamariki ano hoki, i mate tahi me nga tangata ringaringa kaha ki roto i te pa whawhai, heoi ka waiho i roto i toku ngakau taua ako, i reira ano ka tae mai te kupu o te Tianara Kameranana ki a au kia houhia te rongo, whakaae ana au i reira, hoatu ana taku Mere Paraoa hei tohu mo te mahuetanga o taku patu i

roto i toku ringa, haere ana au ki Ngaruawahia, i reira au i reira ano a te Tianara raua ko tana kupu e whai ana i au, ka kite au hoatu ana e au a Ngaruawahia ki roto i te maungarongo takoto ai, ka haere au ki Maungatautari ka tae au ki reira ka puta ake ano te kupu o Ingarangi kia au ekore te awa o Horotiu e reira e te tima, engari ka rere tonu i Waipa, ki te whai i a Rewi, ko Ngaruawahia te rohe kia Tamehana, ekore te tima e tae atu ki Horotiu. Ehara koia ianei i a te Pihopa Herewini, i korero mai i aua kupu, kia matou? Kihai koia i puaki mai i tona waha te tuarua o aua kupu i ki mai nei, kia noho nga tangata Maori ki o ratou kainga i te taha o te awa o Horotiu? Heoi ata noho marire ana nga wahine, me nga tamariki, me nga tane ano hoki i o ratou kainga, a taea noatia te taenga o te Pihopa ratou ko ana hoia, ki Paterangi, engari i tae atu ano au ki reira, matou tahi ko aku iwi, ki te awhina i a Rewi ratou ko ana iwi, no reira i puta ai i au te kupu o Ingarangi i tae mai neo ki te whakahe i au, mo te matenga o nga wahine ki roto i te pa whawhai, katahi ka wehea e au ko Rangiaohia te kainga mo nga wahine, mo nga tamariki, ka wehea atu etehi tane ki reira hei hari kai mai ki konei ki Waipa nei, ara ki Paterangi. Te kitenga o te Tianara kua poto mai matou ki tera wahi, katahi ka tahuri ka whakahau i ana hoia kia haere atu ki Rangiaohia ki te whawhai ki nga wahine ki nga tamariki.¹⁸⁴⁷

While the men were assembled en masse at Paterangi in expectation of what they believed would be a decisive battle, one way or the other, Rangiaowhia had instead been attacked, and Tamihana stated that:

O friends, because of this did I fully consent to the fighting; because of my women and children having been burnt alive in the fire which was suffered, rather than the edge of the sword, to consume their flesh. I would not have regarded it had it been only the men; there would then have been a reason to have thought less of what the rage of the fire had done on account of their having shot seven Pakehas, my relatives were treated in the same manner at Rangiriri – they were burnt alive in the fire. I did not grieve for that, but a thought came to my mind lest what England had taught should be set aside by

¹⁸⁴⁷ *ibid.*, pp.4, 6.

the teaching of New Zealand; but when those doings were enacted again at Rangiaohia, then came up fresh in my memory that which had already been done at Rangiriri. Within me are collected the many things which have troubled us all – but I will confine myself to these. At the time of the fight at Rangiaohia, I discovered that this would be a very great war, because it was conducted in such a pitiless manner.

E hoa ma, no konei au i whakaae nui ai ki te pakanga, no te weranga o aku wahine o aku tamariki i te ahi, i tukua nei tona kaha i runga i te mata o te hoari, hei kai i o ratou kikokiko, e pai ana kia au me he mea ko nga tane anake, ka whai take hei pehi mo te kino o ta te ahi riri, ko ta raua puhanga i nga pakeha toko whitu. I peratia ano oku whanaunga i Rangiriri, i tahunga oratia ano ki te ahi, kaore tera i pouritia e au, engari ko te manakonako kau i tae mai ki roto ia au, mo te ako o Ingarangi, kei kapea, kei riro i te ako o Niu Tireni, no te taenga mai ano o taua mahi, ki runga ara ki Rangiaohia, kotahi ka hura tera i Rangiriri. Tenei te tini o nga mea i raru ai tatou kei roto i a au, kati aku e korero ko enei. No Rangiaohia au i mohio ai, he tino nui rawa tenei pakanga, ina hoki te kino o ona whakahaere...¹⁸⁴⁸

James FitzGerald, who tabled the petition in Parliament on 10 August 1866, was – somewhat intriguingly – reported as having stated at the time he did so that ‘there was nothing objectionable in it; although there was when he first received it, but the petitioner subsequently altered it.’¹⁸⁴⁹ Whether Tamihana had been prevailed upon to water down his petition in some way is far from clear. Either way, with the ailing chief desperate to return home,¹⁸⁵⁰ a select committee was quickly appointed to hear evidence from Tamihana in person. It was hardly a scratch committee, however: Whitaker, McLean, Bell, Haultain, Featherston, (J.C.) Richmond, Graham and FitzGerald had all, in their different ways, played key roles throughout the war years.

The committee convened on the following day (a Saturday) to hear evidence from Tamihana, along with his companion Heta Tauranga, who is also described as

¹⁸⁴⁸ *ibid.*, pp.4, 6.

¹⁸⁴⁹ *Wellington Independent*, 11 August 1866.

¹⁸⁵⁰ *Daily Southern Cross*, 13 August 1866.

belonging to Ngati Haua in some sources.¹⁸⁵¹ FitzGerald, who was elected chairman of the committee, began by asking Tamihana what it was that he wanted the government to do. According to the official minutes of this exchange, the chief replied that:

I wish an enquiry to be instituted into my offences whatever they may be. I wish all the elders to say what have been my real faults, that I may know what they are, and that I may be convinced of them. I want an answer to that first before going further.¹⁸⁵²

FitzGerald replied that it was not the duty of the committee to express an opinion on Tamihana's conduct, adding that different members doubtless each had their own views on this issue. Although Tamihana declared that, in that case, he wished to hear those opinions, FitzGerald would not allow that.

Tamihana at this point explained that he had come to Wellington solely because he understood that the General Assembly had the power to resolve his difficulties. Heta Tauranga then outlined the situation in more detail. He declared that:

We came to Wellington to ask an investigation into the Waikato thinking that no binding engagements had been entered into for the disposal of the land. Now that we know that those engagements have been made it seems to us that it is impossible to investigate Waikato. If what Thompson wishes could have been done, perhaps it might be possible to make arrangements for something hereafter. It would be very easy to make desirable arrangements for the future if Waikato could be given up. In the existing state of things, if Waikato be not given back it would be impossible to make any arrangements as to what steps should be taken for the future.¹⁸⁵³

Wiremu Tamihana and his companion had travelled to Wellington in the expectation that the politicians there had the full power and opportunity to investigate his

¹⁸⁵¹ *Daily Southern Cross*, 7 February 1868.

¹⁸⁵² Minutes of the Maori Petitions Committee, 11 August 1866, Le 1/1866/11, Archives NZ.

¹⁸⁵³ *ibid.*

grievances and restore Waikato to its owners. It would seem that no time had been lost in advising the pair that there was no prospect of that ever happening. Asked if there was some other subject which he wished to bring to the committee's attention, Tamihana replied that 'what he had referred to was the chief root of the whole matter, but if that were settled there were many similar subjects to be spoken of.'

Tamihana noted various meetings at which the boundaries of the confiscated lands had been discussed along with his earlier objections to these, to which Grey had replied:

“William[,] this is to be the boundary between the good and the bad people [;]
I dont [sic] want to bring back the people lest there be evil within those
boundaries [;] my friend work hard at that which is good.” I replied “Friend
the Governor I am not strong to work what is good as you have possession of
the land upon which my thoughts are bent[.] If I were to take away anything
from you upon which your heart were set and then were to tell you to do what
is good, do you suppose that you would struggle to do it? My idea is that you
would not” – that was all my answer to the Governor...¹⁸⁵⁴

He had declined an invitation to travel to Tauranga to see Grey, replying that he could not meet without the other chiefs of Waikato in attendance, and that the governor should instead come to them. Rewi, though, had refused to attend, as a result of which Tamihana met with Grey at Hamilton. He then described the exchange which followed:

The Governor said to me “William you have become an old man”[.] I said
“Yes I am become an old man on account of the war”[.] The Governor asked
me “what are your words”[.] I said “my words are to ask you to give back
Waikato”[.] The Governor said “I cannot do that[;] you had better go to
Wellington to see the Assembly. First go to see your friend Mr. FitzGerald and
have a talk with him. Then come back to the Assembly”[.] I said “formerly my
European friends used to say to me that the Govr. had all the power to settle

¹⁸⁵⁴ *ibid.*

matters. Now I have come to you and you tell me to go to the Assembly. When I go to the Assembly they will tell me to go to the Queen”[.]¹⁸⁵⁵

Reassured by the governor, Tamihana agreed to travel to Wellington after consulting his runanga, he added, ‘but the Govr. did not tell me that all the land in Waikato was already under covenant to military settlers.’ Upon arriving at Wellington, he had gone to Government House to see the governor, who convened a meeting with his ministers at which:

...a large Book was opened and I was shown the proclamation and then I found out that the land was really all covenanted and that no one would undo what had been done. It was like a great rock fixed deep in the earth which could not be moved. I said if I had known this before I should not have taken the trouble of coming here. The Govr. said “is there any piece of land which you really want in Waikato”[.] I said “I want it all”[.] The Govr. said “that is impossible – 2,000 men are already settled upon it.”[.]¹⁸⁵⁶

Officials persisted with efforts to persuade Tamihana to select a small piece of land for himself, and that tactic was also adopted by the select committee. After a large map of the Waikato district was laid before the chief, he proceeded to explain all the lands that had been lost to him and the small area remaining beyond the confiscated boundaries. According to the minutes, following this:

The witness was informed by the Chairman that it was impossible that the whole of Waikato could be given back and was again urged to state any particular pieces of land which he desired to have and which it might be possible to give him. The witness replied[:] No[,] he came for nothing but the whole, the land belonged not only to the men but to the women & children[:] what will be left for them? at all events let the land be given back to them who did not fight. He added that he now saw that the land was kept to pay for money spent in the war.¹⁸⁵⁷

¹⁸⁵⁵ *ibid.*

¹⁸⁵⁶ *ibid.*

¹⁸⁵⁷ *ibid.*

On this note, Tamihana's eloquent and riveting examination by the committee concluded. The whole purpose of encouraging Tamihana to travel to Wellington had, it seems, been to buy him off with offers of a personal estate. But Wiremu Tamihana was a far more principled man than those who had hatched this plan imagined. He was not for sale at any price and remained loyal to the take laid down by the Kingitanga.

One newspaper report, portrayed something of the environment into which the chief had entered. It reported that:

The celebrated William Thompson, of Waikato and Thames celebrity, has been examined before a committee of the House. He is an intellectual man, with a remarkably fine set of lower features, far removed from the cannibal type. But he is, phrenologically speaking, devoid of all the calculating organs, and plentifully supplied with cunning. He wanted the whole of the Waikato to be handed back to him, and the Europeans removed thence, and he persevered in urging his claim with remarkable clearness and assiduity. Finally he was told that the Europeans never gave away; they had taken the Waikato in war, and would hold it; he had been in rebellion and must suffer; but if he and his people would ask for as much land to be given to them as they could cultivate, the government would treat them on as favourable terms as they had always promised to returning rebels.¹⁸⁵⁸

Tamihana departed Wellington for home on 17 August 1866. Just over two weeks later the committee released its report, recommending that Tamihana's petition be referred to the Auckland Superintendent – that is, Whitaker, the architect of the confiscation policy – for further inquiry.¹⁸⁵⁹

Wiremu Tamihana, arguably the most outstanding New Zealand statesman of his day, had gone to Wellington to plead for the return of Waikato in moderate yet forceful tones. If anything came out of his trip, it was perhaps to highlight that no amount of

¹⁸⁵⁸ *Evening Post*, 16 August 1866 (quoting *Lyttelton Times*, 13 August 1866).

¹⁸⁵⁹ Minutes of the Maori Petitions Committee, 4 September 1866, Le 1/1866/11, Archives NZ.

reasoning would ever persuade the Pakeha political establishment to return Waikato in full. It simply was not a question of right and wrong but of possession and dispossession: the Pakeha had the land and on no account was willing to return it.

And yet, colonial politicians could not afford to be so contemptuous as to risk alienating Tamihana altogether. Following his evidence, a special reception was held in honour of the Ngati Haua chief and his companions. Whitaker, McLean and other key players were once more in attendance and a toast was proposed to the health of Tamihana. In reply, he once more declared that it had been his consistent desire to live in peace with the Pakeha. And in an indication of prevailing socio-economic conditions in the wake of the war, Tamihana added that he would much like to reciprocate the dinner laid on for him by inviting those present to his country, 'but unfortunately he is now very poor – even the food which he and his people were using had been purchased by borrowed money'.¹⁸⁶⁰ The same report noted that:

During the course of the evening, Thompson offered to play draughts with Whitaker for the Waikato. Whitaker played, although not for the proposed stakes, and the Maori chief won. Thompson then played with Featherston and McLean, and beat them – thus vanquishing the three Superintendents.¹⁸⁶¹

No doubt there was a serious point behind this apparent jest. Indeed, the missionary Richard Taylor described this as an incident in which the chief's 'patriotism shone forth'.¹⁸⁶² But beyond his obvious love for his people, observers could hardly fail to note Tamihana's increasingly frail condition. One report declared that 'Thompson looks very ill, and is said to have only a brief tenure of life.'¹⁸⁶³ Within weeks of his return to Waikato, Wiremu Tamihana was widely being reported as having died. Although he held on for a little longer than this, Tamihana died a 'worn and depressed' man before the year was out, his efforts to seek the return of the confiscated lands unsuccessful.¹⁸⁶⁴

¹⁸⁶⁰ *Daily Southern Cross*, 22 August 1866.

¹⁸⁶¹ *ibid.*

¹⁸⁶² Stokes, *Wiremu Tamihana*, p.478.

¹⁸⁶³ *Evening Post*, 16 August 1866.

¹⁸⁶⁴ Ward, *Show of Justice*, p.201.

9.5 Other Nineteenth Century Petitions

With a couple of exceptions discussed in a later section, most other nineteenth-century petitions lodged with respect to the Waikato war and confiscation were less sweeping in their scope, tending to focus more on the claims of particular iwi, hapu or even individuals. For example, a second petition tabled in the House of Representatives on the same day as Wiremu Tamihana's final one came from Wiremu Patene ('William Barton, of Waipa'). Addressed to George Graham (who presented the petition in the General Assembly), Patene's petition stated that:

I have a desire that a portion of the lands belonging to me and my people be returned to us; that is, the land between Ngaruawahia and the lower part of Whatawhata, and lying between the Waipa and Horotiu Rivers. The money which has been awarded us by the Government for this large extent of land is £234. We are not willing to take that money. What I urged upon Mr. Mackay to do was, that a portion of that land be given back to us. But this has not been done by him yet.

Do you give heed. This is my principal desire for this to be done by the Runanga [ie., Parliament] at this present time – this which we desire (viz.) that a portion of this land which has been taken from us by the Government be given back to us. Let the piece commence from Otamauri, and go on to below Whatawhata. Leave that money, £234, with the Government. Friend, let this be granted by the Runanga. For what does it advantage the Government to keep this small portion, they having taken the whole of the land? Why not return this small piece to me and my people? For see on the whole of our lands people have been located by the Government, and it appears to us now that the consideration of the Government has become less for us, and more for the Kingites. The words of the Kingites are allowed by the Government to have weight, but ours are not soon considered. I wrote to the Runanga when they met last year, regarding those portions which were wrongfully taken at the time of Mr. Furton's [sic – Turton's or Fenton's?] purchase ("investigation of title") those pieces were Te Toto, Tumaekē, and Parawai, but those pieces

were not made clear by any means. But, O, friends! in this case let your thoughts and decision be clear as regards me and my people. That this land, which I have described above here, be altogether returned to me and my tribe; for we are not at all willing to take the money offered us by the Government for our claims to those places which have been taken for rebellion. Let this be the money for us, some portion of that land which has been taken. Let it be returned to us, instead of our claims to that (“to the whole of that”) which has been taken.

He whakaaro naku mo teteahi wahi o to matou whenua ko toku Iwi kia whakahokia mai kia matou, ara, o te whenua e takoto mai ana i Ngaruawahia tae noa ki raro mai o Whatawhata, i waenganui o nga awa e rua o Waipa o Horotiu. Ko nga moni hoki kua whakaritea e te Kawanatanga mo tenei whenua nui £234. Kaore matou e pai ki a tango i aua moni. Ko taku i tohe ai kia te Make Komihana, ko teteahi wahi ano o taua whenua kia whakahokia mai kia matou. Kaore ano tenei i rite noa ia. Kia rongo mai koe ko taku tino whakaaro tenei kia tino whakaotia mai e te Runanga inaianei ta matou i whakaaro ai. Kia whakahokia mai teteahi wahi ano o taua whenua kua tangohia nei e te Kawanatanga, me timata mai i Otamauri puta noa mai ki raro mai o Whatawhata. Ko aua moni e £234 waiho atu ki te Kawanatanga. E hoa kia rita mai tenei i te Runanga. He aha hoki te pai ko te nuinga o te whenua kua riro katoa i te Kawanatanga he aha to tenei wahi iti te whakahokia mai an kia matou ko toku Iwi, titiro hoki ko o matou wahi kua oti katoa te whakanoho he pakeha ki runga e te Kawanatanga, kua whakaaro matou inaianei, kua whakaitiitia te whakaara o te Kawanatanga ki a matou kua whakanuia to ratou whakaaro ki te taha Kingi, ko nga kupu a nga tangata o te taha Kingi e whakamana ana e te Kawanatanga. Ko a matou kaore e hohorotia mai te whakamana. Kua tuhituhi au ki te Runanga i tera Huinga o te Runanga i tau hou nei, mo nga wahi i tangohia hetia e te hoko a te Tatana (ara mo Te Toto, mo Tumaeke, mo Parawai) kihai rawa i marama aua wahi, ko tenei e hoa kia marama mai ta koutou whakaaro ki a matou ko toku Iwi. Ko tenei whenua kua tuhia e au i runga ake nei kia tino whakahokia mai ki a matou ko toku Iwi no te mea e kore rawa matou e pai ki te tango moni i te Kawanatanga mo to matou urunga ki runga i nga wahi i tangohia e te Kawanatanga mo te hara. Ko

ta matou moni tenei e tango, ko teteahi wahi ano o taua wahi kua tangohia me whakahokia mai ano kia matou, mo to matou urunga ki taua wahi i tangohia. Kua tukua atu e au tenei pukapuka aku ki a koe, mau e whakatakoto ki te aroaro o te Runanga kia whakaarohia mai aku korero.¹⁸⁶⁵

The Maori Petitions Committee recommended that Patene's claim 'should be investigated and that a liberal arrangement should be made with him.'¹⁸⁶⁶ While the specific outcome of Patene's petition has not been followed up for the purposes of this report, more localised grievances such as this could more easily be accommodated by the system than those that challenged the validity of confiscation as a whole.

An intriguing petition that perhaps fitted this category of a more potentially manageable claim was one lodged by members of Ngati Kahungunu on behalf of a Waikato woman living in their district. Henare Matua, who would soon go on to become a prominent leader of the Repudiation movement, was among the four signatories to the petition, which explained that:

Hearken. There is a Waikato woman living here. She came here when the Colony of New Zealand was in a peaceful state, and she had been living in Hawke's Bay for many years before the war broke out in the Waikato.

After her departure from Waikato the war broke out, and her people were defeated while she was living here at Hawke's Bay. After five years had elapsed, she began to think upon the defeat of her tribe, and also upon the position in which her land would be placed, her relations whom she left upon it having been killed.

Now, we ask the Assembly, sitting in Parliament, to look into the question of this woman's grievance, because she and her children are living here in a state of affliction.

¹⁸⁶⁵ AJHR, 1866, G-3, p.1.

¹⁸⁶⁶ Minutes of the Maori Petitions Committee, 4 September 1866, Le 1/1866/11, Archives NZ.

If we give the names of her lands, do you see if you can find out whether they have been confiscated or not, and inform us, so that we may be able to let that woman know.

Kia rongo mai koutou kotahi te wahine no Waikato kei konei e noho ana ko te taima i haere mai ai ia no te taima e pai ana te haere o nga ritenga o tenei moto o Niu Tirangi ara ko te taima i maranga ai te pakanga ki Waikato kua roa noa atu ona tau ki Heretaunga nei noho ai.

No muri i a ia ka maranga te pakanga ki Waikato mate ana taua iwi i muri ia i a e noho nei ki Heretaunga nei. Tae noa ki te rima ona tau katahai ia ka hoki ana mahara ki runga ki te matenga o tana iwi katahi ka titiro ia ki te ritenga mo te mate o ona whenua ina hoki kua mate ana whanaunga nga mea i mahue atu i a ia ki runga i ana whenua.

Na e tono ana matou ki te Runanga e noho ana i te Paremata kia tirohia mai te mate o tenei wahine no te mea kei te noho mate taua wahine i a ia e noho nei me ana tamariki.

Na ki te tuhia atu e matou nga ingoa o aua whenua ma koutou e titiro mehemea ka mohio i a koutou kei runga te patu a te Kawana i aua whenua me whakaatu ki a matou.

Mehemea kahore te patu a te Kawana i tau ki runga i aua whenua kia marama ta koutou whakaatu mai kia marama ai ta matou whakaatu ki taua wahine.¹⁸⁶⁷

Although the petition was recommended for the further consideration of the government, G.S. Cooper reported that 'If this woman's name and tribe, hapu & family were given, the Govt. might then refer the question to Mr. Marshall for his report. But I think that as a matter of principle claims that have lain dormant for so many years, during wh. courts have been sitting for the express purpose of settling

¹⁸⁶⁷ *Appendices to the Journals of the Legislative Council*, no.27, 1871, p.1, RDB, vol.134, p.51587.

such claims as this, should not be entertained.’¹⁸⁶⁸ Native Minister Donald McLean simply penned ‘I agree.’¹⁸⁶⁹ There were no doubt good reasons why someone who had lived at Hawke’s Bay throughout the war years may not have been aware of, or able to participate in, the Waikato Compensation Court process, but these were evidently ignored in the case of this unnamed woman, who had claimed interests between the Waipa and Waikato rivers.

Keke, the wife of early Waikato settler John Vittoria Cowell, appears to have had her 1872 petition treated a little more seriously by officials. She petitioned that:

...at the time of the breaking out of the War at Te Rori, your Petitioner was living in peace and quietness upon Te Rori, containing then about one thousand acres at Te Awamutu and Rangiwahia [sic], and was in possession of land in all those districts. I also had land at Te Rori, at Rangiwahia [sic], and I have ten children. I have been married now over thirty years, my home has been broken up, and out of my land which has been confiscated, I have been given a few acres at Mangere [sic].¹⁸⁷⁰

James Mackay, to whom the petition was referred for comment, subsequently reported that Mrs Cowell had ‘large claims to lands at Waikato’, which she had agreed to ‘commute’ for something in the order of three acres at Mangere, which at the time was valued at around £150 per acre. Mackay reported that, as she had a large family, he had unsuccessfully attempted to persuade her at the time to take part of her entitlement at Waikato, but she had preferred to take it at Mangere. He added that:

Cowell is an old settler and his wife is a very decent respectable woman, who has brought up a large family of well behaved children, and as the land they took has since depreciated in value, and as she is a woman of rank among the Waikatos, I would recommend that one hundred acres at Waikato, or Land Scrip to that amount should be given to her.¹⁸⁷¹

¹⁸⁶⁸ G.S. Cooper, minute, 2 August 1872, IA 1/1871/3446, Archives NZ, RDB, vol.134, p.51585.

¹⁸⁶⁹ McLean, minute, n.d. [c.2 August 1872], IA 1/1871/3446, Archives NZ, RDB, vol.134, p.51585.

¹⁸⁷⁰ Petition of Keke Martha Cowell, IA 1 1872/2643, Archives NZ, RDB, vol.134, p.51758.

¹⁸⁷¹ Mackay, memorandum, 20 September 1872, IA 1/1872/2643, Archives NZ, RDB, vol.134, pp.51756-51757.

It appears that this recommendation, which was endorsed by the Native Affairs Committee, was subsequently approved by the government.¹⁸⁷²

An 1877 petition from Wiremu Hunia Waikere concerning Waiuku lands, though outside the area of immediate interest for this report, is nevertheless of value in terms of what it revealed about confiscation as a whole. Charles Heaphy, who had a major role in terms of the survey and allocation of the confiscated Waikato lands, was called to testify before the Native Affairs Committee with respect to the petition. He explained that:

The land in question is known as the West Waiuku confiscated Block and consists of between forty and fifty thousand acres. On its being confiscated it was found that there was a very large friendly element if I may call it so existing in the proprietary, that is that the friendly natives were almost as numerous as the rebels; consequently very large reserves were made in it for the friendly section and a sum of about £2000 was given to them. This was considered to be sufficient to extinguish their title and the West Waiuku Block was resumed possession of by the Govt. Since that transaction, which was in 1865, a great number of returned rebels have been settled on small pieces of land and provision made for others; and the remainder sold. This man appears to have made no claim either by himself or by his friends.¹⁸⁷³

Heaphy agreed under questioning that it would indeed be a hardship if the petitioner was found to have been deprived of rights in the land as a result of being overlooked. He explained that the reserves for 'friendly' Maori in the district had been allocated by Turton, working in conjunction with a senior chief. But many of the reserves had been made in the names of just a few chiefs, including some who had no proprietary interest in the lands, as a result of which many owners refused to accept the Crown grants. Heaphy had therefore personally undertaken a fresh distribution on the spot,

¹⁸⁷² Report of the Native Affairs Committee (and minutes thereon), 24 September 1872, IA 1/1872/2643, Archives NZ, RDB, vol.134, p.51755.

¹⁸⁷³ Native Affairs Committee, Minutes of Evidence, 16 August 1877, Le 1/1877/5, Archives NZ, RDB, vol.1, pp.225-226.

and he asserted that the petitioner had at no point advanced any claim on the land.¹⁸⁷⁴ Subsequent to this, when a telegram was read to the committee (evidently from Turton), Heaphy was forced to admit that his claim now looked 'more strong' and that 'No doubt he has been overlooked by his friends.'¹⁸⁷⁵ He attributed the mistake to the fact that the man had been absent from the district at the time of the distribution, and that he was 'a man of very little importance', but when asked whether the government or Waikere's fellow tribesmen were responsible for the mistake, Heaphy replied that:

I do not think the Govt. is quite clear of responsibility although his relatives ought [to] have brought his claim forward. Of course the greater part of the blame rests with the chiefs and his relatives, but I cannot conceive that the Govt. is quite clear of responsibility. The Govt. confiscated land in which there were a friendly proprietary and if their machinery was not sufficiently good to find out all the claims against them that does not absolve them from meeting the claims that can be proved to be good.¹⁸⁷⁶

A fascinating exchange then took place between Heaphy and Sir George Grey, who was a member of the committee:

Sir G. Grey – Are you aware of any law, custom or proclamation by which the N.Z. Govt. can take an innocent native's land from him?

[Heaphy:] Well, practically I suppose the N.Z. Settlements Act permits confiscation, but compensation is to be made, and therefore I say that I cannot absolve the Govt. from all responsibility in this case even though he may have bn. overlooked owing to the carelessness of his friends.

[Grey:] Do you think the original proclamation of confiscation did contemplate the taking of innocent native's lands from them?

[Heaphy:] Certainly not.

¹⁸⁷⁴ *ibid.*, p.229.

¹⁸⁷⁵ *ibid.*, p.230.

¹⁸⁷⁶ *ibid.*, pp.231-232.

[Grey:] Do you think the proclamation gave any pledge on the part of the Crown that it wd. not take innocent people's land from them?

[Heaphy:] By implication.¹⁸⁷⁷

While Grey was now apparently concerned to point out that the original confiscation proclamation had not contemplated the confiscation of the lands of those deemed 'innocent', he had personally consented to the massive and indiscriminate takings which followed and had done nothing to protect 'loyalists' in the ownership of their lands.

In 1878 the Native Affairs Committee heard evidence with respect to a petition from Mrs Susannah Sorrenson. For reasons which are unclear, it had previously been inquired into by the Public Petitions Committee, which recommended that the government make further inquiry into the matters raised. Once again, the allegation was raised that the complainant had been overlooked from the title to land awarded by the Compensation Court, and although the specific land (at Hopuhopu) is outside the area of interest for this report, the general theme is of relevance. Committee chairman John Bryce asked H.T. Clarke a series of questions in relation to the compensation process:

[Bryce:] The petitioner refers to the Court of Inquiry held at the Waikato, at which she alleges her father had not an opportunity of being present? Is that the case?

[Clarke:] All I know is, that the Compensation Court sat at two or three different times in the Waikato, at which every person claiming compensation ought to send in their claims, but none was ever sent in from the person referred to here.

[Bryce:] How were these Courts notified?

¹⁸⁷⁷ *ibid.*, pp.233-234.

[Clarke:] In the Govt. Gazette.

[Bryce:] What opportunity would the petitioner or her father have of seeing that Gazette?

[Clarke:] I can hardly answer for that. I don't know how. The Govt. Gazettes are circulated everywhere, and supposed to be official notice to every person concerned.

[Bryce:] Will the petitioner have any opportunity in the ordinary course of preparing a claim?

[Clarke:] No; I am afraid not. What they ask for is compensation in land or a grant in land. But all confiscated land is now Crown land, and is dealt with by the Waste Lands Boards, and any grant made must be made by Act – must be confirmed by the House.

[Bryce:] Then in point of fact, if the petitioner has a claim, that claim will have lapsed in consequence of the non-preference of the claim at the Compensation court?

[Clarke:] So it has been held.¹⁸⁷⁸

Clarke failed to specify that the notices of Compensation Court hearings in the Waikato for the most part appeared only in the *Provincial Government Gazette* – a somewhat baffling inconsistency with what appears to have been the standard procedure in other parts of the country where the Court sat.

With the exception of Tamihana's 1866 petition, most of the Waikato petitions heard by the Native Affairs Committee were considered in the absence of the petitioner.

¹⁸⁷⁸ Native Affairs Committee, Minutes of Evidence, 11 October 1878, Le 1/1878/6, Archives NZ, RDB, vol.2, pp.413-415. Gaps have been inserted between many of the questions and answers in the interests of readability.

Wiremu Te Wheoro's 1879 petition was a notable exception to this trend. Te Wheoro, along with Waata Kukutai, had been one of the most prominent 'loyalist' chiefs during the wars but had become increasingly embittered as a consequence of his people's treatment at the hands of the Crown. As he explained when he appeared before the committee late in 1879, it was only after the war, and after Grey's initial proclamation reassuring 'loyal' Maori that their lands would be safe, that he had become aware that the land of his own people had been confiscated. But whereas Kukutai and his people had received back the whole of their lands, Te Wheoro's own people had not. As he told the committee, instead 'They just gave us what they pleased whether it was a small piece or a large piece.'¹⁸⁷⁹ Ngati Naho therefore received back but a small fraction of their original lands, while other tribes which had been less conspicuously 'loyal' had received back much more. In all, Te Wheoro estimated that his tribe had lost 100,000 acres. It was the lack of consistency that infuriated the chief, and led him increasingly to ally his fortunes with the Kingitanga opponents of confiscation. In fact, shortly before appearing before the Native Affairs Committee, Te Wheoro had himself been elected to Parliament as the member for Western Maori – a position which he secured on the nomination of Rewi Maniapoto. Numerous subsequent petitions and appeals for the return of his own hapu lands saw Te Wheoro subsequently join forces with King Tawhiao on an altogether more ambitious project to secure their return (the 1884 deputation to London, discussed below).¹⁸⁸⁰

There was a noticeable increase in the level of petitions forwarded to Parliament in the early 1880s, perhaps coinciding with heightened expectations of a political break through with Rohe Potae leaders. In the 1880 session alone petitions were received from Harete Tamihana Te Waharoa in relation to the Tauwhare lands,¹⁸⁸¹ Susannah Sorrenson sought a further inquiry into her unresolved claims,¹⁸⁸² and Wiremu Waitangi and other 'returned rebels' sought the return of lands at Pukorokoro. Native Under Secretary T.W. Lewis, who was examined in relation to this last petition, told members of the Native Affairs Committee that 'Ever since confiscation took place

¹⁸⁷⁹ Native Affairs Committee, Minutes of Evidence, 30 October 1879, Le 1.1879/3, Archives NZ, RDB, vol.2, p.704.

¹⁸⁸⁰ Gary Scott, 'Te Wheoro, Wiremu Te Morehu Maipapa, ?-1895', DNZB, vol.1, p.525.

¹⁸⁸¹ Petition No.371, Le 1/1880/6, Archives NZ, RDB, vol.2, pp.751-755.

¹⁸⁸² Petition No.376, Le 1/1880/6, Archives NZ, RDB, vol.2, pp.767-773.

applications have been received from natives asking that certain portions of the confiscated lands be returned to them.¹⁸⁸³ He added that:

Up to the year 1876 the Governor had power to set aside confiscated land for natives who returned from rebellion, but the Waste Lands Act of 1876 took away that power from the Executive Government. It will be remembered that recently a number of natives came in from the King Country and received about 2000 acres at Onewhero, and the Onewhero Grants Bill was passed last session to enable Crown Grants to issue. Since then a number of applications have been received from natives who have been living with the Maori King for land to settle upon, giving the idea that there is a movement amongst the natives to return to their old lands and settle upon them.¹⁸⁸⁴

An 1881 petition with respect to the decisions of the Ngati Kauwhata Commission, though not of itself strictly relevant to confiscation issues, did highlight the extent to which early Waikato Native Land Court hearings were inextricably intertwined with broader political developments. The case concerned the Maungatautari block, sitting immediately beyond the confiscation boundary and first heard in the Native Land Court before Judge Rogan in November 1868. That sitting was interrupted by the arrival of an emissary of the Maori King, Tana Te Waharoa, who protested against the Court proceeding with certain lands. Rogan ignored the protest and proceeded to hear the claims. Yet even the *Daily Southern Cross* felt inclined to express some sympathy for the King party on this occasion, declaring that:

The Native Lands Court is doubtless a great blessing to the country, but we have often felt that its action in Waikato tended to widen the breach between the Europeans and the Maori Kingites. For instance, certain lands beyond the confiscated boundary are put before the Court to adjudicate to whom the title should be issued. It is well known in many cases that the owners of these lands are living amongst the Kingites, and that the others, who put the lands in Court, have only comparatively slight claims. But the Kingites will not

¹⁸⁸³ Native Affairs Committee, Minutes of Evidence, 29 June 1889, Le 1/1880/6, Archives NZ, RDB, vol.2, p.778.

¹⁸⁸⁴ *ibid.*, pp.778-779.

compromise themselves by coming before the Native Lands Court, and state, besides, that they are afraid of their personal safety if they come to our towns. In the absence of the great owners, the land is granted to others, who sell it, and the next thing the real proprietors hear is that some pakeha is fencing it in. Reasoning even from our own feelings, we can easily believe that the Maori does not feel particularly amiable at the tidings.¹⁸⁸⁵

These events were recalled before the Native Affairs Committee in 1881, with Wiremu Te Wheoro giving evidence that:

In 1868 I was present at the sitting of the Native Land Court referred to. I said to the Court at that time, concerning all the lands outside of the Government boundary: "Do not investigate them now, let them be." I said further: "All the chiefs of the people that are present at this Court, all their principal chiefs, are away"; they were away on the Hau Hau side. The Court agreed to leave uninvestigated the Ngati Maniapoto land at Puniu; it consented not to investigate it. My idea in asking the Court to reserve these lands from investigation was that I thought it was not a good time. I thought the best time to have the claims to these lands looked into would be when we had become friendly with those who had separated from us, and when they could have an opportunity of coming in at being present at the investigation of that land. It was on account of this same land about which these people had not come into Court, that disturbances took place, and in these one Sullivan lost his life. Of course we are all aware why those natives could not be present at that Court, because they were divided off from us; they were living in the locality but separated from us; I do not think that we could say these men purposely kept away in defiance of the law – they kept away because there was no intercourse between us and them.¹⁸⁸⁶

Beyond the specific points in dispute, Te Wheoro's evidence highlighted the way in which war and confiscation impacted upon most aspects of Waikato Maori society

¹⁸⁸⁵ *Daily Southern Cross*, 17 November 1868.

¹⁸⁸⁶ Native Affairs Committee, Minutes of Evidence, 29 July 1881, Le 1/1881/5, Archives NZ, RDB, vol.3, pp.917-918.

after 1864. Even lands beyond the confiscation boundaries were necessarily entangled in the complications arising out of these events.

9.6 King Tawhiao's Deputation to England

From the 1880s the 'opening up' of the Rohe Potae district to European settlement, relations between Kingitanga and Ngati Maniapoto leaders, and the operations of the Native Land Court and Crown land purchase agents were all pressing concerns for the hapu and iwi of Te Rohe Potae. These issues were more than enough to occupy attention, while increasingly the need for kotahitanga or unity between different hapu and iwi was also promoted. One result of this was a tendency towards broader petitions encapsulating the grievances of the Maori people as a whole, as well as the first efforts to present these directly to Queen Victoria, the Treaty partner.

Evidence of increased inter-tribal cooperation around shared grievances can be seen from an 1879 'manifesto' released by a committee of ten prominent Maori leaders (including several 'loyalists' who had taken an active part in the wars), who proposed to test the legality of confiscations under the New Zealand Settlements Act.¹⁸⁸⁷ Addressed to 'the Maori tribes interested in the lands confiscated by the Government in consequence of the wars between the Maori and the European peoples', the document stated that the committee had been 'appointed to inquire into and to take proceedings for testing the validity of the laws under which the said lands have been confiscated, and are now claimed by the Government, and to enquire into and test the validity of the acts done by the Government under the provisions of those laws'.¹⁸⁸⁸ They explained that they had consulted lawyers at Wellington, who had explained the various provisions of the New Zealand Settlements Act to them. They added that:

Now we find that the Government, purporting to act under the provisions of that law, and of other laws passed by the General Assembly in connection

¹⁸⁸⁷ The members of the committee were Hori Kerei Taiaroa (president), Wi Parata Te Kakakura (secretary), Wi Tako Ngatata, Mokena Kohere, Henare Tomoana, Hori Karaka Tawiti, Ihaia Tainui, Maihi Paraone Kawiti, Te Keepa Te Rangihwinui and Peeti Te Aweawe.

¹⁸⁸⁸ Translation of Manifesto, 26 August 1879, Mantell Family Papers, folder 147, MS-Papers-0083-147, ATL.

therewith, have created Districts in various parts of the North Island of New Zealand, and claim to hold the lands of the Maori people within those Districts, on the alleged ground that the said lands have been lawfully confiscated by reason that the owners thereof had been engaged in wars against the Government since the First day of January, 1863.

We know that the right of the Government to confiscate those lands, and to retain the same, has long been disputed by the Maori owners thereof, but that no proceedings have ever been taken in any Court of Law to test the validity of the Acts of the General Assembly under which they have been taken, or of the proceedings of the Government under those Acts, or the right of the Government to retain any portions of the lands, so taken, which have not been set apart as sites for settlement.¹⁸⁸⁹

Reference to lands taken and not set apart as sites for settlement suggests that the committee and their lawyers may have identified one of the crucial weaknesses in terms of the application of the New Zealand Settlements Act, as identified in the more recent analyses of Professor Brookfield and others. A further series of questions were also outlined in the manifesto. Its authors declared that:

We, therefore, having been appointed to enquire into these things, have been advised that the proper course for the Maori people who object to them is, to commence proceedings in the Supreme Court of New Zealand, in order that the following questions may be heard and determined by law: -

1. Whether the Acts of the General Assembly, authorizing the confiscation of the Maori lands, are valid Acts or not?
2. Whether those Acts, if valid, authorized the Government to confiscate any of the Maori lands by reason of wars which happened after the Third day of December, 1863?¹⁸⁹⁰

¹⁸⁸⁹ *ibid.*

¹⁸⁹⁰ The date upon which the New Zealand Settlements Act was enacted.

3. Whether those Acts, if valid, authorize the Government to retain any of the lands within the proclaimed districts, which had not been specifically set apart as sites for settlement before the Third day of December, 1867?¹⁸⁹¹

4. Whether the proceedings of the Government, under those Acts, have been regular and proper, so as to bind the Native owners of the lands taken?

5. Whether, if those Acts be valid, proper compensation has been made to those who had not been engaged or concerned in the wars?¹⁸⁹²

The manifesto added that although these were the principal questions lawyers had advised the committee to pursue in the Supreme Court, there were many others that would also be duly raised ‘in the interests of the Maori people.’ They further stated that, if their efforts in the Supreme Court were unsuccessful, ‘we shall be entitled to appeal to the great Court of the Queen in England [i.e., the Privy Council], by which the case will then be fully heard and decided.’

A hint of the context in which this document had been produced came in its call for Maori to ‘assure the Government that you will not commit any deed of violence, or attempt to assert your claims to those lands by force, and that you will leave your rights to be settled by the law and not by the sword’, in return for which the government would be urged to avoid proceeding with the survey of any confiscated lands. Wi Parata, a member of the committee, was quickly dispatched to Taranaki with a copy of the manifesto in order to persuade Te Whiti to desist from any further ploughing of confiscated lands in the district.¹⁸⁹³ Reports suggested that the ploughing had entirely ceased soon after, perhaps in expectation that the validity of the confiscations was about to be tested.¹⁸⁹⁴ It is not clear whether any action was subsequently pursued in the Supreme Court, but as we saw in an earlier chapter when the West Coast Commission opened in 1880 lawyers present attempted to question the

¹⁸⁹¹ As per section 1 of the New Zealand Settlements Amendment and Continuance Act 1865, the final date upon which districts could be proclaimed and lands reserved or set apart under the Settlements Act.

¹⁸⁹² Translation of Manifesto, 26 August 1879, Mantell Family Papers, folder 147, MS-Papers-0083-147, ATL.

¹⁸⁹³ Rusden, *History of New Zealand*, vol.3, pp.199-201, 212.

¹⁸⁹⁴ Riseborough, *Days of Darkness*, p.85.

legality of the confiscations, only to be blocked by the commissioners, who refused to hear any arguments on the issue.¹⁸⁹⁵

But events at Parihaka, including the shocking invasion of the settlement (which as we saw previously, had a substantial Ngati Maniapoto population) on 5 November 1881, outraged Maori the length of the country and further galvanized efforts aimed at gaining redress for the grievances of the Maori people as a whole. Frustrated at the repeated failure of colonial officials to take their concerns seriously, various Maori proposed an alternative approach, based on a direct appeal to their Treaty partner, Queen Victoria. The first such deputation travelled to England in 1882 with a wide-ranging petition which (amongst other things) condemned the Waitara purchase and Taranaki War:

In the year 1860 another evil was brought upon the Maori tribes by the Governor himself, who, without any grounds, drove Wiremu Kingi from his own lands at Waitara, and this war about land renewed the shedding of both European and Maori blood. On this occasion, O mother, the Queen! the grievous lamentation of this Island was raised, and you recalled, in consequence, Governor Gore Browne, whose administration closed here. It was said by the Europeans that William King did wrong in opposing the Governor; that if William King and party had appealed to the Supreme Court, the Government act in that case would have been condemned.¹⁸⁹⁶

Grey had been sent as the new governor, but instead of calming things had ‘rushed hastily away to Taranaki, and gave instructions for road-making on Maori territory, thereby bringing about a war and the slaying of many of both races.’ The petitioners added that:

In the year 1863, the war was carried into Waikato, and the Maoris throughout the Island were unaware as to the reason why war had been made on the Waikato. Now, O Queen, the Waikatos had formed a land league, in

¹⁸⁹⁵ *ibid.*, pp.95-96.

¹⁸⁹⁶ AJHR, 1883, A-6, pp.1-2.

accordance with the Treaty of Waitangi, to preserve their native authority over the land, which principle is embodied in the treaty.

O, the Queen! you do not consider that act of retaining their land to be unjust: but the Government of New Zealand held it to be wrong, inasmuch as war was declared against the Waikatos, and the confiscation of their land followed, although the Waikatos had no desire to fight – the desire came from the Governor and his Council. When the Waikatos were overpowered, armies of soldiers went forth to engender strife against the Maoris at Tauranga, at Te Awa-o-te-Atua, at Whakatana [sic], at Ohiwa, at Opotiki, at Turanganui, at Ahuriri, at Whanganui, at Waimate, and various other places. The motive impelling the projectors of these deeds to execute this work was a desire to confiscate the Maori lands, and to trample under the soles of their feet the Treaty of Waitangi. While these proceedings were being carried out, the weeping people wept, the lamenting people lamented, the agonized people were in agony, the saddened people were in sadness, while they held the Treaty of Waitangi as a basis on which the voice of the Maoris could be made known to you, O Queen!

But the people of New Zealand declared that the fighting and the confiscation of land which brought calamity, and made your children orphans, were sanctioned by you, O Queen. We did not believe the utterances of the Europeans as to the wrongs we suffered, that they were brought about by your queenly authority; but our decision was that such acts were not sanctioned by you, O Queen, whose benevolence towards the Maori people is well known. The disorderly work referred to has been carried into practice, so that a path might be opened up to Europeans to seize Maori lands.¹⁸⁹⁷

They requested (amongst other things) that the Queen ‘restore to the Maoris those lands which have been wrongfully confiscated according to the provisions of the Treaty of Waitangi’.

¹⁸⁹⁷ *ibid.*

This eloquent appeal came not from those most directly affected by the confiscations, however, but was instead lodged by eight northern rangatira from Ngapuhi and related tribes. Although the group were denied an audience with the Queen, and officials back in New Zealand did their best to discredit Taiwhanga and his party, they were granted an audience with the Secretary of State for the Colonies, the Earl of Kimberley. According to the account of this meeting, Kimberley, having heard the grievances of the chiefs:

...said the treaty was very simple, and provided that the possession of land was to be respected. It was not the duty of the Colonial Office to advise the Queen in reference to local matters like the present. The management of the land of New Zealand was absolutely handed over to the New Zealand Government, and the Queen was advised by the Ministers of the Colony with regard to these matters, and not by himself, as there could not be two governments for one country. It had been decided, as more likely to conduce to the peace of the country, that the affairs of New Zealand should be managed at the Colony rather than in Downing Street. He had a strong conviction that that course was right. The question now raised by the deputation appeared to be connected with confiscations arising out of wars, and the treaty would not be concerned in such confiscations, but the point was whether they were just. Having received the petition, he should transmit it to the Colonial Government, and ask them to state their views with regard to it. It might be thought desirable to issue another Royal Commission, but that step rested with the Colonial Government.¹⁸⁹⁸

Frederick Whitaker's response to the petition, on behalf of the New Zealand government, was less open to such a possibility. He pointed out that a number of grievances raised, including those in relation to the Taranaki and Waikato wars, referred to 'transactions during the time Native affairs in New Zealand were under the control and management of the Imperial Government, through their officer, the Governor of the Colony.'¹⁸⁹⁹ A full history of these transactions would no doubt be found in British and New Zealand parliamentary papers, he added, from which 'it will

¹⁸⁹⁸ 'Maori Chiefs in London', AJHR, 1883, A-6, p.4.

¹⁸⁹⁹ Premier to the Administrator, 12 December 1882, AJHR, 1883, A-6, p.5.

be seen how little reason the Maoris have to complain.¹⁹⁰⁰ Whitaker, it is worth remembering, had personally drafted the New Zealand Settlements Act and had been at the forefront of plans to carve up and confiscate Waikato and Taranaki lands. He was now being called upon to decide the merits of claims that such acts were unjust. It was surely not difficult to anticipate his response.

Despite the failure of the 1882 deputation to receive an audience with the Queen, it was thought that a second group might have more success, especially if composed of chiefs of the highest rank. As the wording of Taiwhanga's petition suggested, it remained a widespread Maori belief, even among members of the Kingitanga, that Queen Victoria had not condoned the actions leading to war and confiscation. If only she was made fully aware of the facts of the case then surely she would personally intervene to ensure justice was done to her Maori people. Taiwhanga himself, encouraged by the warm support he had received in England from members of the Aborigines Protection Society and other well-wishers, returned to New Zealand convinced that a second deputation could succeed. He found widespread support for this proposal, and by August 1883 had secured 8000 signatures in support.¹⁹⁰¹ At this point Taiwhanga travelled to Alexandra to see if he could secure one more supporter for his mission. In this respect, however, he was to be disappointed. King Tawhiao, following his emergence from a lengthy period of seclusion behind the aukati in July 1881, had by this stage already determined to personally lead his own party to England and there was to be no room for Taiwhanga in the group.¹⁹⁰²

Instead, the Maori King led a mostly Waikato deputation to London with a view to again presenting their grievances directly to the monarch. This was preceded by a July 1883 letter from the four Maori MPs – Wiremu Te Wheoro, Hone Mohi Tawhai, Henare Tomoana and Hori Kerei Taiaroa – addressed to the Aborigines Protection Society in which it was stated (amongst other things) that:

We believe it is known to you that years ago many of the Maories finding that the hand of Death was strong among them near the European settlements,

¹⁹⁰⁰ *ibid.*

¹⁹⁰¹ Parsonson, 'Te Mana o te Kingitanga Maori', p.160.

¹⁹⁰² *ibid.*, p.162.

where the evil that came with the Whites was more powerful to us than the good, retired into the interior of our Land and uniting many tribes into one people determined to live in the undisturbed possession of a portion of our lands, within certain bounds, beyond which we hoped that the destroyed would be unable to advance. It would take many words to tell you how this proceeding of ours led to war with the colonial Government. Let it suffice that we were driven into a small country on the West of Taupo where many of us have remained until lately undisturbed.¹⁹⁰³

The letter from the Maori MPs was forwarded to the British government, which once more referred it back to the colonial ministry for comment. Native Minister Bryce was scathing, however, rejecting the grievances raised as entirely lacking in substance. Amongst other things, he declared that:

The impression sought to be conveyed that large bodies of Natives have retired into a certain territory lying west of Lake Taupo, in order to remain in a state of isolated aboriginal happiness, is ridiculously inconsistent with facts. The Maoris within the territory indicated are comparatively few in number; they are as jealously determined to exclude stranger Natives from their tribal lands as it is possible to conceive. The old Maori habits of industry have fallen into disuse, they are not living in their ancient comfort as respects food; on the contrary, there is not a village in the part of the country alluded to, where at the present moment the Natives are not absolutely in want of food. For years they have been sick of the policy of isolation, and it is now evidently at an end.¹⁹⁰⁴

Predictable local responses such as Bryce's failed to deter preparations for a second voyage to England. By February 1884 plans for the voyage had been finalised, and Tawhiao embarked upon an extensive tour among his followers aimed at galvanising support for the impending trip.¹⁹⁰⁵ According to one report Rewi Maniapoto was

¹⁹⁰³ Te Wheoro and others to F.W. Chesson (Secretary, Aborigines Protection Society), Aborigines Protection Society Papers, Micro-MS-Coll-20-2432, ATL.

¹⁹⁰⁴ Bryce to Governor, 11 January 1884, GBPP, 1884 [c.4413], p.28.

¹⁹⁰⁵ Parsonson, 'Te Mana o te Kingitanga Maori', p.172; *Waikato Times*, 5 February 1884, 8 February 1884.

quick to declare than he would not be part of the travelling delegation and that he had never intended going. Furthermore, it was said that he was 'reticent as to the advisability of Tawhiao going.'¹⁹⁰⁶ But if that was, indeed, an accurate representation of Rewi's views, then it more likely reflected the then extant state of affairs in the Rohe Potae district than any opposition to the grievances Tawhiao was seeking to advance.

Although the exact composition of the party was a matter of considerable press speculation right up to the time of Tawhiao's departure from Auckland on 1 April 1884, there was to be no Ngati Maniapoto representative. Instead, besides the King, the six-member deputation consisted of Wiremu Te Wheoro, Topia Turoa of Upper Whanganui, Patara Te Tuhi from Waikato, Hori Ropihana from Ngati Kahungunu, and the interpreter, George Skidmore, who was of Ngapuhi and European descent.¹⁹⁰⁷ In the days leading up to his departure, Tawhiao visited Sir George Grey, held a private interview with the governor, 'paid a regal visit to a visiting Japanese warship and paraded Queen Street wearing a gorgeous flaxen crown', before issuing a farewell message to the people of New Zealand for publication once he had sailed.¹⁹⁰⁸ He was hardly slipping out of the country quietly, and the contrast with Taiwhanga's deputation from a few years earlier could not have been greater. There were high expectations of a successful outcome from the trip. No one considered it a futile gesture.

Concerted, behind-the-scenes efforts on the part of the New Zealand government to discredit Tawhiao and his mission also spoke volumes as to the extent to which officials remained concerned. Their objective from the outset was a simple one: to convince British authorities not to grant Tawhiao what would be a supremely embarrassing audience with Queen Victoria, or if such an interview was allowed to go ahead, to assure that it remained a strictly non-political affair. Efforts in this direction in fact began within days of Tawhiao's departure from Auckland and were led by none other than F.D. Bell, the Native Minister at the time Waikato was invaded in

¹⁹⁰⁶ *Waikato Times*, 9 February 1884.

¹⁹⁰⁷ Parsonson, 'Te Mana o te Kingitanga Maori', p.177.

¹⁹⁰⁸ *ibid.*, p.181; [Undated newspaper clipping], Treaty of Waitangi and King Tawhiao Petition, A.F. McDonnell Papers, MSY-4974.

1863 and now Agent-General for New Zealand in London.¹⁹⁰⁹ Late in May, Bell informed the New Zealand Premier that:

I received this evening your telegram on the subject of the Maori King, in which you express your confidence that the Imperial Government would not desire to embarrass your Government, but would think it right only to receive Tawhiao as a private Chief, referring all political questions for settlement in New Zealand. I immediately replied by telegram that it was quite certain the Imperial Government would do nothing to embarrass the Colonial Authorities in relation to that Chief.¹⁹¹⁰

Bell added that he had been in 'frequent semi-official communication with the Colonial Office' on the topic of Tawhiao's impending visit but had not deemed it necessary to attach too much importance to the matter by making it the subject of official letters. However, it is likely that the New Zealand government was just as keen not to have its attempts to block a meeting between the British and Maori monarchs made public.

The petition Tawhiao and his entourage wished to lay before their Treaty partner was described as an address from the Maori chiefs to the people of England. It declared:

Strangers landed on a strange land: -

We, the Maori Chiefs of New Zealand, have come to this distant land into your presence, on account of the great disaster which has overtaken your Maori race, which is beloved by the Queen and the people of England. Accordingly we have now swum the ocean of Kiwa which lies between us, and have reached England in safety, the source and fountain of authority, to the place where the Queen lives, that she may redress the ills of the Maori race inflicted on them by the Government of New Zealand, who have not directed their attention to right those wrongs up to the present time, and those wrongs are still being committed; nor is it because the Maoris are adhering to evil

¹⁹⁰⁹ F.D. Bell to Under Secretary of State for the Colonies, 9 April 1884, MA 23/4A, Archives NZ.

¹⁹¹⁰ Bell to the Premier, 27 May 1884, MA 23/4A, Archives NZ.

practices and so causing trouble between the two races, and therefore owing to this continued inattention of the Government this is presented as an appeal to the highest authority.

And because there was a tender regard displayed by the Queen to Her Maori race, as shown in the Treaty of Waitangi, therefore it is well that those contracts and these ills should be brought before you for your consideration.

Firstly: the words of the Queen were, that Victoria, Queen of England, in Her kind regard to the Chiefs and the tribes of New Zealand, secured that their rights of chieftainship and their lands should be established to them, and that peace should be made with them.

Secondly: that the Queen of England shall order and consent that the Chiefs and tribes of New Zealand preserve their chieftainships, their lands, their villages, their forests, and their fisheries.

Thirdly: that the Government of the Queen shall consent and order that the Queen shall protect the Maoris of New Zealand, and shall give them her laws in like manner as they are given to the people of England.¹⁹¹¹

Having set out very clearly their understanding of the Treaty and the promises and undertakings entered into by virtue of that agreement, along with their expectation that the Queen would personally ensure such obligations were honoured, Tawhiao and the other petitioners added that:

But these contracts have been trampled upon by the Government without exception. The first case of the Government purchasing land was in the year 1855. They paid a deposit for lands to some tribes, without knowing whether the lands belonged to them, and much land in the Waikato, Hawke's Bay, and other places was bought in this manner; and in consequence the Maoris drew a boundary at the Mangatawhiri River, to separate the ground still held by the

¹⁹¹¹ Petition of Tawhiao and others, July 1884, GBPP, 1884-85 [c4413], p.5.

Maoris, and set up a head, viz., Potatau, of the Maori people, who should prevent disputes between the natives who sold and those who retained their lands, always acknowledging the supremacy of the Queen; and this provision was made over all lands throughout Taranaki, Taupo, and other parts.

In the year 1858 the government purchased Waitara from Te Teira, Wiremu Kingi, the paramount Chief of that tribe, prohibiting the sale; but the Government sanctioned the purchase from Te Teira. Wiremu Kingi drove off the surveyors, and the Government waged war throughout Taranaki and confiscated the land.

In the year 1863, a proclamation was issued by the Government that all the natives adhering to the resolve not to part with their lands should retire across the boundary line at Mangatawhiri; they went and the Government followed them across the boundary and fought them; another proclamation from the Government declared that the Waikato Chiefs adhering to the Queen should aid General Cameron, and that the Government would protect their persons, their lands, and their property. Te Wheoro and his tribe aided General Cameron up to the very last, but their lands, amounting to about 200,000 acres, and property were confiscated, and a very little portion of the land was returned; the bulk was sold by the Government to the English, and up to the present day no compensation has been made; for the property destroyed the court ordered compensation to be made, but the Government refused to comply.¹⁹¹²

Perhaps referring to some of the petitions previously discussed, the memorial went on to note that:

The question of the lands thus seized was laid before the Committee of Maori affairs of the House of Parliament in the year 1879, and again in the years 1880 and 1881, and the unanimous reply was made that the Government

¹⁹¹² *ibid.*, pp.5-6.

should specially appoint a Commission to investigate the seizure, but the Government refused to accede to this proposal.¹⁹¹³

In the case of Taranaki, the memorialists outlined their understanding of arrangements that had seen some confiscated lands reoccupied by Maori, only for the government to seize the land without any pretext, arresting Te Whiti and his supporters, destroying their homes and crops, and putting the land up for sale. Te Whiti and others had been imprisoned without trial and although they were subsequently released were 'still under some restraining law of the Government.'¹⁹¹⁴

Beyond the broad themes of war and confiscation a more localised grievance was also raised with respect to Kawhia, which had recently been 'opened up' to European visitors in controversial fashion. The memorial stated that:

Respecting the land at Kawhia; before the establishment of the Government some Europeans resided at Kawhia, the Maoris allowed their residence for the purpose of trade and rent was paid to the natives by these Europeans; the Maoris in ignorance signed their names and, as they paid for the goods received, were unaware that their names were obtained for a purpose. On the arrival of fresh Europeans the lands were sold to the new arrivals, and these demanded a Crown grant from the Government, which was granted, though the Maoris were kept in ignorance of the transaction, and thus the Government dealt with the ground and ultimately bought it for themselves; and not until it was being surveyed were the Maoris aware that their land was alienated. Nor did the Government inquire of the Maoris whether the claims of the Europeans were just, and the Maoris condemned the transaction.¹⁹¹⁵

The remainder of the petition went on to outline at length other familiar grievances – including the massive South Island Crown land purchases, the Native Land Court, under-representation in Parliament and the unwillingness of colonial authorities to

¹⁹¹³ *ibid.*, p.6.

¹⁹¹⁴ *ibid.*

¹⁹¹⁵ *ibid.* The George Charleton old land claim referred to here is discussed in Boulton, 'Hapu and Iwi Land Transactions with the Crown and Europeans', pp.82-92.

allow Maori to administer their own lands and other affairs. Among the various remedies called for, that most directly relevant to raupatu was that which prayed that:

...the lands wrongly obtained by the Government be returned to us. That all may be in accordance with the concessions made in the Waitangi treaty and all other contracts made with your Maori subjects. That the Queen and Her Government also appoint some person from England, a person independent of the Government of New Zealand, who shall carefully investigate those wrongs, and if he finds them in accordance with what we have now presented before you, that then he should decide whether the lands of your wronged subjects be returned or a compensation be made for part of it.

We, your Maori race, confidently rely on the treaty of Waitangi, on its provisions and force, and we will be led by those provisions in these matters for which we have now swum the ocean of Kiwa, and we pray in the presence of the Queen that she will confirm her words given in that treaty that it may not be trampled upon by the Government of New Zealand in anything they may do to annul that treaty.¹⁹¹⁶

Tawhiao and his entourage were feted by members of high society in London and lauded in the mainstream press – large sections of which had been appalled by the invasion and sacking of Parihaka just a few years before. But Bell's lobbying had worked and Tawhiao and his entourage were denied a meeting with the Queen. While they remained hopeful of reversing this decision, in the meanwhile they had to settle for presenting their memorial to the Secretary of State for the Colonies, Lord Derby, on 22 July 1884. The meeting, which was also attended by members of the Aborigines Protection Society and other well-wishers (including John Gorst) who had been attending to the group's needs while in London, was extensively reported upon in the British press. Gorst, in fact, who was by this time a major player in Tory party politics in Britain, had nevertheless maintained a strong interest in New Zealand affairs and introduced the deputation to Derby. Tawhiao told the room that:

¹⁹¹⁶ *ibid.*, p.8.

The reason I have come from a far country is to tell you my wants regarding the Treaty of Waitangi made with me and my forefathers. I am called a king, not for the purpose of separation, but in order that the natives might be united under one race, ever acknowledging the supremacy of the Queen, and claiming her protection.¹⁹¹⁷

He was followed by Te Wheoro, who emphasised his own 'loyalist' credentials and the losses suffered by his people as a result of confiscation, thus making it clear that the grievances laid before Lord Derby did not emanate solely from those deemed 'former rebels'. He outlined the various military and government posts he had held over the years, before noting that in 1879 he finally became a Member of Parliament, 'thinking that there, perhaps, the rights of the Maories would be respected':

...but when I saw the Maori members were ignored, and that the whole Maori race was under oppression I came to England with Tawhiao to lay our wrongs before Her Gracious Majesty, for we are tired of laying our complaints before the New Zealand Government, who refuse to consider our case, and who continue to trample upon us, and we look to you for redress.¹⁹¹⁸

After the other chiefs present had explained the position of their own tribes, and several of the Europeans present had spoken in support of the case outlined, Derby addressed the group. He reassured the chiefs that it was indeed the British government's desire to ensure that 'native rights' were not overridden when it was able to prevent such an outcome. Moreover, he agreed with the sentiments expressed by his own father some 40 years earlier that a treaty was a serious and binding thing, 'whether contracted with natives or with Europeans, and that the fact of its being contracted with natives does not in any degree lessen its validity or its importance; and, therefore, when you ask that treaty obligations shall be respected, and that justice shall be done to the original inhabitants of New Zealand, you express feelings and ideas with which Her Majesty's Government entirely agree.'¹⁹¹⁹

¹⁹¹⁷ *The Times*, 23 July 1884, in MA 23/4A, Archives NZ.

¹⁹¹⁸ *ibid.*

¹⁹¹⁹ *ibid.*

So far, so good, then: perhaps the long journey to London had not been in vain, even if they did not get to meet with Queen Victoria. Lord Derby, however, quickly proceeded to dampen any expectations that may have been raised. Wherever indigenous peoples and Europeans came into contact conflict was nearly always inevitable, especially over land. New Zealand was a long way away and could not adequately be administered from London. Consequently, almost entire power had been devolved to the people of New Zealand to govern themselves, and it was 'a very complicated matter to interfere in questions which we have practically, whether legally or not, handed over for many years past to be dealt with by local authority.' It would, in any event, be necessary for him, before the British government could go into the substance of the grievances, to refer these back to the colonial administration for comment. The Imperial government would 'as far as our power goes, endeavour to do justice' but he was obliged to add that many of the complaints raised related to matters which had been handed over to the local legislature of New Zealand to handle. Those powers, he warned Tawhiao and the other members of the deputation, could not now be taken back, even if it were shown that they had not always been used in the best manner by the colonial administration. At the same time he believed that the New Zealand authorities would be quite willing to listen to any fair representation which might be made to them, 'and to remedy any injustice which they may have involuntarily committed.'¹⁹²⁰ That would have just left the voluntarily committed injustices to be remedied, of which there were doubtless more than a few.

The historian G.W. Rusden, who had recently published a contentious history of New Zealand, highly critical of the treatment meted out to Maori by various governments, was among the group of well-wishers who had crowded into the Colonial Office. He subsequently wrote that:

A singular scene occurred as the deputation left the Colonial office. They were in various groups in the quadrangle, and discussing their reception, when Mr. Gladstone, the Prime Minister, passed, and entered into conversation with one of the English members of the deputation. Mr. Gladstone was not only aware that Tawhiao and his friends were before him: he knew that they had been

¹⁹²⁰ *ibid.*

imploring his colleague to regard loyally that Treaty concerning which Mr. Gladstone himself had averred in Parliament that “as far as England was concerned there was not a more strictly and rigorously binding Treaty in existence than that of Waitangi.”¹⁹²¹

According to Rusden, as William Gladstone stole a furtive glance at Tawhiao and his party ‘he had only a scowl upon his brow’, something which Rusden attributed to a sense of shame that his fine rhetoric on the Treaty of Waitangi had not been matched by any steps to actively intervene on behalf of the Maori people.¹⁹²²

Others were more sympathetic towards the delegation and its calls for the Treaty to be honoured. Tawhiao’s mission received much favourable attention from the London newspapers. In an editorial published in *The Times* the paper declared that:

...there was pathos and force in their short speeches. They spoke of wrongs and oppression done to their race, of loss of land and property, of ingratitude for their loyalty, and despair of obtaining redress at Wellington. Who knows whether the interview of yesterday afternoon may not take its place in history? We have been careless about the fate of these Maoris. But it will scarcely fail to be remembered that the representatives of a once powerful race, gifted with many virtues and capabilities, came to England to plead for ancient privileges, and that they did so with dignity.¹⁹²³

Another newspaper, the *Globe*, added its view that:

Those who know most about New Zealand are willing to admit that, as is unfortunately the case in almost every colonising experience, the natives have been harshly and unjustly treated by the settlers. The excellent impression produced by the Maori deputation during their visit to London will have strengthened the desire which every right-thinking Englishman must have to see an end to the reign of oppression in New Zealand.¹⁹²⁴

¹⁹²¹ Rusden, *Aureretanga*, p.167.

¹⁹²² Rusden, *History of New Zealand*, vol.3, p.358.

¹⁹²³ *The Times*, 23 July 1884, in MA 23/4A, Archives NZ.

¹⁹²⁴ *Globe*, 23 July 1884, in MA 23/4A, Archives NZ.

Meanwhile, the *Echo* declared that ‘whilst New Zealand remains a portion of the British Empire she ought to be required to respect Treaties to which England is a party.’¹⁹²⁵ Many other papers delivered similarly sympathetic verdicts on Tawhiao’s deputation to the Colonial Office, which the *Evening News* declared had been conducted ‘with greater dignity and moderation than either Welsh Liberals or Irish rebels habitually observe.’¹⁹²⁶ It and other newspapers observed that although Lord Derby had expressed sympathy for the plight of the Maori people, something more than this was called for:

...what was hardly fair was that the Colonial Secretary broadly hinted he would be able to do very little for Tawhiao, even in the event of his cause being just, because his lordship is afraid he may offend the New Zealand Government by being too friendly to the native chiefs. We do not quite understand the position. Either they have, or they have not, the power to redress such wrongs as those of which the Maoris complain. If they have not the power, or if they have parted with all authority over such questions and transferred it to the Colonial Government, it would be far honester to say so at once, and not delude our picturesque visitor with false hopes. If they possess this power and authority still, Lord Derby should then have been perfectly frank in saying he would use it to do justice to Tawhiao, no matter what the New Zealand Government might think or threaten. For it is absurd to suppose that public opinion in the Colony will permanently support against the Colonial Office in London any local Government which wantonly outrages justice in observing its treaty obligations with the Maoris. It is ridiculous to suppose that New Zealanders will raise the standard of revolt against the Queen, merely because her Ministers ask them to behave like honest men to their neighbours.¹⁹²⁷

Less sympathetic, of course, was the New Zealand government. Its official representative in London chose to express his contempt for Tawhiao and party by

¹⁹²⁵ *Echo*, 23 July 1884, in MA 23/4A, Archives NZ.

¹⁹²⁶ *Evening News*, 23 July 1884, in MA 23/4A, Archives NZ.

¹⁹²⁷ *ibid.*

declining a Colonial Office invitation to attend the meeting with Lord Derby. Despite being absent, Bell nevertheless reported to the colonial premier that:

The whole thing from first to last has been a sham. Everybody knew perfectly well that the control of Native Affairs had long ago passed away from the Imperial Government, and nobody imagined that Lord Derby had the least intention of interfering now. The preposterous notion of creating a Maori District under Section 71 of the Constitution Act, was only part of the make-believe that has been going on. The Chiefs have been personally treated with great kindness, but they will go back to their homes having learnt the lesson that for any purpose of Imperial interference in the politics of New Zealand, their visit to this country has been a waste of time.¹⁹²⁸

A few days later, having secured a copy of the memorial itself, Bell wrote again to the New Zealand government. He declared with reference to the memorial that:

There are statements in it which every one who knows anything of Native Affairs in New Zealand knows to be sheer nonsense: and, for a moment, I was tempted to make a public correction, for which ample opportunity would have been courteously given to me. But on the whole I have thought it best to adhere, without change, to the line I took up from the first; which was to enter into no controversy in print about these Chiefs. There is a numerous class of people in this Country, whom nothing will ever persuade that Native races are not oppressed by Colonists everywhere, and especially in New Zealand: there is another class, naturally much smaller in numbers, who believe on the contrary that in New Zealand the Government, the Parliament, and the great mass of the settlers, have sincerely wished and tried to live in harmony with the Native people, and to do them justice; and there is a third class, certainly the most numerous of all, who look upon conflicts between aboriginal and colonizing races as matters of course, and as the inevitable accompaniments of one race being supplanted by the other. To the last class, any controversy nowadays about the merits of the King movement, or the wrongs of the

¹⁹²⁸ Bell to Premier, 24 July 1884, MA 23/4A, Archives NZ.

Natives, or the extent of Tawhiao's authority over the tribes, would be of no interest: the second class do not want convincing: and as for the first, since nothing will ever make them look at a Native question in the light of common sense, any argument about it is simply wasted upon them. On all accounts it has seemed to me most convenient to hold my tongue, and let them alone: I dare say they have been amused, and no harm that I know of has been done to anybody.¹⁹²⁹

Bell had not been quite so passive behind the scenes, however, resorting to a description of King Tawhiao as 'not of sufficiently good character to be given an interview' with the Queen.¹⁹³⁰ On 13 August, shortly before the chiefs were due to depart from England, they wrote again to Lord Derby. The chiefs wrote that:

...we have heard your words denying us an audience with the Queen which we asked for and also an audience with the Prince of Wales wherein we desired to present to them our love and reverence and also to give utterance to the thoughts of your Maori race towards the Queen. The land we have come from is many miles away, a distant land and it is not that we have come without cause, but we and our people thought that we should be welcomed by the Queen, we the chiefs of a race loyal to the Queen and acknowledging the Queen's supremacy and should access to her presence and to testify our honor and goodwill towards her. And we now ask you to kindly reconsider your words for it is not that we ask merely for ourselves but for our whole race for they will be very sad at our not seeing the Queen and not giving utterance to the feelings of our race who have sent us here. For since the completion of the treaty of Waitangi, the Maori race have looked up to the Queen as our great mother, and it was with feelings of this sort that our ancestors wrote their names to that treaty, and it is as if we were cast away as a race who had nothing to do with the Queen. Therefore beseech you to plead with the Queen

¹⁹²⁹ Bell to Premier, 28 July 1884, MA 23/4A, Archives NZ.

¹⁹³⁰ CO 209/244, quoted in Parsonson, 'Te Mana o te Kingitanga Maori', p.182, fn.5.

for us that we may not return, without an audience, to our race, with heavy hearts & with no words to give to our race.¹⁹³¹

Once again the depth of their personal attachment to the Queen was fully evident, and according to Ann Parsonson the Colonial Office was inclined to grant the chiefs their request, but was swayed by the intervention of Bell.¹⁹³²

He was hardly a rogue operator, however, and it was entirely predictable that the memorial of Tawhiao and the other chiefs would face outright rejection when subsequently referred back to the New Zealand government for a response.¹⁹³³ Echoing Whitaker's earlier response when Taiwhanga's petition had been sent to New Zealand for comment, Premier Robert Stout on this occasion declared that:

Ministers are of opinion that they would least embarrass Her Majesty's Government by referring only to the period since 1865, when Her Majesty's troops were removed, when for the first time, the Colony was left to manage the Natives without interference by the representatives of Her Majesty in the Colony. It is quite certain that since that period there has been no infraction of the Treaty of Waitangi. As it is clear that if there was a infraction previously, Her Majesty's Government and Imperial Funds would be liable for the same, Ministers deem it more respectful not express an opinion on the subject, but to leave Her Majesty's advisers in Great Britain to arrive at their own conclusions.¹⁹³⁴

While supporters in England continued to lobby the British government on behalf of their Maori friends there was now no prospect of meaningful intervention from that quarter and little real hope that the New Zealand government would take their grievances seriously. The sense of frustration this engendered is best captured in a July 1886 letter from Tawhiao to the governor, after many months of further, fruitless, exchanges, in which the Maori King declared 'no matter how you may be addressed

¹⁹³¹ Te Wheoro to Derby, 13 August 1884, Aborigines Protection Society Papers, Micro-MS-Coll-20-2432, ATL.

¹⁹³² Parsonson, 'Te Mana o te Kingitanga Maori', p.182.

¹⁹³³ O'Malley, 'Runanga and Komiti', pp.273-275.

¹⁹³⁴ Stout to Governor Jervois, 12 March 1885, GBPP, 1884-85 [c.4413], p.11.

you will not regard nor reciprocate.’¹⁹³⁵ That followed a lengthy and thoughtful response from Tawhiao to news that the original memorial had been declared to lack any merit, in which he declared (amongst other things) that:

...with reference to the statement that since 1865, England ceased to interfere in the management of affairs in New Zealand, and left them to be managed by the Government of New Zealand, it may be so! But the Maori people are not aware of the reasons that led their pakeha friends to apply to have the sole management of affairs in New Zealand, and the assent thereto of the Queen’s Government was given without considering the Maori people or making any enquiries of them. Because the right of governing and the occupation of this island by Europeans dates from the Treaty of Waitangi, and it was left to the Chiefs, the Hapus of the Native people, and Her Majesty to carry out the provisions of the Treaty of Waitangi which became a covenant on the descendants.¹⁹³⁶

While Native Minister John Ballance considered the ‘tone’ of the letter such that a simple acknowledgement would suffice, Governor Jervois was of the view that ‘the Natives generally have been exceptionally well treated in New Zealand & have nothing to complain about.’¹⁹³⁷ While Tawhiao’s letter was forwarded to the Secretary of State for the Colonies, at the same time it was declared that ‘no good end can be served by prolonging this correspondence.’¹⁹³⁸ Tawhiao, meanwhile, had also been informed that the government had nothing to add to its previous communication on the matter of the memorial. Confronted with a seemingly endless – and perhaps ultimately unwinnable – argument, it chose instead simply to close down the debate.

It was mainly because they had not expected to obtain justice from the colonial administration that the petitioners had decided to go over their heads and appeal directly to Queen Victoria instead. That grim if largely realistic outlook on the prospects of successfully appealing to the New Zealand government also helps to explain why there were not more direct petitions to Parliament regarding the raupatu

¹⁹³⁵ Tawhiao to the Governor, 7 July 1886, MA 23/4A, Archives NZ.

¹⁹³⁶ Tawhiao to Governor, 21 September 1885, G 49/20, Archives NZ.

¹⁹³⁷ Jervois, minute, 27 November 1885, G 49/20, Archives NZ.

¹⁹³⁸ Jervois to Stanley, 16 December 1885, GBPP, 1886 (110), p.3.

at this time, as well as the subsequent moves towards establishing a more elaborate Kauhanganui from the early 1890s. That is a matter which will no doubt be explored in the relevant political engagement report for this period, however, and meanwhile we need to consider the final way in which responses to raupatu were expressed in this period.

9.7 Political Negotiations with Crown Representatives

The difficulties of disentangling raupatu from the wider political context is no more apparent than in the intermittent negotiations between Crown and Kingitanga representatives aimed at reaching a permanent peace settlement. Although there had been various prior communications between the parties (many of which have been touched upon previously), these might be said to have commenced in earnest in 1869 and were still being conducted into the 1880s. On the one hand these were very much focused on raupatu issues as negotiations repeatedly broke down over the government's failure to agree to return all confiscated lands to their former owners – an essential precondition for a permanent settlement as far as many members of the Kingitanga were concerned. On the other hand, government objectives were much wider than this, including of course the 'opening up' of the Rohe Potae to European settlement (an objective which became especially crucial from the late 1870s, as the district was identified as a likely route for the North Island Main Trunk Railway) along with the extension of practical Crown sovereignty – the writ of law – over the quasi-autonomous 'King Country' region. These broader objectives are more properly the focus of the political engagement report covering that period. In as much as it is possible to disentangle the different components, this section attempts to plot the broad outlines of negotiations in relation to raupatu-related issues.

As alluded to earlier in the chapter, these negotiations, which almost took on the form of diplomatic communications between neighbouring powers, were the most important form of post-war response to confiscation. 'Unsurrendered rebels' had no obvious legal avenues of redress open to them and petitions to Parliament from such groups were hardly going to be seriously entertained. It was in the political sphere of negotiations that a breakthrough always seemed more likely, not merely because the

King Country assumed many of the characteristics of a de facto independent state at this time, but also because there was more scope for grand or magnanimous gestures aimed at winning over support. Individual agency was more likely to be in evidence.

The first to try his hand was Waikato settler and entrepreneur Josiah Firth. With Queen Victoria's son, the Duke of Edinburgh, visiting New Zealand at the time, officials were (somewhat ironically, given what would occur in 1884) anxious to arrange a meeting between His Royal Highness and King Tawhiao, evidently seeing this as an opportunity to secure some kind of open or implied submission to the Crown. Grey personally wrote to the Maori King in October 1867, declaring that in the near future 'one of the sons of the Queen will visit this land' and that if he was 'willing to give up your weapons of war to a great chief, none greater than this chief will ever come near to you'.¹⁹³⁹ In January 1869 Governor Bowen wrote to Tawhiao, informing him that the Queen's son would be at Auckland in May and that if he wished to welcome the Duke ashore the governor would make sure Tawhiao, as the son of the great chief Potatau Te Wherowhero, was taken care of and well fed.¹⁹⁴⁰ But there was little prospect that Tawhiao would agree to go to Auckland at this time. Instead, a large Kingitanga gathering held in April 1869 had reportedly made it clear that it was:

...the desire of the King natives that the Duke of Edinburgh should pay them a visit. The proposal comes from Rewi, and the King has promised to consider the matter. Should such an invitation be given, it would be a sad pity were the Prince to refuse it. His meeting these natives face to face might really have a vast influence in securing peace to this part of the colony. These natives have isolated themselves even from the Governor, and have thus placed themselves beyond the reach of reasoning or reconciliation. In the son of the Queen they recognise an authority with whom they can confer, yet suffer no loss of dignity in doing so, as it is not against him, as it has been against the Governor and authorities here, that they have been warring.¹⁹⁴¹

¹⁹³⁹ Grey to Matutaera, 17 October 1867, GNZMA 260, Auckland City Library.

¹⁹⁴⁰ Governor Bowen to Tawhiao, 8 January 1869, MA 4/76, Archives NZ. (Working translation by Mark Derby).

¹⁹⁴¹ *New Zealand Herald*, 1 May 1869.

Subsequent to this it was reported that Tawhiao, Rewi and other senior chiefs had agreed to travel to Ngaruawahia to meet with the Queen's son.¹⁹⁴² However, that meeting never took place, and it was only through the urgent intervention of Wiremu Te Wheoro and other 'loyalist' Waikato chiefs that the Duke had agreed to postpone his departure from the colony for a short while at the end of May in order to see if one final attempt could be made to persuade Tawhiao to attend such a meeting.¹⁹⁴³

It was in this context that Firth, along with interpreters C.O. Davis and J.W. Preece, travelled to Waikato late in May in a last-ditch effort to see if he could secure a breakthrough. Although his visit was described as a private one, Firth nevertheless consulted extensively with Daniel Pollen, the government's Resident Minister in Auckland, prior to his departure. That was clear in his later report on the results of the journey. On 10 June Firth wrote to Pollen concerning his meeting with Kingitanga leaders at Orahiri, near Tokangamutu, several days earlier. Firth noted that:

On being informed by you that His Royal Highness the Duke of Edinburgh had consented to delay his departure from Auckland, in order that he might meet Tawhiao and the leading chiefs of the King party at Ngaruawahia, so that his influence might be exerted to restore peaceful relations between the two races, it will be within your recollection that I made you acquainted with my intention to visit the King party with the objects, viz.: -

1. To remove the impression existing amongst the King Natives that the Prince had no power to interfere on behalf of peace.
2. To endeavour to insure the attendance of Tawhiao, Tamati Ngapora, and Rewi, at Ngaruawahia.
3. To ascertain, if possible, the desires of the King Natives, so that neither His Royal Highness the Duke of Edinburgh nor the Government might be put in a

¹⁹⁴² *New Zealand Herald*, 13 May 1869.

¹⁹⁴³ *New Zealand Herald*, 1 June 1869.

false position in consequence of unreasonable demands being unexpectedly made by the King party.¹⁹⁴⁴

Firth had 'purposely refrained' from asking Pollen's opinion on any matter connected with the proposed visit, to avoid compromising the government in any way, but at the same time had been informed that ministers had no objections to the trip. Summarising the outcome of the trip, he noted that the party had left on 27 May, reaching Torohanga on 30 May, before meeting with Tamati Ngapora (Manuhiri) and others at Orahiri on 1 June and the following day. He reported that:

The results were, that Manuwhiri [sic] informed me that they had already sent word to Te Wheoro that they declined to meet the Prince, the Governor, or the Kupapa chieftains at Ngaruawahia.

They further informed me that they were desirous of peace on the following conditions, viz.:-

1. The King to be acknowledged.
2. All fighting on both sides to cease.
3. All criminals to be pardoned.
4. The whole of Waikato, as far as Mangatawhiri, to be given back to them.

In reply, I stated my belief that there might be a possibility of the following conditions of peace being granted to them by Government.

1. The King to be acknowledged in a certain district.
2. Fighting on both sides to cease.
3. A general amnesty to be proclaimed.
4. A portion of land to be given in Waikato for those people to live on who have no land.¹⁹⁴⁵

¹⁹⁴⁴ Firth to Pollen, 10 June 1869, AJHR, 1869, A-12, p.3.

¹⁹⁴⁵ *ibid.*

Thus although Firth was not officially representing the government, the parameters of the subsequent negotiations were established from the outset. While the Kingitanga insisted that all lands as far north as Mangatawhiri should be returned to their original owners, the counter-offer invariably consisted of proposals to return a portion of these only, and the other area of most intense debate revolved around the future role of the Maori King. A fuller report of the meeting, from the pages of the *Daily Southern Cross*, made these differences clearer.

Upon arrival at Orahiri the party found about 100 men assembled outside the main whare, besides women and children. Following karakia and a formal welcome, a feast was laid on for the visitors and speeches of peace directed at them. But the author of the report detected a more strained relationship between Waikato and Ngati Maniapoto, writing that:

The King himself, Tamati Ngapora, and all the principal supporters of the King, are Waikatos; and the Ngatimaniapotos are jealous of the assumption of authority over them, and have accused the Waikatos of maintaining the *aukatis* for their own exclusive benefit. Rewi and his people have as yet lost no territory, and are not embittered against us. They are jealous of the King, and would, I feel sure, gladly get rid of the Waikatos altogether, if the latter could be induced to settle on portions of the Waikato. They are annoyed at the obstinacy of the Waikatos, and already a suspicion is gaining ground that these people, whom the Ngatimaniapotos have received as guests and refugees, desire to remain in permanent possession of the land on which they have been provided with an asylum on sufferance. Already there have been bickerings, and I firmly believe that, so soon as it is known that the Waikatos refuse to accept portions of confiscated territory as a free gift, the breach between the two tribes will be so widened that the slightest accident will bring them into hostile collision with each other. At the present time Rewi and Tamati Ngapora are estranged from each other, in consequence of the latter having opposed Rewi's going to Ngaruawahia to meet the Prince. I have been told by those who heard him, that Rewi said at Tokangamutu on a recent occasion, "I have been the cause of these troubles; I was strong to produce them, and now I will be as strong on the other side to end them." The Ngatimaniapotos also say

that should the King and Tamati involve the Ngatimaniapotos in a war with the Pakehas, it is the Ngatimaniapotos who will suffer, while the Waikatos will lose nothing.¹⁹⁴⁶

But there was little to suggest that Waikato proper were planning another war – or for that matter that Ngati Maniapoto accepted the confiscations as a *fait accompli*. And nor was it correct to suggest that they had not suffered confiscation as the loss of Rewi's own settlement at Kihikihi ought to have made clear to all.

After a confused discussion concerning a letter Sir William Martin was said to have sent to the Kingitanga chiefs with reference to various propositions for peace, and the circumstances in which Ngapora had refused to meet with the Duke of Edinburgh, attention turned to the confiscation issue. Whitiora (Wiremu Te Kumete), who had taken an active part in the Rangiriri engagement, explained what they wanted:

We do not want any particular part of Waikato; we want all Waikato and all New Zealand back; for this is Waikato and there is Waikato (meaning the confiscated line through the country). The Taranaki land belongs to its own people; the Manukau land belongs to its own people; the Whanganui and Waikato lands belong to their own people. Let the Governor call back all you Europeans who are sojourners (*i.e.* living on the confiscated land) merely, throughout the Colony, and not until then will we meet the Governor to talk about peace.¹⁹⁴⁷

More substantive discussions took place on the following day. After an exchange with Ngapora and the other chiefs present, Davis was asked to convey their thoughts to Firth:

Listen, you Pakehas. Listen to the sentiments which have been expressed in your hearing to-day. These people (the Maoris) say that their boundary line is at Mangatawhiri, and they want Waikato given back to them. They say that every transgressor, no matter how dark his crimes, should be pardoned. They

¹⁹⁴⁶ Extract from *Daily Southern Cross*, 8-9 June 1869, AJHR, 1869, A-12, p.6.

¹⁹⁴⁷ *ibid.*, p.7.

also say that fighting should cease, and that peace should be established not only in Waikato, but at Taranaki, Whanganui, Poverty Bay, and all places in the Island, and that the soldiers from all these places should be withdrawn. They ask you to acknowledge their King. Now, then, you are between both parties, and this weighty matter will be intrusted to you, that is, to propose these things to your side, the Europeans. Do not suppose that your dignity will be sacrificed, or that you will become little in the eyes of the Maoris, should you accede to their requests. No, it will be simply a great people doing a great thing.¹⁹⁴⁸

The request for the whole of Waikato to be returned as a precondition for entering substantive peace talks with the governor had already been signalled the day before. The inevitable rejoinder to this – that large parts of the Waikato were now occupied by Europeans as a result of which it was impossible to return more than a portion of the district – was one that the Kingitanga leaders had fully anticipated. Their response, again addressed via Davis to Firth, made it clear that they did not accept such a proposition:

Say not to us that the Waikato is dotted over with houses, and that Europeans are living in various localities. We (the Maoris) did not ask you to build those houses, and to occupy those lands. We are not asking you for anything that is yours; we never acknowledged your boundary line laid down by the Governor (the boundary of the confiscated land), and all we ask of you now is to give back our own, the land of our ancestors. Our boundary line is at Mangatawhiri, and we erected a post there. We were not to cross over to your side, nor you to ours. Do not take that which belongs to a small people like us. We have but a small portion which you should allow us to occupy.¹⁹⁴⁹

Firth proceeded to respond to these demands through Preece, firstly noting his understanding of what had occurred with respect to the Duke of Edinburgh's visit. Rewi had sent down 50 men to Ngaruawahia to meet the Duke, but they had subsequently returned, because nobody knew they were coming down and no proper

¹⁹⁴⁸ *ibid.*, pp.10-11.

¹⁹⁴⁹ *ibid.*, p.11.

intimation of their intentions had been given to the governor. When it appeared that some misunderstanding had arisen, and that the Duke was not going to visit Ngaruawahia, requests had been made for him to remain in the land, 'so that peace might be established between the two races.'¹⁹⁵⁰ Firth had accordingly come to their part of the country to understand their intentions and in order to remove any misunderstandings they might harbour. Emphasising that he came as a 'man standing alone', and not as a representative of the government, Firth nevertheless indicated his view that it was likely the King's standing would be recognised over a certain district, and addressed the various other points raised, before adding that:

...if you mean by our giving back the land that you expect the Government to give back the whole of Waikato, I tell you that is a thing which will never be agreed to. With regard to giving portions of land to people who have none, I know that has always been the intention of the Government, and their intentions are unchanged. If peace be established I believe the Government will agree to give portions of the Waikato.¹⁹⁵¹

At this point Firth was clearly surprised to be informed that, according to Manuhiri, Sir William Martin's letter had already indicated a willingness to return all of the lands. While Martin was a well-known opponent of confiscation, it would seem unlikely that he would have made such a suggestion, knowing full well that it was one the government was never likely to consent to. Whitiora, though, returned to the issue of a general amnesty, stating that:

According to the opinions of you Pakehas, these killings you speak of were murders, but we say they are not. This would be a murder, if I were to kill you now that you have come here on a friendly visit; or if I were to kill Mr. Firth, that would be a murder. If I were to say to-day in a friendly spirit, "come round by this path," intending evil while professing friendship, if I took you out of the safe path into that of danger and you were killed, that would be a foul murder. And here are your foul murders: - General Cameron told us to send our women and children to Rangiaowhia, where they should remain

¹⁹⁵⁰ *ibid.*

¹⁹⁵¹ *ibid.*, p.12.

unmolested; but he went away from Paterangi with his soldiers after them, and the women and children were killed and some of them burnt in the houses. You did not go to fight the men; you left them and went away to fight with the women and little children. These things you conceal because they are faults on your side, but anything on our side you set down against us, and open your mouths wide to proclaim it. That deed of yours was a foul murder, and yet there is nobody to proclaim it. Not only in this island are the footprints of your evil deeds visible, but in every island whereon you had touched.¹⁹⁵²

Firth proposed that if they could agree about the land and other things spoken of a letter should be composed and he would take it to the Duke, or if he had already left to the governor or the General Assembly in Wellington. But if they continued to insist upon receiving back the whole of Waikato he warned them again it would not be done and nor would he be prepared to go to Wellington with such a demand.¹⁹⁵³ In any case, the Kingitanga party would not budge in their refusal to put their demands on paper, insisting that future negotiations must be face to face and asked Firth what crime they had committed that only a portion of their lands would be restored to them. Firth, in response, declared that 'Rewi and the Waikatos went down to Taranaki. They interfered in a quarrel with which they had nothing to do. That is the reason why the Waikato lands were taken.'¹⁹⁵⁴ That prompted Ngapora to observe that the governor and his troops had travelled down from Auckland to Taranaki for the fight.

When Ngapora suggested that the Europeans were now holding a court which would take days to come to a conclusion, Preece replied that it might take months, prompting an unnamed Maori to call out 'Years'. But Firth and his party were due to depart the following morning, and it was agreed that there was little more to be said. Firth, though, had one final go, asking 'Once and for all, will you authorize me to state to the Governor that you are willing to make peace on these terms, namely, the assent to the King; all fighting to be at an end; free pardons to be given to all criminals: and a portion of Waikato to be given up to you'. Ngapora's reply that 'We must have all of Waikato', prompted Firth (with his arms behind his back) to retort that 'You have tied

¹⁹⁵² *ibid.*, p.12.

¹⁹⁵³ *ibid.*, pp.12-13.

¹⁹⁵⁴ *ibid.*, p.13.

my hands. I shall go back to my kainga and remain quiet, with my wife and children. I shall not consent to be the bearer of your propositions.'¹⁹⁵⁵ Asked whether they would finally agree to go and visit the Duke of Edinburgh if he had not already departed, Ngapora declared that their answer to that had already been made clear. Moreover, Rewi's word about going to Ngaruawahia was 'he kupu taurangi' – an indefinite figure of speech.¹⁹⁵⁶

While Firth's trip could not be described as direct negotiations between the parties, Firth was definitely acting as a kind of proxy, whether explicitly authorised or not, for the Crown. Prospects for more direct negotiations appeared to improve at the end of June 1869, when Donald McLean was appointed Native Minister in the incoming administration of William Fox. McLean was well-known to many of the Waikato chiefs, had advocated a moderate approach towards the Kingitanga in the 1850s and appeared to oppose many aspects of confiscation policy. Indeed, just months into office he told J.D. Ormond that 'I believe that members of the Cabinet are agreed that the confiscation policy, as a whole, has been an expensive mistake.'¹⁹⁵⁷ There seemed some prospect that, during his term in office, real steps might be taken to roll back raupatu.

It was not long before the Waikato chiefs were given an opportunity to find out first hand. Perhaps it was the news that Makarini, as he was known to Maori as, had assumed office as Native Minister that had prompted an invitation to meet with the leading chiefs. In any case, according to the official account of what followed, McLean, 'having received an intimation that Rewi Maniapoto and Tamati Ngapora had expressed a wish to meet him, it was considered a favourable opportunity for breaking through that rigid exclusiveness which had for a series of years been maintained towards the Government by the so-called Maori King party.'¹⁹⁵⁸ With this view in mind, McLean had departed for Waikato on the afternoon of 2 November 1869, reaching Alexandra two nights later. At this point things did not look promising. The 'loyalist' chief Ahipene Kaihau, who had just returned from

¹⁹⁵⁵ *ibid.*, p.14.

¹⁹⁵⁶ *ibid.* In 1878 one reporter was told by some Kingitanga Maori that the Duke would have been welcomed had he come to them but they had determined not to go to him. AJHR, 1878, G-3, p.11.

¹⁹⁵⁷ McLean to Ormond, 27 October 1869, AJHR, 1870, A-8, p.26.

¹⁹⁵⁸ 'The Native Minister's Interview with the Leading Waikato Chiefs', n.d. [c. November 1869], AJHR, 1870, A-12, p.3.

Tokangamutu, gave a less than positive account of the state of affairs in that place and counselled McLean against proceeding any further. Despite this, on 6 November McLean and his companions reached Otorohanga, described as ‘one of the points of the “Aukati,” of which so much has been said and written, and the crossing of which, was strictly prohibited under the severest penalties.’¹⁹⁵⁹

A day after McLean’s arrival, Wiremu Te Pukapuka, a Ngati Maniapoto chief, arrived with a message from those assembled at Tokangamutu, along with another letter from Rewi (by this time known as Manga) in which he promised to come forward and meet McLean the following day. It appeared the trouble at Tokangamutu had been as a result of a dispute as to the location at which the meeting with McLean should be held. That was eventually resolved in favour of Pahiko, which was reached by the Native Minister and his party on 9 November 1869. Tamati Ngapora (Manuhiri), Rewi Maniapoto, Taonui, Takerei Te Rau and many other leading Waikato and Ngati Maniapoto chiefs were present on this historic occasion. Following karakia many of the chiefs came forward and warmly exchanged handshakes with McLean, before food was placed before the visitors. After the meal was concluded, and a considerable period of time having elapsed, McLean made his way to the front of the whare where the principal rangatira were seated, telling the chiefs that:

I have for some time been waiting to hear the usual words of salutation to the stranger; but as I am given to understand you wish to depart from your custom, and desire that I should speak first on this occasion, I will do so.

Waikato and Ngatimaniapoto – Salutations to you! It is not peace that has brought me here: it is because of the distracted state of the country that I have come to see you. I do not wish to deceive you by talking of peace when we may have discord; but let what may happen, whether good or evil, let us clearly understand each other. There is no reason why we should not now decide between good and evil; both have been in existence, and have been going side by side in this Island for a long time. I am no stranger to you; I

¹⁹⁵⁹ *ibid.* In an earlier chapter it was noted that there appear to have been effectively an inner and outer aukati in place in the late 1860s, the former being located just to the north of Hanganiki, in the vicinity of Otorohanga.

have talked with your old chiefs – the great trees of the forest, - now passed away. They are gone, we are still here, and I now talk to you as I have frequently done before. We have been enemies, and fought against each other – we may do so again – but is this any reason why we should not, on this occasion, have our fight out in words, in the broad light of day, and then determine whether good or evil is to prevail?¹⁹⁶⁰

McLean went on to give words of encouragement concerning what he viewed as recent actions on the part of the King party conducive towards peace, but his speech was met with a long silence. Finally, Rewi came forward and briefly welcomed McLean. A further long pause ensued, before he spoke again. All eyes were then on the Taupo district, where a sharp engagement had recently been fought at Te Porere, where the actions of Horonuku Te Heuheu and other members of Ngati Tuwharetoa came under scrutiny. Had they been captured and imprisoned by Te Kooti or did they join him voluntarily? And if the latter, would yet more lands now be confiscated in punishment for their actions?¹⁹⁶¹ These events were clearly prominent in the thoughts of those assembled before McLean. Rewi told the Native Minister, ‘This is my word. Kati – Kati – Kati me mutu. Cease – Cease – Cease (fighting), let it end; and here is another word: let my land at Taupo be restored; you have got the men, but leave the land with me. Te Heuheu is in your hand; he has been foolish – deal mercifully with him and let him be liberated.’¹⁹⁶² McLean, in response, declared that if Rewi would do his part to assist in the work of restoring order in tandem with the government, ‘then in reality will peace be established, a peace which shall not afterwards be broken.’ Further, no lands would be taken at Taupo without the consent of the owners, and Horonuku would be released. If Rewi was willing to travel to Taupo, McLean added, he would meet him there and together they could settle the outstanding questions in concert with the chiefs.¹⁹⁶³ Further discussion ensued with respect to Te Kooti, before Rewi brought the exchange to an end by declaring that ‘enough had been done for that time, and that a great deal had been accomplished in one day. There were other days in store. Let the sun shine and the rain fall on the words now

¹⁹⁶⁰ *ibid.*, p.4.

¹⁹⁶¹ See Bruce Stirling, ‘Kingitanga to Te Kooti: Taupo in the 1860s’, (report commissioned by the Crown Forestry Rental Trust), April 2005, ch.6; Binney, *Redemption Songs*, pp.187-191.

¹⁹⁶² ‘The Native Minister’s Interview with the Leading Waikato Chiefs’, n.d. [c. November 1870], AJHR, 1870, A-12, p.4.

¹⁹⁶³ *ibid.*

spoken. It was not a matter of little importance that they had seen and conversed with Mr. McLean. If only a fragment of light was now visible, like the dawn it would soon spread.¹⁹⁶⁴ Several chiefs came forward and shook hands with McLean before the Native Minister's party left for Otorohanga.

Although the meeting with McLean had barely even touched on the major issues in dispute, as a confidence-building exercise it had been invaluable. The Native Minister sent a positive account of the meeting to various chiefs around the island,¹⁹⁶⁵ and exchanged several letters with Tamati Ngapora and Rewi.¹⁹⁶⁶ In December McLean wrote privately to the former Native Minister F.D. Bell, noting the fortunate timing of his meeting with the Kingitanga leaders. The last of the British regiments was shortly about to depart from New Zealand, and McLean noted that:

The removal of the 18th regt. at the present time is exceedingly unfortunate but not after all so bad as it would have been had peace not been made with Waikato. The confidence which this has created is wonderful and I have no doubt of the sincerity of the Natives if we can only glide into a state of peace without giving any unnecessary inattention on our part which I regret to say we are often too apt to do without being at all times conscious of the consequences, or of the suspicion by which the pakehas acts [sic] is viewed by a proud and jealous race. It may and is alleged that the King party were tired of the war [;] that they had enough of it and consequently desired peace [;] my observation led me to different conclusions. The Natives as you know attach little value to time, the Ngatimaniapoto had not materially suffered in life or estate [;] 5 or 10 years more of seeking isolation would not be distasteful to a people who had large resources, plenty of food, no trespasses or annoyances from Europeans[,] a commanding position among the tribes and greater sympathy than we are aware of even by many of our best allies. Under these circumstances the isolation was more enviable to a New Zealanders [sic] view than might be supposed...¹⁹⁶⁷

¹⁹⁶⁴ *ibid.*, p.5.

¹⁹⁶⁵ McLean to Maori Chiefs, 12 November 1869, AJHR, 1870, A-21, p.8.

¹⁹⁶⁶ See various letters in AJHR, 1870, A-21.

¹⁹⁶⁷ McLean to Bell, 22 December 1869, McLean Papers, MS-Papers-0032-0158, ATL.

McLean attributed the recent breakthrough to a more conciliatory approach on the part of the new ministry of which he was a member, and clearly believed the end of the aukati was in sight. But in hindsight perhaps he had been right not to underestimate its appeal to many Maori.

In any case, a further meeting was held at Te Kuiti in January 1870 attended by Wiremu Te Wheoro (who forwarded an account of the visit to McLean) and many of the leading Kingitanga chiefs, including Tawhiao. Although the focus of the discussion was on what should be done with respect to Te Kooti, the fact that it was taking place at all was a further sign of the thaw in relations.¹⁹⁶⁸ One chief later secretly informed McLean that 'Peace would have been firmly established by Manuwhiri [sic] when you went to the Tokangamutu, but Rewi took it into his hands, and Manuwhiri did not address you. The bad reports are by other men; but Manuwhiri and Matutaera wish for you to be their friend in the years which are to come.'¹⁹⁶⁹ Late in April 1870 a Kingitanga delegation even travelled to a meeting with 'loyalist' chiefs at Rangiriri. They did so, it seems, in order to convey the clear message that trouble would result if road building and the telegraph wire then in construction extended over Maori land beyond the confiscated boundary, and in turn were warned not to interfere with lands north of their own aukati.¹⁹⁷⁰ That was repeated in a message sent from Manuhiri to McLean soon after.¹⁹⁷¹

Meanwhile, in May 1870 a further large meeting was held at Te Kuiti. Te Wheoro reported general agreement that nothing should be done to cause alarm and, having listened to the declarations of Tawhiao, declared that 'I came to the conclusion in my own mind that the prospects of a peace throughout the Island were now at last of a permanent character'.¹⁹⁷² According to Te Wheoro, Tamati Ngapora (Manuhiri) gave a highly figurative speech that lasted a whole day and into the night. Te Wheoro added that:

¹⁹⁶⁸ Wi Te Wheoro to McLean, 'Account of My Visit to Te Kuiti', n.d. [c. January 1870], AJHR, 1870, A-21, pp.16-17.

¹⁹⁶⁹ Hetaraka Nero to McLean, 3 March 1870, AJHR, 1870, A-21, p.18.

¹⁹⁷⁰ Te Wheoro to McLean, 3 May 1870, AJHR, 1870, A-21, p.23.

¹⁹⁷¹ McCan, *Whatiwhatihoe*, p.66.

¹⁹⁷² Te Wheoro to McLean, 9 June 1870, AJHR, 1870, A-21, p.26.

On the next morning, he spoke again in figurative language. He said: - “I myself will carry you to the temple of your forefather, Israel; whether by the strength of the sword or by the arts of peace time will tell.” The interpretation of these words is as follows: I will carry you back to the land which your father, Potatau, possessed; whether by force of arms, or by the milder negotiations of peace, will by-and-bye be seen. At this stage I replied to his words thus. I said – “Not indeed by force of arms, but only and entirely by the negotiations and endeavours of peace.” He replied – “Yes, indeed, by peaceful means alone.”¹⁹⁷³

In a paper laid before Cabinet by McLean in September 1870 the Native Minister recommended that, although a ‘reconciliation’ had taken place with the Maori King, still it was the case that a policy of non-interference was ‘decidedly the safest; any meddling with the natives before they are prepared to offer or receive overtures would be most unwise.’¹⁹⁷⁴ He observed that the definition of districts within which the tribes could continue to carry out their own laws and usages had long been advocated by some observers, and noted that such an approach would no doubt be favoured by adherents of the King:

They exercise an independent jurisdiction within a certain district, they are not subject to the restraints and annoyances of progressive colonization, which, however we may regard it from our point of view as advantageous to them, they recognise as the extinction of their nationality and independence.¹⁹⁷⁵

McLean argued that if a general desire was exhibited on the part of the King’s supporters to maintain a ‘friendly neutrality’ within defined limits, then it would be prudent to meet such a demand. And in comments that arguably came a decade or more too late, he observed that:

In theory the whole race come under the designation of British Subjects and it is alleged that no exceptional system or laws should prevail under the same

¹⁹⁷³ Te Wheoro to McLean, 11 June 1870, AJHR, 1870, A-21, p.27.

¹⁹⁷⁴ McLean, Paper laid before Cabinet, 16 September 1870, McLean Papers, MS-Papers-0032-0030, ATL.

¹⁹⁷⁵ *ibid.*

sovereignty. This has all along been a mere theory, the only effect of which has been to induce Europeans on the one hand to expect the enforcement of the Queen's writ throughout the country and on the other of exasperating a large section of the aborigines who emphatically declare national independence and deny the right of any foreign power to exercise jurisdiction over them.

It is full time that the Government should decide that it is only within certain settled limits where the large majority are of the European race that English laws can prevail, and that it is not prepared to afford protection to any who may choose to reside beyond the frontiers of territory acquired from the Natives.¹⁹⁷⁶

Through a policy of judicious management, McLean believed that it might even be possible 'to glide into a state of peace without any specific terms.'¹⁹⁷⁷ And yet, while McLean's approach had much to commend it in term of eschewing a confrontational or provocative stance in favour of one based on re-establishing peaceful and cordial relations between the parties, there would invariably come a point at which specific terms could hardly be avoided, particularly with reference to the confiscated lands.

Subsequent to this, in September 1871, W.G. Mair attended the first of many meetings with the Kingitanga leaders he would be present for, and received a warm reception.¹⁹⁷⁸ Then, in June 1872, representatives of Ngati Maniapoto and Ngati Raukawa travelled across the aukati line to Alexandra, to attend a further meeting with McLean.¹⁹⁷⁹ While peaceful sentiments were once more in evidence, according to Mair some of Tawhiao's followers had declared that if he was to make peace with the governor he would die soon after, just as Hone Heke, Te Rangihaeata, Wiremu Tamihana, and Te Ua Haumene had done so.¹⁹⁸⁰ Meanwhile, other concerns were beginning to preoccupy Ngati Maniapoto leaders. If the government was not willing to return the whole of the Waikato, as seemed to be the case, might it not instead

¹⁹⁷⁶ *ibid.*

¹⁹⁷⁷ *ibid.*

¹⁹⁷⁸ *Daily Southern Cross*, 29 September 1871; Parsonson, 'Te Mana o te Kingitanga Maori', p.12.

¹⁹⁷⁹ *Daily Southern Cross*, 20 June 1872; *Waikato Times*, 13 June 1872.

¹⁹⁸⁰ Mair to Native Under Secretary, 2 July 1872, AJHR, 1872, F-3, p.8.

make over some of their lands to Tawhiao? And if the government was willing to acknowledge the Maori King's authority over a specified area, as Firth had earlier indicated might be possible, would it not again be their lands subject to this new and active role of governance?¹⁹⁸¹

Adverse weather contributed to a further, this time unscheduled, meeting between McLean and various Kingitanga leaders early in 1873, as rough sea conditions forced the government vessel the *Luna* to seek shelter inside Kawhia harbour on 1 April. It was said that had the vessel not been a government one with McLean on board (along with the Acting Governor George Arney and many other dignitaries) it would have been ordered to depart the harbour at once, while just as clearly had the visit been deliberate rather than forced by nature it would have been greatly resented. Instead, McLean and his travelling companions were warmly received.¹⁹⁸²

A subsequent visit did not go quite so well. Later in April 1873 James Mackay travelled to the Rohe Potae to investigate the recent killing of Timothy Sullivan at Pukekura. He was attacked in his tent at Te Kuiti near dawn on the morning of 6 May by a man named Ruru from Ngati Mahuta, managing to fend off his attacker before a fatal blow could be delivered. Others quickly rushed to his aid, including Rewi, who condemned the attack and declared that although he was a fighting man he could never kill someone sleeping in his house.¹⁹⁸³ Ruru's was no lone act, however, and throughout the following day no less than three messages were sent from Ngati Mahuta to Tamati Ngapora demanding that they be permitted to kill Mackay. Rewi Maniapoto, greatly angered by these developments, then addressed his own people (and some Ngati Tuwharetoa present), telling them:

At the time of setting up the King, I objected, because I saw that there could not be two chiefs for one house, or two captains for one ship. I said, let us fight the Europeans, and if they kill us all, let them take our lands. I accordingly went to fight at Waitara. Before going, my elder relation, Potatau, said to me, "Rewi, you are the descendant of a murderer, Tukorehu (the Maori

¹⁹⁸¹ Parsonson, 'Te Mana o te Kingitanga Maori', p.13.

¹⁹⁸² *Star*, 3 April 1873.

¹⁹⁸³ Mackay to McLean, 10 July 1873, AJHR, 1873, G-3, p.6.

Cain), we are now Christians, and if we fight we must cease from the evil ways of our ancestors; there must be no murder committed. I was known as a bad man, the descendant of a family of murderers. I, the man of evil, consented to the word of Potatau. I thought the days of committing murder had gone by. Through the first Taranaki war, I and my people fought fairly, and committed no murders; and the very men who asked me to forbear from murdering people, now commit murders themselves. If they desire to kill people, why do not they do so openly? These are the acts of Waikato, the people who deprecated murders. Todd, at Pirongia, was the first. The European (Lyon) at Kihikihi, near Orakau, was the second. Laney, struck with the taiaha, the third. Sullivan, the fourth; and, but for fortunate circumstances, you, Mackay, would be the fifth.

By contrast, Rewi added, that:

My people only committed one murder – that of Mr Whitely, the missionary. I was not aware that they intended to do so. Had I been acquainted with their intentions, I would have prevented it. I subsequently remonstrated with my people, and they said, ‘peace had not been made, it was an act of war.’ I said, ‘if this is war, there shall be no recurrence of it;’ and since then my people have remained quiet. When Todd was killed, I used my influence to get the murderers given up, and I was not attended to. Murders still take place, and I strongly object to such proceedings. I say, if you desire to kill men, fight. I carried on the war at Taranaki. I fought the Pakeha at Te Mauku, Waiari, and Orakau, and I think they will admit I did so fairly. I originally urged war with the Europeans, but I was not the one to give it up. I said let us all die, and then the Europeans can have our country. The Waikato, on reaching Maungatautari, said, ‘let us leave off fighting the Pakeha.’ I went away disgusted. I never made peace, but have not committed murders. The Waikato men who said “cease fighting,” do so. Why do not they fight openly and straightforwardly?¹⁹⁸⁴

¹⁹⁸⁴ *ibid.*, pp.6-7.

Mackay was carefully protected by Rewi and his fellow tribesmen throughout the remainder of his stay in the district and came away convinced that neither Ngati Maniapoto nor Ngati Raukawa would join in any hostile movement against the settlers arising out of recent events. On the other hand, he cautioned that:

In considering the question of the defence of this district, it must always be borne in mind that the Waikato and Ngatihaua Tribes have no land of their own at Tokangamutu, and that some subdivisions (hapus) of Waikato lost the whole of their lands by confiscation.

These are the men who smart under the feeling that they are mere sojourners on the lands of Rewi and Ngatimaniapoto, and it is against them that the Government of the country must at all times be upon their guard, and keep the frontier in good defensive order, or there will be numerous repetitions of acts similar to that of Mohi Hotuhotu Purukutu [Sullivan's killer].¹⁹⁸⁵

Then, in January 1875, McLean was invited to meet with Tawhiao at Waitomo and Otorohanga.¹⁹⁸⁶ The meeting, held over two days on 3 and 4 February 1875, again failed to achieve a firm result, but was nevertheless viewed by the Native Minister as a positive development. He subsequently reported that:

The tone and demeanour of Tawhiao and of his principal chiefs and adherents afforded every indication of a desire to once more resume with the Europeans the friendly relations which had been interrupted by the war, and by the strict seclusion in which that section of natives had kept themselves during the past fifteen years.

Tawhiao frequently expressed his satisfaction at meeting the Native Minister whom he regarded as his Father's friend in past times, and often greeted him as such. At the first meeting it was not deemed advisable to do more than display a desire for friendly intercourse, and foreshadow certain terms, which

¹⁹⁸⁵ *ibid.*, p.11.

¹⁹⁸⁶ Te Wheoro to Native Minister, 21 January 1875, AJHR, 1875, G-4, p.2; Tawhiao to Native Minister, 31 January 1875, AJHR, 1875, G-4, p.2.

the Government would be willing to agree to. With these Tawhiao seemed well pleased. The terms may be briefly stated as follows:-

1st. Tawhiao to exercise authority over the tribes within the district where he is now recognized as the head.

2nd. A certain number of Chiefs to be selected by him in maintaining order and repressing crime among his people.

3rd. The Government to support him in carrying on the duty which would thus devolve upon him.

4th. A suitable house to be built for him at Kawhia and certain portions of land on the Waipa and Waikato Rivers to be granted to him.

Tawhiao expressed himself satisfied with the proposals, and it is expected that he will before long assent to them and afford to the Government his co-operation and support, in preserving law and order among the tribes of Waikato and Ngatimaniapoto who recognize his influence and authority.¹⁹⁸⁷

Ann Parsonson has described these terms as 'generous, if ambiguous'.¹⁹⁸⁸ It was hardly clear exactly what the extent of the lands which it was proposed to return was, merely that it was far from the entire district. In 1872 the General Assembly had resolved that all land confiscated from 'loyalists' should be returned to them.¹⁹⁸⁹ The same message was delivered by the Native Affairs Committee, which declared that it was of the opinion that 'where it is found to be the case that tribes have not been actively engaged in warfare against the Queen, or having been engaged have returned to their loyalty, the lands which have been taken from them, if not otherwise disposed of, should be restored to the Native owners.'¹⁹⁹⁰

¹⁹⁸⁷ McLean to Agent General, 16 February 1875, AJHR, 1875, G-4, p.3.

¹⁹⁸⁸ Parsonson, 'Te Mana o te Kingitanga Maori', p.17.

¹⁹⁸⁹ Richard Hill, 'Enthroning "Justice Above Might"? The Sim Commission, Tainui and the Crown', (report commissioned by the Treaty of Waitangi Policy Unit), 1989, pp.1-2.

¹⁹⁹⁰ AJHR, 1872, G-11, p.4.

It was obvious that nothing quite that sweeping was being proposed by McLean and nor perhaps was the response to these proposals as positive as the Native Minister had suggested. That much was clear from the more detailed narratives of the event which accompanied McLean's report.¹⁹⁹¹ According to one of these after the usual forms of welcome had been taken care of, Tawhiao at length arose and addressed the Native Minister:

McLean, I say to you welcome; I am glad to have this opportunity of seeing you; now let me say to you these few words: it is right that I should repeat the request already made that the Europeans should locate themselves within the lines already admitted by us as the true ones [ie., Mangatawhiri], should they retire, I myself will follow and become as one of them. I ask this on behalf of my people, I leave this matter nevertheless in your hands.”¹⁹⁹²

Another account of the meeting recorded Tawhiao as having declared ‘let the Europeans who are now spread over the world (probably Waikato) return to the place fixed upon for them. If they return to that boundary, I will follow them, and return to the Waikato.’¹⁹⁹³ McLean refused to give a direct answer to the demand, insisting that it was one that would require his consideration. When invited by Tawhiao to pass over to his whare, McLean replied that he would gladly do so, but only after etiquette had been properly observed and the hosts had first visited him at his own tent. Tawhiao eventually obliged and during the course of this more intimate discussion the pair argued over the location of a proposed meeting with the governor, with the Maori King insisting that it should be at Te Kuiti and McLean adamant that Kawhia was a preferable location.

At the close of talks that day McLean retired to Otorohanga, and Tawhiao and his entourage followed him there the following day for a resumption of their talks.

¹⁹⁹¹ Another detailed account of the meeting appeared in *Te Waka Maori o Niu Tirani*, 31 August 1875.

¹⁹⁹² [McLean's meeting with Tawhiao], 3 February 1875, AJHR, 1875, G-4, p.5.

¹⁹⁹³ R.S. Bush, 'The Hon. the Native Minister's Meeting with Tawhiao at Waitomo and Otorohanga', 17 February 1875, AJHR, 1875, G-4, p.7. However, one correspondent had earlier informed McLean that 'The King's word is for all the Soldiers to leave and all the Pakehas to remain peaceably on their respective farms and the Waikatos to return to Waikato.' William Jackson to McLean, 3 August 1874, McLean Papers, MS-Papers-0032-0350, ATL.

According to one account of this second day, Tawhiao was invited to let the Native Minister know his views:

After a considerable pause he submitted a question with which he opened yesterday's proceedings, for the further consideration of the Native Minister. The question as to whether the restoration of the confiscated portion of the Waikato could not be carried out so as to enable him to re-occupy the land, and referred at the same time to the abandonment of the military posts within those limits; observing also, that upon the concession of these points on the part of the Government, the way would soon be made clear for the adjustment of all existing difficulties, and the re-establishment of friendly relations with the Government. This statement was made by Tawhiao with much caution and candour, so different from the close reserve hitherto maintained by him, even during the public assemblies of his own people. The question thus put had evidently been thoroughly weighed by himself and advisers; and, judging from the opinions expressed by some friendly chiefs when briefly introduced on the day previous by Tawhiao himself, was one which it was impossible to avoid on his part without seeming to compromise the interests of his own people as a body, and might apparently be construed as a hasty surrender of the claim they had hitherto advanced.¹⁹⁹⁴

The demand for the return of the full extent of the lands confiscated was not one emanating from Tawhiao alone, then, but reflected the will of the people. Tawhiao could not lightly abandon such a request without risking being disowned by his supporters.

On the other hand, McLean clearly hoped that, in time, the Kingitanga would weary of their situation and agree to drop the demand. It was recorded that:

Sir D. McLean, while admitting the candour shown by this chief on this occasion of his interview with a member of the Government, delivered his reply in so decided a manner as to leave no doubt on the minds of all present

¹⁹⁹⁴ [McLean's meeting with Tawhiao], 4 February 1875, AJHR, 1875, G-4, p.6.

that a concession of the kind was quite impossible, and explained that the Parliament of the country had, with the approval of the Imperial Government, long since settled the question; while at the same time, as Native Minister, he was prepared to do all he could to make such arrangements as were within his power towards bringing about and cementing relations which might be conducive to the interests and well being of both races. Sir D. McLean further intimated that, in the event of Tawhiao and party desiring to hold a location in the Waikato, he was prepared to offer him land on the Waipa, a block of considerable extent having been lately purchased by the Government, or to assist him in building a respectable house in Kawhia, where officers of the Government could more easily visit him, and thus help to preserve his influence as the head of his people, and as having in view the advancement and prosperity of the district, which could only be accomplished by a firm and lasting peace; and now that they had by his own invitation met for the first time, he trusted that it was the forerunner of that more friendly intercourse which seemed to be desired on all sides.¹⁹⁹⁵

A break in proceedings then followed in order to allow Tawhiao to further consult with his people, but this resulted in nothing but a further statement from the Maori King that each further day would bring with it fresh thoughts, 'without compromising the Government or themselves on the present occasion.'¹⁹⁹⁶

W.G. Mair, in reporting on the outcome of this meeting, suggested that the demand for the return of all confiscated lands had almost been ritualistic. He wrote that:

I venture to assert that this meeting of the Hon. the Native Minister and the so-called Maori King is one of the most important events in the entire history of our intercourse with the Maori people. It is true that during the last few years a good deal has been done in the way of reconciliation, but it was left for this meeting to bring about perfect cordiality between the Government of the Colony and a very prominent section of its inhabitants. Tawhiao's application for the restoration of Waikato was made to please his people and for his own

¹⁹⁹⁵ *ibid.*, pp.6-7.

¹⁹⁹⁶ *ibid.*, p.7.

credits sake, it was understood that such an application would be made, and the King party were quite prepared for the reply, it is no new thing for people of other races to ask for a great deal more than they are content to receive, and in such a case Maori honour is satisfied when it can be said that “the demand was made” even though made *pro forma*.¹⁹⁹⁷

Time would tell whether the request was indeed nothing more than a pro forma one. A return visit from McLean a year later suggested not. As Parsonson notes, ‘Far from showing himself sensible of the liberality of the Government, he seemed to have adopted an even firmer line.’¹⁹⁹⁸ Tawhiao made it clear from the outset that the question was whether McLean was willing to comply with the King’s demand made at Waitomo for all of the confiscated lands to be returned. The meeting, held at Kaipiha in May 1876, opened abruptly:

...Tawhiao, Takerei, and Te Tuhi came to the room occupied by Sir D. McLean. Majors Mair and Te Wheoro were also present, thus making three of Sir D. McLean’s party and three of Tawhiao’s.

Sir D. McLean said to Tawhiao: “Perhaps you have something to say to me, Tawhiao?”

Tawhiao: “I ask you if you agree to the request made by me at Waitomo?”

Sir D. McLean: “To which request?”

Tawhiao: “To what I said about the Europeans being returned to the place designated, and I would follow.”

Sir D. McLean: “I told you, Tawhiao, at our meeting at Waitomo, that it was impossible for me to do so, but at the same time informed you that you should continue to exercise authority over the affairs of your people in your own district.”

¹⁹⁹⁷ Mair to Native Under Secretary, 10 February 1875, AJHR, 1875, G-4, p.12.

¹⁹⁹⁸ Parsonson, ‘Te Mana o te Kingitanga Maori’, pp.17-18.

Tawhiao: “This is my word to you: The men and the land are mine.”¹⁹⁹⁹

Tawhiao was thus not willing to compromise on the core demand, and McLean’s further response that he could not promise the impossible evidently failed to impress. Auckland Civil Commissioner H.T. Kemp, later reported that:

During the several interviews that took place care was especially taken to dispel from the minds of Tawhiao and his followers the hope of ever resuming possession of the Waikato as within the confiscated boundary; and although this hope has never, I think, been seriously entertained by them, I nevertheless, on the other hand, feel persuaded that it has, however remote, been kept alive by persons having no real interest in the peace and prosperity of the country, but actuated merely by a morbid desire to widen the breach already unhappily made between the races in these districts, and thus destroy that confidence which seems to be indispensable to the general well-being of the colony as a whole. Notwithstanding this, it was satisfactory to find that the temper and disposition of this section of the Native people was in a political point of view improved, and that civilities were pleasantly exchanged between them and the officers of the Government who accompanied Sir Donald McLean throughout this important, and, I think I might add, successful mission.²⁰⁰⁰

For all of the emphasis upon the amiable reception they had received, McLean came away from Waikato empty-handed once more, and with his death in January 1877 the one Pakeha more likely than any other to secure a breakthrough by virtue of his personal standing among the tribes had been removed from the scene.²⁰⁰¹

A similar scenario played out early in 1877, when new Native Minister Daniel Pollen held a series of meetings with the Kingitanga leaders. He declared that it was ‘of no use alluding to Waikato. The lands inside are absolutely gone, and even if the Government desired to return them to the natives they could not do so as they had

¹⁹⁹⁹ Notes of Meeting between the Hon, the Native Minister and Tawhiao at Kaipihia, by Major Te Wheoro’, n.d. [May 1876], AJHR, 1876, G-4, p.2.

²⁰⁰⁰ Kemp to Native Under Secretary, 2 June 1876, AJHR, 1876, G-4, p.3.

²⁰⁰¹ Parsonson, ‘Te Mana o te Kingitanga Maori’, p.18.

passed into the hands of the Europeans.²⁰⁰² Rewi Maniapoto, meanwhile, held his own meeting with Pollen, at which (according to one account) he declared his concern was not with the confiscated lands but with the clandestine sale of lands beyond the confiscation boundary, though according to a report of the gathering published in *Te Waka Maori* the rangatira did in fact raise the questions previously discussed between Tawhiao and McLean at Waitomo and Kaipiha, only to be told in no uncertain terms that 'Waikato is gone, it has gone from the owners, it cannot be returned, not a single acre of it.'²⁰⁰³

Perhaps it would take the return to power of another great figure to break the stalemate. At the end of January 1878 Sir George Grey, who had recently been installed as Premier, travelled to Waikato to attend the tangi of Takerei Te Rau.²⁰⁰⁴ About a quarter-mile away from their final destination, Grey and his Native Minister, John Sheehan, got out of the waka they had been carried up the Waipa on, and walked towards a crowd of around 2000 people, assembled in semi-circle. Grey's party passed along in perfect silence, until they reached Tawhiao and his relatives, at which point the tangi resumed. Speeches of welcome followed, with Tawhiao the first to speak.²⁰⁰⁵

Further speeches followed the next day, opened by Tamati Ngapora, who stated that 'The heart is still throbbing with the emotion of the occasion, and I am only thinking now how many years have passed. It is now seventeen years since I saw you last.'²⁰⁰⁶ According to the Ngati Maniapoto informants of W.G. Mair, this seemingly straightforward statement had another layer of meaning to it: Ngapora had been waiting seventeen years for Grey to restore the confiscated lands to him.²⁰⁰⁷ Tawhiao, though, had declined to attend a private meeting with Grey, fearing it would result in 'murmuring'. Nothing substantial came out of the talks, other than agreement that

²⁰⁰² *Waikato Times*, 1 February 1877.

²⁰⁰³ *Waikato Times*, 17 February 1877; *Te Waka Maori o Niu Tirani*, 27 March 1877.

²⁰⁰⁴ A newspaper story from the *Auckland Weekly News* reproduced in the AJHRs is there dated 9 January, and at least one historian has accepted this as accurate. But the chief did not die until about 21 January (*Waikato Times*, 22 January 1878) and Grey certainly did not travel to Waikato in early January. More likely the January date for the article ought to have read 'February'. AJHR, 1878, G-3, p.1.

²⁰⁰⁵ AJHR, 1878, G-3, p.2. See also *Te Wananga*, 9 February 1878.

²⁰⁰⁶ AJHR, 1878, G-3, p.4.

²⁰⁰⁷ Parsonson, 'Te Mana o te Kingitanga Maori', p.23.

Grey should return for a further meeting at a future date. Nevertheless, one reporter detected grounds for optimism:

During the whole meeting not a single word was said about giving back the Waikato. On the contrary, instead of indulging in such a dream, Tawhiao and Manuhiri were anxious to obtain Crown grants for small pieces of land, to which Potatau was entitled, at Mangere, Pukapuka, and Ngaruawahia, showing that they take for granted the irrevocable nature of the confiscation, and now, for the first time, acquiesce in it.²⁰⁰⁸

But if nothing had been directly said regarding the return of Waikato, nor had there been any clear abandonment of the demand for its return. The meeting had, after all, been a ‘non-political’ one, and it was no doubt considered inappropriate to raise such matters on that particular occasion.

Grey returned, as promised, attending a second meeting at Hikurangi in May 1878. An estimated 5000 people were present to welcome the Premier and his Native Minister, but it was several days before the meeting was finally convened. As Parsonson described the scene:

The King spoke of love and friendship; Patara Te Tuhi, the Waikato spokesman, agreed that it was time to do business but would not introduce any. In vain Te Wheoro and Paora Tuhaere, the great chief of Orakei, urged them from the Government side to begin. In vain Sir George spoke of his desire to end their isolation. Waikato were impeded, as always, by the problem of their lost lands. It had prevented them from making progress at their first meeting; it seemed likely now to bring matters to a standstill. The problem as finally outlined by Patara Te Tuhi was simple. They could not begin discussion with the Premier until all matters of dissension between them had first been mentioned. Since, however, they knew it would blight negotiations to bring up their lands they were at a loss to know how to proceed.²⁰⁰⁹

²⁰⁰⁸ AJHR, 1878, G-3, p.5.

²⁰⁰⁹ Parsonson, ‘Te Mana o te Kingitanga Maori’, p.29.

At this point Grey, after telling the gathering that he was so unwell he could not long remain at Hikurangi, proposed that he and Tawhiao should speak together privately, reporting back the results of their conversation. When the meeting resumed the following morning, Tawhiao came forward and told the gathering:

The talking yesterday ended with these words: What was the use of me saying, “Give me back the Waikato,” because it could not be done. You told me to say what I wished, and I shall speak out. This is my word; listen. He put a stake in the ground and said, That stake is Mercer or Mangatawhiri Creek. Let the Europeans living on this Island go back to the opposite side of that river. Let them have the management of the other side, and let me and the chiefs of the Natives manage this side.²⁰¹⁰

While Tawhiao added various other demands in relation to surveys, road-making and the leasing and sale of lands, besides suggesting that he ‘should always be first consulted’, Grey set out his own proposals. He told the assembly that ‘From the answers made by me before about giving back the Waikato, you must all know that it is impossible that I can do that, but I will tell you what I can do for you.’²⁰¹¹ He then proceeded to announce a series of concessions the government was prepared to make:

1. You stand in your authority, to which the Government will add that you are to be the administrator within your district. The Government will assist you and the Chiefs of your district to so administer affairs that peace and quietness will alight on the two races of this Island. The Government will always look to you; they will not look to one side or to the other. It is for you to say lease (land), and it will be leased, sell, and sales will take place within your district. The Government will give you and your Chiefs an allowance for the administration of your district. The Government will give you, Tawhiao, five hundred pounds a year. The moneys to be expended within the district will be given as a whole to him (Tawhiao), for him to distribute as he thinks proper to the Chiefs of his district.

²⁰¹⁰ AJHR, 1878, G-3, p.19.

²⁰¹¹ *ibid.*

2. The Government will give you five hundred acres of land in the District of Ngaruawahia, near your father's grave. The Government will build you a house at Kawhia for you to hold your meetings in.

3. The portions of land remaining to the Government which have not yet been sold to Europeans, situate on the western side of the Waikato and Waipa – those are the portions which will be returned to Tawhiao.

4. In addition to this, inasmuch as I am very desirous that you should become wealthy, I consider that the Government should set apart certain town sections within the townships situate on the Waikato and Waipa, and give them to you in trust for the people, the money arising therefrom to be dealt with as you shall think fit, for I wish that you should speedily become rich, because these are the places which are rapidly increasing in value.

5. With reference to roads, it is my wish that you and I should carry out the arrangements respecting them, and that no person should presume to make roads before it has been settled by you and the Government.

6. With reference to surveys, it is for you to say that surveys are to be made, and surveys will be made.

7. I have thought over these matters, and it is my earnest wish that I may see you living comfortably on the lands which will be set apart for you; should you consent to the proposals which I now make to you, I will give it my special attention, so that you may soon occupy the lands in those places which will now be given back to you, and which have not yet been disposed of to the Europeans. With respect to other matters, that is ploughs, harrows, and other implements, requisite for the proper cultivation of the soil, the Government will make some arrangement for that, so that you may live comfortably and prosperously in the homes that will then be made. These are all the proposals that I am able to make to you. With reference to the pieces in the townships,

Tawhiao and yourselves must examine the maps, and select the portions for you.²⁰¹²

While Tawhiao promised to consider the proposals, Patara Te Tuhi reminded those present that he had correctly predicted that Grey would be unable to return the Waikato.²⁰¹³ Grey, it was reported, was confident that his proposals would be accepted unless something very unexpected occurred. After all, as Parsonson notes, the terms he had offered were the best ones Waikato would ever receive, far exceeding what most settlers were prepared to concede and probably more than Grey himself was entirely comfortable with offering.²⁰¹⁴ But it would still not be enough to convince Kingitanga members who could not accept anything less than the return of the Waikato in full. Tawhiao spent the following morning in consultation with Grey and was said to have ‘expressed his full acquiescence in the proposals made’, but holding that ‘a full consideration of the matter had convinced himself and his friends that there should be a confirmation on the part of those chiefs in different parts of the North Island, who for years past had acted with him.’²⁰¹⁵ The issues at stake were clearly not ones which Tawhiao alone could decide on, and (as Parsonson notes) had he had a free hand, he may well have been prepared to accept Grey’s terms.²⁰¹⁶

Although there had been a number of Ngati Maniapoto present, their senior chiefs in particular, had been largely absent from the meeting with Grey. But on the same day that he and Tawhiao held their private consultation, the premier received a message from Rewi Maniapoto seeking a separate meeting. According to the subsequent account of this interview, held on 12 May:

Sir George Grey and the Native Minister have just returned from Puniu, where they had an interview with Rewi. It will be remembered that Rewi did not attend the meeting which has just finished, and many people thought he was standing aloof. The result of the talk which Ministers have had with him shows the supposition to be unfounded. He met them at the house of a Mr.

²⁰¹² *ibid.*, p.71.

²⁰¹³ *ibid.*, p.20.

²⁰¹⁴ Parsonson, ‘Te Mana o te Kingitanga Maori’, p.31.

²⁰¹⁵ AJHR, 1878, G-3, p.21.

²⁰¹⁶ Parsonson, ‘Te Mana o te Kingitanga Maori’, p.32.

Ross, near the Puniu River, and had a talk of over an hour and half with them. He was fully aware of what had taken place at the meeting, and expressed his approval thereof, and throughout his whole conversation showed himself as still remaining attached to Tawhiao. He starts to-morrow morning early to travel through the lands occupied by his tribe down to Mokau, to proclaim the terms of settlement and procure their concurrence. From Mokau he will proceed to Waitara, and meet William King, the leader of the rebel Natives in the Taranaki war. At that place he will be met by a number of chiefs from other parts of the Island, and the hatchet will be buried on the spot where it was first used. He stated that the meeting at Waitara would be at the end of June, and strongly pressed that, if Parliament was not assembled at that time, Sir George Grey and the Native Minister would, if possible, be present at the meeting.²⁰¹⁷

Although Rewi Maniapoto (accompanied by 8 to 10 other Ngati Maniapoto rangatira) had met with Grey privately, Ngati Maniapoto had previously assembled at Te Kuiti to consider the matters they wished brought forward with the Premier.²⁰¹⁸ It appears that raupatu-related issues were among such issues. Rewi Maniapoto was reported to be ‘excessively pleased at the chance of town acres being reserved in his own favourite place near Kihikihi, and other spots to which he is attached.’²⁰¹⁹ The long-standing complaint concerning efforts to deal in lands to which he and other chiefs south of the aukati claimed interests was also advanced.

In June 1878 Tawhiao visited the township of Raglan, the first time since the war that he had entered a European settlement.²⁰²⁰ Attention, though, soon after turned to Waitara, where Rewi’s peace-making meeting was due to be held later that same month. Poor weather hampered attendance, and Wiremu Kingi could not bring himself to visit the European town located on the site of his former pa, but Grey and Sheehan were there.²⁰²¹ In Rewi’s view, as Waitara was the root of the troubles that

²⁰¹⁷ AJHR, 1878, G-3, p.21.

²⁰¹⁸ *ibid.*, p.34.

²⁰¹⁹ *ibid.*, p.21.

²⁰²⁰ *Waikato Times*, 15 June 1878.

²⁰²¹ *Waikato Times*, 27 June 1878.

had sprung up, it was the appropriate place for a form of reconciliation to take place. But during the course of the meeting, he surprised Grey with one request:

I am speaking solely with respect to the division that is between Europeans and Natives, and of the cessation of all further trouble, so that the Natives and Europeans may be one people as you have said. That is all. I address myself to you. My word is this: To finally finish what we have to say between us two, the persons who fought with one another. That is why I fixed upon Waitara as the place of the meeting. If Sir George Grey should acquiesce that I am to have Waitara, it is finished. That is all I have to say.²⁰²²

Clearly taken aback by this development, Grey called for the meeting to be adjourned until the following morning. Meanwhile, one reporter noted that:

Opinion is divided as to Rewi's real meaning in asking for the restoration of Waitara. Some think that he desires to get back a small portion in order to restore it to William King. Others believe that he takes Waitara as representing all the confiscated land. The third idea is that Rewi simply desires that Waitara should be handed over to him formally, when he would return it as an atonement for his sins.²⁰²³

The fourth possibility, of course, though not mentioned in this report, was that Rewi Maniapoto was literally demanding that Waitara be handed over to him on the basis of the customary claims to the area of Ngati Maniapoto. But when the meeting resumed the following morning, Rewi's meaning was made clear. Waitara was to be symbolically given to him and Grey to hold. As he later informed readers of the *Taranaki Herald*, 'I did not ask for Waitara in the thoughts that Europeans have. I said give me back the evil, that we (Grey, Sheehan, and I), might plant the tree of peace upon it for both races.'²⁰²⁴ That suggestion, once clarified, was one with which Grey was happy enough to go along, telling the meeting that 'Waitara is now give up

²⁰²² AJHR, 1878, G-3, p.50.

²⁰²³ *ibid.*

²⁰²⁴ *Taranaki Herald*, 15 August 1878.

to both of us. It belongs to us two. This is the proper spot on which we should loose our hands from one another's heads and cease struggling.'²⁰²⁵

Rewi Maniapoto had declared his intention to remain at Taranaki for as long as it took to reach a complete settlement of all matters which remained to be resolved. By December he had been prevailed upon by Ngati Maniapoto to return home, but a subsequent invitation to Sheehan to meet with him in the Waikato proved a mistake. Other leading chiefs of Ngati Maniapoto held their own meeting, from which the Native Minister was excluded and Manga failed to attend, at which rumours that lands had been offered to the government for roads and other purposes were condemned.²⁰²⁶ Manga, meanwhile, had created something of a sensation in the township of Kihikihi, which he visited – probably for the first time since the war – in the company of Sheehan.²⁰²⁷ However, one point to emerge from these meetings was a delineation of the lands claimed by Rewi Maniapoto. According to one report:

He demands the restoration to himself of all confiscated or purchased lands lying within his original tribal boundary, *i.e.*, a line from Aotea to Pirongia, then to Waipa, near the junction of the Mangapiko and Waipa rivers, through the Awamutu and Rangiaowhia, over Pukekura ranges, across the Waikato river, through Taupo, across the Ongaruhe river to the sea at Parininihi (White Cliffs). All Europeans within this boundary who may have become fairly possessed of the lands in their occupation, to be unmolested upon their transferring their allegiance to him, Rewi (Maku ake era Pakeha) – his laws only to run within this territory. And, further, the titles to the blocks known as Pohue, Pukekura, Maungatautari, Horahora, Paeroa, Waipa, Tirau, Hinuera, and Turanga Omoana, to be reopened for the purpose of giving him an opportunity of proving his claims over them. These lands lie outside of the boundary above described.²⁰²⁸

²⁰²⁵ AJHR, 1878, G-3, p.51.

²⁰²⁶ *Waikato Times*, 14 January 1879

²⁰²⁷ *Waikato Times*, 11 January 1879. See also *Te Waka Maori o Niu Tirani*, 1 February 1879, 8 February 1879.

²⁰²⁸ *Te Waka Maori o Niu Tirani*, 8 February 1879.

Attention, though, soon shifted to a forthcoming meeting to be held at Te Kopua at which it was widely assumed Tawhiao would finally consent to the terms offered by Grey at Hikurangi the previous year. Instead, Tawhiao refused to formally invite Grey and Sheehan to the meeting, and according to other accounts had made it clear that he did not desire their attendance. He had finished with them at Hikurangi and had no further need for them.²⁰²⁹ Grey, appropriately snubbed, threatened to boycott the meeting altogether, before relenting when it became clear that Tawhiao would not back down.²⁰³⁰

According to one report, Tawhiao had been in high spirits regarding the likelihood of reaching a settlement at Te Kopua right up until a short time before the meeting, but had subsequently undergone an abrupt change of heart on the subject when 'informed by Europeans that the proposals of Hikurangi to return the lands were not *bona fide*, and that, if he accepted them and went to look for the lands therein alluded to, he would find a small piece in this corner, and another small piece in that corner, to find which would cost more than the land would be worth, and that it was never intended to give him more than these small pieces.'²⁰³¹ More certainly, the government's move to replace local officials W.G. Mair and William Searancke had been a cause of complaint in some quarters, along with the events at Parihaka, while the decision to push on with the Raglan-Waipā road was also a cause of resentment.²⁰³²

Although Grey and his Native Minister were once more welcomed upon arrival, Tawhiao 'kept himself entirely aloof' from all-comers and was not in attendance at the ceremony.²⁰³³ After keeping the assembled dignitaries waiting for four days, Tawhiao finally appeared, accompanied by a personal body guard consisting of 180 mostly armed men. Addressing himself not to Grey but to the 1500 representatives of different tribes in attendance, he proceeded to commence with a speech of great defiance, declaring:

²⁰²⁹ AJHR, 1879, Session 1, G-2, pp.1, 3; Parsonson, 'Te Mana o te Kingitanga Maori', p.54.

²⁰³⁰ Parsonson, 'Te Mana o te Kingitanga Maori', pp.54-55.

²⁰³¹ R.S. Bush to Native Minister, 2 June 1879, AJHR, 1879, Session 1, G-1, p.15.

²⁰³² Parsonson, 'Te Mana o te Kingitanga Maori', pp.58-63.

²⁰³³ AJHR, 1879, Session 1, G-2, p.2.

Listen! listen, my fathers, my elders, listen! Listen, the people from the South! from there extending to the North Cape and down this side, listen! Listen all ye people! Listen all ye people, to this word. The chiefs of this Island, of this district, listen! There is no one whatever to cause disturbance extending to every part. The word is this: Potatau alone is the ancestor of all people. Potatau alone is the chief of this Island, of you all, and you cannot deny it. The whole of this country was Potatau's. There is another one: Rewi is there on that side. On that side, then, he is one, and I am another. These are my councillors; for this reason I say the land is mine. I have alone the right to conduct the business of my country. I will not hide what I have to say. I will utter it in the midst of you all. I will write it down amongst you. Listen carefully! A letter from the Queen was received by Potatau, stating that Europeans were coming to this Island, and Potatau replied, "Let them not come here." They were told to remain away, and not come to this Island. For this reason I say listen carefully. I therefore say this: Sir George Grey has no right to conduct matters on this Island, but I have the sole right to conduct matters in my land – from the North Cape to the southern end. No one else has any right. I do not consent to any of the arrangements which prevail on this Island. One of these things is the bringing of war into this country. It must be taken right away back to other places. We must not have fighting here. That is what I have to say. There is not to be any fighting whatever; neither about roads, leases, nor about anything else. Let fighting be kept away to the other side. He (Sir George Grey) has no right to conduct matters in this Island. That is why I say all things must be returned, and sent away from here [meaning all English customs]. There will be no evils to-morrow, or next day; none whatever.²⁰³⁴

Following Tawhiao's speech, Rewi Maniapoto rose from his seat, walked over to where the King was, and sat down near to him. More prayers followed and Wahanui declared that Tawhiao's should be the only words uttered that day.

²⁰³⁴ *ibid.*, p.3. Interpolation in original document.

Tawhiao did not make an appearance on the following day, when a succession of ‘loyalist’ chiefs from other districts who had come to Te Kopua to witness the expected peace agreement instead rose to condemn the Maori King’s assertion of authority over the whole island and urged the focus to return to the proposals made at Hikurangi.²⁰³⁵ As Wiremu Maihi Te Rangikaheke of Te Arawa urged:

Listen to these proposals that were made before you by Sir George Grey at a previous meeting. Firstly, my son, that you and the Queen Victoria should make peace, in accordance with the Treaty of Waitangi. Secondly, oh, my son, that you and Queen Victoria should become one under the Treaty of Waitangi, by which the old *mana* over the land was given to the chiefs. Thirdly, arrange that Sir George Grey should be the head and Premier of the Parliament of New Zealand. Fourthly, you, Tawhiao, shall conduct the matters of your people, and Sir George Grey will conduct the affairs of the European side, and you two come to a conclusion respecting the laws for the two peoples. Now let you and Sir George Grey unite and become one. Fifthly, if you and Sir George Grey do not become one to-day, you will have shown that you do not agree to what Sir George Grey has proposed. You say that the Europeans are to go away, and that there is to be no more war; but I say that you should become one, so that a definite arrangement may be concluded.²⁰³⁶

When the meeting resumed the following day, Wahanui hit back, accusing the ‘loyalist’ chiefs of aping the government line merely in return for money and pointing out that, although the Treaty of Waitangi had been ‘severed’, it had not been the fault of the Kingitanga, and nor had they caused the war.²⁰³⁷ Matters threatened to descend to farcical levels when the reply came that it was the Kingites who always had their hands out for government money, and one old Kingitanga follower called the kupapa chiefs ‘dogs’. Wahanui demanded an answer to his question: ‘Who separated the Maori from the Queen?’; Rewi wanted to know why the ‘tree of peace’ planted at

²⁰³⁵ *ibid.*, pp.4-7; Parsonson, ‘Te Mana o te Kingitanga Maori’, pp.65-66.

²⁰³⁶ AJHR, 1879, Session 1, G-2, pp.5-6.

²⁰³⁷ *ibid.*, p.8.

Hikurangi had been split, and others simply wanted to know, one way or the other, Tawhiao's response to the government's proposed terms.²⁰³⁸

Grey, after several days of very public humiliation, finally had enough. He declared that he remained committed to doing 'everything that is right, and fair, and just to Tawhiao, and for all his people' but by contrast 'those persons who tell him to claim all the Island – to talk in the way he did the other day' were not his friends, in the way the Premier and Rewi Maniapoto were.²⁰³⁹

When the discussions resumed two days later, Tawhiao and his guard were once again present, the King sitting with a group of his friends, his back facing the European visitors. After an entire day spent in what was described as 'useless talking', Grey again rose to address the gathering, no doubt taking advantage of the presence of Tawhiao. He had, Grey said, heard many murmurings of complaint in his time at the meeting. He and Sheehan had made certain offers to Tawhiao not in his own right but merely as a servant of the country. Three times he had come to them at very considerable personal trouble and annoyance. He had endured ill health and many other discomforts in order to be present simply because he wished to do good. The first cause of complaint he addressed was the Raglan to Waipa road. Grey stated that:

To that I answer that there is no ground of complaint whatever. The conversation that I had with you at Hikurangi was to this effect: That, if it was agreeable to you and Tawhiao, there should be returned to you that remnant of the confiscated land on the west bank of the Waipa which had not been sold to Europeans. Now the road to Raglan ran through our own lands, the lands that belong to all the people of New Zealand, lands which had been fairly purchased, which had never been taken as confiscated land, and which were lands through which all people had a right to have a road made.²⁰⁴⁰

He next addressed grievances concerning lands at Harapipi which had been repurchased from Europeans for return to Tawhiao by a previous administration.

²⁰³⁸ *ibid.*, pp.9-11.

²⁰³⁹ *ibid.*, p.13.

²⁰⁴⁰ *ibid.*, p.14.

Subsequent to that move, it was understood that the King was dissatisfied with the lands on account of these being greatly mixed up with European farms, which was likely to lead to disputes. Grey had therefore determined to instead offer town sections in every settlement in the Waikato so that Tawhiao could have the means of getting an immediate revenue from these, but if grievances remained concerning the Harapipi lands then he was free to take the matter of compensation up with the General Assembly.²⁰⁴¹

Finally, Grey addressed allegations that he was planning to push on with a railway line through their lands, insisting that the government's offer to fund a line to Mokau had been dependent upon the chiefs first clearly expressing their desire to have one. He concluded by declaring that:

Now, the offers which were made to you at Hikurangi were promises of gifts to be given without your undertaking to do anything in return for them. I shall wait until to-morrow at 10 o'clock in the morning. If then you send to me, to tell me you accept these offers, or that you are prepared to discuss them, I will remain to discuss them. If I do not hear from you that you will discuss them, after 10 o'clock to-morrow morning they will be withdrawn absolutely. And this you must remember, that any further arrangement made with you must be upon a new understanding, not upon those offers made at Hikurangi.²⁰⁴²

According to the Raglan Resident Magistrate, R.S. Bush, who was present at the Te Kopua meeting:

When Sir George Grey withdrew the Hikurangi proposals, the assemblage appeared quite thunderstruck; it was some minutes after the Ministers withdrew that the Natives dispersed, thereby showing that such a coincidence was never thought of by them. Te Ngakau got up to speak as the Government party were moving off, but the Ministers did not return to hear what he had to say.²⁰⁴³

²⁰⁴¹ *ibid.*, p.15.

²⁰⁴² *ibid.*

²⁰⁴³ Bush to Native Minister, 2 June 1879, AJHR, 1879, Session 1, p.16.

Another report noted that there was silence for some considerable time after Grey had departed the scene, and a subsequent meeting held to discuss what had just taken place resulted in discord.²⁰⁴⁴ Rewi Maniapoto, meanwhile, managed to detain Sheehan long enough at Kihikihi to arrange a further meeting with him, though this was almost exclusively taken up with a careful delineation of the Ngati Maniapoto boundary.²⁰⁴⁵ At the end of May he defied pleas from Tawhiao and some of his own tribespeople by travelling to Auckland with the Native Minister. Although feted by European society while there, he was unable to secure his own settlement, and with the fall of the Grey government in which Rewi had invested so much hope later that same year his own position was weakened.²⁰⁴⁶ W.G. Mair, who had returned to government service as Native Agent for Auckland and Waikato, reported in May 1880 that 'Rewi has retired from the prominent position which he assumed in 1878. He is both anxious and willing to aid in bringing about a solution of the difficulty, but he admits his inability to exercise any influence independently of Tawhiao.'²⁰⁴⁷

King Tawhiao's emergence from the Rohe Potae district in June 1881, marked by the symbolic laying down of his gun before Mair at Alexandra, and his subsequent travels around the Waikato and beyond, again raised the prospect that an enduring settlement might be within reach.

In June 1881 Rewi Maniapoto invited a number of leading Kihikihi settlers to celebrate with him the house warming of a new home in the township built for him by the government. It was rumoured that Rewi had previously refused to accept the house unless the land on which it sat was Crown granted to him,²⁰⁴⁸ but by the time he took formal possession the latest (unsubstantiated) story had it that Tawhiao had ordered Rewi to return both the house and land to the government.²⁰⁴⁹ Rewi told the Kihikihi settlers that he had no intention of doing so, and it seems doubtful whether

²⁰⁴⁴ *Waikato Times*, 17 May 1879; McCan, *Whatiwhatihoe*, pp.113-114.

²⁰⁴⁵ *Waikato Times*, 20 May 1879, 22 May 1879.

²⁰⁴⁶ McCan, *Whatiwhatihoe*, pp.115-116; Parsonson, 'Te Mana o te Kingitanga Maori', pp.72-79.

²⁰⁴⁷ Mair to Native Under Secretary, 29 May 1880, AJHR, 1880, G-4A, p.2.

²⁰⁴⁸ *Evening Post*, 21 May 1880. There were later contradictions of this version of events. *Evening Post*, 29 May 1880.

²⁰⁴⁹ *Waikato Times*, 7 June 1881.

Tawhiao had made such a demand in the first place, since the King later visited Kihikihi and declared himself well impressed by Rewi's house.²⁰⁵⁰

Gestures of goodwill predominated over political discussions of substance during the travels of the Maori King, but Tawhiao made it clear that he expected all issues in contention to be debated at a hui to be held at his new home at Whatiwhatihoe in March 1882.²⁰⁵¹ It was May before the meeting was eventually held, but expectations that the gathering would bring about a decisive breakthrough proved misplaced. The Mokau lands dispute diverted attention and created divisions. Meanwhile, poor weather, the impending opening of Parliament and the intransigence of Native Minister John Bryce meant no senior government official would be present at the meeting with whom negotiations could be held.²⁰⁵²

Tawhiao's opening address to the assembly called for an end to leases and sales, along with the Native Land Court.²⁰⁵³ No direct reference was made to the confiscated lands, presumably because there was no one present from the government to hear and respond to his speech.²⁰⁵⁴ However, the King did call for Parliament to come to Auckland, a statement which Rewi Maniapoto later clarified as a desire for several Parliamentarians to be appointed with the power to inform the chiefs of the government's intentions – in other words, essentially, a call for someone to negotiate with.²⁰⁵⁵

There was, though, some discussion of the confiscated lands on later days of the meeting. According to a report of the gathering, at one point it was stated that:

Te Manaku intended sending a petition, *re* his lands confiscated at Rangiaohia, to the Government. Let each tribe send representatives to assist Te Wheoro at Wellington, that he might be assisted in his work there, and know the particular grievances of those whom he represented.

²⁰⁵⁰ *Waikato Times*, 16 July 1881.

²⁰⁵¹ Parsonson, 'Te Mana o te Kingitanga Maori', pp.104-105.

²⁰⁵² *ibid.*, pp.104-113.

²⁰⁵³ *Waikato Times*, 16 May 1882.

²⁰⁵⁴ Parsonson, 'Te Mana o te Kingitanga Maori', p.114.

²⁰⁵⁵ McCan, *Whatiwhatihoe*, p.128; *Waikato Times*, 27 May 1882.

Te Ngakau, advancing to Te Manaku, took the petition which the latter held in his hand and said: It was all very well to bring forth this petition years ago when I proposed that lands confiscated should be given back to us. It is too late now, and I'll tear your petition up.²⁰⁵⁶

Te Ngakau, as the King's one-time chief adviser, had been widely blamed for the failure to consent to the terms offered at Hikurangi. Was his speech on this occasion born of frustration that the opportunity had now seemingly slipped through their grasp?

Tawhiao, too, before the meeting was over, reminded all those present of proposals he said Donald McLean had previously made to him, firstly to recognise him as the head of all those tribes who agreed to acknowledge such a role for him, including a right to be consulted over any land dealings, and secondly to return unsold confiscated lands extending from Alexandra along the west bank of the Waipa River to Ngaruawahia and north from there along the Waikato River to its mouth at Port Waikato.²⁰⁵⁷

Bryce, in response to Te Wheoro's efforts to re-engage the government's attentions,²⁰⁵⁸ declared that he would be delighted to give Tawhiao an answer if only he would first make some proposals, but subsequently announcing his intention to travel to Waikato at the end of the parliamentary session.²⁰⁵⁹

Late in October 1882, Bryce did indeed travel to Waikato, being met by Tawhiao at Alexandra, where a new bridge across the Waipa River was officially opened. Subsequent to this, the Native Minister travelled on to Tawhiao's own settlement at Whatiwhatihoe, where a crowd of some 400 people had assembled to hear the exchange. Tawhiao, who opened proceedings, made the familiar demands. He reminded Bryce of McLean's words, before declaring:

²⁰⁵⁶ *Waikato Times*, 18 May 1882.

²⁰⁵⁷ McCan, *Whatiwhatihoe*, pp.129-130; Bush to Native Minister, 27 May 1882, AJHR, 1882, G-4A,

p.4.

²⁰⁵⁸ See Te Wheoro to the Speaker of the House of Representatives, 24 May 1882, AJHR, 1882, G-4, pp.1-2.

²⁰⁵⁹ Parsonson, 'Te Mana o te Kingitanga Maori', p.117.

Consider what I have to say. Therefore, it is that I ask you to leave me the administration of my own land, and also the land of my tribe. It is the same as I have always said to generations back. I say, therefore, let Mangatawhiri be the end. This is a definite word of mine (meaning Mangatawhiri). You are sufficiently clever to consider what I have said. I would speak with reference to the townships of Waikato. I do not quite approve of these townships. My word about these townships is that they are all with me. I do not interfere with what is yours, and I have the control of what is my own. Alexandra, Te Awamutu, Kihikihi, Ngaruawahia, and all the towns down as far as Mangatawhiri are mine. I am there. The management of all these places is with me.²⁰⁶⁰

The settlers would be permitted to stay in other words, so long as his authority extending north as far as Mangatawhiri was acknowledged.

Bryce was in no mood to entertain the King's proposals. There was, he declared, no man present who could possibly think the demands capable of being complied with. Tawhiao had referred to his previous negotiations with McLean, but had omitted to mention those held with Grey. That was all on record. There was no point going back into the past, but instead Bryce concluded with a story whose moral was that moderation was invariably the wisest course of action. Tawhiao and the chiefs should act likewise at this time.

Tawhiao stated in response that:

It was a small thing which caused Sir George Grey not to come to terms.²⁰⁶¹ It was caused by a European, whose name I have forgotten. Sir George Grey's proposals were good, but they were frustrated by the other person. Man is man, timber is timber, but land is quite another thing. Sir Donald McLean said it (the land) should commence at the sea at Waikato, and go right up to

²⁰⁶⁰ *Waikato Times*, 31 October 1882.

²⁰⁶¹ According to a separate report an unnamed Waikato chief stated that 'when Tawhiao stated that a small matter was the cause of Sir George Grey's offer not being accepted, he referred to a piece of land at Harapipi being given to Mr. McMinn for school purposes.' *New Zealand Herald*, 1 November 1882, in MA 23/3, Archives NZ, RDB, vo.82, p.31845.

Taheka, and I did not agree. He said that the land should come from the mouth of the Waikato river, following it right up to this, even to Manga-Moka, but I did not agree. When I met Sir George Grey he said the same thing. Do you consider this and we also will consider it.²⁰⁶²

Bryce this time responded at greater length. Tawhiao had said that he was disappointed that the offers of McLean and Grey did not continue, even though they were not accepted by him. It was wrong to suggest that if Donald McLean was alive he would renew his offers of old, since once such things passed they could not be recalled. Ever since that time, he added, 'the flood has been rising':

What do I mean by the flood? I mean the flood of European civilization and occupation: There is no use in saying that flood is bitter; roll back its waters. Bitter or sweet, the waters are not waters if they roll back. If anyone, great or small, thinks that he could stay that tide of occupation, I'll tell him what to do. Let him go down to the sea beach when the tide is low and endeavour to keep that tide from rising. Then if the great ocean obeys him, let him try and stop European civilization and occupation. Therefore, do not let us go back to Sir Donald McLean or Sir George Grey. Let us make a canoe that will float on the top of the flood; and if we are going to build that canoe, let us see that we build it of durable wood, and not of perishable wood.²⁰⁶³

Tawhiao again returned to the subject of McLean's offer. The reason he referred to this, the King said, was because he considered the offer so satisfactory, and although McLean was now dead, he did not consider the proposals revoked. He had understood from McLean that he would have the control of his own lands and people. But as the proposals of McLean and Grey had fallen through Bryce should now outline his own proposed terms.

Bryce, in reply, declared that although the particular terms of any agreement would need to be talked over with Tawhiao and the chiefs in a less public forum, he was prepared to outline in general terms his thoughts on the matter. Though Tawhiao

²⁰⁶² *Waikato Times*, 31 October 1882.

²⁰⁶³ *ibid.*

seemed principally concerned with the land question, Bryce declared that there were other matters of even greater substance in his view:

First of all as to the question of sovereignty. He stood there that day as a Minister of the Queen, and he was bound to tell them, in the presence of all, that he did not think this land was large enough to support two authorities. Chiefs might still have their authority among their own people, but the sovereignty of the Queen must extend over this island from end to end. If he told them anything different from that he would be misleading them. The law might be bad in some respects, but they should endeavor to amend it, not resist it.²⁰⁶⁴

Although this part of the Native Minister's speech could well have been delivered decades earlier, there were more encouraging aspects. It was vain for Tawhiao to say that all land sales should stop. On the hand, Bryce, an outspoken critic of land speculators, declared that if matters continued as they were many of the tribes would become dispossessed of all their lands and left with little to show for it. Permanent reserves ought to be secured to Maori and the balance administered in such a way as would benefit both them and the colony. Bryce declared that he was willing to assist in implementing such a plan. Tawhiao, he added, was a great chief, and the government was prepared to recognise him as such, but he ought nevertheless to be moderate in his demands.²⁰⁶⁵

One day after this meeting Tawhiao received a note from Bryce, delivered via Wiremu Te Wheoro, in which the Native Minister outlined his detailed proposals. The document stated that:

1. As to the land, the Government will return the bulk of the Crown confiscated land west of the Waipa and Waikato to Tawhiao and his people. Will give him the section of land he wants at Kaipara; will press Ngatimaniapoto to give Tawhiao and his people a piece of their country.

²⁰⁶⁴ *ibid.*

²⁰⁶⁵ *ibid.*; *New Zealand Herald*, 31 October 1882, in MA 23/3, Archives NZ, RDB, vol.82, p.31843.

2. As to special provision for Tawhiao Government will build him a house and furnish it, and will give him a pension of £400 a year.

3. As to mana or authority Government will make him an assessor of the Resident Magistrate's Court, an assessor of the Native Lands Court, a Justice of the Peace for the colony, and a member of the Legislative Council.²⁰⁶⁶

Reports from soon after the first meeting had it that Tawhiao was inclined to accept Bryce's proposals, notwithstanding that he had been spoken of as the younger brother (whether literally or this was a metaphorical reference to the Native Minister's insistence on the supreme sovereignty of the Crown is not clear).²⁰⁶⁷

An opportunity to gauge the King's response came at a second meeting held a few days later. After referring to his travels through the Waikato and Auckland, Tawhiao referred to an apparent exchange he had had with Mair and subsequently Daniel Pollen in which (according to Tawhiao) he had agreed to accept payment from the government for at least a portion of the confiscated lands, subject to the appointment of two independent witnesses to ensure this was fairly distributed amongst the people. That proposal had not been agreed to, and Bryce's terms were the latest to be offered. With respect to these, the King declared:

It is right, it is right. I approve of part of the proposals. I approve of the proposals in the first, second, and third paragraphs of the written memorandum in my possession...But I look upon those as being mine. The decision about this is with the tribes, and must be considered by them.²⁰⁶⁸

Bryce, in response, called upon Tawhiao to be clearer as to what he meant with respect to the question of sovereignty. The proposals he had advanced were liberal ones that had been made because the government recognised Tawhiao as a great chief and because it was anxious to finally settle the trouble between the two peoples. But it was not the intention to leave some questions of trouble standing for another day:

²⁰⁶⁶ *New Zealand Herald*, 3 November 1882, in MA 23/3, Archives NZ, RDB, vol.82, p.31849.

²⁰⁶⁷ *New Zealand Herald*, 1 November 1882, in MA 23/3, Archives NZ, RDB, vol.82, p.31845.

²⁰⁶⁸ *New Zealand Herald*, 3 November 1882, in MA 23/3, Archives NZ, RDB, vol.82, p.31849.

whatever he offered ‘must be accepted or declined as a whole, for nothing must be left to produce trouble at some future time.’²⁰⁶⁹ The proposals he made were his and would not be left for another day:

When he left Alexandra he took his proposals with him, and he thought they would never be repeated. Therefore he would say, never let Tawhiao or any other Maori present say in the future that they thought these proposals were still in existence, but know that they went away with him if they were not accepted. These proposals were made with a view to their settling everything, including the question of sovereignty.²⁰⁷⁰

Bryce’s offer was thus presented as a take it or leave it one, and came with the added warning that ‘the sun was setting, and the same offer may never be made again.’

Tawhiao, though, objected that he could not decide matters in a day. He accepted the proposals made so far conditionally but these should be left for him to consider carefully. It was eventually decided that a further meeting would be held two days later at which Tawhiao would give his final response.

One report noted that the general expectation, right up to the very hour of the meeting, was that Tawhiao would accept Bryce’s offer. But the sovereignty issue remained the major stumbling block, as Tawhiao made clear in his opening address to the Native Minister. He declared that although he approved of Bryce administering affairs on his side, ‘I will remain on my side and administrate’.²⁰⁷¹ Bryce delivered an impatient reply. Tawhiao had not given a decided answer to the proposals. The terms he had offered were ‘so good and liberal that I shall be blamed for doing so in many parts of the colony.’ But Tawhiao’s reply must be delivered in plain words and not ‘dark sayings.’ He added that:

If they are not accepted to-day they will be distinctly and absolutely withdrawn. I have made them because I thought it was right I should make

²⁰⁶⁹ *Waikato Times*, 4 November 1882.

²⁰⁷⁰ *ibid.*

²⁰⁷¹ *Waikato Times*, 7 November 1882.

them. Shall I ever make them again? I think not. I am waiting for an answer; but the time is passing. If Tawhiao's speech means that he declines these proposals I can understand him in that way, and go back to Auckland to-day. But even if he does not speak plainer, if he refrains from accepting them I shall take that as a rejection. In any case I shall leave this afternoon for Auckland; and if my proposals are not accepted they shall go back with me. I have made proposals to Tawhiao that very few people would now have made. At any rate I am entitled to a plain answer yes, or no.²⁰⁷²

Wahanui, though, in urging more time to weigh up the proposals, went to the heart of the matter when he declared that 'The question is one of authority, and all you want to do is to take the authority from Tawhiao.' Bryce, in reply, declared that:

Wahanui sees clearly the main point at issue; that is to say the question of *mana* or sovereignty. But, however, there is one point which, perhaps, he does not see; and that is this: I have never acknowledged a sovereignty in this island excepting that of the Queen. I have never acknowledged the sovereignty of any other person in the days that are passed, in the days of the present, or in the days that are to come. And I cannot do one thing now, nor can I speak one word now that will acknowledge for one moment the sovereignty of any other person in New Zealand. What I say is this: that there is a shadow of authority claimed by a person of the native race; and I see in various ways that that shadow is slipping away, and you can see this as well as I. Therefore, I say, if it is to pass away, let it be removed in a proper manner, and not by one and then another falling away until there is nothing left but the memory of it.²⁰⁷³

He had not heard a single reason assigned for any evil that might result from acceptance of the Queen's sovereignty, and if only good could flow from this then why should this not be done?

Wahanui responded that he could not consider the Native Minister's proposal in the short time allowed, especially when he knew the result of Bryce's words would be

²⁰⁷² *ibid.*
²⁰⁷³ *ibid.*

anger. Bryce, declaring that he was sorry rather than angry, declared that it was right that those assembled should hear Tawhiao's final reply to him. Tawhiao, in response, declared that 'Wahanui has taken it out of my hands, and it now rests with him.'²⁰⁷⁴

According to one newspaper the question of whether to accept or reject the terms offered by Bryce had been debated right up until the time of the Native Minister's arrival. Wahanui, it was said, had urged that Bryce's proposals should be rejected, and 'Tawhiao was unwilling to abandon his claim upon the Ngatimaniapoto tribe, which the acceptance of the conditions without the concurrence of Wahanui might have implied.'²⁰⁷⁵ But as Ann Parsonson notes, 'Bryce's terms, aimed as they were at the very destruction of the King, had left no room for bargaining.'²⁰⁷⁶ Not only was the Kingitanga being asked to surrender the very thing they had gone to war two decades earlier in order to defend, but Bryce's manner throughout had been peremptory and off-hand. Whereas McLean and Grey both made some effort to flatter the King, Bryce's approach was to attempt to bully him into submission. Beyond the substance of the negotiations, Tawhiao 'had come to parley as an equal', but Bryce treated the issue more in terms of dealing with a group of recalcitrant chiefs who had hitherto refused to accept their inevitable incorporation into the colonial body politic.²⁰⁷⁷

Although there were further direct negotiations with government ministers later in the decade, these were hardly on the same scale. But in terms of the raupatu component, it is worth examining more closely what it was that Tawhiao had turned his back on in 1882. Whereas Grey had previously offered to return all unsold confiscated lands west of the Waipa, Bryce had by this time lowered that to read the 'bulk' of such lands. One report noted that 'Mr. Bryce does not know for certain the exact amount of unsold land across the Waipa, but considers about 20,000 acres, and that at least 300 Waikatos have to be provided for.'²⁰⁷⁸ What was being offered was thus not a substantial portion of the Waikato confiscated district but just over 1.66% of the total area. Significantly more land than this had already been awarded to Maori through the Compensation Court or had been offered through other mechanisms such as the

²⁰⁷⁴ *ibid.*

²⁰⁷⁵ *New Zealand Herald*, 6 November 1882, in MA 23/3, Archives NZ, in RDB, vol.82, p.31852.

²⁰⁷⁶ Parsonson, 'Te Mana o te Kingitanga Maori', p.124.

²⁰⁷⁷ *ibid.*, pp.121-122.

²⁰⁷⁸ *New Zealand Times*, [c.6 November 1882], in MA 23/3, Archives NZ, RDB, vol.82, p.31840.

Waikato Confiscated Lands Act by which provision was made for 'returned rebels'. And although the earlier proposals of Grey and McLean would likely have encompassed a larger area of land, it is far from clear that they would have been substantially larger. Tawhiao and his supporters, in essence, were being offered a meagre share of their former lands in return for effectively abandoning the Kingitanga. Little wonder perhaps if this proved a bridge too far.

Tawhiao's attentions turned for a time to directly appealing to his Treaty partner, Queen Victoria, while the Crown's focus was diverted to negotiating the extension of the North Island Main Trunk Railway through Ngati Maniapoto lands. However, in December 1887 Hoani Taipua, the member for Western Maori asked whether the lands previously set aside for Tawhiao and his people were still available for them to settle upon. Tawhiao, he declared, was no longer in opposition to the government but living under the law. Te Kooti had been responsible for a great deal more suffering and alarm, and yet the government had shown him some consideration, and had given him land. Tawhiao, he believed, was even more entitled to consideration and kindness from the government.²⁰⁷⁹

Native Minister Edwin Mitchelson replied that although the Waikato Confiscated Lands Act had long since expired, and the lands were being otherwise dealt with, if Tawhiao and his supporters chose to make a formal application to the government this would be favourably considered. Sir George Grey took the opportunity to express his satisfaction at this announcement, while at the same time hoping that there would be no delay in carrying it out. The matter had been, he added, 'so long delayed that if the [Native Minister] could at once do it he would confer a very great boon upon the Natives and upon the whole country.'²⁰⁸⁰

Renewed interest in the subject saw Mitchelson travel to Waikato in April 1888 in order to meet with Tawhiao. The King recalled his former negotiations with McLean and Grey (but, significantly, not Bryce). Wiremu Te Wheoro pointed out the promises of McLean and Grey, before embarking on a lengthy (but unrecorded) discussion on the Treaty of Waitangi. Mitchelson, though, declared that although the government

²⁰⁷⁹ NZPD, 17 December 1887, vol.59, p.821.

²⁰⁸⁰ *ibid.*

was anxious to assist Tawhiao and his people by giving them land this would be strictly 'on condition that they reside on the lands given them, and are willing to acknowledge the Queen as their Sovereign.'²⁰⁸¹ The time had come for the two races to become one people, and it was hoped that Tawhiao would see the desirability of giving up 'his state of isolation.'

After a break of an hour or so in order to confer privately with his followers, Tawhiao again addressed the Native Minister:

What you have said is right. Get returned to me my land; the land which was returned to me by Sir Donald McLean and by Sir George Grey. We have long since given in our allegiance to the Queen. When the chiefs of this island asked that they should retain their mana, it was granted then that the Queen should be the guardian of the land and the people, and I have always adhered to it. The treaty of Waitangi has always been my counsellor.²⁰⁸²

Mitchelson chose to interpret Tawhiao's statement rather more narrowly than it warranted, declaring that since he had acknowledged allegiance to the Queen, there should be no objection in swearing an oath of allegiance to the Crown. That Tawhiao and his followers would be required to take such an oath and occupy any lands allotted them were among several conditions set out by the Native Minister. No longer was there any undertaking to return all confiscated lands still in the Crown's possession west of the Waipa River. Instead, Mitchelson announced that:

The Government will provide land for Tawhiao and his people, in such areas as may be approved by Parliament, and such places as may be suitable, and where land is available. The wishes of Tawhiao and his people will be considered in fixing localities.²⁰⁸³

Confiscated lands at Mangere previously owned by Potatau which remained undisposed of would be restored to Tawhiao, and the government would make such

²⁰⁸¹ *New Zealand Herald*, 13 April 1888, in MA 23/3, Archives NZ, RDB, vol.82, p.31741.

²⁰⁸² *ibid.*

²⁰⁸³ *ibid.*, p.31742.

arrangements to enable him to live in comfort and work cordially with it as might be agreed between the parties, besides ensuring that all lands returned were inalienable. Tawhiao's response seemed to indicate that he believed the Treaty of Waitangi had been his oath of allegiance. He declared 'I have only to say that the question of allegiance has long ago been agreed to by the old men and the chiefs. All these things are in my hands...The Treaty of Waitangi shall not fall from my hands.'²⁰⁸⁴ Nevertheless, the hui concluded with a detailed discussion as to potential lands suitable for settlement by the King and his followers, and Te Wheoro declared that 'the proposals were practically accepted'.

The government's refusal to abandon its insistence that Tawhiao take the oath of allegiance, and the equally determined stance of his followers that he should not do so, scuttled any hopes of a settlement. The King's followers had convened a series of meetings to consider the demands made soon after Mitchelson's departure and had '[a]lmost to a man' rejected any suggestion that Tawhiao should be made to take the oath. Even some observers believed the demand an unnecessary one at a time when substantive Crown sovereignty had been well and truly secured.²⁰⁸⁵ But from the government's perspective that was precisely the point: it no longer needed to be so gentle with the Maori King because he was not considered quite the same threat to the social fabric of the colony as he might have been just a few years earlier. It was a case of more stick and less carrot.

Tawhiao's insistence that he stood with his father when it came to the Treaty of Waitangi was thus not accepted in lieu of the oath, and the Maori King was even informed that 'The Treaty of Waitangi must not be brought into the negotiations.'²⁰⁸⁶ Tawhiao, though, remained unrepentant, informing the Native Minister that:

...I told you in the presence of the people and chiefs that I would consent to all the proposals in your memorandum, but there was one point which I was not clear about, namely, the oath, because my father's assent had long ago been given in the Treaty of Waitangi, & I am now standing on my father's word. I

²⁰⁸⁴ *ibid.*

²⁰⁸⁵ *Waikato Times*, 21 April 1888, *Waikato News*, 21 April 1888, in MA 23/3, Archives NZ, RDB, vol.82, p.31731.

²⁰⁸⁶ Mitchelson to Tawhiao, 10 May 1888 (telegram), MA 23/3, Archives NZ, RDB, vol.82, p.31680.

am holding the Treaty of Waitangi... . The oath is a departure from the Treaty of Waitangi.²⁰⁸⁷

Mitchelson's insistence that the oath must be taken before any agreement could be reached was, however, upheld in Cabinet, in consequence of which any further progress was impossible.

Once it became clear that the Crown was not going to provide land for Tawhiao and his followers to live upon other Maori attempted to step in to fill the breach. In June 1888 Wiremu Nera Te Awaitaia informed the Native Minister that at a recent meeting of his tribe the question of giving land known as the 'Wharauora' block to Tawhiao had been discussed.²⁰⁸⁸ This was clearly not the same Wharauora block as that which had been conveyed to the Crown in 1857. Instead, it appears more likely that the land in question was part of the Wharepuhunga block.

According to one observer, the 'more fanatical portion of Ngati Raukawa' (who were considered responsible for the gesture) sought to convey the whole of their lands within the Rohe Potae block, consisting of some 250,000 acres, to King Tawhiao.²⁰⁸⁹ The European husband of one of those interested in the lands described this as an 'insane proceeding' which 'would of course mean closing up the whole country against European enterprise of every description for an indefinite period.'²⁰⁹⁰ Meanwhile, legal complications proved fatal to the prospects of Tawhiao getting any land at all. E.T. Dufaur, the lawyer charged with getting the 400 owners of the block to sign a deed of gift for the 60,000 acres, pointed out that any attempt on his part to secure such agreement would render him criminally liable under legislation preventing any party other than the Crown from dealing in Rohe Potae lands for a period of three years after the passage of the Native Land Court Act Amendment Act 1888. The government proved notably unsympathetic to the request to find some solution to this problem, merely reminding Dufaur of the provisions of the

²⁰⁸⁷ Tawhiao to Mitchelson, 15 May 1888, MA 23/3, Archives NZ, RDB, vol.82, p.31633.

²⁰⁸⁸ Te Awaitaia to Native Minister, 23 June 1888, MA 23/3, Archives NZ, RDB, vol.82, p.31627. The writer was a namesake of the famous chief, who had died in 1866.

²⁰⁸⁹ William Moon to Native Minister, 13 September 1888, MA 23/3, Archives NZ, RDB, vol.82, p.31607.

²⁰⁹⁰ *ibid.*

legislation.²⁰⁹¹ The proposed gift appears to have lapsed in the light of such difficulties.

Meanwhile, in what Native Under Secretary T.W. Lewis described as a ‘not very friendly’ letter from Tawhiao, the Maori King informed Mitchelson that:

...you yourself spat out your own spittle and then took it back again. Sir George Grey and Donald McLean’s spittle has not yet been taken back – it is still here at Waikato and as far as the West Coast.

This is my word, I am not a child nurtured and fed by strangers nor have there been such from the time of my ancestors down to my parents, this is my reason for saying to you sometime back that I was still standing in my father’s place.²⁰⁹²

The Ngati Whatua chief Paora Tuhaere, who for more than two decades had been attempting to broker some kind of settlement between Waikato and the Crown, chose to spell out even more clearly the meaning of Tawhiao’s letter:

He says that you spat out your own spittle and then took it back again. That word means that he did not apply to you for the land but that you yourself gave it under the shining sun and that having done so he simply concurred.

With regard to the allusion which he has made concerning Sir George Grey and Sir Donald McLean, that their word[s] still hold good, he means that their “words” are not doubtful and conditional as yours are, because according to your words until Tawhiao has taken the oath of allegiance to the Queen the words of the Government would not be given effect to.

It is in reply to the terms proposed by the Government that Tawhiao says that he is not a child nurtured and fed by strangers. He means that he is a man, as

²⁰⁹¹ T.W. Lewis (Native Under Secretary) to Dufaur, 1 October 1888, MA 23/3, Archives NZ, RDB, vol.82, p.31604.

²⁰⁹² Tawhiao to Native Minister, 5 October 1888, MA 23/3, Archives NZ, RDB, vol.82, p.31599.

all his fathers have been before him, still holding and exercising his authority and is brought up by his own father.²⁰⁹³

Tuhaere had shown Tawhiao a plan of some lands potentially available to him if he finally agreed to the government's proposals and reported that:

I asked Tawhiao his opinion with regard to the plan, he replied that he had nothing to say but as I brought the map, all he could say was that if the Government would not agree he was content to remain as he was.

I am rather inclined to think that Tawhiao will now remain passive altogether and will never discuss the matter again, because you have fixed your decision.²⁰⁹⁴

Tawhiao and his supporters had refused to be publicly humiliated through enduring an enforced oath of allegiance, and the Maori King would not lower himself to bring up the matter again. As he told the Native Minister, he was not a child and the rejuvenation of the Kingitanga governance structures through the Kauhanganui (King's Parliament) after 1892 proved that there was no intention of meek submission. By the early decades of the twentieth century, when the raupatu issue was again vigorously pursued by the Waikato tribes, it was less a case of seeking a political settlement of the outstanding war issues than of pursuing redress for the Crown's wrongful actions.

9.8 The Sim Commission

As was noted in the introduction to this chapter, the coverage of twentieth century developments provided below is not intended to be comprehensive. Brief sections on some of the major developments up to around 1950 have been included for the sake of completeness, but it is envisaged that these issues will be more thoroughly traversed in the relevant political engagement report for the twentieth century.

²⁰⁹³ Tuhaere to Mitchelson, 14 November 1888, MA 23/3, Archives NZ, RDB, vol.82, pp.31593-31594.

²⁰⁹⁴ *ibid.*, pp.31594-31595.

In October 1926 a Royal Commission headed by Sir William Sim, a Supreme Court Judge, and also including Vernon Herbert Reed, a member of the Legislative Council, along with its only Maori member William Cooper of Gisborne, was appointed to inquire into grievances related to the land confiscations of the nineteenth century.²⁰⁹⁵ Its eventual report was completed in June 1927, but not tabled in Parliament until nearly fifteen months later in September 1928.²⁰⁹⁶ The appointment of such a commission reflected a number of factors, including the emergence of a new generation of western-educated Maori leaders who were able to successfully operate within the mainstream political system. In the wake of the First World War, Parliament had been flooded with petitions from a number of tribes who evidently considered that their war service would be appropriately recognised through the investigation of their long-held grievances. In the Waikato district, meanwhile, active opposition to war service, followed by the imprisonment of more than 100 men who had ignored conscription demands, served to remind many of the depth of local hapu and iwi feelings with respect to the invasion and confiscation of their district in the 1860s.²⁰⁹⁷

It was clear that the wound would continue to fester for so long as the raupatu grievance continued to be ignored. Politicians such as Maui Pomare and Sir Apirana Ngata found a ready ally in the form of Native Minister between 1921 and 1928 (and Prime Minister between 1925 and 1928) Gordon Coates. In 1925 he agreed to introduce legislation providing for the appointment of a commission of inquiry, explaining that many tribes harboured ‘a general sense on their part of unjust treatment’ as a result of the confiscation of their lands.²⁰⁹⁸ While it was hoped that the inquiry would help to overcome such feelings, Coates warned that:

The failure to obtain consideration in the past has been due largely to the ill-advised attempts by the Natives’ advisers to rely on the terms of the Treaty of Waitangi. The obvious answer to that claim is that such reliance is propounded

²⁰⁹⁵ AJHR, 1928, G-7, p.1.

²⁰⁹⁶ O’Malley, ‘The Aftermath of the Tauranga Raupatu’, pp.110-111.

²⁰⁹⁷ Richard S. Hill, *State Authority, Indigenous Autonomy: Crown-Maori Relations in New Zealand/Aotearoa, 1900-1950*, Wellington: Victoria University Press, 2004, pp.107-109; Michael King, *Te Puea: A Biography*, Auckland: Hodder and Stoughton, 1977, pp.84-97.

²⁰⁹⁸ NZPD, 28 September 1925, pp.773-774.

on behalf of men who repudiated the Treaty, and with the Treaty the cession of sovereignty to the Crown, which was the basis of the Treaty.²⁰⁹⁹

This set the tone for the commission which was to follow, which Coates explained would be based on ‘benevolent consideration of the question whether the extent of the territorial confiscation was just and fair under the circumstances of the warfare and the action taken by Natives and by Europeans.’²¹⁰⁰

The Treaty was out, then, and the inquiry to be premised on the assumption that confiscation was fundamentally justified, with the only question remaining to be considered one as to whether this had been excessive in extent. The basic assumptions of most European officials in the 1860s were therefore to form the starting point for the inquiry which followed and these were incorporated into the terms of the commission issued. These required the commissioners to determine whether the confiscations ‘exceeded in quantity what was fair and just’, but explicitly declared that:

(a) you shall not have regard to any contention that Natives who denied the sovereignty of Her then Majesty and repudiated Her authority could claim the benefit of the Treaty of Waitangi; (b) you shall not accept any contention that the said Acts or any of them were *ultra vires* of the Parliament of the Dominion.²¹⁰¹

In fact, a credible argument could have been advanced that the Kingitanga had never rejected the Queen’s sovereignty, but rather had repudiated the assumption of power by the colonial government which supposedly emanated from the former. Nevertheless, that this was intended to be less than a comprehensive inquiry was clear, and the commissioners were also required to recommend any compensation payable solely in terms of money. As Dr Loveridge has commented:

²⁰⁹⁹ *ibid.*, p.774.

²¹⁰⁰ *ibid.*

²¹⁰¹ AJHR, 1928, G-7, p.2.

One can only conclude that it was not Coates' intention to give the Commission a free hand on the confiscation question, and he did not do so. The terms of reference were carefully designed to steer the Commission away from the major legal-historical problems which lay at the heart of this question, and to prevent it from making recommendations for redress which might be too expensive or too politically sensitive for Government to act upon.²¹⁰²

There were also more practical constraints on the commission's proceedings, including the fact that it had just eight months to inquire into and report on all of the major confiscations under the New Zealand Settlements Act, besides more than 50 separate petitions covering a myriad range of issues.

The Sim Commission held its first hearings in New Plymouth in February 1927, at which time the main counsel for the claimants, D.S. Smith, took advantage of a flaw in the wording of the terms of the inquiry to successfully argue that the commission should indeed inquire into the fundamental justice of the confiscations. He did not have the same success in urging that the Treaty of Waitangi should also be taken into consideration.²¹⁰³ Nevertheless, this opening allowed the commission to condemn the Taranaki War and subsequent confiscations in the strongest possible terms. Its report declared that:

When martial law was proclaimed in Taranaki, and the Natives informed that military operations were about to be undertaken against them, Wiremu Kingi and his people were not in rebellion against the Queen's sovereignty; and when they were driven from the land, their pas destroyed, their houses set fire to, and their cultivations laid waste they were not rebels, and they had not committed any crime.²¹⁰⁴

Instead, as the Sim Commission concluded:

²¹⁰² Donald M. Loveridge, 'The Taranaki Maori Claims Settlement Act, 1944', (report commissioned by the Crown Law Office), August 1990, p.20.

²¹⁰³ AJHR, 1928, G-7, p.6.

²¹⁰⁴ *ibid.*, p.11.

The Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative but to fight in their own self-defence. In their eyes the fight was not against the Queen's sovereignty, but a struggle for house and home.²¹⁰⁵

The Sim Commission's report into the Waikato confiscations was a wide-ranging one, which traversed Fenton's time as Resident Magistrate in the district, the findings of the Waikato Committee, and other matters. It was clear, the report concluded:

...that the tribes whose lands were included in those [confiscation] Proclamations had been engaged after the 1st January, 1863, in rebellion against Her Majesty's authority. They were rebels, therefore, within the meaning of the New Zealand Settlements Act, 1863, and their land was liable to be confiscated. The first question is whether or not the circumstances were such as to justify us in saying that in good conscience and equity the Natives, although rebels, ought not to have suffered any confiscation of their land.²¹⁰⁶

Considering this question, the report of the commission commented that:

It is true, certainly, that the Government did afford them some excuse for their resort to arms. For them the Government had become a gigantic landbroker, whose sole object, however disguised, was the acquisition of their territory, regardless of their rights under the Treaty of Waitangi. They knew that the first Taranaki war was an unjust and unholy war, and this view of it was completely established when the Waitara purchase was abandoned by the Government.²¹⁰⁷

The report then went on to quote Sir William Martin's comment that Maori had not fallen short of their part under the Treaty more than the government had and 'had not, as a nation, sinned more against us than we, the superior and protecting power, had against them.' Despite this, the commission concluded that:

²¹⁰⁵ *ibid.*

²¹⁰⁶ *ibid.*, p.15.

²¹⁰⁷ *ibid.*

If in the circumstances the Natives had contented themselves with providing for their own defence when attacked, with providing also for the establishment of law and order in their midst, and for the regulation of sales of Native land, they might have been declared to be blameless. But they were not content to do that, and formed a plan for the destruction of Auckland and the slaughter of its inhabitants. This was to be part of a general attack in the North Island, and a party of Natives had actually set out on the march north to attack the pakehas before General Cameron had crossed the Mangatawhiri Stream. In view of these facts...we are not justified, we think, in saying that the tribes who took part in the Waikato war ought not to have suffered some confiscation of their lands as a penalty for the part they took in the rebellion.²¹⁰⁸

The commission had been heavily influenced by William Pember Reeves' work, *Long White Cloud*, in reaching this conclusion and quoted extensively from it in the report. Reeves, in turn, appears to have based his assertions largely on Grey's despatches to the Colonial Office in the days leading up to the invasion. As will be fully traversed in the political engagement report for the 1840-1863 period, there are some serious problems in relying upon these as a justification for the assault on Waikato.

Having determined, albeit on the basis of seriously flawed information, that the confiscations were justified, the commission next needed to determine whether these were excessive in extent having regard to the circumstances. On this point, the report asserted that 'the confiscation as finally effected did allow the Ngatimaniapotos to escape without any loss of territory, and made the Waikatos the chief sufferers.'²¹⁰⁹ With respect to the confiscations effected in the South Auckland area, the commission quoted Gorst's work to the effect that the tribes resident in this area had been harshly and unfairly dealt with, and concluded that 'it is clear that a grave injustice was done to the Natives in question by forcing them into the position of rebels, and afterwards confiscating their lands.'²¹¹⁰ Although rejecting the submission that there should not have been any confiscation, the commission therefore found that 'in view of all the

²¹⁰⁸ *ibid.*

²¹⁰⁹ *ibid.*, p.16.

²¹¹⁰ *ibid.*, p.17.

circumstances to which we have referred, the confiscation was excessive, and particularly so in the case of the Mangere, Ihumatu [sic], and Pukaki Natives.’²¹¹¹

The only reference to Ngati Maniapoto was thus a dismissive one, implying that the tribe had escaped lightly and that Waikato proper had, in effect, been punished for their sins. Yet it does not appear that the Sim Commission heard evidence from a specifically Ngati Maniapoto perspective and certainly the commissioners were unaware of interests claimed by that iwi within the Waikato confiscation district. The assumption that Ngati Maniapoto had no interests within the confiscated area appears to have been based on information supplied by the Department of Lands and Survey. The Commissioner of Crown Lands had written to the Crown Law Office in response to earlier communications, prompting ‘enquiries...with the object of establishing the position of the boundary between the Waikato and Maniapoto Tribes.’²¹¹² The commissioner went on to outline the nature of those inquiries:

The Native Land Court minute books dealing with investigation of titles to certain blocks have been searched and Judge MacCormick has been interviewed and also Mr. George Graham a local student of Maori history.

The information obtained from these sources has been used in fixing the boundary as shewn coloured green on the enclosed lithograph, from which it will be seen that none of the Maniapoto land was included in the confiscated area.²¹¹³

The relevant section of the map is shown below, with the tribal ‘boundary’ depicted in green and the southern boundaries of the Waikato confiscated lands shown in blue. It can be seen that the map suggested that these two lines were virtually identical from about Kihikihi across to Pirongia, before deviating, with the confiscation line running north to Whaingaroa and the tribal one being depicted as running across to the south side of Aotea Harbour. Whether there was such a thing as a hard and fast tribal boundary between Waikato and Ngati Maniapoto and, if there was, its exact location

²¹¹¹ *ibid.*

²¹¹² K.M. Graham (Commissioner of Crown Lands) to C.H. Taylor (Crown Law Office), June 1927, MA 85/7/7, Archives NZ.

²¹¹³ *ibid.*

is a matter best left to others more qualified to address. But it is worth bearing in mind that most Crown officials in the 1860s assumed that some Ngati Maniapoto lands had been confiscated – just not enough to satisfy many of them who harboured views of the tribe as obstinate and notorious ‘rebels’.



(Source: MA 85/7/7, Archives NZ)

Figure 17 Waikato Confiscation and Tribal Boundaries

It appears that no one bothered to ask Ngati Maniapoto or other Rohe Potae iwi for their views on the extent to which they had been affected by the confiscations. In fact, Ngati Maniapoto subsequently complained that they had been denied the opportunity to present their own case before the Sim Commission. These issues were highlighted by two separate but similar petitions which were lodged with Parliament by members of Ngati Maniapoto in 1927. The first of these stated:

1. – THAT a Commission known as “The Confiscated Lands Commission” has been sitting throughout the Dominion of New Zealand for the purpose of hearing claims from Natives with respect to lands confiscated by the Crown in consequence of the Maori wars.

2. – THAT large areas owned by the Ngati-Maniapoto tribes were so confiscated, these lands being situated in the Cambridge, Kihikihi, Pirongia, Ohaupo, Waikato and Ngaruawahia districts.

3. – THAT your petitioners are informed and verily believe that it has been stated that no Ngati-Maniapoto lands were confiscated and that if this statement has been made it is incorrect.

4. – THAT the representatives of the Ngati-Maniapoto tribe have not had an opportunity of stating their claim before the Commission and that no sitting of the Commission has been held in the Ngati-Maniapoto District.

WHEREFORE your petitioners pray that the scope of the above mentioned Commission shall be extended to include any claim which may be made by the Ngati-Maniapoto people and that no final decision be arrived at with respect to the report of the Commission until such claims shall have been heard and dealt with and that in the alternative such other consideration should be granted to your Petitioners as in your discretion should be deemed adequate.²¹¹⁴

The second petition, signed by Hone Te Anga and others, closely resembled the first in much of its wording, but proposed slightly different means of redressing their grievance, praying that:

²¹¹⁴ Petition No.175/1927, Hotu Taua Pakuhatu and others, Le 1/1927/23, Archives NZ, in Jamie Mitchell, ‘King Country Petitions Document Bank’, Crown Forestry Rental Trust, January 2008, p.2411.

...a sitting of the Commission may be held at some place in the Ngati-Maniapoto district in order to give your Petitioners an opportunity of having their claims placed before the Commission, OR alternatively, that a further Commission may be appointed for the purpose of hearing and reporting upon the said claims.²¹¹⁵

Both petitions were referred to the Native Department for comment, which in September 1927 replied to both in identical fashion, reporting that:

The Commission to which the petitioners referred has already ceased its labours and sent in its report to the Governor-General. The Commission did sit at Ngaruawahia within the Waikato-Maniapoto District.²¹¹⁶

Although the Native Affairs Committee referred both petitions to the government for its consideration, it would appear from the above that the matter had already been decided, and that no thought was given to enabling the Ngati Maniapoto claims to be referred to a further inquiry for investigation (though this remains to be confirmed through additional research). If this was indeed the case then the Sim Commission can hardly have been said to have removed the ‘sense of injustice’ felt by Ngati Maniapoto.

9.9 The Waikato-Maniapoto Maori Claims Settlement Act 1946 and Subsequent Developments

The Sim Commission had recommended annual payments of £5000 in compensation for the unjustified Taranaki confiscations and £3000 in respect of what it concluded had been the justified but excessive Waikato confiscations. That was not binding, however, and the first hurdle to be surmounted was gaining government acceptance of the findings and recommendations of the commission. To this end the four Maori MPs tabled their own recommendations for settlement before the Cabinet shortly before the Sim report was officially released. Although they accepted the £5000 figure for

²¹¹⁵ Petition No.176/1927, Hone Te Anga and others, Le 1/1927/23, Archives NZ, in Mitchell, ‘King Country Petitions Document Bank’, p.2419.

²¹¹⁶ Native Under Secretary to Chairman, Native Affairs Committee, 6 September 1927, Le 1/1927/23, Archives NZ, in Mitchell, ‘King Country Petitions Document Bank’, p.2410.

Taranaki, the MPs recommended an increase in the figure for Waikato to £4500.²¹¹⁷ A clause included in the 1928 Native Land Amendment and Native Land Claims Adjustment Act gave the government authority to act on the recommendations of the Commission as it saw fit, at the same time giving it discretion to modify or vary any of the payments to be made.²¹¹⁸

A sympathetic public response to the commission's report had no doubt smoothed the way for implementation, and Ngata's appointment as Native Minister following the 1928 election also seemed to hold out the prospect of an early settlement of matters. The concurrence of the affected groups was also required, however, and by August 1930 Ngata was able to report the agreement of all but Waikato to the terms offered them.²¹¹⁹

Waikato were far from happy with the findings and recommendations of the Sim Commission and throughout the 1930s remained divided as to whether to accept monetary compensation or stand by their governing maxim that 'as the land was taken, so land should be returned'.²¹²⁰ Michael King wrote that the basis of this view was neither simple idealism nor rapaciousness, but:

...an expression of the belief that money taken in compensation for land that had been fought over was contaminated. "We won't take black pennies", was one cry; and, "you don't eat your ancestors". The fact that the bones of ancestors lay in this land for which money was being offered, and that this money would be used to buy the necessities of life, meant the recipients would indeed be "eating" their ancestors.²¹²¹

At the same time, the frustration voiced by Te Puea to Frank Acheson in 1939 was also common. She declared it 'beyond the understanding of myself and my people...that in spite of the finding of the honourable men of this Commission, no

²¹¹⁷ Cathy Marr, 'Crown Policy Towards Major Crown/Iwi Claim Agreements of the 1940s and 1950s', (report commissioned by the Treaty of Waitangi Policy Unit), 1990, p.18.

²¹¹⁸ O'Malley, 'Aftermath of the Tauranga Raupatu', pp.130-131.

²¹¹⁹ Marr, 'Crown Policy Towards Major Crown/Iwi Claim Agreements', p.26.

²¹²⁰ Richard S. Hill, 'Enthroning "Justice Above Might"?': The Sim Commission, Tainui and the Crown', (report commissioned by the Treaty of Waitangi Policy Unit), 1989, p.8.

²¹²¹ King, *Te Puea*, p.223.

reparation acceptable to Waikato and practicable for New Zealand has yet been arranged' and expressed her great regret 'that a wrong nearly 80 years old should be permitted to continue to grind Waikato Maoris down...and compel many of them to feel life to be very harsh.'²¹²²

By 1935 Ngata believed that Waikato had given up their insistence upon land and a formal offer of £5000 per annum capped at £100,000 was made to tribal representatives. A counter-offer of either a lump sum £250,000 payment or annuities of £7500 was not acceptable to the government.²¹²³ Prime Minister M.J. Savage repeated the £5000 offer when visiting Ngaruawahia in 1936, but negotiations became bogged down and Waikato indicated their desire for double that amount.²¹²⁴ By mutual agreement negotiations were then postponed for much of the war. With the serious prospect that some settlement to the raupatu claim might be achieved, Waikato this time embraced the war effort more enthusiastically and like other iwi expected their contribution to be acknowledged. In 1944 legislation had been passed confirming the annual payment of £5000 to a Taranaki Maori Trust Board which had been paid on an interim basis since 1931,²¹²⁵ and legislation was passed with respect to the long-standing Ngai Tahu claim that same year.

Attention now turned back to the settlement of the Waikato confiscation claim. In April 1946 one of the largest hui seen at Ngaruawahia in many years was convened to consider the question afresh. While key leaders of the Kingitanga were now reconciled to the notion of monetary compensation, they remained adamant that any payment should be in perpetuity in permanent reminder of what had been lost to them.²¹²⁶ Others were less comfortable with this approach. According to Richard Hill, Tita Wetere of Morrinsville, inheritor of the Kingmaker mantle, poured scorn on the notion that 'the spiritual loss of land' could be rectified by monetary payment.²¹²⁷

²¹²² F.O.V. Acheson, 'Princess Te Puea Speaks', *New Zealand Mirror*, vol.18, nos. 7-10, 1940, cited in King, *Te Puea*, p.222.

²¹²³ Marr, 'Crown Policy Towards Major Crown/Iwi Claim Agreements', pp.47-48.

²¹²⁴ King, *Te Puea*, p.223.

²¹²⁵ Cathy Marr, 'An Overview History of the Taranaki Confiscation Claim – From the Sim Commission to the Submission of Taranaki Claims to the Waitangi Tribunal', (report commissioned by the Waitangi Tribunal), 1991, ch.4.

²¹²⁶ Hill, 'Enthroning "Justice Above Might"', pp.8-9.

²¹²⁷ Richard Hill, 'Settlements of Major Maori Claims in the 1940s: A Preliminary Historical Investigation', Department of Justice, November 1989, p.8.

Wetere and his supporters held the mana of the Kingitanga to be more important than settlement of the claim by way of compensation and pressed for statutory recognition of the King.²¹²⁸

A majority considered this unrealistic, however, and on 22 April 1946 agreement was reached for the payment in perpetuity of £5000 per annum. It was also agreed that an additional sum of £50,000 should also be paid in order to effectively backdate the compensation to 1936, with £5000 to be paid immediately and a further £1000 paid annually for the next 45 years.²¹²⁹ This agreement was embodied in the Waikato-Maniapoto Maori Claims Settlement Act, which was passed into law in October 1946.²¹³⁰

While Waikato leaders viewed the deal as vindication of their long-held grievances, historians have cast doubt on whether they would necessarily have seen it as the full and final settlement which Pakeha politicians and officials spoke about. Rather, it has been cast more in the light of the best possible deal available at the time, albeit one based on the Sim Commission's finding that the confiscation had been merely excessive and not unjustified.²¹³¹ That finding, along with view that Waikato had been in breach of the Treaty of Waitangi in the 1860s and were therefore unable to assert any rights on the basis of the 1840 agreement, would continue to be strenuously rejected by the Waikato tribes over subsequent decades, culminating in the 1995 Waikato Raupatu Claims Settlement Act and an apology from the Queen for the Crown's breaches of the Treaty in the 1860s.

The 1946 settlement legislation had expressly included 'Maniapoto' in its title, implying their inclusion in the agreement. As Paul Meredith has observed, the term was not part of the Bill as introduced and had been added only after, and perhaps in response to, a flurry of Ngati Maniapoto complaints with respect to the deal.²¹³² Hori

²¹²⁸ Hill, 'Enthroning "Justice Above Might"', pp.9-10.

²¹²⁹ Hill, 'Settlements of Major Maori Claims in the 1940s', p.9.

²¹³⁰ *New Zealand Statutes*, no.19, 1946.

²¹³¹ Marr, 'Crown Policy Towards Major Crown/Iwi Claim Agreements of the 1940s', pp.87-88; Hill, *Crown Authority, Indigenous Autonomy*, p.223.

²¹³² Paul Meredith, 'Maniapoto in the Waikato Settlements: Extract from a Draft Paper Entitled Maniapoto ki tua o te Puniu: Maniapoto Beyond the Puniu River', n.d., p.1 <http://www.kaputuhi.org/maniapotopuniu.pdf> (accessed 25 September 2008).

Tana had made it clear at the hui that endorsed the settlement that this was not solely a matter for Waikato proper but ‘affects the whole of the Waikato tribes and also the Maniapoto tribe.’²¹³³ Subsequent to the April 1946 agreement members of Ngati Maniapoto requested an investigation into the title to the lands confiscated and asserted an interest in these, as well as requesting that members of any body established to administer compensation funds should be appointed from among those persons found to be customary owners upon investigation.²¹³⁴ This request was rejected by the minister Rex Mason, who declared that:

In the legislation which will be brought before Parliament it will be made clear that the compensation is for the benefit of the tribes who lands were confiscated and also that the members of the Board are to be found from among the people who belong to those tribes. An enquiry by a Court to determine the rights of the people in the confiscated territory is not necessary, because they are sufficiently well known for the purposes of the Act, and an enquiry would only give a lot of trouble and expense without any benefit.²¹³⁵

The Native Minister further asserted that in a matter such as this it was ‘not possible to please everyone and if every objection has to be taken notice of, the Board will never be appointed.’²¹³⁶

Other members of Ngati Maniapoto claimed that they had been denied an opportunity to speak at the earlier Ngaruawahia meeting and sought a meeting with government representatives in their own area. Wi Nikora wired the governor-general to this effect, claiming to speak on behalf of the Ngati Maniapoto soldiers who served in both world wars, along with the parents and widows of those who never returned home.²¹³⁷ He subsequently forwarded a list of 243 signatures attached to a resolution requesting

²¹³³ Notes of meeting held at Turangawaewae marae, Ngaruawahia, 20 April 1946, p.9, MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22252.

²¹³⁴ Tahiopipiri Moerua to Prime Minister Fraser, 13 May 1946, MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22194.

²¹³⁵ Native Minister to T. Moerua, 2 July 1946, MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22191.

²¹³⁶ *ibid.*

²¹³⁷ Wi Nikora to Governor-General, 3 October 1946 (telegram), MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22108.

such a meeting, indicating significant levels of Ngati Maniapoto dissatisfaction with the deal done at Ngaruawahia.²¹³⁸

At a hui held at Otorohanga representatives of some 16 Ngati Maniapoto hapu endorsed resolutions rejecting the settlement Bill as a whole, as well as demanding that the new board to be established should be the 'Waikato-Maniapoto Trust Board', rather than the Tainui Maori Trust Board.²¹³⁹ Reihana Te Amohanga also forwarded the Prime Minister an urgent telegraph on behalf of the Maniapoto Welfare Committee urging the government to hold back from further consideration of the settlement legislation until such time as the tribes concerned had had an opportunity to put forward their views in person.²¹⁴⁰ But with the Bill already well advanced through Parliament, Te Amohanga was informed in response that 'at this stage no good purpose can be served by further discussion of the provisions of the Bill.'²¹⁴¹ That did not deter Te Amohanga, who wrote in reply that the Maniapoto Welfare Committee had 'decided that this matter will not be allowed to rest.'²¹⁴² Nearly a month after the final passage of the settlement legislation he again wrote to the Prime Minister, informing him that:

After referring your correspondence to my committee and members of Ngati Maniapoto tribe a resolution was passed that we of Ngati Maniapoto will not tolerate the Board already formed or take any active part in the administration of the Waikato Maniapoto Claims Settlement until the Government meet us here in our own marae.²¹⁴³

Whether such a meeting ever took place is unclear, and meanwhile there had been few other concessions to the Ngati Maniapoto viewpoint. While the preferred 'Waikato-Maniapoto' term was adopted for the Act it was rejected for the Trust Board on the

²¹³⁸ Wi Nikora to Governor-General, 7 October 1946, MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, pp.22099-22106.

²¹³⁹ Reihana Te Amohanga to Governor-General, 29 September 1946, MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, pp.22113-22114.

²¹⁴⁰ Te Amohanga to Prime Minister, 2 October 1946 (telegram), MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22111.

²¹⁴¹ Prime Minister Fraser to Te Amohanga, 2 October 1946, MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22110.

²¹⁴² Te Amohanga to Fraser, 7 October 1946, MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22097.

²¹⁴³ Te Amohanga to Fraser, 4 November 1946, MA 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22081.

grounds that this might cause confusion given the existence of the Waikato-Maniapoto Maori Land Board.²¹⁴⁴ Reassurance was also offered that ‘The section of the Maniapoto people whose land was confiscated will have a representative on the Board.’²¹⁴⁵ Regulations providing for representation on the new Tainui Maori Trust Board subsequently provided for a Puniu representative to be elected on behalf of the Ngati Paretekawa and Ngati Ngutu ‘sections of the Ngati Maniapoto tribe’.²¹⁴⁶ Raureti Te Huia was chosen as the representative on the Board.²¹⁴⁷ His subsequent actions suggested, however, that he did not necessarily view the settlement legislation as fully encompassing all of the various interests claimed by Ngati Maniapoto groups north of the Puniu River.

In 1947 Raureti Te Huia and 75 others petitioned Parliament on behalf of Ngati Paretekawa and Ngati Ngutu with respect to various confiscated lands within the Mangapiko and Puniu parishes, and others within the Kihikihi township. The petitioners declared that the lands in question had been returned to the wrong people, being individuals belonging to hapu which did not have customary claims on the lands in question.²¹⁴⁸ They called for an inquiry into these lands and the manner in which the reserves had been awarded.

Although the Maori Land Court subsequently sat in April 1948 to consider the matters raised in the petition, that hearing was effectively rendered nugatory by the Court’s ruling that it was barred by the provisions of the Waikato-Maniapoto Maori Claims Settlement Act from considering the merits of the petition.²¹⁴⁹ Section 3 of the 1946 Act had declared that this was intended ‘In settlement of all claims and demands which have heretofore been made or which might hereafter be made upon His Majesty’s Government in New Zealand in respect of or arising out of the confiscation of lands in the Waikato district’. Asked during the course of the Maori Land Court

²¹⁴⁴ M.R. Jones, Private Secretary to the Native Minister, to Rore Erueti, 23 August 1946, MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22151; Meredith, ‘Maniapoto in the Waikato Settlements’, p.2.

²¹⁴⁵ Native Minister to Te Amohanga, 9 October 1946, MA 1 5/13/9, vol.2, Archives NZ, RDB, vol.58, p.22096.

²¹⁴⁶ *New Zealand Gazette*, no.47, 22 July 1948, cited in Meredith, ‘Maniapoto in the Waikato Settlements’, p.3.

²¹⁴⁷ Meredith, ‘Maniapoto in the Waikato Settlements’, p.3.

²¹⁴⁸ Le 1/1947/16, Archives NZ, in Mitchell, ‘King Country Petitions Document Bank’, pp.2814-2832.

²¹⁴⁹ ‘Report and Recommendation of Maori Land Court on Petition No. 15 of 1947, of Raureti Te Huia and Others, Praying for an Inquiry in Relation to Certain Lands in Mangapiko and Puniu Parishes’, AJHR, 1950, G-6, in MA 1 5/13/201, Archives NZ, RDB, vol.67, pp.25882-25883.

inquiry why the issues raised in the petition had not been advanced prior to the 1946 settlement, Raureti Te Huia argued that the lands had been returned, so were therefore not encompassed by the Waikato-Maniapoto Maori Claims Settlement Act. He also pointed out that the matters raised in the petition were not considered by the Sim Commission, whose report and recommendations provided the foundation for the 1946 legislation.²¹⁵⁰

What the Court did not hear was that there had in fact been a much earlier petition with respect to at least some of the lands in question. In October 1947 the Under Secretary of the Maori Affairs Department informed the clerk of the Maori Affairs Committee that a petition had been lodged by Raureti Te Huia for the return of three sections in the parish of Mangapiko (338, 339, 341A) as early as 1923, but the Native Affairs Committee had no recommendation to make at the time.²¹⁵¹ Evidence of even earlier agitation with respect to these same lands can also be found. Raureti Te Huia had written to the Public Trustee in 1911 seeking information with respect to the three Mangapiko Parish lots, encompassing an area of 63 acres in total.²¹⁵² Nearly two months of confused correspondence followed before Te Huia was informed that the Public Trustee had no information regarding these blocks.²¹⁵³ It is not clear whether any effort was made to refer the query on to other government agencies such as the Native Department or Lands and Survey which may have been able to shed further light on the lands in question. However, in 1915 Raureti Te Huia wrote to Maui Pomare, the MP for Western Maori and officially referred to as the Member of the Executive Council Representing the Native Race, with respect to the same three lots. Referring to an earlier inquiry into the status of the lands, he informed Pomare that:

...we think that it is just that we should be given Crown grants for the said lots, or else that the matter be referred to the Native Land Court for our rights thereto to be inquired into, i.e., if such are Maori “takes”, but, maybe, on the

²¹⁵⁰ Sitting of Maori Land Court to Hear Petitions from Raureti Te Huia and Karena Tamaki, 12 April 1948, pp.10-12, MA 1 5/13/201, Archives NZ, RDB, vol.67, pp.25897-25899.

²¹⁵¹ Under Secretary, Maori Affairs Department, to Clerk, Maori Affairs Committee, 22 October 1947, MA 1 5/13/201, Archives NZ, RDB, vol.67, pp.25908-25909. See also Petition No. 168/1923 (Session II), AJHR, 1924, I-3, p.11.

²¹⁵² Raureti Te Huia to Public Trustee, 15 April 1911, MA-MT 1/1911/1061 (box 88), Archives NZ.

²¹⁵³ Deputy Public Trustee to Raureti Te Huia, 19 June 1911, MA-MT 1/1911/1061 (box 88), Archives NZ.

other hand, such “takes” may be that the lands were returned for landless Maoris; if so, then, we are part of these landless people, and the said lands originally belonged to us before they were confiscated.²¹⁵⁴

While Pomare’s response to this latest correspondence is not on file, it seems apparent that Raureti Te Huia was under few doubts as to the merits of the claim lodged on behalf of his people, a claim premised on customary ownership of the lands in question prior to the confiscation of these, along with the state of landlessness to which his people had been rendered as a consequence of raupatu. In fact, a separate petition from George Warren in 1917 with respect to the Mangapiko parish lots 338, 339, and 341 finally helped to shed some light on these lands. Warren wrote that:

This land was reserved for the Maoris and we have been to see this land. Now, we consider that this land is unsuitable for a kainga. This land adjoins the Puniu Stream and is unsuitable as a kainga for us.²¹⁵⁵

While the author of this letter asked for alternative lands in the Rangitoto district to be made available, subsequent inquiries by the Commissioner of Crown Lands revealed that the Mangapiko lots had been sold to two settlers. That followed a Native Land Court inquiry in 1910 at which it was ruled that the lands were no longer occupied by Maori and were not required by them for residential purposes, as a consequence of which they could be discharged from reservation and opened up for selection.²¹⁵⁶ Judging by the subsequent correspondence of Raureti Te Huia and others, it would appear that the extent to which Maori interested in the Mangapiko lands were aware of the 1910 hearing and its outcome is doubtful.

The 1923 petition with respect to these lands appears to have been a lost opportunity for at least some of the specific grievances of hapu and iwi from the Rohe Potae district with respect to the Waikato confiscation to have been referred to the Sim Commission for inquiry. As noted previously, in 1927 two petitions were lodged by

²¹⁵⁴ Raureti Te Huia to Maui Pomare, 4 January 1915, AADS W3562 22/959 (box 296) pt.2, Archives NZ.

²¹⁵⁵ George Warren to Native Minister, October [1917], AADS W3562 22/959 (box 296) pt.3, Archives NZ.

²¹⁵⁶ Commissioner of Crown Lands to Under Secretary, Lands and Survey Department, 12 November 1917, AADS W3562 22/959 (box 296), pt.3, Archives NZ.

members of Ngati Maniapoto with respect to the Sim Commission's failure to hear evidence from their tribe with reference to the confiscations. Instead, their interests were assumed to be covered by the 1946 legislation, notwithstanding apparently high levels of opposition to the settlement from members of Ngati Maniapoto and a continuing desire to have their own unique issues considered by the Crown. Fred Hapeta (Herbert) of Ngati Ngutu states in his brief of evidence dated March 2008 that 'the 1946 Act facilitated a breach of the Treaty because it denied Ngati Ngutu the opportunity to have the Crown's reserve allocation process investigated.'²¹⁵⁷ Issues have also been raised by some Rohe Potae claimants with respect to the Waikato Raupatu Claims Settlement Act of 1995, but those are matters that cannot be touched upon here.

9.10 Conclusion

Te Rohe Potae hapu and iwi, along with their wider Waikato kin, responded to war and confiscation with a remarkably diverse set of tactics and strategies, all of which revolved around a shared and deeply felt sense of loss and grievance. The 1869 attack on the Pukearuhe redoubt in northern Taranaki was one form of response. But although military scares persisted through until the 1870s, actual armed confrontation with Crown forces was not a favoured tactic after 1864. The people of Te Rohe Potae and the broader Waikato district had, after all, been forced into a defensive war in 1863, and suffered great hardship and trauma in consequence. It was not an experience they were keen to repeat in a hurry. However, the constant rumours of intended attacks kept the district in a state of continual uncertainty throughout the 1860s, contributing towards the ultimate failure of the scheme of military settlements. Small-scale deputations of Maori to particular military settlers, warning them to vacate their homes or suffer the consequences, also appear to have been remarkably effective, besides contributing to an atmosphere of constant fear among Europeans living on the confiscated lands in Waikato. Ngati Maniapoto leaders agreed to give shelter to Te Kooti largely out of a concern to avoid any further 'mischief', and a similar motivation appears to have been behind the imposition of an aukati from 1866 onwards.

²¹⁵⁷ Brief of evidence of Fred Herbert, 21 March 2008, p.7.

Other forms of early protest included an attempt to block the sale of township sections at Ngaruawahia in 1864, along with various letters and publications protesting at the injustice of the confiscation (including some penned by Pakeha sympathisers). Appeals to officials or formal petitions to Parliament sometimes challenged the injustice of confiscation as a whole, or at other times sought to mitigate its effects in more discrete ways, such as efforts to secure the protection of urupa and other forms of wahi tapu. Many petitions lodged on behalf of particular individuals, whanau or hapu sought assistance in ameliorating their plight. So long as they did not pose a challenge to the official narrative of war and confiscation as having been provoked by, and justified in response to, supposed Kingitanga threats and actions, these kinds of petitions or appeals might sometimes receive favourable treatment from Crown officials.

Broader grievances which questioned the justice of the Crown's actions received short shrift, however, and that certainly applied to the series of petitions lodged by Wiremu Tamihana between 1865 and 1866. The narrative he outlined, along with his calls for an independent inquiry into the conduct of the war, constituted a direct challenge to the official line. Tamihana himself had laid down his arms at Tamahere in May 1865, and more than a year later he was lured to Wellington to present the last of his petitions in person. As we saw, it soon transpired that colonial politicians had encouraged Tamihana to put in a personal appearance not so that they could more closely consider the grievances he harboured, but in the hope of buying him off with offers of a personal estate. Tamihana, though, was not for sale and refused to abandon the core Kingitanga demand for the return of the confiscated lands in full.

That demand was one that King Tawhiao, after a long period of seclusion in the Rohe Potae district, determined to take directly to his Treaty partner, Queen Victoria, in 1884. An earlier deputation of this kind, composed of a group of northern chiefs, had failed to secure a meeting with the Queen, but Tawhiao's deputation was widely viewed as being of a different calibre altogether. No one at the time considered the trip little more than a futile or symbolic gesture, lest of all the New Zealand government, which made frantic behind-the-scenes efforts in London to block what would have been a deeply embarrassing audience with the Queen. Those efforts to

sabotage Tawhiao's mission ultimately proved successful. While Tawhiao and his entourage met with a great deal of sympathy for their cause from the British press and public, following a meeting with the Secretary of State for the Colonies his grievances were referred back to the New Zealand government for a response. It predictably rejected the grievances outright, ironically perhaps vindicating the original decision to go over their heads and appeal directly to the Queen.

Tawhiao's journey to England followed a long period from about 1869 onwards in which the preferred approach of Kingitanga leaders to resolving outstanding grievances relating to raupatu involved direct high-level talks with New Zealand government representatives. Those talks frequently assumed something of the nature of diplomatic negotiations between independent powers, which given the quasi-autonomous status of the Rohe Potae district until at least the early 1880s, reflected the reality of the situation on the ground. But whereas Crown officials remained determined to open up the district to the writ of English law, along with roads, railways and European settlements, Kingitanga leaders were firmly focused on securing the return of all confiscated lands. That was a demand that the Crown refused to seriously contemplate. And while early negotiations under McLean and subsequently Grey showed some signs of promise, Crown officials increasingly spurned opportunities to negotiate carefully and respectfully towards a resolution of the grievances of Waikato Maori in favour of unilateral demands for submission to the Queen's sovereignty – a situation eerily reminiscent of the scene confronting the Waikato tribes in the early 1860s. By the late 1880s government officials were choosing to openly humiliate and insult the Maori King by demanding that he personally swear an oath of allegiance to the Crown. And Tawhiao's response that the Treaty of Waitangi had always been his 'oath' was met with the statement that the Treaty should not be brought into the negotiations. Throughout, the area of land offered by the Crown had been tiny by comparison with that originally confiscated – constituting approximately 1.66% of the total confiscated area according to one report.

By the early twentieth century matters had moved on, and it was less a case of negotiating a political settlement of outstanding issues left over from the war than of seeking redress for the historical injustices of war and raupatu inflicted by the Crown.

The appointment of the Sim Commission in 1926 to investigate the various confiscations promised some kind of action. However, the commission was hamstrung from the outset by various restrictions on its ability to make full inquiry, including clear instructions to have no regard for the Treaty of Waitangi when considering the claims of former ‘rebels’ or their descendants. Despite those restrictions, the Sim Commission’s report found the Taranaki confiscations wholly unjustified, while those in Waikato were deemed excessive, providing a basis for some kind of compensation. However, members of Ngati Maniapoto subsequently complained that they had been denied the opportunity to present their own raupatu grievances before the Sim Commission, and similar complaints surfaced in the lead up to the passing of the Waikato-Maniapoto Maori Claims Settlement Act in 1946. In fact, the only concession to their viewpoint appears to have been the inclusion of ‘Maniapoto’ in the title of the legislation, implying a level of concurrence with the measure that was not reflected in the flurry of complaints from members of Ngati Maniapoto received by government officials at this time. While officials argued that Ngati Maniapoto ought to have brought their grievances forward much earlier, this overlooked the fact that in a number of instances they had done precisely that, but to little or no avail. The unique raupatu-related grievances of Ngati Maniapoto and other Rohe Potae iwi have consequently never before being fully inquired into by any official body.

10. Conclusion

It has become something of a truism in Treaty history circles to suggest that the Native Land Court was more harmful to Maori society in the nineteenth century than war and confiscation. Alan Ward, writing in 1973, was probably the first to advance such an argument, and many historians have subsequently quoted approvingly his statement that 'It was the sordid, demoralising system of land-purchasing, not war and confiscation, which really brought the Maori people low.'²¹⁵⁸ It is only a relatively short conceptual leap from such an argument to one that virtually sees raupatu as preferable to the Land Court. David Williams, for example, comes perilously close, when he writes that:

In our time, the Crown, in direct negotiations with claimants and in memoranda to the Waitangi Tribunal, has acknowledged that 'raupatu' – the use of the New Zealand Settlements Act 1863 to confiscate land from Maori who were labelled as 'rebels' – constituted an injustice and was in breach of the principles of the Treaty of Waitangi. Parliament has now enacted the Waikato Raupatu Claims Settlement Act 1995 which contains an apology from the Crown to the hapu of Waikato for the raupatu they suffered and implements measures to partially atone for the injustice. Ironically, raupatu by the Crown sometimes reinforced a sense of collective unity within the tribes (such as the Kingitanga tribes of Waikato) which were affected by that injustice. On the other hand, the individualising of land ownership by the Native Land Court invariably tended to leave Maori communities deeply disunited.²¹⁵⁹

So fashionable has it become to dismiss raupatu-related grievances as a sort of rhetorical device by which to emphasise the seriousness of Native Land Court issues that we are in danger of losing all perspective. The impact of the Land Court was felt far more widely than raupatu in terms of geographical coverage so if we are considering the breadth of a grievance then Ward undoubtedly had a point. But if we

²¹⁵⁸ Ward, *Show of Justice*, p.267.

²¹⁵⁹ David V. Williams, 'Te Kooti Tango Whenua': *The Native Land Court, 1864-1909*, Wellington: Huia Publishers, 1999, p.3.

focus instead on the gravity of the issues giving rise to the grievances then it is a different matter altogether. In the Waikato district *it was* war and raupatu which ‘really brought the Maori people low’, and there can surely be little doubt about that. Moreover, there is a clear qualitative difference between attending a Land Court hearing and, say, being present at the site of a British attack, such as that on Rangiaowhia. Not too many people, as far as this author is aware, were shot, killed, maimed, burnt to death in their whares or imprisoned without trial while innocently hanging about waiting for a Land Court to convene. Moreover, talk of unity can be misleading. At various times in their history – war, land confiscations, the Great Famine – large numbers of the Irish people were no doubt united in their hatred of what the English had done to them. But that hardly served to bring back to life dead family members, or restored land to them, or put food on their otherwise empty tables. With respect, it is suggested that similar considerations apply with regard to war and raupatu in New Zealand. None of this should be read as questioning the serious issues associated with the Native Land Court, merely as a case against the drift towards what too often seems like the casual trivialisation of raupatu-related grievances. ‘Raupatu’, let us remember, is not merely a term for another form of land alienation, but also speaks to the violent encounters which preceded such takings.

In the early chapters of this report those encounters and their impacts on hapu and iwi were considered at length. British plans for the invasion of the Waikato advanced in 1861 by Governor Browne were soon cancelled (or perhaps postponed?) by his successor Grey. An altogether fascinating counterfactual history might be imagined had that decision not been made, involving almost certain crushing defeat for the British. Instead, the intervening two years allowed Grey to build up both military resources and the necessary infrastructure for a successful invasion by July 1863. Greatly outnumbered and confronted with other distinct disadvantages, the various Kingitanga forces necessarily sought to avoid open conflict in favour of more fleet-footed tactics designed to slow the British advance through attacks on supply lines and the construction of a series of defensive pa lines. Numerous small engagements fought in the months between July and October 1863 succeeded in frustrating the British advance, but Cameron’s forces achieved a more comprehensive victory at Rangiriri in November, though only under the most controversial of circumstances.

Rangiriri was captured and more than 180 of its defenders thus taken prisoner under a white flag of truce.

All the weight of available evidence suggests that, in the wake of Rangiriri, Kingitanga leaders made strenuous efforts to bring an end to the war, even complying with a British demand to voluntarily abandon Ngaruawahia before peace talks could be commenced. But no talks followed, in part because Grey and his ministers chose instead to argue over who should travel to the Waikato to offer terms of submission. At a more fundamental level, Grey, it appears, remained concerned that the Kingitanga had not yet been sufficiently crushed, while many contemporaries suspected that ministers had their eyes on the rich lands of Rangiaowhia and surrounds, to the south of Ngaruawahia.

In February 1864 a sharp defeat was inflicted on Maori at Waiari, following which Cameron cleverly manoeuvred his forces around the Paterangi defensive line. He chose instead to strike at Rangiaowhia, which, though an important source of food supplies for the various Kingitanga forces, was considered a place of refuge for women, children and the elderly. The attack on the settlement, and an incident in which a number of people died inside a whare set alight by British soldiers, were consequently bitterly remembered by the Waikato tribes. Hairini and Kihikihi followed soon after, the sacking of the latter (deserted) settlement watched by its former residents from a nearby hill on the other side of the Puniu River. While debate ensued as to how much further south into the territory of Ngati Maniapoto British troops should attempt to push, ministers had begun to turn their attentions eastwards towards Maungatautari. The subsequent siege at Orakau was therefore unexpected, and though it has been mythologised as ‘Rewi’s last’ (romantic if futile) stand, the truth appears somewhat different. Large numbers of the pa’s occupants were killed in the subsequent pursuit, including some women and children, and there is evidence of various atrocities committed by British troops.

Only those with the benefit of hindsight described Orakau as the final act of the Waikato War. There was no large-scale submission, highlighting the limited nature of Crown victory. Yet for the hapu and iwi involved the losses were very real. These included the loss of the lands conquered and informally held by the British until such

time as these could be legally confiscated, almost crippling damage done to what economic infrastructure remained in Maori ownership and casualty levels which may have been comparable with the horrendous losses suffered by New Zealand troops during World War One. A period of obvious deprivation and disease followed, which was exacerbated by the large number of war refugees now sheltered south of the Puniu, before a gradual recovery from the late 1860s. The imposition of an aukati by 1866 may have had some beneficial effects in this respect, limiting, for example, exposure to infectious diseases to which Maori continued to have limited immunity. Although many settlers came to resent the aukati, it was clearly intended to prevent rather than provoke further trouble, being enforced most strongly during periods of tension, for example. Nor was it ever absolute. Both Europeans and Maori deemed 'loyalists' continued to occupy lands south of the aukati in the post-war years. It was never simply a crude device to keep Pakeha out of the district but operated as a more flexible instrument of policy over the years it was in place.

The confiscation of lands north of the Puniu River brought European settlement ever closer. Though colonial politicians sometimes attempted to point to Maori custom as a supposed precedent for confiscation, closer examination hardly bears out such a view. There were, however, stronger precedents in British Imperial history, including repeated wholesale acts of conquest and confiscation in Ireland, as well as some local examples of what might be described as proto-confiscations dating from the 1830s and 1840s. The invasion of Waikato in July 1863 was premised on a previously agreed plan to confiscate lands stretching across the North Island from Raglan (or Kawhia) to Tauranga, upon which military settlers would be planted. The New Zealand Settlements Act was part of a package of legislative measures passed during the 1863 parliamentary session which were intended to give effect to these proposals. It encountered minimal opposition inside the General Assembly, a little more outside it and a great deal more in Britain. But conditions imposed on the implementation of the Act by the Colonial Office intended to mitigate potential abuse of the power created to confiscate Maori lands were largely ignored by successive colonial ministries. And for all of the Colonial Office concerns expressed, ultimately the British government remained more interested in finding the quickest and cheapest exit strategy for its troops than in ensuring strict adherence either to those conditions or to the Treaty of Waitangi.

A similar dynamic played out locally, with Grey protesting long and loudly about the supposed injustice of sweeping confiscation proclamations proposed by the colonial ministry, before ultimately signing off on such takings. Yet it was Grey who had, by his own admission, been the original architect of the confiscation proposals, his subsequent opposition to which became apparent only as news of the British backlash against such plans began to filter back to the colony. Just weeks after British troops crossed the Mangatawhiri, the first contingent of military settlers sailed for New Zealand from across the Tasman. After having essentially driven one ministry out of office, in October 1864 Grey succeeded in getting a proclamation published which gave all those persons implicated in 'rebellion' until 10 December to come in and take the oath of allegiance in return for receiving a pardon. When the deadline expired with little response, the first sweeping confiscation proclamation was issued with respect to Waikato. It was a curiously worded document which made no reference to the New Zealand Settlements Act and could be read either as notifying the governor's intention to confiscate all 'rebel' lands between the Mangatawhiri and Puniu rivers, or as confirming their confiscation. Subsequent confiscation proclamations issued under the Settlements Act through until September 1865 eventually confiscated something in the order of 1.2 million acres of Waikato lands. With early auctions of some of the confiscated lands reaping handsome profits, a number of the British regiments involved in the Waikato War applied for a share of the prize money from the lands they had conquered.

Yet despite this, there can be little real argument as to the ultimate failure of confiscation as a whole. Not only were Sir William Martin's very real fears concerning the legacy of this fully vindicated (that is, that it would prolong Maori resistance and create a sore that would fester for generations), but even from the perspective of encouraging closer European settlement and colonisation the confiscation policy was an unmitigated failure. While the government had acquired more than three million acres of land at Waikato, Taranaki and elsewhere through various proclamations under the Settlements Act, it had also indebted itself to the tune of £3 million, and initial plans to recoup this through the sale of confiscated lands to settlers were not realised, helping to plunge the colony into further financial crisis. Many of the military settlers, meanwhile, lacking basic farming skills, poorly

capitalised and living under constant threat of attack, lasted but a short time on their plots, preferring to return to the easier pickings of the goldfields. Indeed, about the only group of people to have done well for themselves out of the confiscations were private speculators, among them Frederick Whitaker and Thomas Russell, who had both been heavily involved in designing the scheme of confiscation in their role as ministers in the Whitaker-Fox government of 1863-64. Those kinds of figures did not hesitate to cut corners where necessary, and previous analyses have raised significant doubts as to the legality of the confiscations as implemented on the ground. Two particular issues stand out: firstly the frequent failure to comply with the 'three step' process required under the New Zealand Settlements Act in order for lands to be confiscated; and secondly, the failure to adhere to the same legislation's stipulation that only lands suitable for settlement could be taken. Plenty of mountain tops and other lands patently unsuited for settlement of any description were included in the blanket confiscation proclamations.

Meanwhile, clear and unequivocal promises made to those not implicated in 'rebellion' that their lands were safe from confiscation were all but rendered null and void by later qualifications that this undertaking did not extend to lands owned jointly with supposed 'rebels'. Instead, Waikato 'loyalists' for the most part received back no more than a tiny fraction of their original estate, if anything, to be held under individualised Crown grant rather than under customary title. Indeed, it is clear that a significantly larger area of land was confiscated than the Crown ever intended retaining in large part because of the opportunities that this was seen to create for tenurial reform of a similar kind to that being promoted elsewhere through the mechanisms of the Native Land Court. The Compensation Court established to determine eligibility for compensation and make awards accordingly shared many of the same personnel as the Land Court, along with many aspects of its *modus operandi*. The Land Court was a well-oiled machine by comparison, however, and much of the work of the Compensation Court appears to have been chaotic in conception and execution. Further complicating the picture is a string of poorly documented out-of-court settlements in which Maori were likely to be on the back foot by definition. It was, after all, not a case of agreeing as to what would be given up to the Crown but rather of seeking the return of at least a portion of those lands already in the Crown's possession – hardly an optimum negotiating position. There is also evidence that a

number of factors may have contributed to the rapid alienation of much of the land 'returned'.

Early pronouncements that generous provision would be made for so-called 'returned rebels' was not matched by any actual legislative provision by which lands could be granted to such persons until the passage of the Confiscated Lands Act in 1867. If that was perhaps an interesting indication of where government priorities lay, it was to be a further 12 years before any legal steps were taken to set aside lands under the provisions of the 1867 legislation. Further provision was then made under the Waikato Confiscated Lands Act of 1880 and subsequent enactments for additional lands to be set aside for 'former rebels' who might wish to resettle on a portion of the confiscated lands, but met with a relatively low response rate owing in large part, as officials acknowledged, due to the poor quality of the lands on offer. By the early twentieth century a large number of Waikato Maori were officially described as landless in consequence of the confiscations.

In the Taranaki district Ngati Maniapoto interests had been recognised by Crown officials as recently as 1860, albeit out of rather self-interested motives, but had all but vanished from the radar by the time of the confiscation proclamations in 1865. Critics such as Octavius Hadfield argued that the Waikato tribes had not backed up conquest in the 1830s with subsequent occupation of the lands in question and had therefore failed to establish any customary claim on the Taranaki lands. However, other evidence clearly indicates that Crown officials had acknowledged a Ngati Maniapoto right to occupy lands south as far as Urenui, while there are other indications that Ngati Maniapoto communities were periodically occupying parts of northern Taranaki in the 1840s and 1850s. Although they failed to file claims to Taranaki lands in the Compensation Court, assertions of right were felt in other ways, including the 1869 attack on the Pukearuhe redoubt. Parininihi, just to the north of this redoubt, had evidently been selected as the northern boundary of the Taranaki confiscated lands not because it coincided with any particular tribal boundaries, but because it happened to be the northern most limit of the area the British controlled.

The attack on Pukearuhe was one of the few military confrontations after 1864 in which members of Ngati Maniapoto or other Rohe Potae hapu or iwi were definitely

involved. However, throughout the period through until at least the mid-1870s frequent rumours of planning imminent uprisings kept the settlers and colonial politicians on their toes (as did occasional small-scale attacks on settlers across the aukati). Indeed, this unrest undoubtedly contributed to the failure of the military settlements, and thus could be seen as serving broader political objectives. There were even some reported instances in which deputations of armed Maori gave military settlers and their families notice to quit the confiscated lands or suffer the consequences – a warning that appears to have been invariably heeded. Other Maori interrupted auctions of confiscated lands to lodge their protest, penned pamphlets or letters in protest, or pleaded with officials on the ground for their wahi tapu to be protected. Petitions, at least in the nineteenth century, were less common than might have been expected, perhaps owing in large part to the fact that many of those who had suffered confiscation were nominally ‘unsurrendered rebels’ living south of the aukati until at least the early 1880s. Wiremu Tamihana’s series of petitions lodged in 1865-1866 hardly augured well for the success of such an approach, as Pakeha politicians for the most part refused to engage with the chief on the many detailed grievances he presented to them. If one thing came out of his 1866 trip to Wellington to present the last of these in person it was perhaps that no amount of reasoning would ever persuade the Pakeha political establishment to return the Waikato in full.

More discrete petitions which did not seek such an outcome or did not require a fundamental reassessment of official verdicts that Maori were responsible for the Waikato War could sometimes meet with a somewhat more favourable response. That hardly described the grievances of the Kingitanga as a whole, however, and in 1884 King Tawhiao travelled to London in an effort to make a direct appeal to his Treaty partner. Apparently frantic behind-the-scenes efforts on the part of the New Zealand government’s representative in London succeeded in blocking a meeting between Tawhiao and Queen Victoria.

The trip itself followed on from a lengthy period, commencing in 1869, when political negotiations between the King movement leaders and government representatives appeared the favoured and most likely path for a settlement of outstanding raupatu matters to be reached. In essence the Kingitanga were consistent in their demand that all of the confiscated lands should be returned. Meanwhile, apparently generous

government offers after 1876 to return all those lands to the west of the Waipa and Waikato rivers, which were at various times thought likely to be accepted, appear, on closer inspection, to have involved a very small fraction of the area originally taken. When such talks finally broke down altogether in the late 1880s the wider political dynamic had changed considerably with the 'opening up' of the King Country to European settlement, and officials were confident enough to attempt to publicly humiliate Tawhiao by requiring him to take the oath of allegiance. That was something which the King's supporters would on no account allow to happen, and meanwhile Tawhiao repeatedly declared that the Treaty of Waitangi was his oath of allegiance. There was really little more to say when the Maori King was warned that the Treaty must on no account be brought into the negotiations.

Subsequent developments in the twentieth century, including the Sim Commission inquiry into the confiscations and negotiations leading up to the passage of the Waikato-Maniapoto Maori Claims Settlement Act of 1946 were of a rather different nature. No longer did these take the form of talks aimed at resolving outstanding political matters left over from the war, so much as push for redress of obvious historical injustices arising out of those events. Slowly but surely a process of historical reappraisal was beginning to shed new light on the events of the 1860s, even if officials for a long time insisted that the Treaty could not be brought into such reassessments.

In summary, then, while members of some Te Rohe Potae hapu and iwi provided limited support and assistance to the British forces during the Waikato War, and particular rangatira sometimes played an important role in attempting to broker peace talks between the parties, many more Maori from the district were forced into a defensive war in consequence of the Crown invasion begun on 12 July 1863. Several Kingitanga efforts to negotiate an end to the war were subsequently rebuffed by Crown officials determined to instead demand unconditional surrender on the part of the tribes and who were widely believed to be intent on seizing valuable lands in the area around Otawhao and Kihikihi. The dubious circumstances under which Rangiriri was seized by the British and more than 180 of its occupants taken as prisoner, despite indicating a desire to bring the fighting to an end, created an atmosphere of suspicion and mistrust. Meanwhile, the subsequent attack on the village of Rangiaowhia, which

was widely believed to have been a place of refuge for women, children and the elderly, gave rise to much pain, bitterness and anger among many of the Waikato tribes, and those feelings have reverberated across generations. Very heavy Maori losses were also sustained at the battle of Orakau, where most of those who died appear to have been killed in the British pursuit, while others, including women (and possibly some children) were killed in cold blood.

While the information available to us is less than complete, there are reasonable grounds for concluding that the casualty rate among Te Rohe Potae hapu and iwi and their wider Waikato kin caught up in the British invasion of their district may have been horrendous, possibly on a par with, if not exceeding on a per capita basis, New Zealand's total killed and wounded during World War One. Te Rohe Potae hapu and iwi thereafter gave shelter to a very large refugee population from the Waikato, though with a reduced land base and following much damage to their own economic infrastructure. All of the evidence indicates that a period of great deprivation followed in the immediate aftermath of the wars, with diseases associated with cramped and unsanitary living conditions taking a large toll, and the threat of starvation a very real prospect by some accounts. By the late 1860s that situation had improved somewhat, even if the people of Te Rohe Potae continued to remain vulnerable to crop failures or other adverse circumstances.

Confiscation proposals had been developed to an advanced stage prior to the invasion of Waikato. These envisaged the establishment of a military frontier from Raglan or Kawhia across to Tauranga, taking in a significant amount of land belonging to various Te Rohe Potae hapu and iwi. Ngati Maniapoto, in particular, were regarded by Crown officials as especially deserving of punishment and in some schemes the confiscation of all land as far south as Mokau was openly contemplated. Legislative provision for confiscation was subsequently enacted in the form of the New Zealand Settlements Act, passed by the General Assembly towards the end of the 1863 parliamentary session. But Grey and his ministers thereafter disputed the area of land that should be confiscated, perhaps due in part to British unease on this issue which had influenced the governor, and though the former eventually buckled and agreed to extensive confiscations in December 1864 the southernmost limit of these was further north at the Puniu River. That happened to coincide with the full extent of the territory

under actual and effective British occupation and control. A perception was thereafter evident among officials that Ngati Maniapoto had unjustly escaped 'scot free' from the confiscation of their lands while less culpable tribes to the north of them had suffered disproportionately. But besides being grounded in unfair depictions of Ngati Maniapoto as obstinate 'rebels' and troublemakers, that viewpoint also overlooked the confiscation of valuable lands in the area between Kihikihi and Rangiaowhia and elsewhere along the boundary with the Rohe Potae district. Moreover, Te Rohe Potae hapu and iwi also suffered as a consequence of the Taranaki confiscations, which encompassed lands in which their interests had previously been recognised by Crown officials. While Ngati Maniapoto and other groups did not participate in the Taranaki Compensation Court process, they continued to make their claims over Taranaki felt in other ways, including the 1869 attack on the Pukearuhe redoubt in northern Taranaki.

Some Rohe Potae Maori took part in the Waikato Compensation Court hearings, by which process a small fraction of the lands of those deemed eligible for compensation were either awarded back to them or monetary compensation was paid over instead. Unambiguous earlier promises that the lands of 'loyal' and neutral Maori would not be touched by confiscation had been watered down to the point of meaninglessness by subsequent qualifications excluding lands owned jointly with 'rebels' from this undertaking. In fact, the Crown had confiscated a much larger area of land than it intended retaining, in part because of the desire to impose a kind of tenurial reform similar to that taking place elsewhere through the Native Land Court by the 'return' of lands under individual Crown grants, thereby eliminating customary and communal titles.

Promises that so-called 'returned rebels' would be generously treated failed to be matched by any actions for a long time, even after legislative provision was finally and belatedly made for this to occur in 1867. It was a further 12 years before any legal steps were taken to set aside any lands for these purposes. And further efforts under the Waikato Confiscated Lands Act after 1880 failed to match the scale of the problem, partly due to the wholly inadequate nature of the lands available to select from and partly from a more fundamental reluctance on the part of many hapu and iwi to participate in any process that could be seen as condoning or legitimising the

confiscations. Thousands of Waikato Maori, include some groups with claims before the Rohe Potae inquiry, remained landless by the turn of the twentieth century as a direct consequence of the confiscations.

Responses to the raupatu on the part of Te Rohe Potae hapu and iwi, along with their wider kin, were remarkably diverse, encompassing a range of different tactics and strategies, though all underpinned by a shared sense of loss. More discrete petitions or appeals to Crown officials which did not challenge the official narrative of war and confiscation promoted by the government (that is, of a defensive or pre-emptive war fought reluctantly by the government in response to Waikato Maori threats and arising out of which confiscation was not only entirely justified but also necessary for the future defence of the colony) might sometimes receive favourable consideration. Broader grievances received short shrift, however, and throughout Crown officials were adamant that ‘rebels’ or their descendants had forfeited any rights to their lands guaranteed them under the Treaty of Waitangi by virtue of their supposed ‘rebellion’. That view permeated the operations of the Sim Commission in the 1920s, and although a partly favourable report provided a basis for later compensation Ngati Maniapoto complained that their own unique grievances had not been inquired into, a viewpoint which persisted after the passage of the Waikato-Maniapoto Maori Claims Settlement Act of 1946.

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 IA 1/1867/1195 (extracts from *The Times*)
 IA 1/1867/1460 (King party movements)
 IA 1/1867/1703 (re Ngatiawa Confiscated Block)
 IA 1/1867/2267 (peaceful disposition of Kingitanga)
 IA 1/1867/2523 (memo re compensation claims)
 IA 1/1867/2932 (rules for guidance of Compensation Court)
 IA 1/1867/3089 (re hostilities of King party)
 IA 1/1868/484 (White Cliffs 'Massacre')
 IA 1/1868/492 (White Cliffs 'Massacre')
 IA 1/1868/710 (Catholic Bishop's compensation claim Rangiaowhia)
 IA 1/1868/2012 (schedule of unsuccessful compensation claims)
 IA 1/1868/2032 (Ahipene Kaihau petition for payment for Taranaki)
 IA 1/1868/2033 (Ahipene Kaihau claim on Taranaki lands)
 IA 1/1868/2260 (military movements, Puniu River)
 IA 1/1868/2294 (petition re Taranaki confiscated lands)
 IA 1/1868/2466 (Maori reserves under Settlements Act)
 IA 1/1868/3408 (extracts from British newspapers)
 IA 1/1868/3419 (Ngaruawahia)
 IA 1/1869/2089 (King Tawhiao's movements)
 IA 1/1870/156 (defence of Waikato district)

IA 14/12, Introduction of Military Settlers 1863-1864. Submissions by various interested parties of schemes for the introduction and regulation of Military Settlers particularly for the Waikato, suggesting classes and nationalities of settlers required. Settlers soliciting employment as agents for selecting military settlers. C.D. registered files.

IA 14/13, Military defence of New Zealand (Appendices to the Journals of the House of Representatives, A6a, 1863) - 1-22 August 1863. Despatches

requesting finance from British Government for military defence of New Zealand for unforeseen expenditure until General Assembly can provide the necessary funds, 1863.

IA 14/14, Letters to Featherston from Potatau and others 1863 (in Maori).

IA 14/17, Native Policy - Confiscation (Appendices to the Journals of the House of Representatives, Part in E2, 1864) - Correspondence between the Governor and his Ministers concerning the legality of Orders in Council for the confiscation of Maori lands in the Waikato submitted for the Governor's signature. Also the Governor's suggested plans for fortifying and settling the Waikato.

IA 14/20, Despatches from Sir George Grey relating to Maori prisoners (Appendices to the Journals of the House of Representatives, E5, 1864) - Despatches concerning welfare, etc. of Maori prisoners on the hulk "Marion" (ship). Despatches concerning the administration of Native and military affairs. Description of fight at Orakau Pa, 1864.

IA 14/22, Accounts of visits to the Waikato of Reihana Kiriwi Raneira Te Kooterangi, Te Rauhihi and Rio Haeaterangi in 1864 - (Maori and English).

IA 14/25, The maintenance and location of immigrants introduced into the North Island under the New Zealand Settlements Act 1863 (Appendices to the Journals of the House of Representatives, D2 and D2a, A2, 1866) - Also regulations for acquiring land by confiscation etc. and the administration of waste and confiscated lands by Government and Auckland Province. Correspondence concerning surveys and land sales by C Heaphy. Correspondence concerning Provincial and General Government. Funds and finances to be extended on Public Works staffed by immigrants. Arrangements for loan to Provincial Government for immigration purposes - (Colonial Secretary registered letters) - (IA 1866/1651 and previous papers).

IA 14/26, Petitions from Military settlers in the Waikato against Government withdrawal of troops from Waikato - 30 June 1865.

IA 14/27, Correspondence signed or purporting to be signed by William Thompson Waharoa (Appendices to the Journals of the House of Representatives, E11, 1865) Maori - Mainly discusses development of Native Affairs in Waikato. Gives his opinions on the plans the Governor has suggested for ending the war and for settling Maori problems, movements of troops and the intentions of the natives re land, war, etc, 1865.

Lands and Survey Department (AADS):

AADS W3562 22/959 (box 296), pt.1, Koheroa Parish – Landless Natives in Waikato and Tauranga, 1909-1913.

AADS W3562 22/959 (box 296) pt.2, Koheroa Parish – Komakorau Parish – Landless Natives, 1913-1916.

AADS W3562 22/959 (box 296) pt.3, Komakorau Parish – Tamahere Parish – Landless Natives, 1916-1922.

AADS W3562 22/959 (box 296), pt.4, Tamahere Parish – Landless Natives – Waikato, 1922-1927.

Lands and Survey Department (LS):

60. Confiscated Lands Department – Inwards Correspondence

Legislative Department (Le):

1. Papers Brought Before the House:

Le 1/1864/1. Box 39. Committees - Colonial Defence Force Corps, Petitions from.

Le 1/1865/129. Box 42. Schedule of Accounts and papers laid upon the table - Accounts (see Finance) – “Hokioi” and “Pihoihoi” Newspapers, Files and translations.

Le 1/1865/137. Box 42. Schedule of Accounts and papers laid upon the table - Accounts (see Finance) - Native Affairs, Letter from Mr Dillon Bell to Waikato Chiefs dated 7 May 1863.

Le 1/1865/138. Box 42. Schedule of Accounts and papers laid upon the table - Accounts (see Finance) - Native Affairs, Report by Mr Commissioner Mackay on the petitions from certain Natives presented last Session.

Le 1/1865/143. Box 43. Schedule of Accounts and papers laid upon the table - Accounts (see Finance) - Native Insurrection, Reports by Civil Commissioners relative to events which have taken place in the Waikato.

Le 1/1865/152. Box 43. Schedule of Accounts and papers laid upon the table - Accounts (see Finance) - New Zealand Settlements Act Amendment Act, Gazette containing Proclamations.

Le 1/1866/6. Box 45. Committees - Confiscated Lands. [AJHR, 1866, F-2].

Le 1/1866/11. Box 46. Committees - Maori Petitions.

Le 1/1867/118. Box 54. Accounts and Papers - Schedule of Accounts and papers laid upon the table - Accounts (See Finance) - Military Settlements, Plan of the, in the Upper Waikato.

Le 1/1868/153. Box 59. Accounts and Papers - Schedule of Accounts and Papers laid upon the table - Waikato Districts, Report from Mr MacKay on the State of the. [AJHR, 1869, A-19].

Le 1/1869/134. Box 65. Accounts and Papers - Schedule of Accounts and Papers laid upon the table - Native Affairs, Report by Mr Firth of his visit to the King Party and his interview with Tamati Ngapora. [AJHR, 1869, A-12].

Le 1/1874/109. Box 106. Accounts and Papers - Schedule of Accounts and papers laid upon the table - Confiscated Lands, Regulations, under the New Zealand Settlements Acts, for sale and disposal of.

Le 1/1876/103. Box 125. Accounts and Papers - Schedule of Accounts and papers laid upon the table - Crown Lands, return of lands disposed of under the New Zealand Settlements Acts, and regulations issued hereunder, also public reserve made.

Maori Affairs Department (MA):

1. Registered inwards correspondence:

MA 1/1863/244 (Maori casualties at Koheroa)

MA 1/1863/249 (unsafe for Rogan to go to Waikato)

MA 1/1863/260A (reports from front line)

MA 1/1863/317 (reports of 'rebel' Maori in Auckland)

MA 1/1863/352 (draft notice on seizure of Ngaruawahia)

MA 1/1863/383 (list of Rangiriri prisoners)

MA 1/1910/4369 1021 (Waikato Confiscated Lands, 1880-1912)

MA 13/10A (Waikato Confiscated Lands)

MA 23/3 (Tawhiao's Papers, 1876-1892)

MA 23/4 (Tawhiao's Papers, 1881-1891)

MA 23/25 (Register of chiefs)

MA 1/28/7/4/6 (Waikato claims, 1915-1959)

MA 61/1-9 (Commission in Compensation Claims Arising from the Maori Wars, 1865)

Maori Land Court:

Otorohanga Minute Books.

Maori Trust Office (MA-MT):

MA-MT 1 1911/1061 (box 88), Native Reserves – Query from Raureti
Te Huia Regarding Lots 338, 339 and 341A Mangapiko Parish, 1911

War Office (UK):

WO 33 Reports and Miscellaneous Papers:

Journals of the Deputy Quartermaster General in New Zealand, 1861-1865
(WO 33/16)

Selections from Despatches and Letters Relative to the Conduct of Military
Operations in New Zealand, 1860-1865 (WO 33/16)

Archives New Zealand (Auckland Regional Office)

Agent for the General Government, Auckland (AGG-A):

1. Inwards Letters, 1865-1878

AGG-A 1/1/65 (box 1), Inwards letters. 3 June 1865 - B Graham, Te
Awamutu - Telegraphs request that statement in Southern Cross, 31 May
1865, be contradicted concerning; 1. Relative status of Maori King and Queen
Victoria. 2. Acquisition of land. 3. Its relationship to negotiations left to
discretion of Frenchman. 4. A conversation between Mr Mainwaring and Mr
Thompson.

AGG-A 1/34/65 (box 1), Inwards letters. 16 July - 8 September - Survey and
settlement of the Waikato - Correspondence with JC Richmond, Colonial

Secretary, and C Heaphy, Chief Surveyor, relative to the survey and disposal of land in the Waikato to military settlers, immigrants and loyal natives, 1865.

AGG-A 1/69/65 (box 1), Inwards letters. 26 July 1865 - Charles Heaphy, Auckland - Urges necessity for changing boundaries of military settlement between Waipa and Waikato rivers. Is to send sketch of proposed variations.
- Enclosure: Tracing of plan of survey, missing.

AGG-A 1/70/65 (box 1), Inwards letters. 3 August 1865 - Charles Heaphy, [Auckland] - Furnishes part of plan showing disposition of confiscated Waikato lands, and a schedule. Neither is now attached to this memo.

AGG-A 1/83/65 (box 1), Inwards letters. 1 August 1865 - W Gisborne, Wellington - Informs him that Government does not as yet intend to sell confiscated land in Waikato.
- Enclosure: C Heaphy to W Gisborne, Wellington - n.d. - Describes lands concerned and encloses tracing (missing). Memo. Copy.

AGG-A 1/199/65 (box 1), Inwards letters. 14 September 1865 - S Morgan, Kawhia - Encloses letter from Hone Te One to Governor Grey, and comments on the intense Kingite sympathies in the district. - Encloses: Hone Te One to Governor Grey - Warns of inflammable state of Kingite Maori (missing.)

AGG-A 1/202/65 (box 1), Inwards letters. 27 September 1865 - W Rolleston, Wellington - Forwards letters from Mite Kerei Kaihau and Ngawai te Tauha, laying claims to land.
- Enclosure: Aforementioned letters, both missing.

AGG-A 1/220/65 (box 1), Inwards letters. 3 October 1865 - W Gisborne, Wellington - Approves course being pursued in relation to Waikato lands for settlement, and requests report on visit about to be paid.

AGG-A 1/262/65 (box 1), Inwards letters. 30 October 1865 - W Gisborne, Wellington - Acknowledges receipt of letters concerning settlement of

confiscated land, and asks that no further action be taken until further instructions are sent.

AGG-A 1/284/65 (box 1), Inwards letters. 4-18 November 1865 - Transfer of Waikato lands and General Government Agency to Provincial Government's control - Correspondence from EW Stafford and the Superintendent, Auckland, arranging the transfer of the confiscated lands to Provincial Authorities, thanking Dr Pollen for his able administration and taking action on handing over of records of the Agency to the Superintendent, Sir F Whitaker.

AGG-A 1/291/65 (box 1), Inwards letters. 8 November 1865 - W Gisborne, Wellington - Approves laying of road through confiscated Waikato land.

AGG-A 1/307/65 (box 1), Inwards letters. 20 November 1865 - J Allen, Raglan - Sends document requested in earlier letter.

- Enclosure: Copy of agreement between a Maori of the Nae Nae tribe and George Cooper, entitling the latter to lease some land in the Waipa district.

AGG-A 1/317/65 (box 1), Inwards letters. Incident arising from Wiremu Tamihana's visit to Cambridge - Letter from Te Hakuwhi (in original and translation), informs that the potato crop has failed and that Wiremu Tamihana was denied the right to sleep in Cambridge. Protests against the obligation of Maori chiefs to show passes. The Resident Magistrate explains the viewpoint of the authorities.

AGG-A 1/326/65 (box 1), Inwards letters. 26 August-4 December 1865 - Maori Burial Places, Patumahoe - Correspondence relating to the compensation of the Patumahoe Maoris for confiscation of burial grounds. Contains letters from chiefs applying for compensation or return of lands and explaining the social importance of the grounds.

AGG-A 1/337/65 (box 1), Inwards letters. 9 December 1865 - EW Stafford, Wellington - Sends letter from Maori Chief requesting return of a portion of

forfeited land, and conveys Governments wishes that he be well treated. Directs agent to enquire of Mr Russell whether any previous agreement was reached.

- Enclosure: Takerei Te Rau to Sir George Grey, 9 October 1865 - Puts his case for being allowed to return to his land. Copy. Note from Mr Russell, 20 December 1865, explains the agreement that would have been implemented had his ministry not gone out of office.

AGG-A 1/341/65 (box 1), Inwards letters. 13 November-14 December 1865 - Correspondence from FD Fenton, enquiring about implementation of the amended New Zealand Settlements Act, and from Russell, Rolleston and Stafford, requesting safeguard of Crown interests.

- Enclosure: Copy of the Amended Act 1865.

AGG-A 1/343/65 (box 1), Inwards letters. 14 December 1865 - EW Stafford, Wellington - Acknowledges receipt of letter from Mr Mackay, regarding Maori reaction to abandonment of certain Waikato posts.

AGG-A 1/345/65 (box 1), Inwards letters. 14 December 1865 - EW Stafford, Wellington - Acknowledges receipt of letter, warning of impending Maori attack on out settlements.

AGG-A 1/350/65 (box 1), Inwards letters. 21 December 1865 - FD Fenton, Auckland - Requests that Mr Turton be directed to handle all claims for compensation in Taranaki province to him.

AGG-A 1/351/65 (box 1), Inwards letters. 22 December 1865 - FD Fenton, Auckland - Sends copies of letters, relating to the removal of Mr Turton from his orders, and his placement under the instructions of the Executive Government.

- Enclosure: FD Fenton to the Colonial Secretary, 29 November 1865 - Reminds him of earlier correspondence relative to Mr Turton's position. Copy.

- W Rolleston to HH Turton, 13 December 1865 - Informs him that he is to receive orders direct from General Government. Copy.

AGG-A 1, 29 June 1865 (box 1), Inwards letters. 29 June 1865 - Dr Sam, doctor, Camp Cambridge - Asks for overriding permission to cross into Maori territory to treat his patients.

AGG-A 1, 30 June 1865 (box 1), Inwards letters. 30 June 1865 - Mite Kerei Kaihau and Ngawai Te Tawha, Waiuku - Copies of petitions from Mite Kerei Kaihau to Mr Weld and from Ngawa Te Tawha to Major Speedy, asking for their wrongfully confiscated land to be returned. Both in translation only.

AGG-A 1/65, Inwards letters. 8 July 1865 - W Gisborne, Wellington - Acknowledges receipt of telegram reporting clash with Maori at Puniu.

AGG-A 1/70/65 (box 1), Inwards letters. 25 July 1865 - AK Churton, Pukekohe, to Charles Heaphy, Auckland - Reports alarm of party of surveyors on encountering party of Maori and assures him it was not justified, lest surveyors should stir up panic amongst settlers.

AGG-A 1, 18 September 1865, Inwards letters. 8 September 1865 - JC Richmond, Wellington - Acknowledges receipt of Gazette containing Order relating to confiscated Waikato lands, and confirms Agent's authority to select land for military settlement. Requests lists of lands rejected.

AGG-A 1, 14 September 1865, Inwards letters. 14 September 1865 - Native Secretary's Office - James Edward Fitzgerald - Acknowledges receipt of letters and reports that he is awaiting the results of Mainwaring's mission to establish communication with Thompson (Tamihana). Rewi is still hostile but no steps can be taken to open communications until the Assembly is over.

AGG-A 1, 14 September 1865 (box 1), Inwards letters. 14 September 1865 - Hone Te One, Kawhia, to Governor Grey - Warns him that Kingites have threatened to attack Kawhia, Aotea and Whaingaroa, and pleads for military protection. Copy of original and translation.

AGG-A 1, 30 September 1865 (box 1), Inwards letters. 30 September 1865 - Settlement of land disputes, Waikato - Instructions from James Edward Fitzgerald, relative to the compensation of loyal Maori, whose lands had been confiscated. Outlines scheme for confiscating lands but handing it back to them as a Crown Grant. Circular to accompany Gazette explaining this, is attached. Te Wheoro writes asking for justice (original and translation). Letters also from Kukutai of which only original is on file. Map and description (apparently incomplete, as it is not headed or signed) of the disputed areas are on file. This file is in a generally poor condition, as the papers seem to have suffered badly from water damage.

AGG-A 1/12/66 (box 1), Inwards letters. 11 January-24 February 1866 - Appointment to position of Officers for settlement of confiscated land claims, Waikato - Correspondence from C Marshall, relative to obstacles to his accepting the position and financial arrangements and services necessary to the discharge of his duties.

AGG-A 1/19/66 (box 1), Inwards letters. 18 January 1866 - Commissary General, Auckland - Requests every possible assistance in supplying soldiers in Waikato, in view of the difficulties caused by war.

AGG-A 1/34/66 (box 1), Inwards letters. 30 January 1866 - HR Aubrey, Wanganui - Acknowledges receipt of communications explaining Government's compensation policy, and reports that this has been implemented. (cf. 341/65, compensation claims in Waikato.)

AGG-A 1/41/66 (box 1), Inwards letters. 2 February 1866 - Colonel Moule, Hamilton - Sends letter reporting hostility of Waikato Maori.

- Enclosure: 1. Captain Goldsmith to Colonel Moule - Reports hostility of Waikato Maori. Copy, missing.

2. Colonel Moule to Captain Goldsmith - Sends instructions as to how to handle situation. Copy, missing.

AGG-A 1/45/66 (box 1), Inwards letters. 2 February 1866 - HH Turton, [Auckland] - Writes concerning the land to be investigated, for which there are claimants from three different tribes. Suggests employment of solicitor, and asks to be excused attendance at Waikato hearings. Memo.

AGG-A 1/69/66 (box 1), Inwards letters. 26 February 1866 - Andrew Sinclair, Auckland - Acknowledges receipt of letter about transfer of confiscated lands to provincial control and informs him that he had told his staff.

AGG-A 1/367/66 (box 1), Inwards letters. 23 October 1866 - RC Mainwaring, Te Kopua - Reports hostility of Maori, and their King's refusal to accept surveyors working round Pirongia.

AGG-A 1/451/66 (box 1), Inwards letters. 13 November 1866 - Waiho Te Puriri to Commissioner Mackay - Informs him that the Waikato have gone to Hangatiki to see their dad [sic], after which they are to leave, and live in Hauraki. Original and translation.

AGG-A 1/127/67 (box 2), Inwards letters. 19 February 1867 - FD Fenton, Auckland - Notifies him of the sitting of Compensation Court about to take place.

- Enclosure: Notice in English and in Maori.

AGG-A 1/182/67 (box 2), Inwards letters. 1 March 1867 - WE Combs, Te Awamutu - Applies to purchase lot at Puniu. Notes by Heaphy and Russell record that there is no objection to sale, unless the lot should be required for military purposes.

AGG-A 1/184/67 (box 2), Inwards letters. 7 March 1867 - EW Stafford, Wellington - Acknowledges receipt of letter giving information about arrangements for sale of Waikato lands and thanks for obviating difficulties over sale.

AGG-A 1/187/67 (box 2), Inwards letters. 2 March 1867 - EW Stafford, Wellington - Asks advice as to how government should handle certain claims for compensation.

AGG-A 1/193/67 (box 2), Inwards letters. 6 March 1867 - Takerei Te Rau, Ngaruawahia - Acknowledges receipt of request to visit the Agent in Auckland but cannot because his tribe is unsettled. Translation only. Letter of this date in Maori found loose amongst other correspondence.
- Attachment: Frederick Whitaker to Takerei Te Rau, 18 March 1867 - Approves his action in not coming during disturbance. Translation (English) only.

AGG-A 199/67 (box 2), Inwards letters. 18 March 1867 - FD Fenton, Auckland - States that he wishes to buy certain lots in the Waikato and asks that they may be put up for sale. Marginal notes record that steps were taken to comply with the request.

AGG-A 1/219/67 (box 2), Inwards letters. 25 March 1867 - JC Firth, Auckland - Asks how to go about applying to buy lot at Kihikihi. Marginal note records that the lot is still required for militia purposes.

AGG-A 1/277/67 (box 2), Inwards letters. 11 April 1867 - Colonel William C Lyon, Hamilton - Forwards copy of letter from the officer commanding at Alexandra and informs him that a copy has been sent to the Defence Minister also.

- Enclosure: William St Clair Tisdall to the Officer Commanding at Alexandra and informs him that a copy has been sent to the Defence Minister also.
- Enclosure: William St Clair Tisdall to the Officer Commanding at Waikato, 8 April 1867 - Sends reports given to him by L Hetet, relative to rumours of unrest amongst the Ngati Maniapoto and the Waikato.

AGG-A 1/286/67 (box 2), Inwards letters. 8 April 1867 - W Gisborne, Wellington - Acknowledges receipt of letter relative to withdrawal of the 57th regiment from Waikato and Raglan outposts.

AGG-A 1/290/67 (box 2), Inwards letters. 9 April 1867 - W Gisborne, Wellington - Conveys disapproval of behaviour of M de Thierry, clerk and interpreter of the Resident Magistrate's Court, Raglan, and asks that the Resident Magistrate be informed and that the clerk's appointment be terminated.

AGG-A 1/298/67 (box 2), Inwards letters. 9 April 1867 - EW Stafford, Wellington - Authorises him under Order-in-Council, under the New Zealand Settlements Acts Amendment Act 1866, to issue script for compensation. Requests that he take legal advice to settle the form of the scrip and encloses original papers for his information.

- Enclosure: 1. Gazette of 7 April 1867, missing.
2. Schedule of papers forwarded on 9 April 1867 - Papers are missing; some noted as returned.

AGG-A 1/308/67 (box 2), Inwards letters. 6 April 1867 - EW Stafford, Wellington - Announces that as F Whitaker has resigned and his resignation has been accepted, the Government has conferred the appointment of Agent to the General Government on him (D Pollen), at a salary of £600, combined with his other offices.

AGG-A 1/309/67 (box 2), Inwards letters. 8 March 1867 - EW Stafford, Wellington - Asks him (Whitaker) to reconsider his resignation, in view of his indispensability to the unsettled Waikato situation.

AGG-A 1/321/67 (box 2), Inwards letters. 14 March-23 April 1867 - Compensation Claims for war losses - Correspondence and schedule relative to compensation claims for losses sustained during the war. Not more than one third of the amounts due to be paid to persons named on Government vouchers. Information relative to the settlement of succession to Patu's lands.

AGG-A 1/323/67 (box 2), Inwards letters. 27 June 1867 - J Tole, Ngaruawahia
- Reports that he has investigated as requested a piece of land wanted by Rewi Tutaki, and sends tracing and former correspondence.

- Enclosure: 1. Tracing of reserve in question.

2. Rewi Tutaki to F Whitaker, 8 April 1867 - Requests the two acres promised by Mr Mainwaring, and asks for Crown grant for some land of his in the Pai Marire district. (Original and translation.)

AGG-A 1/357/67 (box 2), Inwards letters. 2 May 1867 - James Mackay, Auckland - Reports on the number of compensation claims coming to his office, amongst them 28 claims from friendly Maori, and recommends that they be actioned by Mr Beckham, and that a time limit be advertised for acceptance of compensation claims.

- Enclosure: 1. List of Maori compensation claims.

2. Copies of both letter and list.

AGG-A 1/367/67 (box 2), Inwards letters. 4 May 1867 - W Buckland, Cambridge - Forwards letter from Penetana, to whose loyalty he witnesses, complaining that he lives in fear of the Arawa. Reports that Matutaera has ordered cessation of hostilities and the Tekau-ma-rua are to be given land at Hangatiki. Tauranga Maori are to come to terms with the Government.
- Enclosure: Penetana to Buckland, 4 May 1867 - Original. Translation missing.

AGG-A 1/398/67 (box 2), Inwards letters. 11 May 1867 - W Lyon, Hamilton - Encloses a copy of a letter from Captain Tisdall, the original of which he has sent to the Defence Minister.

- Enclosure: W Tisdall to W Lyon, 2 May 1867 - Reports that on a visit to Raglan he learned that some friendly Maori and settlers have been warned to leave Kawhia, because of an intertribal dispute and a wish by some tribes to set up a separate Maori kingdom from Aotea, with Kawhia as a Maori harbour. No hostile actions have yet been committed, and further enquiry is to be made by the Resident Magistrate. Sheets mutilated and faded.

AGG-A 1/400/67 (box 2), Inwards letters. 14 May 1867 - Formation of a volunteer corps, Raglan - Correspondence from RO Stewart, Resident Magistrate, relative to a public meeting, at which certain resolutions for local defence were passed and at which thirty-nine men volunteered and resolved to request the Governor to form them into a corps for local defence.

AGG-A 1/521/67 (box 2), Inwards letters. 24 June 1867 - W Gisborne, Wellington - Refers to enclosures in No 1040 and states that the Government does not think it desirable to send more arms to Raglan than needed to arm the Europeans, and that it wishes to get back arms from the Maori when they are no longer needed.

AGG-A 1/530/67 (box 2), Inwards letters. 20 June 1867 - LH Dihars, Cambridge - Reports that floodwaters prevented his reaching Tokangamutu but that he will attempt to go into the interior in about a week. States that the rumour that the Maori at Maungatautari have no provisions is false, as they recently acquired a large quantity of potatoes. There is much jealousy of Heta Tuhi Kara. (In French only.) - 21 April 1867 - From Waihou writes that the Maori seem to him peaceably disposed and that there is discontent with chieftainship that may result in a general submission to 'civilisation' and law. - 6 June 1867 - From Okaina reports that potato cultivation continues and that a pa has been constructed at Tauranga, but he thinks no more will be done at present, though some still nurse grievances about confiscated land. - 12 June - From Kuranui, Patetere. Here too, the Maori are busy in their cultivations, and seem to lack purpose. The Ngati Porou and Kereopa are going to take up residence at Patetere. He has been warned not to visit Kuranui for fear of hostile Maori. Numerous Maori have gone to visit Matutaera, who is said genuinely to desire peace, but he will give further information if any movements take place. Believes that gunpowder is being smuggled in the Thames. (In translation only.)

AGG-A 1/282/68 (box 3), Inwards letters. 11 May 1868 - JC Richmond, [Wellington] - Asks him to pay balance of sum handed to him, to Mackay to meet compensation awards.

AGG-A 1/428/68 (box 3), Inwards letters. 28 June 1868 - James Mackay Jr, Shortland, to the Native Minister, Wellington - Reports secret information he has received relative to the plan of the King party to advance on Auckland and spark off a general uprising.

AGG-A 1/213/69 (box 4), Inwards letters. 15 March-8 November 1869 - Local Defence - Raglan district - Correspondence from WN Searancke, JC Johnstone and RO Stewart, relative to the defence of Raglan against possible attack by the King Maori and an attempted theft of ammunition from the blockhouse.

AGG-A 1/236/69 (box 4), Inwards letters. 29 March 1869 - W Moule, Hamilton - Returns a letter of JC Firth in which he comments on the inability of the settlers in the Waikato to withstand a surprise attack, and suggests a method of fortifying their houses. W Moule observes that there is nothing new in the letter, and that the situation is not as grave as alleged. - Enclosure: JC Firth, 9 March 1869

AGG-A 1/246/69 (box 4), Inwards letters. 31 March 1869 - W Steele, Hamilton - Forwards resolutions passed at a public meeting at Hamilton that the Government's policy of arming friendly Maori is inexpedient, that their removal from the district be requested to prevent hostile Maori from escaping notice by mingling with them, and that steps be taken to protect settlers' interests until the Agent has been notified of the resolutions.

AGG-A 1/261/69 (box 4), Inwards letters. 30 March-1 April 1869 - Disputed Survey - Aotea - Correspondence from Hone Te One and other Maori, from HW Brabant, WN Searancke and JK McDonald, expressing fear that continuing with the survey at Aotea, will provoke attack from the Hauhau.

AGG-A 1/287/69 (box 4), Inwards letters. 15 April 1869 - WN Searancke, Hamilton - Reports that he has heard that there is to be a meeting of the

Taupiri Maori and Te Wheoro and the Ngatimato at Hangatiki, and makes observations as to their intentions, in the light of this.

AGG-A 1/297/69 (box 4), Inwards letters. 4 April 1869 - Aihepene Kaihau, Waiuku - Informs him that there is to be fighting not in the Waikato but in the Tikowaru district, at Wanganui and Mokau. Original and translation.

AGG-A 1/299/69 (box 4), Inwards letters. 12 April 1869 - Ki Te Monehu, Rangiriri - Reports that a messenger from Matutaera has come to call the chiefs in Waikato to a meeting and asks that Mr Searancke may accompany him to it. Original and translation.

AGG-A 1/359/69 (box 4), Inwards letters. 10 May 1869 - WN Searancke, Hamilton - Sends an untranslated letter from Wiremu Patene (copy.)
- Enclosure: Wiremu Patene, Karakariki, to WN Searancke, 7 May 1869 - Informs him that Rewi asked him to have a message sent to Auckland, stating that he would like to see the Governor and the Duke of Edinburgh at Ngaruawahia. (Copy of translation only.)
- Attachment: J Mackay, Jr, to W Pollen, 14 May 1869 - Explains the contents of Patene's letter and agrees with its contention that the Maori of the southern portion had much to do with the origins of the King movement. (copy)

AGG-A 1/360/69 (box 4), Inwards letters. 15 May 1869 - JC Firth, Auckland - Forwards copies of letters from Hohaia and Te Raihi, which he has sent to the authorities, and urges the importance of the Duke of Edinburgh's meeting Tawhiao, Rewi and Tamati at Ngaruawahia. Reports that his arrangement to rent lands on the Waiho is to be adhered to, as before Wi Tamihana's death.
- Enclosed. 1. Hohaia Te Himiona, Parutene, Peina et al, 5 April 1869 - Exhorts them to respect his rights over land at Iwiangaomoana for which he pays rent.
2. Te Raihi, Matamata to JC Firth, 20 April 1869 - States that Firth's agreement to lease of land at Matamata still stands and cannot be upset by Kereopa.
3. Hohaia to Tawhiao, Tamati, and Rewi. 13 April 1869 - Urges them to take a

stand against Maori acts of terrorism and stresses that the visit of the Duke of Edinburgh is an opportunity for reconciliation which must not be lost.

AGG-A 1/381/69 (box 4), Inwards letters. 24 May 1869 - JA Wilson, Alexandra - Reports on his negotiations with Tawhiao, Rewi and Tamati, attempting to clear up a misunderstanding about the visit of the Duke of Edinburgh and a meeting of the Waikatos with him at Ngaruawahia.

AGG-A 1/399/69 (box 4), Inwards letters. 1869 - J Mackay, Jr, Ngaruawahia - Forwards a translation of a letter received from Andrew Barton, relative to Te Wheoro's invitation to Matutaera, Rewi and Tamati Ngapora, to meet the Governor at Ngaruawahia.

AGG-A 1/446/69 (box 4), Inwards letters. 19 June 1869 - JA Wilson, Auckland - Forwards three letters from Commissioner Clarke, and feels that they have cause for apprehension as the behaviour of Firth and others at Tokangamutu is provocative to the Hauhau. Reports that Te Kooti and band have gone into the King Country.

AGG-A 1/476/69 (box 4), Inwards letters. 5 July 1869 - WN Searancke, Alexandra - Reports on his investigations into the Maori situation. A number of strange Maori have been in the Rangiaowhia district, and the settlers are uneasy. Te Kooti has been seeking the kingship and asked Tawhiao to resign to him.

AGG-A 1/675/69 (box 5), Record Missing Inwards letters. 6 September 1869 - Rawiri Te Rangikaurua, Raglan - Asks that he be shown where his acres of land at Waipa or Waikato are situated and that the Crown Grant in the name of Hone te One be issued. Maori and translation.

AGG-A 1/679/69 (box 5), Record Missing Inwards letters. 18 September 1869 - Thomas Black, Auckland - Reports that the baker, O'Connor, has been visiting the Maori, inciting them against English rule, and representing himself as Rangatira of the Irish, under whose rule, Maori glory would burst forth.

AGG-A 1/325/73 (box 8), Inwards letters. 9 April 1873 - C Haughton, Under Secretary, Crown Lands, Wellington - Asking for an explanation as to the discrepancies between returns of Confiscated lands and maps supplied by the Inspector of surveys.

- Enclosure: List of discrepancies to be explained.
- Attachment: Letter explaining discrepancies.

AGG-A 1/771/73 (box 9). Inwards letters. 31 October 1873 - J La Frohe, Karioi - Asks whether right of road was reserved through the Papahua Native Reserve, as it will be necessary to traverse it to put through the road to Raglan.

- Attachment: 1. J Rogan to W Gisborne, 14 November 1873 - Cannot recall if he reserved right of road through the land he purchased in 1856 or 1857, without reference to the deed. Knows nothing of land surveying by Mr Ligar. Minute.

2. Sketch of the area by C Heaphy, 13 January 1874 - States that no right of road was made in any Karioi reserve.

AGG-A 1/191/74 (box 10), Inwards letters. 15 April 1874 – HT Clarke, Wellington - Forwards papers relative to Mr Brissenden's land negotiations in the Waikato.

AGG-A 1/326/76 (box 10), Inwards letters. 7 July 1874 - C Marshall, Port Waikato - Draws attention to the practice of certain daughters of 'rebels' married to loyal chiefs selling timber from lands grant to the Maori for fencing and protecting their cultivations.

AGG-A 1/234/75 (box 11), Inwards letters. 3 July 1875 - J Gibbons, Waiuku - States that some Maori have offered to sell him land on the bank of the Waikato, and asks whether there would be any objection. A Sinclair reports that being returned 'rebels' they are not entitled to a Crown Grant.

AGG 1 (box 11), Miscellaneous inwards letters. 28 October 1867 - 15 March 1869 - Greenstone Mere of Potatau I - Letters and reports from WN

Searancke, JC Richmond, GS Cooper, TB Gillies and others, relative to the incident of the mere, reputed to have belonged to Potatau. It was buried by the Kingites at the foot of the flagstaff at Ngaruawahia. When this was blown down, WN Searancke had it dug up, and it was subsequently broken and part of it stolen. As it was regarded as symbolic of Potatau's mana (it weighed 9¾ lbs) the incident was potentially a setback in establishing good relations with the Kingites.

AGG-1/1059/67 (box 11), Miscellaneous inwards letters. 5 November-6 December 1867 - Greenstone Mere of Potatau I - Certain letters and copies of parts of the above file, with a note from W Gisborne, asking that the affair be handled through JC Richmond, while he is in Auckland.

3. Entry Books of Outwards Letters

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5/15. Miscellaneous Papers

Department of Survey and Land Information, Auckland District Office (BAIE):

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BAAZ 4699/1a, Return showing lands within the confiscated districts of Waikato, which have been awarded to Natives by the Compensation Court, or which have been reserved for or abandoned to Natives by the Crown, under the provisions of the New Zealand Settlements Act 1863, and the New

Zealand Settlements Amendment and Continuance Act 1865 up to 30 June 1866.

Maori Land Court, Auckland (BBOP):

BBOP 4309 1884/2756 11b-127, Rihi Te Tahuti, Kihikihi, asking if any claims have been sent in within limits for Puniu, Mangahamoe, etc, 1884

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Appendix One: Legislation Relevant to War and Raupatu in the Waikato and Taranaki Districts, 1858-1946

1858

Militia Act

1860

Indemnity Act

Militia Act Amendment Act

Naval and Military Settlers Act

Taranaki Settlers Relief Act

Arms Act

1862

Colonial Defence Force Act

Militia Acts Amendment Act

1863

New Zealand Settlements Act

New Zealand Loan Act

Loan Appropriation Act

Suppression of Rebellion Act

Wellington and Hawke's Bay Naval and Military Settlers Act

Arms Act Continuance Act

Colonial Defence Force Act Amendment Act

1864

New Zealand Settlements

Arms Act Continuance Act

1865

Maori Funds Investment Act

Indemnity Act

New Zealand Settlements Amendment and Continuance Act

Arms Act Continuance Act

Outlying Districts Police Act

Taranaki Naval and Military Settlers Act

Volunteers Land Act

1866

Friendly Natives Contracts Confirmation Act

New Zealand Settlements Act Amendment Act

Arms Act Amendment and Continuance Act

Tuakau Block Surrender Act (Provincial legislation)

Newcastle Crown Grants Validation Act

1867

Confiscated Lands Act

Armed Constabulary Act

Volunteers Act Amendment Act

1868

Confiscated Land Revenue Appropriation Act

University Endowment Act

Indemnity Act

1869

Naval and Military Settlers Act

Military Contribution Act

Disturbed Districts Act

Arms Act Amendment Act

Armed Constabulary Act Amendment Act

1870

Immigration and Public Works Act

Punishment of High Treason Act

Defence and Other Purposes Loan Act

Militia Act

Volunteer Act Amendment Act

1871

Taranaki Education Reserves Act

Arms Act Amendment Act

1873

Arms Act Amendment Act

Volunteers Land Act Amendment Act

1875

Riddell Grant Act

Green Land Claims Settlement Act

Chubbin Land Purchase Act

1876

Waiuku Native Grants Act

Waste Lands Administration Act

1877

Volunteers and Other Lands Act

Special Contracts Confirmation Act (local)

1878

Waikato Crown Lands Sale Act

1879

Confiscated Lands Inquiry and Maori Prisoners' Trial Act

1880

Maori Prisoners Act

Maori Prisoners Detention Act

West Coast Settlement (North Island) Act

Waikato Confiscated Lands Act

Arms Act

1881

West Coast Settlement Reserves Act

1882

West Coast Peace Preservation Act

Waikato Confiscated Lands Act

Amnesty Act

1883

West Coast Settlement Reserves Act Amendment Act

Special Powers and Contracts Act (local)

1884

Waikato Confiscated Lands Act

West Coast Settlement Reserves Act Amendment Act

1885

Special Powers and Contracts Act (local)

1888

Native Contracts and Promises Act (local)

1902

West Coast Settlement Reserves Act Amendment Act

1907

Rangitatau Block Exchange Act

1928

Native Land Amendment and Native Land Claims Adjustment Act

1944

Taranaki Maori Claims Settlement Act

1946

Waikato-Maniapoto Maori Claims Settlement Act

Appendix Two: Research Commission

OFFICIAL

Wai 898, # 2.3.23

WAITANGI TRIBUNAL

CONCERNING: The Treaty of Waitangi Act 1975

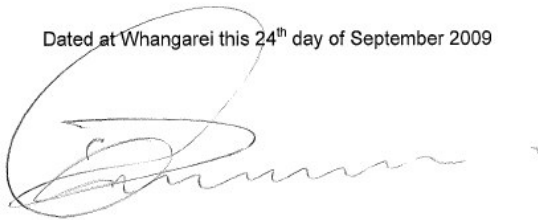
AND: The Te Rohe Pōtae Inquiry

DIRECTION COMMISSIONING RESEARCH

1. Pursuant to clause 5A of the second schedule of the Treaty of Waitangi Act 1975, the Tribunal commissions Dr Vincent O'Malley to prepare a research report examining the Taranaki and Waikato wars and the raupatu which followed as they relate to the hapū and iwi of the Te Rohe Pōtae inquiry district. This is the second in a series of general thematic reports on political engagement and autonomy for the Te Rohe Pōtae district inquiry and is project 5a in its agreed casebook programme (Wai 898 #6.2.7).
2. The report will address the following research issues:
 - a) The nature and extent of participation by hapū and iwi of this district in warfare in Taranaki and Waikato and the defence of their lands;
 - b) Crown understandings of this participation and responses to it;
 - c) The impacts of battles or incidents in the wars of particular relevance to hapū and iwi of this district, for example, Ōrākau and Rangioawhia, and of the allegedly deliberate introduction of disease into the district as a means of warfare, if any;
 - d) The immediate impacts of loss of life and the creation of refugees as a result of warfare for hapū and iwi of the inquiry district;
 - e) A brief outline of the development and implementation of the confiscation policy in the Waikato and Taranaki districts, the relevant confiscation legislation applied and the legislative provisions for implementing the confiscation and compensation process in these districts;
 - f) The impact of confiscations/raupatu implemented as a result of the Waikato and Taranaki wars on hapū and iwi of this district;
 - g) The impact of warfare and confiscation on relations among hapū and iwi of this district and their relations with their neighbours and with the Crown;
 - h) Responses of Te Rohe Pōtae Māori to the raupatu and the redistribution of land, for example protests and petitions in the period to the 1890s, and the Crown's reaction to any protests.
3. The commission commenced on 17 November 2008. It is to run in parallel with the commission for project 5. A complete draft of the report is to be submitted by 7 May 2010 and will be circulated to claimants and the Crown for comment.

4. The commission ends on 25 June 2010 at which time a copy of the final report must be submitted for filing in unbound form, together with indexed copies of any supporting documents or transcripts. An electronic copy of the report should also be provided in Word or Adobe Acrobat format, together with any data tables in Excel or Access format and maps in a standard graphics file format. The report and any subsequent evidential material based on it must be filed through the Registrar.
5. At the discretion of the Presiding Officer the commission may be extended if one or more of the following conditions apply:
 - a) The terms of the commission are changed so as to increase the scope of work;
 - b) More time is required for completing one or more project components owing to unforeseeable circumstances, such as illness or denial of access to primary sources;
 - c) The Presiding Officer directs that the services of the commissionee be temporarily reassigned to a higher priority task for the inquiry; or
 - d) The commissionee is required to prepare for and/or give evidence in another inquiry during the commission period.
5. The report may be received as evidence and the author may be cross-examined on it.
6. The Registrar is to send copies of this direction to:
 - Dr Vincent O'Malley
 - Claimant counsel and unrepresented claimants in the Te Rohe Pōtae inquiry
 - Chief Historian, Waitangi Tribunal Unit
 - Manager – Research/Report Writing Services, Waitangi Tribunal Unit
 - Inquiry Facilitator, Waitangi Tribunal Unit
 - Inquiry Supervisor, Waitangi Tribunal Unit
 - Solicitor General, Crown Law Office
 - Director, Office of Treaty Settlements
 - Chief Executive, Crown Forestry Rental Trust
 - Chief Executive, Te Puni Kōkiri

Dated at Whangarei this 24th day of September 2009



Judge D J Ambler
Presiding Officer
WAITANGI TRIBUNAL