THE MURIWHENUA NORTH AREA AND THE MURIWHENUA CLAIM (Wai-45)

A Historical Report
commissioned by the Waitangi Tribunal

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Purpose of the Investigation

This report will present evidence and interpretation about the nature of key land transactions in Muriwhenua North during the 19th and 20th centuries. Muriwhenua North is defined as that area north of today's town of Te Kao, to distinguish it from the 1858 Crown purchase called Muriwhenua South which stretches south of Te Kao (See Muriwhenua North map 1986, attached as Doc 1). The report concentrates on 19th century transactions because ownership of most Muriwhenua North land passed out of Maori hands before 1900. Throughout much of the 19th century Muriwhenua North was also a unified area. Only after the Native Land Court deliberations of the 1870s did it become divided. The continuing division of Muriwhenua North, as reflected in the 1986 map, has meant that many local people no longer recognise it as a single area.

Nonetheless, the land of Muriwhenua North figured prominently in the 8 December 1986 Muriwhenua claim. Almost all the land areas specified in that claim are within Muriwhenua North. For that reason claimants called upon the Waitangi Tribunal to investigate the process by which so many of these land areas had passed out of Maori hands.[1] This report is intended to fulfil the terms of the Waitangi Tribunal's 23 August

[1] Muriwhenua Claim 8 December 1986, included in Part I of the Wai-45 Record of Documents as Doc 1.4.

1990 commission to investigate that process.

Of necessity, this report depends almost entirely on Pakeha sources. The Maori history of Muriwhenua North will be reconstructed by claimant researchers, and until they have completed their work we will have only an incomplete understanding of the nature of the key transactions affecting the land and the people there. Any discussion of the Maori side of these transactions in this report owes much to discussions with claimant researchers Waerete Norman and Margaret Mutu. Their assistance is gratefully acknowledged, although the findings of this report, of course, are mine, not theirs.

Outline

After a brief discussion of early Maori settlement in Muriwhenua North, the historical debate surrounding Rev Richard Taylor and missionary land claims, and the incomplete historical records available, the report follows a chronological outline:

1830-1840	Church Missionary Society land claims
1839-40	Richard Taylor's arrival in Muriwhenua
20 Jan. 1840	The Taylor-Te Rarawa transaction
Feb-April 1840	Taylor's role in Treaty negotiations
1840-45	The attack on missionary land claims
12 Nov. 1840	Taylor's statement of claim
16 Feb. 1841	The first Taylor-Te Aupouri transaction
1840-41	Trusteeship in the dual transactions
1840-45	Taylor's attempts to transfer his rights
1843	The Crown Land Claims Commission
22 Oct. 1844	Taylor's Crown Grant

1845-50	Crown acts of omission regarding reserves
1845-52	Taylor's changing views on trusteeship
1857	North Cape coal
1858-61	Crown land purchase activity
1859-66	Taylor maintains his trusteeship
26 July 1866	The second Taylor-Te Aupouri transaction
1840-70	The economic basis of Taylor's trusteeship
1870-78	The Native Land Court partitions the area
21 March 1873	The Muriwhenua block purchase
19 June 1873	Taylor's final appeal
1900-75	Muriwhenua North in the 20th century
1925-48	Land Consolidation and Development
1974-76	The Crown's response to the Te Aupouri/Ngati Kuri petitions.

In conclusion, the author of this report will pose major questions or issues arising from the evidence presented.

1. Maori Settlement in Muriwhenua North c1000 AD-1840

The archaeological evidence Dr Janet Davidson presented to the Waitangi Tribunal in December 1986 suggests a long history of Maori settlement in Muriwhenua North. Dozens of sites have revealed human materials that have been radio-carbon dated back to at least 1000 AD.[2] The journals of 18th century European explorers Cook, du Fresne, de Surville D'Entrecasteaux and King all record extensive Maori settlement in the Muriwhenua North area.[3] Although few Pakeha accounts of the early 19th century survive, those that do suggest that Muriwhenua was the scene of intense inter-tribal warfare somewhere around 1820. The CMS missionaries who visited the area during the 1830s found it virtually deserted, and concluded that Te Rarawa and Ngapuhi warriors had dispersed the Te Aupouri and Ngati Kuri inhabitants of the area a decade earlier. Te Aupouri had apparently settled in the Manawatawhi (Three Kings) Islands, and in the Whangaroa area, while Ngati Kuri migrated to the Whangaroa and Hokianga areas around 1820.[4]

Much of the post 1840 history of Muriwhenua North concerns the return of Te Aupouri to their ancestral homeland. Few Pakeha

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[2] Janet Davidson, "Archaeological Evidence in the Vicinity of Parengarenga Harbour," (December 1986) included in the Wai-22 Record of Documents as Doc #A5.

[3] Barry Rigby and John Koning, "Toitu te Whenua e (Only the land remains, constant and enduring): A Preliminary Report on the Historical Evidence [hereafter Wai-45 Prelim. Report]," included in the Wai-45 Record as Doc #A1. See pp.11-12.

[4] J Matthews to W Jowett 9 March, 4 June 1841, Church Missionary Society, New Zealand correspondence [hereafter CMS/CN] O 61, Alexander Turnbull Library [hereafter ATL].

bothered to record that fact that Muriwhenua North was also a Ngati Kuri homeland. Since Ngati Kuri were so closely related to Te Aupouri, Pakeha observers may have assumed that they lacked a distinct identity. The few references to Ngati Kuri in this report, however, should not be construed as support for such a denial of their distinct identity.

2. The Historical Debate on Taylor and missionary land claims

For most Pakeha historians, the debate surrounding Muriwhenua North has not been about the tangata whenua. Instead, the debate has focussed on the motivation of the most important Pakeha claimant in the area, the Reverend Richard Taylor (1805-1873), and similar missionary land claimants elsewhere in New Zealand. The debate has been about whether or not Taylor and other missionaries sought to protect Maori by establishing such land claims. Since these same missionaries participated in the negotiation, drafting and translation of the Treaty of Waitangi, the debate is also about whether they sought to protect Maori in assisting the Crown to annex New Zealand in 1840.[5]

Taylor's role in the negotiation of the Treaty of Waitangi, and the nature of his claim to Muriwhenua North land, reveals much, not only about missionary motivations, but also about Crown motivations, and the extent of missionary influence over the

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[5] For a convenient description of Taylor's life, in relations to these debates, see JMR Owens's entry on him in The Dictionary of New Zealand Biography (Wellington 1990) pp. 437-8. For a vigorous defence of Taylor's claim to Muriwhenua North land, see Athol L Kirk, "Richard Taylor's North Cape Land Grant," Historical Record 6:2 (Nov. 1975), pp. 3-10.

Crown in 1840. Moreover, even if the evidence suggests protective intent on the part of the missionaries and the Crown, the question remains, were they successful in effectively protecting Maori interests as required by the terms of the Treaty of Waitangi? The answer to this question should reveal how the Treaty either served, or failed to serve, the interests of a specific group of people living in a specific area. In many ways, Richard Taylor shaped the relationship between the Crown and Muriwhenua North during the 19th century. His actions were, for Maori in Muriwhenua North, the Treaty in action.

3. Incomplete Historical Records

Despite Taylor's copious journals and letters, for years the incompleteness of the written record has severly limited historical understanding of the key transactions affecting Muriwhenua North. After a series of Maori petitions to Parliament protesting Crown acquisition of parts of the area during the 1870s, Crown officers discovered they had lost the Taylor file from the Old Land Claim records. This file contained the original 1840 Muriwhenua North deed, and the details of the 1843 Crown Land Claim Commission. For over a century historians had to rely on Taylor's references to these vital records in his private papers.

Fortunately, the author discovered a copy of the Maori version of the 1840 deed recently. Many gaps in the records remain, however. The Hope-Gibbons fire of 1952 destroyed most of the Native Department and Department of Lands records for the

period 1858-1892. Furthermore, the crucial minutes of the Native Land Court hearings of 1870-75 in which Judge Frederick Maning presided over the partition of Muriwhenua North, were either lost or destroyed during the 19th century. Clearly, the Crown has failed to fulfil a basic public responsibility in failing to ensure the preservation of the records of its actions in Muriwhenua North.

4. Church Missionary Society land claims 1830-1840

To understand the nature of the key transactions in Muriwhenua North before 1870 involving Taylor, it's necessary to review the history of Church Missionary Society [CMS] land claims before 1840. During the 1830s CMS missionaries negotiated agreements with their Maori hosts in the Bay of Islands and at Kaitaia for the use of land on which they established their mission stations. Missionaries such as Henry Williams and George Clarke in the Bay of Islands, and Joseph Matthews and William Puckey at Kaitaia, negotiated agreements with leading chiefs in a very public manner. By the 1830s missionaries had established themselves as useful members of Maori communities, and typically chiefs treated land transactions as ways of formalising their relationship with their missionaries.[6]

Most transactions designed to establish new stations, or formalise missionary-Maori relations were relatively small in scale, affecting hundreds rather than thousands of acres. Missionaries invariably negotiated these agreements on behalf of

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[6] On the establishment of the Kaitaia mission station in 1833-34, see Wai-45 Prelim. Report, pp. 19-22.

their parent organisation, the CMS. Subsequently, individual missionaries began to negotiate larger scale transactions on their own behalf, or on behalf of themselves and their children. The CMS paid each missionary a £50 allowance per child which most used to acquire land rights. Many, however, sought to acquire rights to thousands of acres, arguing that this was necessary to provide for the financial security of their children in later life.[7]

Nonetheless, these individual missionary transactions came under the scrutiny of the British House of Lords in 1838. Captain, later Governor, Robert Fitzroy, testified about the large areas in the Bay of Islands affected by them. In responding to the House of Lords report on New Zealand, the Bay of Islands missionaries argued that these transactions were designed both to provide for their children, and to protect Maori. They described their children, numbering 122, as permanent settlers who would civilise New Zealand and make the benefits of that civilisation available to Maori. By establishing their children on land among the Maori, they would protect the tangata whenua from unprincipled Pakeha land sharks. Furthermore, they invited the Crown to extend its protection over this civilising mission. Almost a year before the Treaty of Waitangi, they proposed that "the British Government as a first measure should[,] as guardians of this people [ie. Maori,] provide that ample reserves should be made for different tribes..., within the limits of which no settlers should purchase [Maori land]."[8] Here we see the origins,

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[7] W Puckey to CMS 22 Jan. 1846, Puckey papers II: 96, Univ. of Auckland Library.

[8] Minutes of [NZ CMS] Subcommittee Meeting, Paihia, 19 Feb. 1839, CMS/CN/ M11.

not only of the missionary defence of their land claims, but also of a Crown policy, that of establishing Maori reserves.

Well before Waitangi, CMS missionaries advocated the annexation of New Zealand to preserve the trusteeship relationship they said they had established with Maori. Again in early 1839, they were arguing that they were attempting to ensure that "immense tracts of good land...remain in [the] possession of the natives..." by insisting that such land was "held in trust by the Missionaries for the natives..." They reported that Maori were "...continually parting with their land, and every year [this] leaves them poorer in point of landed property." They assured their Parent Committee that, in addition to their trusteeship agreements with Maori, their individual purchase transactions were all fully understood by Maori. Such purchases were "made with the full understanding that they do not revert again to the New Zealanders. They are secured to the purchasers and his heirs forever with a right to everything pertaining thereto." If Maori continued to cultivate this "alienated land," they did so "only by permission..." of the missionary owner. Ultimately, the missionaries felt they were fighting a losing battle, however, in educating Maori in the responsibilities of Pakeha land ownership. By sqandering so much of their land in Northern New Zealand, the missionaries believed that Maori had divested themselves of much of their sovereignty. Only in alliance with the Crown could missionaries protect Maori from their own profligacy and allow them to "maintain a portion of their country." In pursuit of this kind of trusteeship, the CMS

missionaries called again for Britain to annex New Zealand.[9]

5. Richard Taylor's Arrival in Muriwhenua 1839-40

Thus, before Richard Taylor arrived in Muriwhenua in late 1839, local missionaries had firmly established their position on land claims, the protection of Maori, and the desirability of British annexation. Taylor, a Cambridge University graduate and ordained priest, spent 3 years in New South Wales before proceeding to New Zealand. While Vicar of Liverpool, near Sydney, he acquired land in partnership with Lieutenant Ralph Sadlier, a naval officer and one of his leading parishioners. Sadlier would later provide much of the capital to finance Taylor's "purchase" of Muriwhenua North. As early as July 1839, Taylor became a defender of missionary trading interests when he denounced a critical Sydney Herald article as slanderous.[10] This was to be the first of many occasions when Taylor defended missionaries, including himself, against what he considered slanderous accusations.

Taylor's first contact with Muriwhenua people occured in September 1839 when the vessel on which he sailed from Sydney to the Bay of Islands called at Manawatawhi (or Three Kings) Islands. There he received hospitality from the Te Aupouri people who he would later establish a trusteeship relationship with.

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[9] Remarks of the [CMS NZ] Subcommittee on Parent Committee letter of 9 August 1838, nd., ibid. The Subcommittee writing this letter consisted of Henry Williams, William Williams, and George Clarke (who became Protector of Aborigines from 1840-45).

[10] Taylor to Editor, Sydney Herald, 18 July 1839, Taylor papers, 251, ATL.

Although based in the Bay of Islands from late 1839 to 1842, Taylor visited Muriwhenua on at least three occasions during those years. He visited the CMS station at Kaitaia in November 1839 and January 1840. There he expressed admiration for Matthews and Puckey's efforts in reducing the incidence of war, and in encouraging the development of agriculture among Te Rarawa people.[11]

6. The Taylor-Te Rarawa transaction 20 January 1840

Taylor's journal entry for 20 January 1840, the day he established a claim to the trusteeship of over 65,000 acres of Muriwhenua North land, reads:

> This day I settled with Noble [Panakareao] the chief of the Rarawa to buy Muriwenua or the north end of the island, a large though unserviceable tract of land 35 miles long and ten wide in one part arranging at the same time for the entire land as far as Mt Camel with the chieftainship of the whole. I have given the former one hundred and sixty pounds (£160) in goods which I have taken off Sadlier's hands at his request and £100 in money. I have been induced to do so because by my becoming purchaser 80 natives will immediately return and settle upon it where I have offered them and the entire tribe a home. They have been vanquished and expelled by Noble's tribe some years ago and have never since dared to live on the land. I had no sooner concluded the purchase than I heard of no less then three applications made from pakias to buy it A messenger from one arrived just as the deed was being signed but all were anxious I should have it, and I trust it is the leading of Providence that I may more extensively do good.[12]

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[11] Taylor Journal (7-10 Nov. 1839, 17-19 Jan. 1840) II: 164-6, 182-4, Auckland Institute and Museum.

[12] Ibid. (20 Jan. 1840) II: 184-5.

When he reported this transaction to the CMS Parent Committee 9 months later, he stressed that it was intended to protect a conquered people, Te Aupouri, and that only he could restore to them an ancestral homeland Te Rarawa drove them from 20 years earlier. Taylor maintained that Te Aupouri had unsuccessfully petitioned Panakareao to allow them to return to Muriwhenua North before 1840. According to Taylor, fate intervened when Sadlier, his NSW business partner, shipped him a consignment of goods valued at £160 which arrived at the Bay of Islands just as Taylor was about to visit Muriwhenua. Taylor admitted that he reluctantly agreed to invest these goods in Muriwhenua North land because he expected much public criticism for entering into such an agreement.[13]

Nonetheless, when Taylor heard of the plight of Te Aupouri in January 1840 at Kaitaia, he convinced himself that "this would be the only opportunity missionaries would have of making any provision for natives..." Panakareao, he said, was willing to allow Te Aupouri to return only if a trusted Pakeha would vouch for the fact that they would do so "peaceably." Taylor apparently agreed to ensure that Te Aupouri consider his authority as that of a guardian or trustee. He wrote that "in the deed I have made provision for the whole tribe of the Aupouri[,] only stipulating that each individual shd. be obedient to me." Taylor understood that British annexation was imminent, and that any agreement he reached after the act of annexation would require prior consent by the Crown. Undoubtedly aware that his Te Rarawa transaction would beat annexation by the narrowest of margins, he concluded

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[13] Taylor to Jowett 5 Oct. 1840, Taylor papers 9, ATL.

his report to London with a confession.

> I may have erred but I believe whatever the world may say I have done more for the poor natives than will be done again, a tribe now has a home its native home.[14]

These were prophetic words. For the rest of his life Taylor would have to answer for what he did on 20 January 1840 in Kaitaia. Even his descendants, including his great grandson, Dr Richard MS Taylor, would feel obliged to defend what he did that day. Taylor himself would occasionally reveal self-doubts. Two weeks after first reporting the transaction to London, he reported the Treaty negotations which he had recorded at Hokianga and Kaitaia in February and April 1840. In the covering letter accompanying these Treaty reports, Taylor revealed a family tragedy. He had just lost a 10 year old son in a riding accident. Stricken with grief, he expressed how his son's death "caused me to feel how unbecoming it is of us to take so much thought about providing for our children..." Instead of land, he wrote:

> The grand inheritance is to be looked for in the heavenly Canaan and my dear child's death has made me feel more strongly than ever I did before that our stay here is short and that much [spiritual] work remains to be done which requires all my strength...[15]

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[14] Ibid. Sadlier's letter to Taylor accompanying his shipment of goods has not survived in Taylor's private papers. He probably informed Taylor of Captain (later Governor) Hobson's arrival in Sydney and meetings with New Zealand land claimants there during January. Wai-45, Prelim. Report, pp. 76-77.

[15] Taylor to Jowett 20 Oct. 1840, Taylor papers, 10, ATL. In this letter, as in that of 5 October, Taylor offered to transfer his Muriwhenua North rights and responsibilities to the CMS, if this would remove "a cause of offence to many..."

For 150 years historians have had to depend on Taylor's account of what took place at Kaitaia on 20 January 1840, because the original deed in English and Maori was not available. Recently, the author found a copy of the Maori version in the Taylor papers held at the Auckland Public Library. ("Copy of Deed of North Cape," with Waerete Norman's translation, attached as Doc 2)

After identifying Panakareao and Taylor as the principals, the agreement reads:

> Kua tuhitukia tenei pukapuka e matou e Nopera Pana Kareao ma ki tetahi taha ko Reihana Teira tetahi wahi wenua oti toku atu me nga rakau katoa me nga aha moa me nga aha noa katoa e tupu ana i tana wenua me nga mea mea katoa a raro o tana wenua, me te rangatiratanga me te mana i runga i tana wenua.
>
> This book constitutes a written contract as stated by Nopera Panakareao and others on the one hand and Richard Taylor on the other. It is a statement to all people thereof that we consent to the release of a small piece of land to Richard Taylor, including all the trees within its confines, everything on it and all things growing on this land, all things beneath the surface, and the authority and mana over this land.

Paradoxically, the deed then describes a large triangular piece of land (containing at least 65,000 acres), bounded by Matapia in the south, Murimotu in the east, and Te Reinga/Motuopao in the west. (See "Plan of Taylor's Grant," attached as Doc 3)

Equally puzzling are the references to Taylor's payment. In his Journal and statements to Crown Commissioners, Taylor records having paid Panakareao £100 in cash and £160 in goods. The deed, however, describes as "the equivalent currency in terms of taonga..." $1,250 plus $1,750, by all accounts a much larger sum

than that which Taylor handed over on 20 January. Perhaps this amount referred to the value of the whole 65,000 acre area, while Taylor paid the equivalent of £260 for a different "small piece of land." Whether it was for the whole or for the part of the land, Taylor had it set out for himself and his children in perpetuity (A mo Reihana teira te wenua kua oti nei te wakarite mo ona tamariki ake ake ake.)

The concluding section defining Te Aupouri rights reads:

> Na e wakae ana e Reihana Teira Kia noho te toenga o te Aupouri ki runga i tona wenua ki te noho marie ratou ana e tutu mana me te Reihana Teira e tohutohu te wahi e noho ai te tangata me ke mia hia etahi o te Aupouri ki te hoki ki reira noho ai. Otira awa tetahi wa o ratou e mea nona ake te wenua kei pokahoa te hokotetahi wahi i roto i anei kaka.
>
> Richard Taylor consents that the remainder of Te Aupouri can live peacefully on this land providing they do not create any disharmony. He will reserve a place where the people shal live should those of Te Aupouri desire to return to dwell there. This is to prevent anyone from reclaiming the area ancestrally, or taking it upon themselves to sell a piece from within its limits...

Significantly, the 29 Maori "vendor" signatures are arranged in columns headed "Kai tuku." According to claimant researchers, this suggests that Maori understood the transaction to be quite different to a simple sale which would be described as "Kai hoko." The transaction appears to have been the establishment of a trusteeship by Taylor and his heirs over Te Aupouri land, obtained from Panakareao and other Te Rarawa chiefs. It was obviously a solemn and public undertaking which was witnessed by 13 people, including Matthews and Puckey,

together with a number of Maori mission teachers.[16]

The deed fails to disclose the existence of Taylor's partner, Sadlier, who contributed most of the payment. Far from being a business agreement in the Pakeha sense, this was a personal and conditional trusteeship agreement. It was between Maori and Taylor, not Sadlier, and it was conditional upon the good conduct of Te Aupouri which Taylor was willing to vouch for.

7. Taylor's Role in Treaty Negotiations February-April 1840

Little more than 2 weeks after signing the Muriwhenua North agreement at Kaitaia, Taylor was witnessing Treaty negotiations at Waitangi. In fact, Taylor was probably the only person present at all 3 major Treaty negotiations in Northern New Zealand, those at Waitangi on 5-6 February, at Hokianga on 12-14 February, and back at Kaitaia on 28 April 1840. In some ways, his 20 January transaction can be viewed as a precursor to these negotiations because at each of them Maori essentially ask the Crown representatives a simple question: can we trust you? At both Waitangi and Kaitaia Maori provided their own answer: if the missionaries trust the Crown, so can we.

Taylor's record of these Treaty negotiations reveals how central to them was the question of land rights. He points out

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[16] Copy of Deed of North Cape 20 Jan. 1840, Taylor papers, Miscellaneous Maori Documents, Auckland Public Library [hereafter: APL], and Waerete Norman's translation, attached as Doc 2. I am indebted to Waerete Norman for this translation which she provided at very short notice.

how at Waitangi on 5 February "...the first speeches were hostile to the Governor, some reflected on the Missionaries and Mr Busby buying land..."[17] From Walter Brodie's account, it appears that Maori were especially critical of the man who translated the Treaty of Waitangi into Maori from Busby's English draft, Henry Williams. Maori apparently criticised Williams not only for his extensive land claims, but also because they doubted that his translation of their verbal criticism into English for Hobson was pointed enough.[18] According to William Colenso, the CMS printer, during the heated discussion on land, Hobson agreed that as a result of the Crown's investigation of the validity of pre-treaty transactions, any land found to have been unjustly taken from Maori would be returned to them.[19] This probably won the Crown many Maori friends, and Taylor convinced Hobson to bring the Treaty signing forward to the following day instead of waiting until 7 February as originally planned. Taylor claims his advice was based on the recognition that Maori who had travelled great distances to Waitangi could not be detained, but he may have sensed that the time was ripe to take advantage of the sense of trust evoked by the outcome of the 5 February discussion.[20]

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[17] Taylor Journal (5 Feb. 1840) II: 188.

[18] Walter Brodie, Testimony before the House of Commons New Zealand Committee, 4-6 June 1844, British Parliamentary Papers [hereafter BPP], 1844, (556) pp. 39, 50-1. Taylor himself reported that Williams "interpreted so low [inaudibly] that I could not take a correct account of the speeches." Taylor to Jowett 20 Oct. 1840, Taylor papers, 10, ATL.

[19] Quoted in Claudia Orange, The Treaty of Waitangi (Wellington 1987) pp. 46-7.

[20] Taylor Journal (6 Feb. 1840) II: 188-9. Colenso, of course, questioned Hobson about whether he was satisfied that Maori fully understood the significance of what they were being

When Hobson took the Treaty to Hokianga a week later, land claims again figured prominently. As Taylor records, Hobson opened proceedings by denouncing malicious rumours that the Crown would enslave Maori and "seize" their land. Taonui, of Ngapuhi, declared:

> ...We are not willing to give up our land. It is from the earth we obtain all things, from the earth is all our happiness. The land is our father. The land is our chieftainship[,] we will not give it up.

Wi Tana Papahia, of Te Rarawa/Hokianga then "asked whether it was right for two men to have all the land from the North Cape to Hokianga." This must have embarrassed Taylor, because he had to be one of the two men referred to. William Puckey, a witness to the 20 January transaction, rose to his defence. Puckey said:

> the land alluded to was held under a trust deed for the use of the natives, and that the mission would hand over that [land] and all other Tracts held in a similar way to the Government [my emphasis].[21]

Again with the reassurance that the Crown would investigate all Pakeha land claims, implying that questionable claims would be invalidated, Maori at Hokianga signed en masse. Taylor records, however, that 50 of the signers withdrew their consent 2 days later. As Hobson's vessel made its way towards the Hokianga Heads, a waka overtook it and the Maori aboard delivered

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asked to do. Hobson answered saying he had done all that was humanly possible to make it understandable to them. The Hokianga sequel to Waitangi suggests that if Maori had been given time to ponder the significance of the Treaty, some of them may not have signed. Taylor helped deny Maori the time to ponder what was at issue at Waitangi.

[21] Notes of the Meeting at Hokianga 12 Feb. 1840, encl. in Taylor to Jowett 20 Oct. 1840, Taylor papers, 10, ATL.

a letter of withdrawal. They dramatically threw back the blankets Hobson had presented them with when they had signed. According to Taylor, Hobson "seemed much annoyed..." This significant withdrawal of Maori consent suggests that, had signers at Waitangi and Kaitaia been given an opportunity, they too may have withdrawn consent.[22]

At Kaitaia on 28 April land also figured prominently in the Treaty negotiation, but there CMS influence figured more prominently than at Hokianga. The first Maori speaker at Kaitaia, Taylor's namesake Reihana Teira, was probably the same person who signed the 20 January transaction immediately below Panakareao's name. Many speakers criticised "Pakeha Maori" land sharks, apparently referring to land claimants in the Mangonui/Oruru area. Panakareao's son, Paratene Wairo, according to Taylor, denounced as malicious the rumour that his father "was going to cut-off all the people at the North Cape," which would have been in violation of his agreement with Taylor. Panakareao then rose to deliver his memorable Treaty speech. He contrasted the good Governor (who was not present) and missionaries (who were) with the malicious Ngapuhi (who insulted the good Governor at Hokianga) and their Pakeha Maori land shark allies. Panakareao's metaphor for the meaning of the treaty was, according to the account Taylor sent to London, "the shadow of the land will go to him [Hobson] but the substance will remain with us." The Crown would pay Maori for their goods, including land, and not take what was rightfully theirs without their consent.[23]

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[22] Taylor Journal (14 Feb. 1840) II: 192. Surprisingly, few historians have pondered the significance of this withdrawal.

[23] Notes taken at a meeting held at Kaitaia 28 May [sic] 1840, encl. in Taylor to Jowett 20 Oct. 1840, Taylor papers, 10,

8. The Attack on Missionary Land Claims 1840-45

Taylor had every reason to be sensitive to Maori criticism of missionary land claims at Waitangi and Hokianga, and every reason to be thankful for the warm support missionaries had received at Kaitaia 3 months after he negotiated his claim there. Even before the Kaitaia signing, Taylor's CMS colleague George Clarke severely criticised him in the same letter in which he sought his Parent Committee's permission to become the Crown's Protector of Aborigines. Clarke wrote:

> I have with pain heard that Mr Taylor has purchased the whole country of probably not less than fifteen hundred Thousand [1,500,000!] acres near the North Cape... I fear he has given great cause to the Enemy.[24]

The "Enemy" Clarke referred to were critics of CMS land claims who, by April 1840, included Dr John Dunmore Lang, a Presbyterian Minister from Sydney, and Edward Gibbon Wakefield of the New Zealand Company in London.[25] Taylor's CMS colleagues in the Bay of Islands rose to their own defence when called upon to account for their purchases by the Bishop of Australia later in 1840. They maintained that they had established land claims

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ATL. This version differs slightly from that recorded in Taylor's Journal (28 April 1840) II: 196-201.

[24] Clarke to Coates 25 April 1840, Clarke papers, ATL. Prior to becoming Protector of the Aborigines, Clarke worked for at least 3 months with Taylor at Waimate. His wildly inaccurate report of the size of Taylor's claim suggests that Taylor confided in few of his CMS colleagues about Muriwhenua North.

[25] John Dunmore Lang, New Zealand in 1839 or Four Letters to Durham (Sydney 1840). Lang accused CMS missionaries of being the "principals in the grand conspiracy of the European inhabitants of the island to rob and plunder the natives of their land."

solely for the benefit of their children long before British annexation had been a realistic prospect (which Taylor could hardly argue). Because they did "not desire to reserve any lands for their own [as opposed to their children's] personal property or advantage..." they rejected the "violent calumnies..." heaped upon them.[26] Obviously, Taylor and other CMS missionaries foresaw how controversial their land claims would be when they formally presented them to the Crown in late 1840.

9. Taylor's Statement of Claim 12 November 1840

Taylor's statement of claim to Muriwhenua North emphasised his trusteeship relationship with Te Aupouri. It read:

> The piece I claim was formerly the abode of the Aupouri, a tribe which was conquered and expelled by the Rarawa, it was chiefly to give a home to the remnant of this tribe that I was induced to make this purchase...and at this time there are nearly 100 of the Aupouri residing upon it.

He went on to stress the limited commercial value of the land saying that it was "barren...very hilly," and with a substantial portion covered with sandhills. He recognised the existence of "small patches of good land well adapted for native cultivation" or "European cultivation," but he estimated that such land was not more than 1,000 out of 50,000 acres. In conclusion he stated quite clearly:

> My intention, as expressed in the deed is to give up to this tribe the greater portion[,] retaining only sufficient to form an equivalent for the property invested [my

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[26] Missionaries of the Northern District of NZ to Bishop of Australia 9 Nov. 1840, CMS/CN/ M11.

emphasis].[27]

Any reading of this statement would have to ackowledge it as something much closer to describing a trusteeship agreement than to describing a purchase agreement. Within the CMS there was a clear distinction between the two. Land held in trust for Maori remained their property, while land purchased from them didn't.

10. The First Taylor-Te Aupouri transaction 16 February 1841

The imprecise nature of Taylor's description of Muriwhenua North in his statement of claim can be explained by the fact that until early 1841 he had never even seen the land. In January and February 1841 he visited the area for the first time, and formalised his trusteeship relationship with Te Aupouri.

On his way to Muriwhenua North, Taylor paid his respects to Panakareao in Kaitaia, but found him disenchanted with the Crown. Although Hobson had paid Panakareao £100 for disputed land at Oruru, Te Rarawa clearly expected more rewards for the loyalty they had expressed at the Kaitaia treaty signing. Taylor recorded on 25 January 1841:

> Noble and all the chiefs are much dissatisfied with the Governor's proceedings. He says he thought the shadow of the land would go [to] the Queen and the substance remain with them[,] but now he fears that the substance of it will go to the Queen and the shadow only [will] be their

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[27] Taylor to ED Thompson (Col. Sec. NSW) 12 Nov. 1840, Taylor papers, ATL. Under the terms of the original NSW Land Claims Ordinance, claimants to land in New Zealand were required to lodge their claims with the NSW Colonial Secretary before such claims could be investigated in New Zealand by Crown Commissioners.

portion.[28]

When Taylor reached the main Te Aupouri settlement on the shores of Parengarenga harbour the following day, he began to discuss which part of Muriwhenua North would be his, and which part "would be their portion." To Taylor's surprise, he received "a very cool reception from the natives..." at a 27 January hui. He recorded that Te Aupouri "know I had purchased the North Cape and they said Noble had no business to sell it without them." They therefore interrogated Taylor "respecting my intentions."[29] Apparently, Te Aupouri resented Taylor deciding their future without consulting them.

After Taylor explained his intentions to local people at "a long korero" on the following day, "...we became good friends." He then set out on a week long expedition following the boundary line identified in the 20 January 1840 deed. At Waikuku, which was outside his boundary but which he believed was "within the boundary of my purchase," he commented that the attractive green meadow there "could form a very pretty farm." On 30 January after inspecting a Te Rarawa pa site which Te Aupouri reoccupied and planted, Taylor recognised that Te Aupouri claimed "all the coast almost as far as Pakohu from Murimotu [North Cape] which Noble has sold to me."[30] At Te Werahi, between Te Reinga and Motuopao, a man named Wareware occupied a "beautiful plain." Taylor stated: "I believe he has no right to it though in my dominion."

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[28] Taylor Journal (25 Jan. 1841) II: 226.

[29] Ibid. (25-27 Jan. 1841) II: 226-7.

[30] Ibid., (28-30 Jan. 1841) II: 234.

On returning to the main settlement at Parengarenga, Taylor began to negotiate the extent of his "dominion." He suspected that a Pakeha named Dr Smith, who lived with Te Aupouri and had "...great influence with them," had encouraged them to "claim three-quarters of what I have purchased..." At yet another hui on 5 February, Te Aupouri specified "what part of the purchase they allowed..." for Taylor. This was the land "from Pakaho [Pakohu] to Waitahora [about 5km east of Te Reinga] and thence to Parengarenga and Matapiu [Matapia]."[31] Again, no formal agreement appears to have been concluded.

Taylor then travelled back to Kaitaia with at least 4 representatives of Te Aupouri. On 11 February he presided at a Thanksgiving service at the CMS church with 500 Maori, including Panakareao and the Te Aupouri representatives, in attendance. This celebration of the first decade of CMS activity in Kaitaia produced a collection of £46/5/-, with Panakareao contributing £5, and a 90 year old Te Aupouri chief from Houhora £2.[32] Four days later, Taylor baptised Wiki Taitimu, leader of the Te Aupouri/Parengarenga delegation, and five days later he married Panakareao and Ereonora (one of the few female signers of the Treaty of Waitangi). Since neither Matthews nor Puckey were ordained priests, only Taylor could perform these rites. This must have increased his mana with Te Aupouri, who were about to enter a formal agreement with him.

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[31] Ibid., (5 Feb. 1841) II: 235-6. In this journal entry Taylor criticised Smith from living "in sin" with a Maori woman and their children. He disdained such a person who "pretends to stand up for the rights of the natives..."

[32] Ibid., (11 Feb. 1841) II: 237-8.

On 16 February 1841, the day of Panakareao's marriage, the 4 Te Aupouri representatives at Kaitaia signed an agreement with Taylor. In his journal, Taylor recorded that he engaged Taitimu "to go and reside on my land at Waikuku," and that all 4 representatives "signed a paper acknowledging that the land was mine, and that none should live there without making the same acknowledgement..."[33] The Maori version of this agreement reads:

> Ko te waka kitenga tenei o taku waka aetanga ki te hokonga o Nopera i Muri wenua. Kia to Teira, a e pai ana ahau kia noho ki Waikuku i to te Teira Kainga. Nei wakarite mo te Teira a e kore e tukua e a hau. Kia noho i reira nga tangata e kore nei e waka ae a no te Teira te Kainga.

> This declaration is my agreement of a sale [hokonga] by Nopera in Muriwhenua to Taylor and I consent to his living in Waikuku, such place to be regarded as Taylor's place. So that this agreement may be binding, I will not permit the people who oppose Taylor to live there, also those who object to this place being Taylor's

Wiki Taitimu signed this agreement as "Rangatira o te Aupouri", with Hoterani Whakaruru, Paraone te Huhu and Mehaka Hiko also signing on behalf of Te Aupouri. Panakareao, Matthews and Puckey witnessed the signing (See 16 February 1841 agreement, Copy of Deed of North Cape, with Waerete Norman's translation, attached as Doc 2).[34] Although this document does not record any payments, Taylor reported that he presented Taitimu with a blue cloak which Panakareao earlier refused to accept, and that he distributed "several minor sums as an after payment to different chiefs who

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[33] Ibid., (16 Feb. 1841) II: 240.

[34] 16 Feb. agreement, Taylor papers, Miscellaneous Maori documents, APL. Just as with the 20 January 1840 deed, this document has been missing for over a century.

had a claim upon [Muriwhenua North]..."[35]

A major problem in assessing the significance of the first Taylor transaction with Te Aupouri dated 16 February 1841 is in relating it to earlier discussions at Parengarenga. Those discussions between 26 January and 5 February led to a Te Aupouri proposal to limit Taylor's rights to a triangular area between Matapia, Parengarenga, Pakohu, and Waitohora. The people who tried to define Taylor's "portion" in this way may be those defined as his opponents in the 16 February deed. To further complicate matters, although Taylor thought otherwise, Waikuku was outside his originally defined claim area (see Map entitled "Plan of Taylor's Grant," attached as Doc 3). Perhaps this deed signified Te Aupouri agreement to regard Waikuku as the "small piece of land..." referred to in the 20 January 1840 deed as Taylor's.

11. Taylor's Attempts to Transfer his Rights 1840-45

Taylor's transactions with both Te Rarawa and Te Aupouri emphasised the personal nature of his rights and responsibities. Reihana Teira, not the CMS, and not the partnership of Taylor and Sadlier, entered into these solemn agreements which were based on personal trust. The only possible transferral of rights refered to in either agreements, was Taylor's transferral of his rights to his heirs. Nonetheless, even before the first Te Aupouri transaction, Taylor had offered to transfer his rights

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[35] Taylor Journal (16 Feb. 1841) II: 240; Taylor to Sadlier 4 Aug. 1845, Taylor papers, APL.

to the CMS.[36]

Taylor evidently never consulted Maori about his attempts to transfer his rights in this way throughout the 1840s. In May 1841 Taylor repeated his willingness to "resign" his land rights by transferring them to the CMS. Normally the continuing attack on missionary land claims triggered these offers. Taylor told Dandeson Coates, the CMS Secretary, that he was "one of those odious land sharks as the veracious Dr Lang styles us..." The truth of the matter, Taylor claimed, was that he had restored Te Aupouri to its ancestral home by reserving a "portion" of Muriwhenua North "for its support..."[37] Two years later Taylor again coupled a defence of his motives in becoming involved in Muriwhenua North with an offer to turn it over to the CMS. He told Coates that he had allowed Te Aupouri "to return to their former homes which it could not have done had I not purchased the land." He also repeated his willingness to accept absolute ownership of only a small area "sufficient to cover my outlay..."[38]

In 1844 Taylor tried to interest George Augustus Selwyn, the first Bishop of New Zealand, in Muriwhenua North. Taylor offered

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[36] Taylor offered to do this, partly to protect the CMS and himself against criticism of missionaries enriching themselves at the expense of Maori. Taylor to Jowett 5, 20 Oct. 1840, Taylor papers, 9 & 10, ATL.

[37] Taylor to D Coates 29 May 1841, ibid, 11.

[38] Taylor to Coates 8 Aug 1843, ibid., 13. In concluding this letter, Taylor admitted that "although I thought my motive was a laudable one [in becoming involved in Muriwhenua North], after what has been said about missionaries and land[,] I regret I had made it."

to donate all except 200 acres of his expected Crown Grant to the Church of England as an educational endowment. Selwyn, however, insisted that Muriwhenua North land wasn't valuable enough. He proposed that Taylor accept a scrip exchange to acquire more valuable land near Auckland. This Taylor refused to do. He told Selwyn that such an exchange "would most justly expose me to the misunderstanding of the public." Later, Taylor stated his refusal was based on the firm conviction that such an exchange "...would destroy my original intention..."[39]

While Taylor may be applauded for refusing to violate his agreements with Maori in this instance, the fact remains that his refusal came in the course of negotiations to transfer his rights without their consent. Taylor also brought his business partners, Lieutenant Sadlier, Colonel Phelps, J Duffus and J Lloyd into Muirwhenua North, again, without consulting Maori.

In late 1841, Taylor's original business partner, Sadlier, anticipated Selwyn's exchange proposal by suggesting that he invest proceeds from Taylor's NSW property in valuable Auckland real estate.[40] In an 1845 letter to Sadlier, Taylor refers to Muriwhenua North in almost exclusively commercial terms. He advised Sadlier that:

> ...if you want to have a larger quantity assigned than the Government has been pleased to allow...by paying a penny an acre you will have a crown title for as many acres as like for which you have a native title, and you are aware that the whole of our title in the North is undisputed, so

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[39] Taylor to Selwyn 29 Feb. 1844, Selwyn to Taylor 24 Aug. 1844, Taylor to Selwyn 8 Nov. 1844 (extracts), ibid, 202; Unpublished draft, Taylor papers, 297/42, APL.

[40] Sadlier to Taylor 13 Dec. 1841, Taylor papers, 252, ATL.

> friend Duffus and you have only to send over your pence and the acres are yours...[41]

Taylor pointed out to Sadlier how a colonial government engaged in putting down Maori resistance at both ends of the North Island had been forced to offer settlement incentives, but few Pakeha were willing to take advantage of them. Since New Zealand land was now available at bargain basement prices, Taylor advised his NSW partners to buy.[42]

By involving such partners in Muriwhenua, Taylor was engaged in transferring to them a proportion of his property rights as defined by the Crown. Initially, Sadlier assumed a 50% share in Taylor's investment. Sadlier then assigned half his share to Phelps, but then both apparently sold their 25% shares to J Duffus and JP Lloyd. Throughout, Taylor retained his original 50% share. The question remains, however, was Taylor's transferral of 50% of his property rights in keeping with the personal trust involved in his Maori agreements?

12. The Crown Land Claims Commission 1843

Colonel Edward Godfrey, the Crown Land Claims Commissioner investigating Taylor's claim during 1843, provided the Crown's definition of the nature of Taylor's property rights in Muriwhenua North. Godfrey considered Taylor's claim at his Mangonui hearings in January and February 1843. Since Taylor had been transferred to Wanganui, Joseph Matthews presented the claim on his behalf. According to the Commission's surviving records,

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[41] Taylor to Sadlier 4 Aug. 1845, Taylor papers, 297/1, APL.

[42] Ibid.

Matthews testified as to the "execution of the deed and the payment to the Natives and the land having been purchased in 1839 [sic]..."[43] At the January hearing, a Te Aupouri chief, Ngatakimoana, objected to Taylor's claim. On 15 January Godfrey reported to the Colonial Secretary:

> The adverse Tribes have opposed the sales made by Nopera to Mr Ford [at Oruru] and Mr Taylor - and with more shew of justice because these lands have been their dwelling places for very many years.[44]

Since the Oruru dispute was particularly dangerous, Godfrey sought to win concessions from Te Rarawa at Kaitaia before returning to Mangonui in February. At this second hearing Godfrey apparently convinced Ngatakimoana to withdraw his opposition to Taylor's claim, "having convinced him that the lands of his family still remained unsold and unclaimed."[45]

When Godfrey recommended what land the Crown should grant Taylor, he wrote that he should receive 1704 acres

> Excepting,
>
> Any cultivation or other Grounds required by the Aupouri Tribes at the discretion of the Protector of the Aborigines - more particularly excepting 'Waikuku'[46]

Strangely enough, Waikuku, which Te Aupouri reserved for Taylor in their 16 February 1841 agreement with him, became the only

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[43] R Taylor claim No. 222, Register of Reports, Old Land Claim records [hereafter OLC] 3/2.

[44] Godfrey to Col. Sec. 15 Jan. 1843, ibid., 8/1, pp. 54-6.

[45] Godfrey to Col. Sec. 10 Feb. 1843, BPP (556) 1844, Appendix No. 4, pp. 126-7.

[46] Summary of Godfrey's report 15 April 1843, Taylor claim, No. 222, Register of Reports, OLC 3/2.

area Godfrey explicitly recommended to be reserved for Te Aupouri.

In arriving at his 1704 acre grant recommendation, Godfrey relied entirely upon what Taylor stated he had paid Maori. Since Matthews testified under oath to the accuracy of Taylor's statements, Godfrey apparently accepted their veracity. Yet it's clear that some of these statements were inaccurate. Firstly, the first transaction occured on 20 January 1840, not in 1839. Secondly, the original purchase price was Taylor's £100 in cash and Sadlier's £160 in goods. Taylor stated, however, that he had payed £193/16/7 in goods. This price apparently included subsequent payments Taylor made, such as the £6 he distributed "as an after payment to different chiefs..."[47] In other cases, however, Godfrey ruled that the inclusion of payments after the 30 January 1840 proclamation of the Land Claims Ordinance in New Zealand was improper. He was apparently willing to accept the veracity of Taylor's statements without fully examining them, and to make his grant recommendation on the basis of unexamined evidence.

13. Taylor's Crown Grant 22 October 1844

When Governor Fitzroy issued Taylor his 1704 acre Crown Grant on 22 October 1844 none of the land had been surveyed. Consequently, Taylor's Grant describes the entire area of

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[47] Taylor to Sadlier 4 Aug. 1845, Taylor papers, 297/1, APL. In addition to paying "different chiefs" £6, Taylor paid £7 for the transporting of Sadlier's goods to Kaitaia, £10 for having someone examine the land for him, and £7 in fees to the Crown Land Claims Commission.

Muriwhenua North within its originally defined boundaries. Thus, Taylor received a 1704 acre Grant in a document that described an area of over 65,000 acres. Taylor later selected 852 acres (his 50% share of the total 1704 acres) within the total area described in the Grant, but the wording of the Grant does not make this clear. It states that the Crown granted Taylor,

> his Heirs and Assigns, all that Allotment, or Parcel of Land..., said to contain (1704)...acres, more or less, situated at the North Cape, and called Muremia [sic] Kapowirau [Kapowairua] and the Reinga and of which the boundaries are reported to be as follows: of the entire quantity claimed - Boundaries commencing at Matapia...

The boundary description then repeats that in the 20 January 1840 deed (in English), and the grant document concludes by repeating Godfrey's reserve recommendation: "Excepting any cultivation...more particularly...Waikuku." (See 22 October 1844 Crown Grant, attached as Doc 4)

The lack of precision characteristic of many 1844 grants led Fitzroy's successor as Governor, George Grey, to regard them as "defective." Grey maintained that in granting land without the benefit of professional surveys, or even accurate boundary descriptions, the Crown invited disputes. He also maintained that many of the 1844 grants in the Bay of Islands did not contain sufficiently explicit reserve provisions to ensure Maori compliance. Ultimately, however, the key defect of these grants was the "very uncertainty of the boundaries named..." This, alone, Grey believed, was sufficient "...to render these documents null and void."[48] While Grey delivered this judgement with Bay of Islands rather than Muriwhenua missionary grants in

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[48] Grey to Earl Grey 10 Feb. 1849, No. 12, Grey papers, ATL.

mind, it could apply equally to the latter.

14. Crown Acts of Omission regarding Reserves

In granting Taylor 1704 acres at Muriwhenua North, the Crown had stated that such a grant should not include land such as Waikuku "required" by Te Aupouri for cultivations, as determined by the Protector of the Aborigines. This provision should have obligated the Crown to set aside specific Te Aupouri reserves, something which it failed to do at any time during the 19th century. Although the creation of such Maori reserves may not have been in the interests of Te Aupouri, the question remains: why did the Crown fail to fulfil this obligation in Muriwhenua North?

The answer appears to lie in the way Grey reduced the power of the Protectorate Department, and with it the influence of CMS missionaries within the colonial administration, when he replaced Fitzroy as Governor in 1845. Fitzroy's Protectorate Department depended upon the services of CMS missionaries and their sons. Grey believed this Department's woeful land purchase record and its abortive attempts to placate Hone Heke, warranted a drastic reduction in its power. He therefore took personal control of native affairs and virtually forced the Chief Protector, George Clarke, to resign in 1845.[49] Having been reduced to the level of clerks within the Colonial Secretary's office, Protectorate officials soon became powerless to discharge obligations incurred before 1845. Consequently, the Crown failed to implement the

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[49] For a recent account of the events surrounding Clarke's differences with Grey see Graham Butterworth and Hepora Young, Maori Affairs/Nga Take Maori (Wellington 1990) pp. 21-5.

reserve provision in Taylor's grant.

Nonetheless, those reserve provisions continued to influence Taylor's view of the situation. Taylor continued to believe that his rights in Muriwhenua North stemmed from the consent of its inhabitants, and that the Crown had recognised this in its Grant. He informed Coates in 1846 that Panakareao in 1840 "gave me the fullest title[,] conceding even the chiefdomship of that district..." in a solemn agreement signed "...afterwards by the heads of the Aupouri." He asserted (incorrectly) that his "claim to this large district passed through the Commissioner's Court without opposition..." He believed that no other "land in New Zealand is held with such entire consensus of the natives as mine is..., the natives regard it as a beneficial purchase for themselves..." Taylor evidently thought of the entire 65,000 acres described by the boundaries in his Grant as a "refuge" or reserve. He thought that in time it might be a "refuge" not only for Te Aupouri, but also for the entire diminishing population of North Island Maori.[50] Taylor clearly thought that his solemn agreements with Maori were binding upon the Crown, and that the peculiar boundary and reserve provisions in his Grant confirmed the Crown's obligations to honour those agreements.

15. Taylor's Changing Views of Trusteeship 1845-52

While Taylor continued to view his rights and responsibilities in Muriwhenua North as those of a trustee, his understanding of trusteeship changed. Firstly, his correspondence with Sadlier in 1845 reveals how commercial calculations had

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[50] Taylor to Coates 9 Jan. 1856, Taylor papers, 28, ATL.

crept into his view of his rights.[51] During the struggle between Grey and the CMS which continued throughout the period 1845-52, Taylor also learned to form an alliance with the Crown, partly to protect his position at Muriwhenua North. In 1845-7 Taylor befriended the most powerful Crown agent in the Wanganui/Taranaki area, Donald McLean, and the Governor himself. Taylor confided in McLean about how he had been unjustly maligned as "a leviathan land shark" and how he felt "the censure of the public as acutely..." as anyone else. He told McLean that he, nonetheless, regarded himself "a considerable benefactor to the natives..." in Muriwhenua North, and he predicted "...I may live to see the day when the principal native population of this Island shall be there."[52] Taylor cooperated actively with McLean and Grey in negotiating Crown land purchases in the Wanganui area.[53]

Taylor's cordial relationship with Governor Grey contrasted with the acrimony that characterised Grey's relationship with George Clarke, Henry Williams and the other Bay of Islands missionaries. In mid 1848 Taylor even offered to transfer his Muriwhenua North grant to the Crown. Rather than transferring his trusteeship responsibilities to the CMS or Church of England, he told Grey,

> ...it will be more beneficial <u>to give up my land entirely to the natives as a permanent reserve for the Aupouri Tribe</u> [my emphasis]...[54]

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[51] Taylor to Sadlier 4 Aug. 1845, Taylor papers, 297/1, APL.

[52] Taylor to McLean 27 Jan. 1847, McLean papers, 600, ATL.

[53] Grey to Taylor 10 July 1846, Taylor papers Ms. 76, 9, ATL; Taylor to McLean 24 Feb. 1847, McLean papers, 600.

[54] Taylor to Grey 12 June 1848, Taylor papers, 206, ATL.

This, of course, represented another Taylor attempt to transfer his rights without consulting Maori, but Taylor could claim that, in so doing, he was merely attempting to get the Crown to implement the reserve provisions of his grant. In any case, Grey did not act upon Taylor's offer.

When Grey failed to respond, Taylor again attempted to get the CMS to accept title to his grant as an educational endowment on condition that

> the natives of the Aupouri who formerly belonged to it still continue to return there...[and that] at a future period some steps be taken, by the Society for their spiritual welfare...[55]

His attempt to transfer his rights to the CMS was again motivated in part by his desire to protect the missionary community from the continuing criticism of their land grants.[56] Taylor, however, was also conscious of the survey and title registration fees he would incur if he chose to act upon his grant by obtaining a deed of title. His partners, now J Duffus and JP Lloyd, could not claim their respective 25% shares in the 1704 acre grant, until Taylor had selected, surveyed, and registered his title to the 852 acres he was entitled to. Taylor, therefore, hoped that the CMS would spare him the trouble and expense of doing this.[57]

Neither the Crown nor the CMS took up Taylor's offer to transfer his rights and responsibilities in Muriwhenua North to

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[55] Taylor to GA Kissling 6 June 1849, ibid., 250.

[56] Taylor to Kissling 8 June 1849, ibid.

[57] Taylor to Kissling, Taylor to JP Lloyd 16 Sept. 1850, ibid.

them. By 1852 he had decided to select his land at Kapowairua. He had 852 acres surveyed that year and he registered the deed in his own name. (See Survey OLC 234, Taylor's Grant, attached as Doc 5) In 1851 and 1852, Duffus and Lloyd chose to select and survey the 426 acres they were entitled to, not in Muriwhenua North, but on the eastern side of Mangonui harbour. The people of Muriwhenua North would not discover how Taylor transferred his rights (obtained from them) in this way for over a century. Taylor believed he hadn't committed a breach of his original Maori agreements, but when he sent a surveyor to separate Kapowairua from the rest of Muriwhenua North he was practising a different kind of trusteeship to that which he had preached in 1840-1.

16. North Cape Coal 1857

During the 1850s Taylor remained at his Wanganui mission station having little apparent contact with Muriwhenua North. As far as Crown land purchase agents were concerned the area remained in limbo until the discovery of coal there in 1857. "Brown" (perhaps Paraone te Huhu, a signer of the 1841 Te Aupouri agreement with Taylor) discovered surface coal seams at Ohao on the north head of Parengarenga harbour. This information reached the Crown through Joseph Matthews and James Busby, the former British resident in New Zealand.[58] The Crown directed its Resident Magistrate at Mangonui, WB White, to investigate the value of the resource. He reported that the coal was commercially valuable, and recommended the purchase of the surrounding 500-600

[58] Busby to Lt. Col. Wynyard 15 Sept., 18 Nov. 1857, Internal Affairs records, National Archives of NZ [hereafter NA].

acres for £100. At the same time he warned the Colonial Secretary that the Maori owners of the land "...overestimate the value of the property," and would therefore demand more than a £100 payment.[59]

The coal discovery raised, for the first time in over a decade, the legal status of the land within the boundaries stated in Taylor's 1844 Grant. The Ohao area, like Waikuku further north, lay adjacent to the eastern boundary described in the Taylor 1844 Grant as extending from Waru to the mouth of the Waitangi Stream. (See "Plan of Taylor's Grant," attached as Doc 3) Since this boundary really described the extent of Taylor's original claim, not the 852 acre area he obtained title to at Kapowairua, the Crown could claim the balance of the 65,000 area claimed as "surplus land." When the Surveyor General recommended that the Crown purchase Ohao in 1857, he noted

> there is government [ie. surplus] land in the neighbourhood derived from Mr Taylor and others and care must be taken that this offer of 500 or 600 acres does not encroach on it.[60]

During the 1840s and 50s the Crown seldom exercised its claim to ownership of the difference between the area claimed by Pakeha as a result of pre-treaty transactions, and the area finally granted by the Crown. In Taylor's case he had claimed 50,000 acres (though the claim area amounted to at least 65,000 acres), but had received only 852 acres. Of course, the Crown should have set aside Maori reserves within the so-called "surplus" outside Kapowairua, but failed to do so. For over 20

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[59] White to Col. Sec. 6 Nov. 1857, ibid.

[60] Suveyor General's minute 19 Nov. 1857, ibid.

years the Crown's claim to almost 65,000 acres of Muriwhenua North land lay dormant.

17. Crown Purchase Activity 1858-61

The Crown's attempt to purchase Ohao land spawned attempts to purchase other Muriwhenua North land within the Taylor claim area between 1858 and 1861. These, ultimately unsuccessful, attempts to extinguish Maori title in an area where theoretically Taylor had extinguished Maori title in 1840, complicated the Crown's position. After White failed to strike a deal with Ohao residents in 1858, Te Rarawa reportedly offered the Crown land for sale along the western shores of Parengarenga harbour. By instructing the Northern Land Purchase Commissioner, Henry T Kemp, to commence negotiations for the purchase of this land in 1860, the Crown implicitly recognised the validity of Maori title within the Taylor claim area.[61]

Four months later Kemp reported that his Parengarenga negotiations had broken down "...in consequence of a disagreement between the Native claimants." We cannot assume that this was a disagreement between Te Rarawa, reasserting their pre-1840 claim, and Te Aupouri. Colonial officials often described all Maori living north of Hokianga as Te Rarawa, so the sale offer may have come from Te Aupouri, rather than from Te Rarawa. According to Kemp, he offered to have the Government survey out a reserve for the local people at its own expense, but this failed to clinch the deal. Kemp consoled himself by saying that the land wasn't

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[61] McLean to Kemp 15 Dec. 1860, No. 92, Appendices to the Journals of the House of Representatives 1861, C-1, p.42.

particularly attractive to Pakeha settlers, and that Maori would eventually agree to sell the area "for a reasonable sum."[62]

Perhaps the most significant possible consequence of these fruitless Crown purchase negotiations arose because they coincided with Francis Dillon Bell's attempt to tidy up Pakeha land claims. By 1856 the Crown admitted that it had failed to grant clear title to most of the claimants as a result of the 1840s Commission recommendations. It therefore commissioned Bell to reinvestigate almost all these claims, and to recommend new grants, new reserves, and surplus land acquisition. Bell conducted his reinvestigation in the Far North while the Crown was engaged in purchase activity around the shores of Parengarenga harbour. This implicit recognition of Maori title may have deterred Bell from reinvestigating Taylor's claim. In any case, Bell did not reinvestigate Taylor's claim between 1858 and 1861. Consequently, he made no recommendations regarding grants, reserves or surplus land there. At the conclusion of its unsuccessful purchase negotiations, the Crown's position in Muriwhenua North remained as unclear as it have ever been.

18. Taylor Maintains his Trusteeship 1859-66

Evidently, Taylor never knew about the Crown purchase activity in Muriwhenua North between 1859 and 1861. During those years, however, he defended his relationship with the land and people of the area. In 1859 the first modern history of New Zealand, written by AS Thompson, referred briefly to Taylor's claim. This inspired Taylor to prepare yet another written

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[62] Kemp to McLean 17 April 1861, No. 94, ibid., p. 43.

defence of his 1840-1 agreements, and to express the view that these agreements remained in effect. His unpublished manuscript headed "AC [area claimed] 50,000 1706 [sic] assigned Cause[,] to put an end to a tribal war" began by stating that his critics had accused him of "being the grand land shark of the entire scrip fraternity."

Taylor rejected such criticism. He wrote that he made no apologies for having lodged a claim to 50,000 acres.

> I made it and what is more I still maintain it and feel sure it will be confirmed to me...[Far from depriving Maori of their land,] I gave them formal possession of the entire district excepting one part which was retained as an equitable return for the money advanced. They were also to acknowledge that they had no power of alienating any portion [of the land] but were to consider it as a reserve in perpetuity for their tribe...In after years, as I viewed myself in the light of a trustee for this tribe I offered my share of it to the church...[but since the offer was declined] The land therefore still remains in my hands viz. my share of it... and the district is still occupied by its original owners the Aupouri who thus through this purchase possess a permanent home which they cannot alienate [my emphasis].[63]

In this manuscript, Taylor asserted his continuing trusteeship relationship with the land and people of Muriwhenua North with few references to the role of the Crown. The ambiguity of his 1844 Crown Grant led him to believe that the Crown had sanctified his claim to be a trustee for the vast area in which Te Aupouri lived. The reserve provisions of his Grant also confirmed his belief that the Crown had given legal effect to his

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[63] Unpublished Ms. circa 1859-60, Taylor papers, 297/42, APL.

original trusteeship agreements.

19. The Second Taylor-Te Aupouri Transaction 26 July 1866

After an absence of 25 years, Taylor revisted Muriwhenua North to reconfirm his trusteeship agreement in July 1866. Significantly, he travelled north by sailing ship and set foot at Kapowairua. He recorded that a man named "Rewiti" (probably Rewiri), who he described as "my tenant," had "been cultivating my land," but he did not give Taylor and his son Cecil "...a very hospitable reception." Rewiri, however, did agree to accompany the Taylor's to the main Te Aupouri settlement on Parengarega harbour. There on Saturday 26 July 1866 Taylor preached two services to devout Maori congregations and had "afterwards a talk about the object of my coming."

As Taylor records in his Journal, he told the people of Parengarenga:

> ...I was going to place my son on my land [at Kapowairua] and I looked to them to do everything in their powerfor him[,] in return for my having given them back the land of their forefathers...[64]

Taylor attributed the success of this meeting to the benign influence of the mission teacher, Hemi (probably Riumakutu). At the conclusion of the meeting, Hemi supervised the writing of a letter "thanking me for returning them the land of their forefathers and praying that God's blessing may follow me."[65]

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[64] Taylor Journal (26 July 1866) XV: 23.

[65] Taylor to H. Venn 3 Sept. 1866, Taylor papers, 196, ATL.

This letter has not survived, but Taylor quoted it later as acknowledging:

> that the land I had given was to be a permanent residence for their tribe '*nei kainga tuturu mo matou, mo a matou tamariki mo ake tonu atu*' signed by '*Na Paraone te Riumakutu aratona ware katoa na tona iwi na te Aupouri.*'[66]

Taylor treated the warm welcome he had received at Parengarenga on 26 July 1866 as a vindication. He reported to the CMS in London:

> ...many epithets of opprobrium have been heaped upon me for this purchase but I feel this spontaneous expression of support is proof that I have done a good work in thus securing a permanent home for this tribe, for in returning it to them I stipulated that it should never be sold and perhaps in that remote spot there is little to fear that any will desire to deprive them of it.[67]

Taylor clearly believed that he had done all that was necessary to protect Te Aupouri from losing their land. It apparently never occured to him that to provide secure protection, he needed to get the Crown to sanction his agreements in a formal way. Possibly he thought that by placing his son on the land at Kapowairua, he would be able to guard Te Aupouri against any infraction of his solemn trusteeship agreements with them. His son Cecil, however, lived at Kapowairua for only a few years.

20. The Economic Basis of Taylor's Trusteeship 1840-70

Taylor's faith in the moral basis of his trusteeship led him to pay insufficient attention to its legal and economic basis.

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[66] Taylor to FD Fenton 19 June 1873, Taylor papers, 297/18, APL.

[67] Taylor to Venn 3 Sept. 1866, Taylor papers, 196, ATL.

As much as Taylor believed that his 1844 Grant confirmed his trusteeship, the Crown never gave his original agreements legal effect. Similarly, the security of Te Aupouri in Muriwhenua North was ultimately dependent on their economic well being.

The local economy looked promising in 1841 when Ernest Dieffenbach, the New Zealand Company naturalist, visited the area. He recorded that a community of about 60 people supported themselves by hunting pigs and drying fish. A resident Pakeha trader, perhaps Dr Smith, bought and sold this produce.[68] By 1866 the local population had increased to about 300, and it supported itself mainly by digging kauri gum. Apparently New Zealand's very first export of gum was shipped out of Parengarenga Harbour during the early 1840s. The transition from food production to gum dependence after 1860 left Maori vulnerable to the command over the local economy exercised by Pakeha trader, Samuel Yates.

Yates was a complex person. Although he had incurred the wrath of the Crown's agent at Mangonui, WB White, this was probably more a reflection of his alliance with Oruru Maori, than of the "sharp Jew" trading practices which White accused him of. In 1856 White described Samuel Yates and his brother of being "not very particular about how they make money or what they say."[69] Soon after Yates moved to Parengarenga in about 1860, he married Ngawini te Kaka, an influential Pukepoto woman with tribal connections to Te Rarawa, Ngati Kuri and Te Aupouri. Yates's marriage to Ngawini (also known as Annie) increased his

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[68] Ernest Dieffenbach, Travels in New Zealand (London 1843) I: 208-9.

[69] White to McLean 15 Nov., 15 Dec. 1856, McLean papers, 633. For the conflict between White and Yates over the Oruru purchase, see Wai-45 Prelim. Report, pp. 120-125.

influence within Maori society in a way which must have increased his trade with them. After 1866, when Taylor visited Muriwhenua North for the last time, Samuel Yates replaced him as the central Pakeha figure in local history.[70]

Very little evidence of the way Yates dominated the local gum-digging economy of Muriwhenua North has survived. From the way that it operated in other areas, however, we can assume that in areas where the diggers had to deal with a single trader, they normally had to sell cheap and buy dear. Such unequal exchange meant that diggers invariably accumulated sizable debts with the local trader and often had to sell land to him to discharge these debts. Indebtedness, dire poverty, and ill-health went together. In 1880, for example, the School Inspector reporting on Muriwhenua North stated: "Natives in the Parengarenga district are dying out very rapidly..." [71] While Yates cannot be held responsible for this mortality, available evidence suggests that his reign as the gum "king" of Muriwhenua North contributed to the poverty of local Maori. This poverty began to undermine the economic basis of Taylor's trusteeship before 1870.

21. Native Land Court Partition of Muriwhenua North 1870-78

While Yates undermined the economic basis of Taylor's trusteeship, the Crown began to undermine its legal basis. During the last years of Taylor's life, the Crown moved into Muriwhenua North to define its previously undefined legal position, without

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[70] Florence Keene, Kaitaia and its People (Whangarei 1989) p. 125.

[71] Pope report 18 May 1880, Education Dept. records, BAAA 101/574b, National Archives of NZ/Auckland.

considering the implications of his trusteeship agreements.

After the fruitless Crown purchase activity in 1858-61, Crown agents returned to Muriwhenua North through the medium of the Native Land Court during the 1870s. Under Judge Frederick Maning, the Court began to investigate Maori title within Muriwhenua North in 1870. In March that year, WB White alerted Native Minister, Donald McLean, to the fact that

> there is shortly to be a great talk about the North Cape lands - a portion surveyed and applications made to [Chief Judge] Fenton to pass it through the Court.[72]

Since almost all official correspondence and minutes documenting these crucial transactions aren't available, they can be reconstructed only through indirect evidence. For example, the surviving Maori Affairs register records that Maihi Paraone te Huhu (perhaps the son of a signer of the 16 February 1841 agreement) enquired about Muriwhenua land before July 1870, but we do not know the nature, or even the exact date, of his enquiry. The Register also reveals that WB White called for the Crown's file on the Taylor claim on 16 September 1870, because Judge Maning had indicated that he wished to hear Paraone's application the following year.[73]

Paraone's application apparently forced the Crown to formulate a legal position on its rights to Muriwhenua North land. Before sending White the Taylor claim file, Commissioner

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[72] White to MCLean 18 March 1870 (private), McLean papers, 633.

[73] 70/891, 13 July; 70/1324, 16 Sept. Maori Affairs Register 2.9.

of Land Claims (and former Premier) Alfred Domett reviewed its contents. In reporting this Domett addressed the question of reserves. Although admitting that the Protector of Aborigines had obligations in reserving land to Maori, Domett's reading of the deed was that it was Taylor's responsibility to "point out the place where any of the Aupouri wishing to reside, may reside." Nonetheless Domett concluded:

> The Native title strictly speaking seems to have been extinguished over the land described in Taylor's purchase deed - with the exceptions and subject to the occupation on sufferance above described [Domett's emphasis].[74]

H. Halse in the Native Department argued the Crown's case even more staunchly. He believed that since the Native Land Court's jurisdiction was limited to Maori customary land, any land found to be validly purchased was beyond its jurisdiction. By implication, Halse argued that all Muriwhenua North land, outside Taylor's 852 acres at Kapowairua, should be considered surplus land of the Crown.[75]

Before McLean decided the Crown's position he wanted White to inform him about "the probable value of the district.." He also instructed White "to avoid any reference that might lead the Natives to expect that the Government will relinquish its claims to the land in their favour." [76] White's report to McLean can be reconstructed from a later letter in which he argued that the Crown could have upheld its claim to nearly 65,000 acres of

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[74] Domett to GS Cooper 3 Sept. 1870, Records of the Surplus Land Commission [hereafter SLC] Claim 458, p.7.

[75] Halse to H Sewell 1 Nov. 1870, ibid., p.8.

[76] Halse to White 8 Nov. 1870, MA 4/65, p. 379.

surplus land within the Muriwhenua North area:

> But such a course would have caused very serious complications, as the Government has never exercised any rights of ownership...[Any effort to reassert the Crown's claim] would have entailed a heavy expense in compensation and principally the land is not worth a misunderstanding with the Native people.[77]

McLean communicated his decision to White (through Halse) on 23 December 1870. He instructed White to appear for the Crown at the Native Land Court hearing on Muriwhenua North and there to "state that the Government relinquishes its claim, and offers no evidence of any sale of the land in question."[78]

Although the Crown's relinquishment of its claim to surplus land could be considered a victory for the tangata whenua, the victory entailed costs. Firstly, it facilitated the partition of Muriwhenua North because the Native Land Court heard different Maori claims to different parts of the area. Secondly, by offering "no evidence of any sale of the land in question" for the Court to consider, the Crown withheld evidence of Taylor's trusteeship agreements, and his 1844 grant which included important reserve provisions. In dispensing with these agreements, without consulting parties to the agreements, the Crown facilitated a process by which the Court would determine title to Maori land prior to the alienation of that land under highly predictable circumstances.

The partition of Muriwhenua North commenced at the 18

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[77] White to Native Department 22 September 1871, SLC Claim 458, p. ?.

[78] Halse to White 23 Dec. 1870, MA 4/65, pp. 430-1.

September Native Land Court sitting at Ahipara where Judge Maning recommended title awards for two separate blocks. One was the 56,678 acre "Muriwhenua" block (now Te Paki Farm Park) at which Maning ordered a Certificate of Title for 7 people, all apparently Te Aupouri, with the exception of Timoti Puhipi from Te Rarawa/Pukepoto. (Native Land Court Order, Muriwhenua block 18 September 1870, attached as Doc 6) White recorded how Tipene te Taha of Ngati Kahu/Taipa objected to Maning's decision, but later accepted an out of court settlement in which the Te Aupouri awardees presented him with 4 horses.[79] At the same sitting, Maning ordered a Certificate of Title for 5 people to the 264 acre Whangakea block. (Native Land Court Order, Whangakea block 18 September 1870, attached as Doc 7). The partition of Muriwhenua North had begun.

Once the partition process had begun it became irreversible. On 2 January 1873, Judge Maning ordered title for 10 people to the 2,491 acre Murimotu block, which in 1878 became Murimotu No. 1 and Murimotu No. 2 when 3 out of 10 titleholders refused to sell to the Crown. (Native Land Court Orders, Murimotu, Murimotu No. 1, Murimotu No. 2 blocks, attached as Doc. 8, 9 and 10) On 1 May 1875, Judge Henry Monro ordered title for 10 people to the 10,923 acre Mokaikai block, which included Waikuku. (Native Land Court Order, Mokaikai block, 1 May 1875, attached as Doc 11) All these blocks emerged from what had been a unified area of Muriwhenua North, and many passed out of Maori hands almost as soon as they had emerged from the Native Land Court.

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[79] White to Native Dept. 22 Sept. 1871, SLC Claim 458, p. 10;71/1089, 22 Sept. MA Register 2/42; Halse to White 7 Feb. 1872, MA 4/66.

22. The Muriwhenua Block Purchase 21 March 1873

Within 6 months of the final granting of Maori title to the 56,678 acre Muriwhenua block, Samuel Yates and his Auckland financial backer, Stannus Jones, purchased it for £1,050. The outcome was perhaps predictable. When Maning ordered the certificate in September 1871, those named in the certificate could not afford Court costs amounting to £7/12/-. Undoubtedly, at least some of the Maori grantees were indebted to Yates. White remarked after the September 1871 Court sitting that the Muriwhenua block

> ...will now possibly by peaceably occupied by some herdsmen, and by that means be profitable to the Natives, and the community at large, instead of lying profitless, as it has for thirty years.[80]

Since Yates was the only local person with the means to move livestock onto the block, White may have predicted that he would lease the land and employ local Maori as herdsmen. Once Yates had Auckland financial backing, however, he could afford to purchase the block.

Evidence about the nature of the 21 March 1873 transaction is sketchy since it was a private purchase. Nonetheless, it appears that the Crown's agent, WB White, both facilitated the purchase and distributed the £1,050 purchase price among Maori sellers. White, who had been a bitter enemy of Yates during the 1850s, apparently became his land purchase agent during the 1870s.[81] White reported how a dispute over the distribution of

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[80] White to Native Dept. 22 Sept. 1871, SLC Claim 458, p. ?.

[81] White to McLean 12 March 1873, McLean papers, 633.

the purchase price almost wrecked the deal until he came to the rescue. As he described the situation:

> In this emergency I was called upon to settle the dispute, which I fortunately succeeded in doing. The conveyance was signed, and the money was paid.

Taylor defended his 1870 recommendation against the Crown claiming the Muriwhenua block as surplus land since:

> ...the Government could not have taken possession without compensating the resident Natives. This would have led to much excitement and discontent; whereas by the present course of allowing the Natives to sell, the Government, without trouble or expense, derive a revenue, both directly by fees and indirectly by the beneficial occupation of the land by Europeans.

Clearly, White regarded Maori occupation as non-beneficial. He went on in the same despatch to describe the relationship between Maori and Yates:

> The [Maori] people are occupied in digging gum. Hitherto there has been one trader here, Mr S Yates, who is very much liked by both Natives and Europeans of this district. He is most gentle and kind with the Natives, and has their confidence. Lately, other traders have started in opposition, and though opposition in trading is good, in these out-of-the-way places it results in impoverishing the Natives, for they get into debt far beyond their means of paying: losing heart, they get idle, which soon leads to worse. I have often regretted that it cannot be in law that a trader could not recover more than a certain moderate sum from a Native debtor: this might have the effect of staying much of the reckless credit given them. [82]

Despite Yates's popularity among Maori, his relationship with them was almost certainly a creditor/debtor relationship. Although conclusive evidence is lacking, the available evidence

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[82] White to Native Dept. 22 April 1873, No. 2, AJHR 1873 G-1, pp. 1-2.

suggests that Maori sold the Muriwhenua block in an effort to discharge their debts to Yates.

Maori probably trusted Yates to a much greater extent than other Pakeha (with the possible exception of Taylor), because of his kinship with them through Ngawini. In selling land to Yates, Maori probably believed that it hadn't passed entirely out of their hands. Ngawini was evidently a powerful force in the Yates family. According to Florence Keene, "through her tribal connections," Yates eventually controlled (either by ownership or long-term lease) 137,000 acres of Muriwhenua North land.[83]

The basic economic relationship between Maori and Yates remained a creditor/debtor, landlord/tenant one which contributed to his wealth and their poverty. In 1891 the local school teacher reported:

> Mr Yates is the only trader of any importance in that district; he also leases or owns all the land, - except Maori reserves - North of Parengarenga Harbour; all the Maoris are in his debt; and their improvidence is likely likely to keep them so.[84]

Another school teacher reported in 1897 the Yates charged local people three times the Auckland prices for staples such as sugar and flour. Maori were so heavily indebted to Yates that they had to dig gum rather than work on their own kainga.[85]

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[83] Keene, Kaitaia and its People, p. 125.

[84] John McGavin to Sec. of Education 15 July 1981, BAAA 101/574b.

[85] Charles Irvine to Sec. of Education, Irvine to Pope 19 April 1897, ibid.

The rest of the story is well known. Yates and Ngawini built an 11 room mansion on the shores of Parengarenga harbour where they entertained some of the wealthiest Auckland capitalists. Well before his death in 1900, Yates had replaced Taylor as the de facto trustee of Muriwhenua North, but, unlike Taylor, he enriched himself while most Maori families endured grinding poverty.

23. Taylor's Final Appeal 19 June 1873

Taylor, however, lodged a final appeal in an attempt to maintain his Muriwhenua North trusteeship just a few months before his death in October 1873. Upon hearing of the Muriwhenua purchase, Taylor protested it as a violation of his 1841 and 1866 agreements with Te Aupouri in a strongly worded letter to Francis Dart Fenton, the Chief Judge of the Native Land Court. (Attached as Doc 12). Taylor maintained that in 1841, and again in 1866, Te Aupouri chiefs promised "never to alienate" any land within Muriwhenua North. He implied that if Te Aupouri had violated these agreements, they would have done so illegally. He wrote:

> If they have done so I must appeal to you as the Chief Judge of Native Lands whether Mr Stannus Jones can have valid title to the land of which I was the original purchaser without my sanction...[If Te Aupouri had] broken their covenant with me[,] then I have returned to my original position as the first purchaser.[86]

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[86] Taylor to Fenton 19 June 1873, Taylor papers, Miscellaneous Maori Ms., APL, attached as Doc 12. Fenton misplaced this letter, and telegraphed Taylor to send him another copy some time later.

Since the rights and responsibilities Taylor invoked lacked the force of law, Fenton probably decided against reviewing the purchase. Taylor also violated his own standards by including in his will a provision to allow for the sale of Kapowairua.[87]

Nonetheless, Taylor's final appeal to maintain his solemn agreements demonstrates how he believed that the Crown should have upheld them. Taylor apparently regarded his Muriwhenua North agreements in the same way many Maori regarded the Treaty of Waitangi, as a sanctified covenant above the law. But just as invoking the treaty failed to protect Maori interests during the 19th century, when it lacked the force of law, so Taylor's trusteeship agreements failed to protect Maori interests in Muriwhenua. The question remains, however, should such solemn undertakings have had the force of law? If so, why did the Crown fail to give them legal effect?

24. Muriwhenua North in the 20th Century

Without going into the minute details of Muriwhenua North history during the 20th century, it's possible to trace the broad outlines. The first decade of the 20th century was a period of desparate poverty for most Maori in the area. School Inspector William Bird reported in 1907 that the papakainga was confined to the shores of Parengarenga harbour which at that time was "nothing more or less than a swamp." He predicted that once Maori had exhausted the gum in this area they "will be reduced to great privations...Possibly, however, many will have died off by then."

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[87] In 1875, two years after Taylor's death, Yates purchased his 852 acres at Kapowairua. It remained in the ownership of the Yates family until 1910 when Ngawini died.

Bird appealed to his superior to refer the Muriwhenua North situation to the Stout-Ngata Commission on Maori land because "in no part of New Zealand does the Maori land situation call for investigation as much as in the Far North." [88]

The Stout-Ngata Commission investigated the Muriwhenua North situation in 1908, but changed very little to benefit Maori. Because of the continued partition of the Pakohu/Parengarenga blocks around the harbour, most Maori had survey liens attached to their lands. In 1905 the newly established Tai Tokerau Maori Land Board (staffed by the Native Land Court Judge and Registrar) obtained legislative power to obtain control over these lands in an attempt to pay off the debts to surveyors. The Board proceeded to lease these lands to Pakeha without the consent of Maori.[89] The Stout-Ngata Commission recognised how Maori "strongly resented" Land Board practices, but recommended nothing that would change them. The Commission supported the request of Te Hapua people for a larger papakainga, but then recommended that the Land Board divide it into individual lots.[90] Thus the Land Board continued the Land Court's practices of partitioning Maori land in a way that increased the possibility of alienation.

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[88] Bird report 28 Oct. 1907, Bird to Inspector-General 15 Jan. 1908, Education Dept. records, BAAA 1001/575 abc.

[89] The 1904 Maori Land Claims Adjustment and Laws Amendment Act provided for further partitioning of Parengarenga land, and the 1905 Maori Land Act empowered Maori Land Boards to lease areas for a maximum of 50 years. New Zealand Statutes No. 49 (1904), No. 44 (1905), pp. 263-73, 447-54.

[90] Stout-Ngata Commission Interim Report on Native Lands 10 June 1908, AJHR 1908 G-1J, appendix III, p.55. On the Commission's general leasing recommendations, see Butterworth and Young, Maori Affairs pp. 66-7.

Ngawini, on behalf of the Yates estate, began to sell or terminate long-term leases throughout Muriwhenua North before her death in 1910. Richard Keene, a Wellington businessman, bought most of the Yates holdings soon thereafter, and the Keene family replaced the Yates family as the dominant force in the local economy until the mid 1960s. During the 1920s the MacArthur Trust acquired a 16,400 acre section of Te Paki Station and the 10,000 acre Mokaikai block, although most of it was leased to the Keenes before the mid 60s. Maori retained ownership of the smaller Whangakea, Te Neke, Muriwhenuatika, Pakohu, Murimotu 2, Ohao, and the multiple Parengarenga blocks. When the Crown acquired Te Paki Station (or the 56,000 acre Muriwhenua block) from the Keenes in 1965, it also acquired Whangakea and Kapowairua (Taylor's Grant). Finally, in 1975, the Crown acquired Mokaikai to establish itself as the major landowner in Muriwhenua North.[91]

25. Land Consolidation and Development 1925-48

Long before the 1960s, however, the Crown had begun to manage the Maori economy of Muriwhenua North. During the 1920s the Crown recognised that Muriwhenua North was probably the most poverty-stricken area in New Zealand. Tai Tokerau Maori Land Court Judge FOV Acheson informed the Native Minister that dependence on gum and the monopoly pricing of local storekeepers had reduced the people of Muriwhenua North to "extreme

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[91] Some of these transactions are documented in the "Evidence of Ian Geoffrey McIntyre" presented to the Waitangi Tribunal, 8 December 1986 (included in Part II of the Wai-45 Record of Documents as Doc #A8) pp. 89-91.

poverty."[92] Acheson's solution for Te Kao was to win the cooperation of local people to consolidate multiple Parengarenga 5B3 Blocks adjoining their papakainga. By joining together over 400 titles, and by establishing a Tokerau Maori Land Board owned store, Te Kao people were able to establish a largely self-sustaining dairying community after 1928. No longer were Te Kao people dependent on meagre gum earnings and the exorbitant prices charged by Pakeha storekeepers.[93]

The 200 odd Te Kao people were fortunate enough to have sufficient Maori land suitable for local dairying. The 400 or so people living in Te Hapua during the 1920s were less fortunate. The Keene family and the MacArthur Trust controlled almost all available grazing land north of Paua. Te Hapua people had so little cultivable land that they had to migrate to Kapowairua to grow kumara. During the early 30s, as the world depression caused a collapse in gum prices, Te Hapua people were faced with destitution.[94]

The Crown, however, refused to follow Acheson's advice in establishing a dairying scheme at Te Hapua similar to that running successfully at Te Kao. To have undertaken a successful consolidation and development scheme at Te Hapua, the Crown would have had to consider acquiring land from the Keenes and from the MacArthur Trust. MR Findlay, the Native Department official investigating the situation, reported that although there was

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[92] Acheson to Native Min. 10 Aug. 1925, MA 19/1/548 Pt.3, NA/Wellington.

[93] Acheson to Native Min. 10 July 1926, MA 29/2/5.

[94] Acheson to Native Min. 29 July 1932, MA 19/1/660.

approximately 23,712 acres of Maori land north of Paua, few of these areas were suitable for dairying, and they were too scattered to consolidate effectively. At the same time, Findlay reported that since 1928, 24.5% of children under 5 had died (mostly from tuberculosis), and that the average family earnings from gum digging were barely 16/3d per week. All he was prepared to recommend as a solution to this disastrous situation was a sheep and beef cattle scheme supervised by a Pakeha manager.[95]

The Director General of Health, AH Watt, who visited Te Hapua in March 1935 was shocked by what he saw. Tuberculosis was rife because people were ill-fed, ill-clad and ill-housed. Everything, he wrote, "gave the impression of extreme poverty..." [96] Two months later Tau Henare, MP for Northern Maori, visited the area and undoubtedly saw the political consequences of Te Hapua's poverty as votes for his Ratana/Labour opponent in the forthcoming election. He identified the cause of Te Hapua's problems as the fact that "the best parts of the land are occupied by Europeans and only about 200 acres of Native land can be developed..." He proposed Crown purchase of sections of the Mokaikai block adjacent to Te Hapua, "to enable those who are landless to earn a living by milking cows."[97] Henare, therefore, agreed with Acheson who continued to advocate intensive dairying and a cooperative store as the solution to Te Hapua's problems.[98]

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[95] Findlay to Registrar, Native Dept., Auckland, 5 March 1935, ibid.

[96] Watt to Min. of Health 10 April 1935, ibid.

[97] Henare to Under Sec. Native Dept. 2 May 1935, ibid.

[98] Acheson to Under Sec. Native Dept. 8 June 1935, ibid.

When the first Labour government swept into power with almost unanimous support from Te Hapua's voters, local people had every reason to expect a "new deal." In January 1936 Te Hapua residents petitioned Prime Minister Savage to consider returning to Maori the Mokaiakai and other blocks suitable for land consolidation and development.[99] Instead of returning land, the new government established unemployment relief schemes during 1936 and 1937. After July 1937 relief workers were lured back to the gum fields by a brief rise in prices. When gum prices fell again in 1938, Te Hapua found itself without employment once more. The local Maori Labour Committee appealed unsuccessfully for a restoration of relief work.[100] Acting Native Minister, Frank Langstone accused the Te Hapua people of disloyalty by deserting relief schemes in roading and drainage for the gumfields. Instead of dealing with the land problem in Muriwhenua North which forced people to depend upon gum, the Native Department began to promote the removal of the unemployed from Te Hapua as the solution to its problems.[101]

During 1938 the Native Department began a dairying scheme, using unemployed Te Hapua workers, on Crown land at Ngataki, 34 miles south. MS Coughlan, the Ngataki Supervisor there recommended this scheme as the only alternative to the "precarious and unhappy livelihood on the gumfields..." of

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[99] Petition of H Romana and others to Prime Minister and Native Min. 28 Jan. 1936, ibid.

[100] Romana to PK Paikea (MP, Northern Maori), R Murupaenga to Savage 28 March 1938, Romana to Savage 7 July 1938, ibid.

[101] Langstone to Murupaenga 7 April 1938, ibid.

Muriwhenua North.[102] A typical Native Department official in late 1938 referred to Te Hapua people as "shiftless and improvident," and concluded that the only solution to their problems "would be the transfer of the community to a more suitable location..." at Ngataki.[103] When the AH Watt, Director General of Heath, visited Ngataki in 1938 he detected the arrogance of officials in dealing with Maori who had been compelled to leave their papakainga at Te Hapua. He wrote to Peter Fraser, later to become Prime Minister:

> May I suggest that it would not be out of place to remind officers who are dealing with Maoris that they, the Maoris, are very much like human beings with the same feelings to hurt. I have seen much harm done by wrong methods of approach by European officials as well as others, in their dealings with natives.[104]

According to Judge Acheson, the 12 Te Hapua families which eventually moved to Ngataki did so with great reluctance.[105] The Te Hapua Maori Labour Committee continued to press for a home dairying scheme, and the return of Mokaikai land to make this and local forestry possible. In particular, local people wanted an alternative to gum digging, because it meant "working only for

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[102] Registrar, Auckland to Under Sec. Native Dept. 23 May 1938, Coughlan report on Te Hapua encl. in Registrar to Under Sec. 24 May 1938, Native Min. to Paikea 3 June 1938, ibid.

[103] Native Dept. officer to Under Sec. 10 Nov 1938, ibid.

[104] Watt's reference to Maori as "like human beings" could be interpreted as an indication of his own racism. Whatever the case, he was apparently more concerned about the welfare of Maori at Te Hapua and Ngataki than any of the Native Department officials. Watt to Fraser 23 Oct. 1938, ibid.

[105] Acheson statement at Te Aupouri meeting with Minister of Lands 7 Sept. 1944, MA1 19/1/553.

the Storekeepers."[106] The Native Department remained adamant, however, that the "land north of Te Kao is not considered suitable for development."[107] The Crown may have considered the Ngataki scheme a successful answer to Te Hapua's problems, but few of the people affected agreed. The Ngataki scheme was also a way in which the Crown avoided remedying the source of these problems, the lack of sufficient Maori land suitable for consolidation and development.

During the World War II years, Tai Tokerau Maori began to mobilise in support of a greater degree of local control over land development schemes. They also demanded remedies for long-standing land claims. Hemi Manuera, of Te Kao, and Judge Acheson proposed what eventually became the Aupouri State Forest as a regional development scheme to the Ministers of Lands, Works, Agriculture and Native Affairs in Wellington on 7-8 September 1944.[108] Two weeks later at a Tai Tokerau hui in Te Kao, participants discussed a proposal for land development "free from official domination..." and for the return of land needed for Maori farming as part of a settlement of long-standing claims.

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[106] Petition of Murupaenga and Others to Savage, Fraser, Langstone and Webb, 10 Jan. 1939, MA 19/1/660. The 68 Maori Labour Committee members signing this petition also called for government to support a Maori Land Board owned store, improved housing and water supply, a permanent community nurse, and a ban on Pakeha commercial fishing in Parengarenga harbour.

[107] Registrar, Auckland to Head Office, Native Dept. 16 Sept. 1944, ibid.

[108] "Notes of a Deputation from the Aupouri Natives which waited on the Min. of Lands," 7 Sept. 1944, "Notes of Interview with Min. of Agriculture 7 Sept. 1944, R Semple to HGR Mason (Native Min.) 26 Oct. 1944, Mason to Semple 11 Nov. 1944, MA1/19/1/553.

This latter category included MacArthur Trust Mokaikai land and part of the Keene's land at Kapowairua.[109]

Again, the Crown failed to respond to local Maori initiative. In the absence of such a response, Te Hapua people tried to fund their own community deveopment scheme with limited results.[110] Having little hope of local employment, people started to drift to the towns and cities during the late 1940s. The desparate circumstances of such people became national news in mid 1948 when a "Grapes of Wrath" squatter camp of almost 100 Te Hapua people appeared on private land along Larmers Road near Kaitaia. After 20 years of land consolidation and development in Muriwhenua North, therefore, half the population of Te Hapua had been compelled to leave their papakainga, and a quarter of them were living illegally in nikau whares outside Kaitaia.[111]

Not until the mid 60s did the Crown become actively involved in the economic development of Muriwhenua North. 20 years after Judge Acheson and Hemi Manuera first proposed it, the Forest Service established the Aupouri State Forest. At the same time, the Crown acquired Te Paki Station and Kapowairua, or Taylor's Grant, from the Keene family. Although both forestry and conservation provided jobs for the people of Muriwhenua North, most of the young people continued to leave for the wider

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[109] "Maori Rehabilitation: Suggestion for Tokerau Tribes - Te Kao", 23 Sept. 1944, ibid.

[110] J Rameka (Sec. Tribal Committee) to Paikea 6 Sept. 1948, encl. in Paikea to Acting Min. of Maori Affairs 19 Oct. 1948, MA54 19/1/660.

[111] Freedom 14 July 1948, encl. in Welfare Officer to Under Sec. Maori Affairs 30 July 1948, ibid.

employment opportunities of the towns and cities. The Crown, also, failed to address the grievances of generations who had witnessed the progressive alienation of Maori land.[112]

26. The Crown's Response to the Maori petitions 1974-6

During August 1974 a Te Aupouri delegation headed by Andrew Rollo presented the then Minister of Maori Affairs and Lands, Hon Matiu Rata a petition which continued a century long tradition of Maori protest at the alienation of significant areas within Muriwhenua North. The 1974 petition focussed on Kapowairua. Without adequate records to document their case fully, the petitioners argued that: (1) Taylor's 20 January 1840 "purchase" was invalid because it had been negotiated with Te Rarawa, not Te Aupouri, the rightful owners of the land; (2) Because Taylor's partners, Sadlier, Phelps, Duffus and Lloyd, neither participated in the "purchase," nor assumed ownership rights, their share of the title was invalid, and; (3) Because Te Aupouri had continuously occupied Kapowairua during the 19th and 20th centuries, they had a valid claim to ownership of it as their papakainga.[113] A few months later Ngati Kuri residents of Muriwhenua North and elsewhere lodged a similar petition with the Maori Land Court. The petitioners simply requested an investigation of how Yates acquired the Muriwhenua block in

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[112] Saana Murray expresses some of these grievances in her book Te Karanga e te Kotuku (Wellington 1974).

[113] Petition by Andrew Rollo and Others, [August] 1974, Lands and Survey records 23/1099, HO 4/919. According to his successor, Hon Venn Young, Matiu Rata received this petition from Te Aupouri at the Otiria Marae in August 1974. Young to Rollo 16 Jan. 1976, ibid.

1873.[114]

These petitions prompted the Minister to commissioned the fullest historical investigation possible within the then Department of Lands and Survey. Paul J Phillips, who carried out the Crown's investigation during 1975, enlisted the services of the late Viv Gregory in identifying the original boundaries of Taylor's claim (see "Plan of Taylor's Grant," attached as Doc 3), and explaining some of the Maori traditions associated with the area. Paul Phillips also contacted Dr Richard Taylor, a great grandson of Rev Richard Taylor, who has continued the family tradition of defending his ancestor's actions towards the land and people of Muriwhenua North. The Phillips report, presented in July 1975, however, made no specific recommendations about the validity of Te Aupouri and Ngati Kuri claims to Muriwhenua North.[115]

By the time the Crown considered the Phillips report, and responded to the Te Aupouri petition, Matiu Rata had been succeeded by Venn Young as Minister of Lands. In his 16 January 1976 letter to Andrew Rollo, the new Minister dismissed the major arguments presented in the Te Aupouri petition. He referred to the Crown's investigations as having "shown clearly that the Crown has a valid title..." to Kapowairua, or Taylor's Grant.

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[114] Petition of Hana [Saana] Murray and Others, 14 May 1975, Maori Land Court records, Whangarei 26M. I am indebted to Wi Apuwai, the current Registrar of the Maori Land Court in Whangarei, for providing me with prompt access to this file.

[115] Report of Paul J Philips 8 July 1975, Lands and Survey records, Auckland, included in Wai-45 Prelim. Report, Supporting Docs, Vol.I, pp. 402-24; Telephone interviews with Paul Phillips and Dr Richard Taylor by the author, July-October 1990.

In response to the specific Te Aupouri arguments, the Minister stated that: (1) Godfrey's 1843 "Land Claims Court" upheld the validity of Taylor's 20 January 1840 "purchase," that this "Court...dealt with hundreds of land claims to the complete satisfaction of the Maoris at the time," and that Maori subsequently ackowledged the validity of Taylor's claim. (2) According to the Minister, the fact that none of Taylor's partner's exercised their ownership rights didn't impair the validity of his title. Taylor, until his death, "...was the exclusive owner of the land granted to him," and exercised these rights both by putting his son on the land in 1866, and by directing that the executors of his will sell it. (3) Finally, the Minister contended that Te Aupouri claims to continuous occupation at Kapowairua were not supported by historical evidence. Apparently using occupancy information in a 1908 Statutory Declaration by Annie Yates, the Minister stated that the only evidence of Te Aupouri occupation was Rewiri's presence in the 1850s and 60s. The Minister concluded his letter stating:

> that the Crown through successive title has now clear title to Taylor's Grant and there is no justification legally or morally to upset that title in favour of the Aupouri.[116]

The third contention in the Minister's letter is the most suspect of the three. His statement that ever since 1844 "Taylor's Grant has been owned exclusively by non Maoris..." was based almost entirely evidence sworn to by Annie Yates in her 1908 Statutory Declaration that no Te Aupouri had lived at Kapowairua for 35 years during her residence there. But who was Annie Yates? None other than Ngawini te Kaka, who was definitely

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[116] Ibid.

Maori, and probably Te Aupouri. If no Te Aupouri were living at Kapowairua, how could a Native School be established there during the 1890s?[117] The Crown evidently failed to consider sufficient historical evidence on which to base its case.

Conclusion: Issues Arising from the Evidence

In concluding this historical report, there are a number of basic questions or issues arising from the evidence presented here. In chronological order they are:

(i) What was the nature of the 20 January 1840 Taylor-Te Rarawa transaction?

(ii) What was the nature of the 16 February 1841 Taylor-Te Aupouri transaction?

(iii) Was the Crown's decision to adopt Godfrey's 1843 recommendation to grant Taylor 1704 acres, while providing Te Aupouri reserves, in keeping with its Treaty obligations?

(iv) Was the Crown's failure to establish the reserves referred to in Taylor's 1844 Grant in keeping with its legal obligations, and with its Treaty obligations?

(v) Was the Crown's reference to the boundaries of Taylor's 1704 acre Grant as identical to that of his 65,000 acre claim, a recognition of the validity of his 1840-1 agreements?

(vi) Were Taylor's actions in seeking to transfer either

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[117] Kapowairua residents had requested such a school since 1882 when there were apparently 40 children of school age in the area. Hongi Keepa to Native Minister Bryce 7 Oct. 1882, Petition of Muru Hongi and Others 24 April 1891, Charles Irvine to James Pope 19 April 1897, Education Dept. records, BAAA 101/574b.

some or all of his rights to business partners, the Church, the CMS, and the Crown, in keeping with his original agreements?

(vii) Were the Crown's purchase activities in Muriwhenua North between 1858 and 1861 a recognition that it had failed to extinguish Maori property rights there previously?

(viii) What was the nature of the 26 July 1866 Taylor-Te Aupouri transaction?

(ix) What was the legal significance of the Crown's waiver of its claim, and its withholding of evidence regarding Taylor's claim from the Native Land Court, in 1870?

(x) Was the Native Land Court's partition of Muriwhenua North during the 1870s in keeping with the Crown's Treaty obligations?

(xi) Was Crown Agent WB White's intimate involvement in the Yates and Jones 1873 Muriwhenua block purchase proper and legal?

(xii) Was Taylor objection to the 1873 Muriwhenua purchase one that had the force of law?

(xiii) Were the Crown's 20th century land consolidation and development schemes in Muriwhenua North a suitable recognition of its legal and Treaty obligations?

(xiv) Was the Crown's response to Maori petitions, particularly the Te Aupouri/Ngati Kuri petitions of 1974-5, a suitable recognition of its legal and Treaty obligations?

LIST OF DOCUMENTS ATTACHED

Doc 1 Muriwhenua North Map 1986

Doc 2	Copy of Deed of North Cape, with Waerete Norman's translation
Doc 3	Plan of Taylor's Grant
Doc 4	Taylor's Crown Grant 22 October 1844
Doc 5	Survey of Kapowairua (OLC 234)
Doc 6	Native Land Court Order, Muriwhenua block 1870
Doc 7	Native Land Court Order, Whangakea block 1870
Doc 8	Native Land Court Order, Murimotu block 1873
Doc 9	Native Land Court Order, Murimotu No.1 1878
Doc 10	Native Land Court Order, Murimotu No.2 1878
Doc 11	Native Land Court Order, Mokaikai block 1875
Doc 12	Taylor to FD Fenton 19 June 1873