

OFFICIAL

Wai 686, # G11
Wai 174, # A2
Wai 694, # A2

**Te Horete 1 and Te Horete 2
Tairua Reserves**

**A Report Commissioned by the
Waitangi Tribunal
for Wai 174 and Wai 694**

by

Philip Cleaver

May 1999

Table of Contents

Table of Contents	2
Table of Maps and List of Tables	3
Abbreviations	4
Author	4
Commission	5
1. Te Horete 1: Title Investigation, and Alienations of Te Horete 1A, Te Horete 1B1, and Te Horete 1B2	
1.1 Investigation of Title	7
1.2 Background to Crown's Purchase of Interests in Te Horete 1: Establishment of the Hauraki Goldfield	8
1.3 Crown's Purchase of Interests in Horete 1	9
1.4 Exchange of Interests in Te Horete 1 for Land in Omaha West 2	10
1.4 Definition of the Crown's Interest in Horete 1	13
1.5 The Partition of Te Horete 1B	14
1.6 Crown's Purchase of Te Horete 1B1	14
1.7 Private Sale of Te Horete 1B2	17
2. Te Horete 2: Title Investigation, and Alienation of Te Horete 2A, Te Horete 2B and Te Horete 2C1	
2.1 Investigation of Title	20
2.2 Crown's Attempt to Purchase Te Horete 2	20
2.3 Inquiry into the Title of Te Horete 2	21
2.4 Partition of Te Horete 2	22
2.5 Survey of the Subdivisions of Te Horete 2	24
2.6 Native Land Act 1909	25
2.7 Private Sale of Te Horete 2A	26
2.8 Private Sale of Te Horete 2B	28
2.9 Partition of Te Horete 2C	31
2.10 Private Sale of Te Horete 2C1	32
2.11 Evaluation of the Waikato-Maniapoto Maori Land Board	35
3. Taking of Land from Te Horete 2C2 for a Road	
3.1 Background	38
3.2 Taking of Land Under Part 2 of the Public Works Act 1928	39
3.3 Failure to Provide Compensation	41
4. Private Sale of Te Horete 2C2 Following a Meeting of Assembled Owners	
4.1 Appointment of a Receiver	43
4.2 Order Under Section 34 of the Maori Purposes Act 1950	45
4.3 Meeting of Assembled Owners	47
4.4 Discussion	50

5. Tairua Reserves

5.1	Background	51
5.2	Location and Area of the Tairua Reserves	55
5.3	Private Sale of Pukioire Reserve	58
5.4	Private Sale of Te Kutakuta Reserve	59
5.5	Conclusion	60

Bibliography	62
---------------------	----

Table of Maps

Map 1:	Te Horete Block	6
Map 2:	Subdivisions of Te Horete 1	15
Map 3:	Subdivisions of Te Horete 2	29
Map 4:	Te Horete 2C2 (showing area taken for road)	40
Map 5:	Tairua Block	52
Map 6:	Location of Tairua Reserves	56

List of Tables

Table 1:	Interests in Te Horete 2 succeeded to by Ngaroma Whaiapu, 1873-1907	23
Table 2:	Amended areas of subdivisions of Te Horete 2 following survey of 1918	25
Table 3:	Money paid to owners of Te Horete 2B and to W-M MLB on behalf of owners	30
Table 4:	Owners and relatives interests of Te Horete 2C1 as ordered by the Native Land Court, 14 December 1914	32
Table 5:	Other lands owned by owners of Te Horete 2A, Te Horete 2B, and Te Horete 2C1	36
Table 6	Owners present and owners represented by proxy at meeting of owners of Te Horete 2C2, 15 July 1952	48
Table 7:	Details of memorandums of transfer executed by owners of Pukioire Reserve land, March 1880	59

Abbreviations

<i>Appendices to the Journals of the House of Representatives</i>	AJHR
<i>Appendices to the Journals of the Legislative Council</i>	AJLC
Certificate of Title	CT
Block Order file	BOF
Folio	fol
Land Information New Zealand	LINZ
Maori Land Court Plan number	ML
National Archives	NA
Waikato-Maniapoto Maori Land Board	W-M MLB
Waikato-Maniapoto Maori Land Court	W-M MLC
Waikato-Maniapoto Native Land Court	W-M NLC
Waitangi Tribunal claim number	Wai

Author

My name is Philip Cleaver. I graduated from Victoria University in 1996 with a Masters of Arts, majoring in history. This is the first report I have written for the Waitangi Tribunal.

Commission

This report was commissioned by the Waitangi Tribunal to examine the history of some of the land named in Wai 174 and Wai 694.

Wai 174 was lodged in October 1990 by Ata Bailey on behalf of herself, and on behalf of the descendants of those Ngati Kotinga 'whose names are recorded . . . as original owners' on the titles of the several blocks listed in the claim. In March 1998, the statement of claim for Wai 174 was amended to include Te Horete 1 and Te Horete 2 blocks. The claimants allege:

- That they are 'likely to be prejudicially affected by the action of the Crown in the acquisition by sale or by the taking of land pursuant to a statute' as it effects the listed blocks; and,
- 'That the moral and ethical aspect of the law was not applied to the sale of these Maori Land Blocks to the Crown at that time, and is therefore inconsistent with the principles of the Treaty of Waitangi'.

In relation to Wai 174, the author was commissioned to write a report that investigated the following matters:

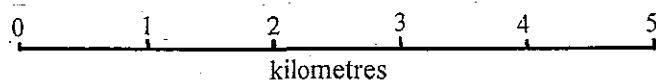
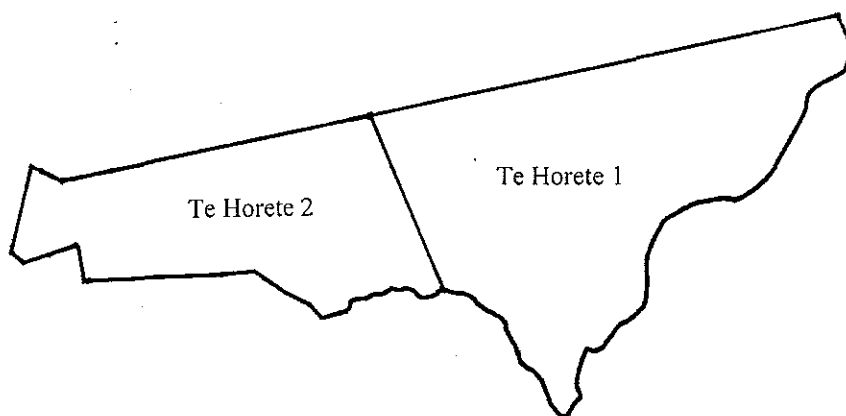
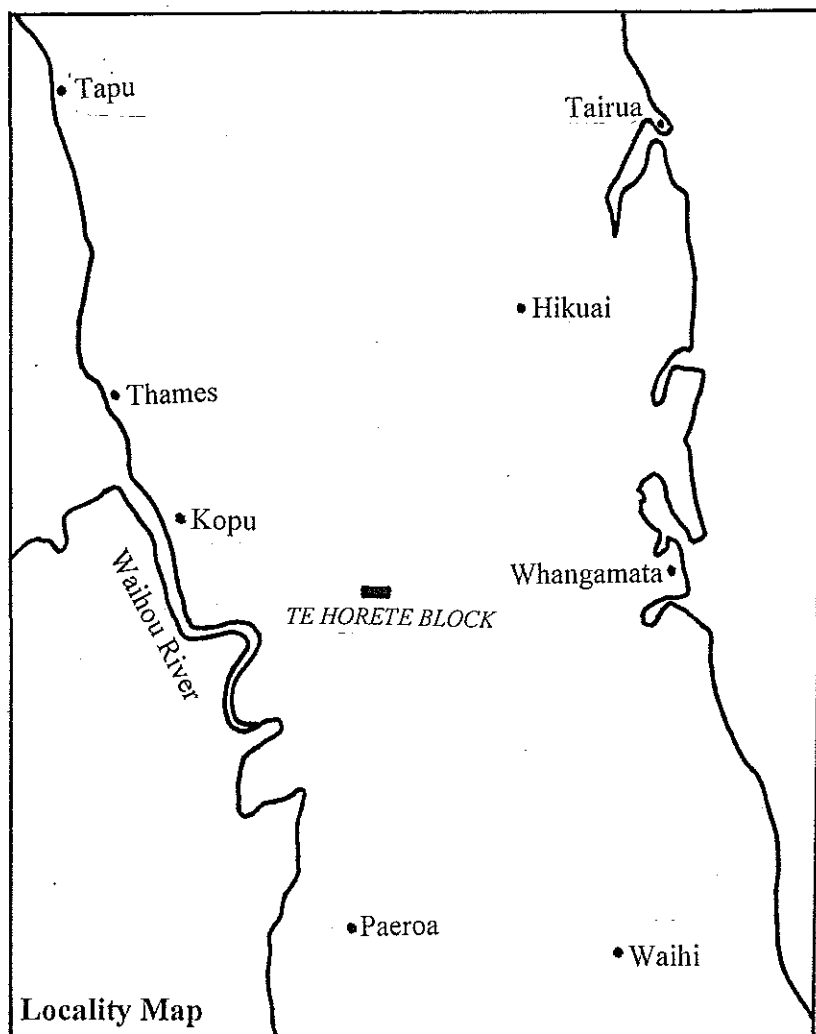
- a title investigation into Te Horete 1 & 2, and the Native Land Court's subsequent inquiry, in 1897-98, into the original certificate of title issued for Te Horete 2;
- the Crown purchase of Te Horete 1A & 1B1;
- the private purchase of Te Horete 1B2, 2A, 2B, & 2C1;
- the acquisition of part of Te Horete 2C2 for a road; and,
- the circumstances leading up to the alienation of Te Horete 2C2 to recover rate arrears and other charges.

Wai 694 was lodged by Philip Kapa and others in December 1997, for themselves 'and the descendants of Hori Kerei Tuokioki and with the support of the Oturu Whanau Charitable Trust Board'. The claimants allege that they have been prejudicially affected by actions relating to the title investigation of Tairua block and by its subsequent purchase by the Crown.

In relation to Wai 694, the author was commissioned to write a report that investigated the following matter:

- the establishment, and subsequent private purchase, of the reserves created out of the Tairua purchase.

Map 1: Te Horete Block



1. Te Horete 1: Title Investigation, and Alienation of Te Horete 1A, Te Horete 1B1, and Te Horete 1B2

1.1 Title Investigation

In May 1873, an application by Aperahama Te Reiroa, Ngapari Whaiapu, Hori Timo, and Reha Aperahama was lodged with the Native Land Court for an investigation into the ownership of Te Horete block.¹ The survey of Te Horete block was completed in June 1873 by Oliver Creagh.² The plan showed the block to be divided into two parts, Te Horete 1 and Te Horete 2. It gave the area of Te Horete 1 to be 1240 acres. The plan had not been approved by the Inspector of Surveys when the Native Land Court sat to investigate the block's title.³

The hearing was held at Shortland on 17 December 1873, before Judge Fenton.⁴ The investigation was brief, with the claim being put forward by one speaker, Aperahama Te Reiroa, whose statement was uncontested. Te Reiroa did not detail an historic relationship with the land to justify the claim, but stated simply: 'I live at Kaitawa[?]. I belong to N. Maru. I know the land before the Court.' He continued by listing nineteen individuals, including himself, whom he claimed to be the owners of Te Horete 1: Aperahama Te Reiroa, Meha Te Moananui, Ngapari Whaiapu, Aihe Pepene Te Reiroa, Mango Whaiapu,⁵ Watene Te Koao, Tuterei Te Karewa, Porokoru Te Weta, Hori Timo,⁶ Reha Aperahama, Hori Aperahama, Hirawa Te Moananui, Mata Pie, Ngaroma Whaiapu, Winiata Patara, Mere H Taipari, Hoani Nahi, Tiopira Karaua, and Matiu Kaimate.⁷

Those named by Te Reiroa as the owners of Te Horete 1 appear to have belonged to different hapu of Ngati Maru. At a later Court hearing concerning the partitioning of the block, Mango Whaiapu and Mere H Taipari claimed to respectively belong to Ngati Matewhakapapa and Ngati Rautao hapu of Ngati Maru.⁸ Hoani Nahe, Member of Parliament for Western Maori from 1876 to 1879, belonged to Ngati Hauauru, Ngati Te Aute and Ngati Kotinga hapu of Ngati Maru.⁹ Although the owners of Te Horete 1

¹ Application for Hearing of Claim, 21 May 1873, BACS A622/21a, NA Auckland

² ML 2901A, LINZ, Hamilton

³ Order of the Court, 17 December 1873, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁴ Hauraki Native Land Court minute book 8, 17 December 1873, fol 265

⁵ The full name of Mango Whaiapu was given when Mere H Taipari's application for the partition of Te Horete 1B was heard in 1889. Ibid, 30 May 1889, fol 104

⁶ The correct spelling of the name Hori Timo was given to the Native Land Court in September when the Court heard an application by Hirawa Te Moananui to succeed to his interest in the block. Ibid, 24 September 1883, fols 14-15

⁷ Ibid, 17 December 1873, fol 265. Except for the names of Hori Timo and Mango Whaiapu, the spelling of these names is taken from an Order of the Court in which there are amendments to the spelling given in the Hauraki minute book. Order of the Court, 17 December 1873, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁸ Hauraki Native Land Court minute book 11, 31 August 1878, fol 288

⁹ Angela Ballara, 'Hoani Nahe', in *The Dictionary of New Zealand Biography, Volume Two:1870-1900*, Claudia Orange (ed), Wellington, Bridget Williams Books and the Department of Internal Affairs, 1993, pp 342-344

belonged to different hapu, they do not appear to have owned the land as designated representatives of their respective hapu.

The Court made two orders: first, that the names of ten of the individuals listed by Te Reiroa go on the title, which could only be issued after the plan was approved;¹⁰ and secondly, that the names of all the persons who had been found to have an interest in Te Horete 1 be registered in the Court under section 17 of the Native Lands Act 1867.¹¹ A list of the individuals with an interest in Te Horete 1 was attached to the second order. It contained the nineteen names provided by Te Reiroa and an additional name, that of Turuhira Poha. It is possible that this name was given by Te Reiroa during the hearing, but was accidentally not recorded in the minute book.

Under section 17 of the Native Lands Act 1867, the Native Land Court was required to ascertain the right and title of every person with an interest in claimed land. The certificate of title could not be issued to more than ten owners, but when more than 10 people had an interest in a block the names of all owners were required to be registered in the Court. This was to be recorded in a recital on the certificate of title when it was issued.¹²

On 22 December 1873, AF Puckey, Clerk of the Native Land Court, referred the plan of Te Horete block to the Inspector of Surveys.¹³ The plan was duly endorsed, allowing a certificate of title to be issued.

1.2 Background to Crown's Purchase of Interests in Te Horete 1: Establishment of the Hauraki Goldfield

Robyn Anderson describes how, following the wars of the 1860s, the Government set about gaining full control of the Thames' goldfield 'as part of its intensifying policy of regulation of the economic development of the colony.'¹⁴ James Mackay, as Assistant Native Secretary, toured Hauraki in 1864 and reported the presence of gold at Ohinemuri and Kauaeranga. He considered the potential of the Hauraki goldfield to be greater than that of Coromandel, but noted that Ngati Maru were 'very determinedly opposed' to leasing their auriferous lands.¹⁵ Gold was discovered in February 1867 at Puriri, the area where the Te Horete block was located, helping to fuel the mounting pressure to have the Hauraki lands opened for mining operations.¹⁶ Mackay, appointed Civil Commissioner in May 1864, finally managed to negotiate the limited opening of Kauaeranga in July 1867, and then proceeded to secure other agreements:

Over the next two years, Mackay expanded on this beginning, progressively arranging for the opening of the western side of the Coromandel peninsular to mining, wooing neutrals and so called "friendlies", cajoling when the opportunity presented itself, but

¹⁰ Order of the Court, 17 December 1873, BOF Te Horete 1 & 2, W-M MLC, Hamilton

¹¹ Ibid

¹² Heather Bassett, Rachel Steel, David Williams, *The Maori Land Legislation Manual: Te Puka Ako Hanganga Mo Nga Ture Whenua Maori*, Wellington, Crown Forestry Rental Trust, 1994, p 47

¹³ Maori Land plan 2901A, LINZ, Hamilton.

¹⁴ Robyn Anderson, *Goldmining Policy, Legislation and Administration*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), December 1996, p 37

¹⁵ Mackay to Colonial Secretary, 22 April 1864, AJHR, 1869, A-17, p. 16, cited in Anderson, p 37

¹⁶ Anderson, *Goldmining*, p 38

otherwise 'just working it quietly, putting in [his] wedges and letting them draw'. Mackay divided the area into nine large blocks, reflecting general hapu divisions, arranging boundaries on the spot, and making verbal arrangements with those he deemed to be principal right-holders in each area, to the exclusion of King supporters such as Te Hira.¹⁷

On 9 March 1868, 77 members of Ngati Maru and Ngati Whanaunga iwi, six of whom were later included amongst those awarded the ownership of Te Horete 1, signed an agreement 'to release (give over) to Sir George Ferguson Bowen, Governor of New Zealand and the Governors who may succeed him, a certain piece of land in the district of Hauraki for gold-mining purposes'.¹⁸ The land to which this agreement related was a large area on the western side of the southern part of the Coromandel Range. It was divided into nine blocks, one of which, Te Puriri, contained Te Horete block. Under the terms of the agreement, all of this land, except certain reserve areas and townships, was opened for mining by holders of mining rights issued by the Government. A mining right cost £1 per annum, all of which was to be received by the Maori owners of the land for which it was issued. The area which Maori had agreed to open for goldmining was proclaimed a goldfield on 16 April 1869.¹⁹

In the 1870s, the Government began purchasing land in order to obtain gold and other resources. This included land within the goldfield which had already been opened for goldmining activities by negotiation.²⁰ The Crown agents who purchased this land did so in accordance with 'the wish of the public . . . that the Government should acquire the freehold of the Gold Field whenever possible, and not private speculators'.²¹ It was with this agenda that the Crown began purchasing interests in Te Horete 1.

1.3 The Crown's Purchase of Interests in Te Horete 1

Between March 1874 and August 1878, the Crown acquired the interests of 17 of the 20 individuals who had been awarded Te Horete 1. The owners were asked to sign a deed which would:

convey and assure unto her Majesty . . . all that piece or parcel of land . . . known by the name of Te Horete N^o 1 . . . with all the rights and appurtenances thereto belonging . . . for ever.²²

In specifying who the deed was between, the names of all the block's owners were recorded. However, only 15 of the 20 owners signed the deed. These signatures were collected on four separate occasions.²³

The first owners to sign the deed were Meha Te Moananui, Hori Timo, Matiu Kaimate, Reha Aperahama, and Aihe Pepene Te Reiroa. Their signatures are undated. However,

¹⁷ Ibid, p 38

¹⁸ 'Agreement between chiefs and people of Ngatimaru and Ngatiwhanaunga of Hauraki and Sir George Ferguson Bowen', 9 March 1868, AJHR, 1869, A-17, p 23

¹⁹ Anderson, *Goldmining*, p 39

²⁰ Ibid, p 40

²¹ Ibid, p 41

²² Auckland Deed 1225, LINZ National Office, Wellington

²³ Ibid

while giving evidence at a succession case before the Court in September 1883, George Wilkinson, native agent, claimed that these individuals sold their interests in Te Horete 1 on 13 March 1874.²⁴ Their signatures were witnessed by John Guilding, interpreter, and Gerald O'Halloran, land purchase agent. There was no translation attached to the deed, but Guilding declared before a JP that immediately prior to the inscribing of the five signatures, 'I did faithfully interpret the same to them in the Maori language and that my translation was correct and understood by them'.²⁵ Guilding's declaration was made on 18 December 1875, some 21 months after the signatures were collected.

The next owners to sign the deed were Ngaroma Whaiapu, Mata Pie, and Winiata Patara. These signatures were again witnessed by Guilding and O'Halloran 'after the contents had been explained to them by an interpreter of the Court and the[m] appearing clearly to understand the meaning of the same'.²⁶ It is unclear when Whaiapu, Pie, and Patara signed the deed, their signatures being undated, but in July 1877 James Mackay could report to the Minister of Public Works that eight of the owners of Te Horete 1 had signed a deed of conveyance, leaving 12 still to sign.²⁷

On 20 June 1878, Aihe Pepene Te Reiroa and Reha Aperahama were declared by the Court to be the successors to the interest in Te Horete 1 of their brother, Hori Aperahama.²⁸ Following the Court's order, they both signed the deed a second time, but in this instance did so as Hori Aperahama's successors.²⁹ There are no accompanying names or signatures of witnesses. However, beside the undated signatures of Te Reiroa and Aperahama, it is written that they signed the deed 'in the presence of us after the contents had been explained to them by an Interpreter of the Court'.³⁰ Presumably, the word 'us' in this declaration was, again, Guilding and O'Halloran.

1.4 Exchange of Interests in Te Horete 1 for Land in Omahu West 2

In May 1878, the Crown notified that it had paid monies for interests in Te Horete 1 block, and that the Government was negotiating the purchase of the block.³¹ The Crown then proceeded to apply to the Native Land Court to have its interest in Te Horete 1 defined. In August 1878, shortly before the application was to be heard, Hoani Nahe wrote to the Native Minister offering his interest, and the interests of four other owners, in exchange for Crown Land in nearby Omahu West 2 block:

Friend we have five shares in Te Horete Block that we wish to exchange for land at Omahu West No 2 each individual's share is 65 acres, making a total of 325 acres. These five shares have all been given to me by my fiends for me alone. My name alone to be in the Grant.

²⁴ Hauraki Native Land Court minute book 15, 24 September 1883, fol 14

²⁵ Auckland Deed 1225, LINZ National Office, Wellington

²⁶ Ibid

²⁷ Mackay to Minister of Public Works, 31 July 1877, AJHR, 1877, G-7, pp 7-10, cited in David Alexander, *The Hauraki Tribal Lands*, Volume 8, Part 2, Paeroa, Hauraki Maori Trust Board, 1997 (Wai 686 record of documents, doc A10), page 173

²⁸ Hauraki Native Land Court minute book 10, 20 June 1878, fol 232

²⁹ Auckland Deed 1225, LINZ National Office, Wellington

³⁰ Ibid.

³¹ Notification of the payment of money on and entry into negotiations for the purchase of Native Lands, 15 May 1878, *New Zealand Gazette*, 1878, no 44, pp 600-608, at p 605

This gift is made to me according to Maori custom. I now apply to you in respect of that 325 acres, although the land is in the mountains, still let me have the exchange on the flat land, do you show me some consideration and also regard my loss through our land at Kahukurawaharahi being included in Miriama Pehi's sale of land to the Government, however our loss was occasioned through two Courts holding their sittings at the same time, and we informed the Court that we had lost our land through Miriama's sale. That land now adjudicated on yesterday, and Mr Munro was requested to have a survey made according to our boundaries as known by us, and though a Crown Grant had issued for it, yet the Government should investigate the matter.

It was surveyed and the area thereof ascertained to be 1040 acres. Well, I suffered through having to pay for a fruitless survey conducted through instructions given by the Court.

There were only 130 acres of our land that were excluded from the sale, that was the portion that was awarded to us.

Should you favourably consider my application, do you telegraph to Mr Preece to have the 325 acres of Te Horete taken in exchange for land at Omahu West No 2 block.³²

The Native Minister agreed to the proposal.³³ Nahe replied by sending a copy of the agreement between himself and Aperahama Te Reiroa, Watene Te Koao, Tiopira Karaua, and Tuterei Te Karewa, the four owners of Te Horete 1 who were gifting to him their interests in the block.³⁴ Nahe also detailed that, in addition to his own name, the names of Hori Matene and Hera Tuhirae (Nahe's wife) were to appear on the grant. He requested that the Native Minister 'speedily give instructions' to have the grant prepared so that it could be finished while Parliament was sitting.³⁵

As a result of delays in administration and in surveying the land, it was not until 1 September 1880 that a Crown grant was issued for 363 acres 2 roods of Omahu West 2A.³⁶ Although this land was supposed to be an equal exchange for the interests of the five owners of Te Horete 1 who were party to the agreement, the area granted was 53 acres 2 roods in excess of this. When Nahe first corresponded with the Native Minister to request the exchange, his calculations were incorrect.³⁷ The shares in Te Horete 1 were held equally, meaning that the interest of each of the 20 owners of the block was 62 acres. Five shares, therefore, equated to 310 acres, 15 acres less than the area which Nahe wished to be exchanged.

There is no direct explanation provided in the sources which states why the Crown grant was made for an area of land in excess of an equal exchange. The excess area cannot have been compensation for unequal land value. According to Nahe, Te Horete 1 was 'in the mountains', and was in contrast to the 'flat land' of Omahu 2 block.³⁸ One possible explanation is that the excess area may have been included in the Crown grant to placate Nahe for the injustice he felt when land at Kahukurawaharahi was sold. This seems the most likely explanation, given that at the time Nahe wrote the letter

³² Nahe to Native Minister 5 August 1878, MA 13/54/A, NA Wellington

³³ Native Minister to Nahe, 6 August 1878, MA 13/54/A, NA Wellington

³⁴ Nahe, to Native Minister, undated, MA 13/54/A, NA Wellington

³⁵ Ibid

³⁶ Samuel to Stevens, 24 July 1881, MA 13/54/A, NA Wellington

³⁷ Nahe to Native Minister, 5 August 1878, MA 13/54/A, NA Wellington

³⁸ Ibid

requesting the exchange, he was a minister without portfolio and a member of the Executive Council in Sir George Grey's administration.³⁹

It has not been possible to establish the details of the alienation of the land at Kahukurawahi. This place-name is not recorded in the LINZ database, and neither the Native Land Court minute book database or the relevant secondary literature contain any reference to land named or located at Kahukurawahi.

In 1879, after he became aware of the boundaries of the land that was to be granted, Nahe requested that 18 acres of adjoining bush be included in the grant.⁴⁰ He wished to have this land because of the value of the bush as a source of firewood.⁴¹ The Native Minister agreed to this, but stipulated that the total area of the grant could not increase.⁴² However, the Crown grant made on 1 September 1880 did not incorporate this exchange. No action was ever taken to correct this oversight, despite efforts made by Nahe.⁴³

When the deed was signed by Hoani Nahi, Aperahama Te Reiroa, Watene Te Koao, Tiopira Karaua, and Tuterei Te Karewa, it appears that Turuhira Poha and Porokoru Te Weta also added their signatures. There is nothing written on the deed to suggest that these seven signatures were properly witnessed or that an adequate translation of the document was provided.

One of the owners of Te Horete 1, Hirawa Te Moananui, who was considered to have sold his interest in the block when the Crown's application for partition was heard, did not sign the deed. On the deed, his name is written outside of a bracket around the names of the first five signatories. This suggests that they were considered to have signed on his behalf. Despite not having signed the deed, it is clear that Hirawa Te Moananui felt that his interest in Te Horete 1 had indeed been sold to the Crown at the time the other owners were selling, and that he received payment for his interest. At a succession hearing held before the Court in September 1883, when Hirawa Te Moananui claimed Hori Timo's interest in Te Horete 2, he stated: 'when we sold the Block N^o 1 I purchased the interest of Hori Timo in the Block N^o 2 with the proceeds of my shares.'⁴⁴ George Wilkinson, native agent, who was sworn as a witness at the succession hearing, explained that Hirawa Te Moananui sold his share in Te Horete 1 on the condition that the purchase money be used to nullify the Crown's purchase of Timo's interest in Te Horete 2.⁴⁵ Timo was the only owner of Te Horete 2 who had sold his share to the Crown, The Crown had 'purchased' Timo's interest even though the block was an 'inalienable' reserve.

³⁹ Ballara, pp 342-344

⁴⁰ Wilkinson, 1 July 1879, on plan of Omaha West 2, attached to Chief Surveyor, Auckland, to Under Secretary, Native Land Purchase Department, 19 September 1879, MA 13/54/A, NA Wellington

⁴¹ Nahe to Hammond, 29 June 1891, MA 13/54/A, NA Wellington

⁴² Under Secretary, Native Land Purchase Department, to District Surveyor, Auckland, 9 September 1879, on cover sheet to file NLP 1879/337, MA 13/54/A, NA Wellington

⁴³ See Alexander, *Hawaki Tribal Lands*, Volume 8, Part 2, pp 240-3

⁴⁴ Hauraki Native Land Court minute book 15, 24 September 1883, fols 14-15

⁴⁵ Ibid

When the Crown came before the Court to have its interest in Te Horete 1 defined, it had acquired the interests of 17 of the 20 owners who had been awarded the block in December 1873. While it is known that 5 shares were obtained through a non-monetary exchange for land in Omahu West 2, it is difficult to identify how much the Crown paid for the 12 shares that it acquired by purchase. The main body of the deed records that the sum of £243 14s was paid.⁴⁶ This may only have been the amount paid to the first five signatories, in which case they would have received £48 14s 10d each, or about 15s 9d an acre. However, if £243 14s was given to all 12 of the owners who received payment, this equates to £20 6s 2d each, or about 6s 7d an acre. This seems most likely, given that the two owners of Te Horete 1B1 who sold their land in 1896 received only 3s 6d an acre. There is no evidence to suggest that the owners of Te Horete 1 received any mining revenue from the land, a factor which might have explained why the price per acre was relatively generous.

1.5 Definition of the Crown's Interest

In April 1878, the Crown applied to the Native Land Court under section six of the Native Land Act Amendment Act 1877, 'to ascertain and determine what interest has been acquired by or on behalf of Her Majesty' in Te Horete 1.⁴⁷ The Crown's application to have its interest in Te Horete 1 defined was heard by the Court on 31 August 1878, before Judge Symonds. James Mackay, on behalf of the Crown, told the Court that the Crown had acquired the shares of all but three of the individuals who had been awarded the block. He asked to have their combined interest of 186 acres partitioned, requesting that the area be cut-off on the southern boundary of the block. Mackay claimed that of the non-sellers, none of whom appeared to have been present in Court, 'all three agreed' to this plan.⁴⁸ The Court ordered that a Certificate of Title for 186 acres be issued in the names of Mango Whaiapu, Ngapari Whaiapu and Mere H Taipari.⁴⁹ No alienation restriction was applied to this land, which was to be named Te Horete 1B. None of the owners who sold their interests to the Crown appear to have been present in Court, and there were no objections to the application made by the Crown for the balance of the block.⁵⁰ The area awarded to the Crown was 1054 acres. The Order of the Court stated that this land, which was to be known as Te Horete 1A, 'is the property of Her Majesty Queen Victoria and has been acquired on her behalf'.⁵¹

In March 1880, Te Horete 1A was declared Waste Lands of the Crown.⁵² The Crown then notified that it had no further interest in acquiring any more of Te Horete 1.⁵³

In his examination of the operations of the Native Land Court in the Hauraki district, David Alexander asserts that: 'The Court's role in the mechanism of defining the

⁴⁶ Auckland Deed 1225, LINZ National Office, Wellington

⁴⁷ Native Minister to Chief Judge, Native Land Court, 8 April 1878, BACS A622/21a, NA Auckland

⁴⁸ Hauraki Native Land Court minute book 11, 31 August 1878, fol 288

⁴⁹ Ibid, fol 288

⁵⁰ Ibid, fol 291

⁵¹ Order of the Court, 31 August 1878, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁵² Lands declared to be waste lands of the Crown, 31 March 1880, *New Zealand Gazette*, 1880, no 34, pp 452-456, at page 455

⁵³ Notification that Her Majesty has ceased to have any interest in certain Native Lands in the North Island, 14 June 1881, *New Zealand Gazette*, 1881, no 47, pp 756-761, at p 758

Crown's interest can generally be said to be characterised by neglect or minimal inquiry.⁵⁴ The extent of the Court's enquiry when the Crown's interest in Te Horete 1 was defined is consistent with Alexander's assessment. The purchase deed does not appear to have been produced in Court for inspection. There was no independent examination of the deed to confirm Mackay's claim of having obtained the interests of all but three of the block's owners.

Under section 85 of the Native Land Act 1873, all instruments of alienation were to be witnessed by a judge or resident magistrate and at least one other male adult witness.⁵⁵ However, as detailed above, several of the owners' signatures were not witnessed, and in the case of Hirawa Te Moananui the deed was not signed. By failing to examine the deed the Court could not ensure that the alienation was entirely legitimate. Therefore, the Court does not appear to have been concerned with protecting the interests of the owners of Te Horete 1.

1.6 Partition of Te Horete 1B

In May 1889, the Native Land Court heard an application by Mere H Taipari to have her interest in Te Horete 1B partitioned. Sworn before the Court, Taipari claimed a third of the block, 'to be cut off by a line parallel to the Northern boundary to include the necessary area of 62 acres'.⁵⁶ The Court approved Taipari's application, awarding her 62 acres that was to be named Te Horete 1B2. The remaining 124 acres of Te Horete 1B was to be held in equal shares by Mango Whaiapu and Ngapari Whaiapu. It was to be called Te Horete 1B1. The Court ordered that certificates would issue after surveys had been completed and properly certified plans deposited.⁵⁷

1.7 Crown's Purchase of Te Horete 1B1

In May 1896, Gilbert Mair, land purchase officer at Thames, reported to his superior that:

Ngapari Whaiapu and Mango Whaiapu were the two non-sellers in the Horete No 1 block, the bulk of which was purchased by the Crown. They now wish to sell their 124 acres at 5/- an acre. The land is just at the back of Puriri and may become valuable as several new claims are now being worked there now.⁵⁸

The Surveyor General commented on the value of the land, advising that:

The only reason for considering this application is that the block may prove to be auriferous to a paying extent under the new processes. It is no use for settlement but I think 3/6d an acre might be offered.⁵⁹

⁵⁴ David Alexander, 'The Operations of the Native Land Court in Hauraki', statement of evidence for Wai 100, 1999 (Wai 686 record of documents, doc E3), p 39

⁵⁵ Section 85, Native Land Act 1873

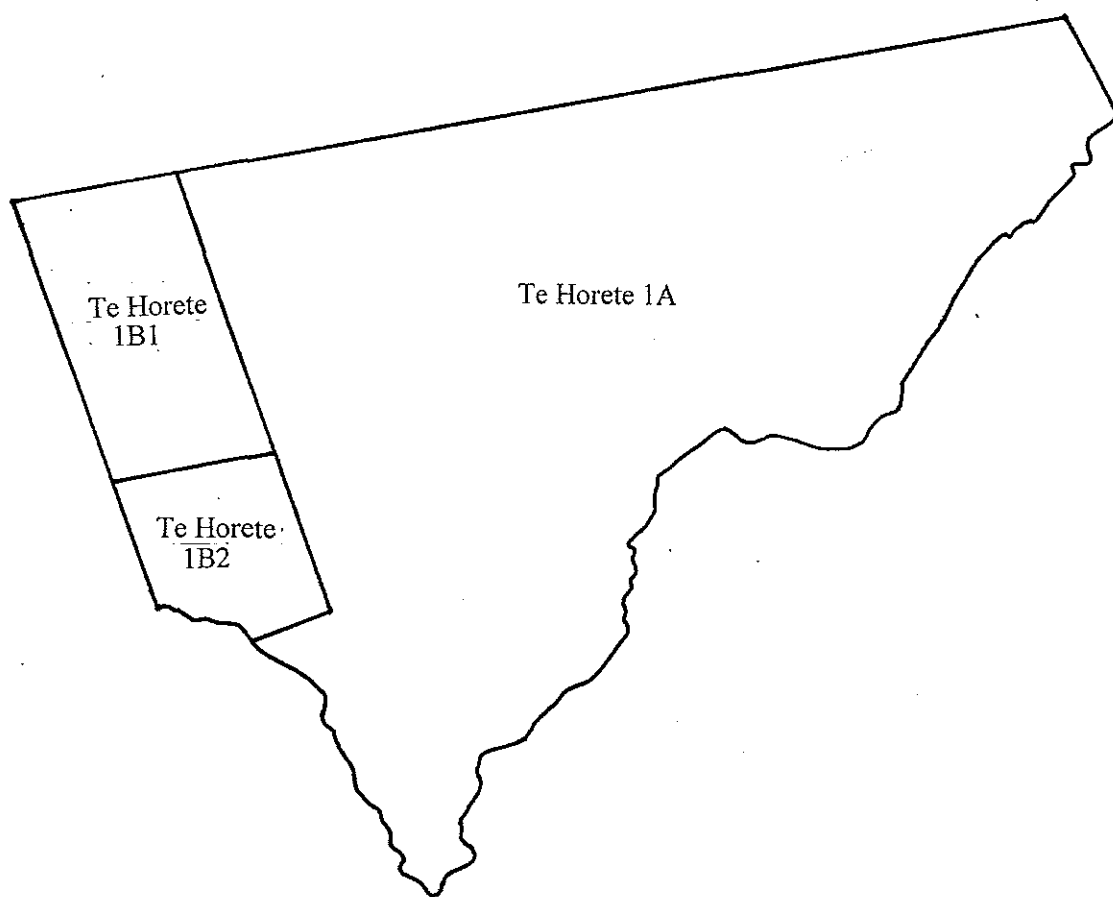
⁵⁶ Hauraki Native Land Court minute book 21, 30 May 1889, fol 104

⁵⁷ Ibid

⁵⁸ Land Purchase Officer, Thames, to Chief Land Purchase Officer, 21 May 1896, MA-MLP 1896/244, NA Wellington

⁵⁹ Surveyor General to Chief Land Purchase Officer, 17 June 1896, on cover sheet of file NLP 1896/143, MA-MLP 1896/244, NA Wellington

Map 2: Subdivisions of Te Horete 1



In June 1896, Mair was authorised to offer 3s 6d an acre for Horete 1B1.⁶⁰ On 19 August 1896, Mango Whaiapu and Ngapari Whaiapu signed a Memorandum of Transfer to 'hold the said land and premises with the appurtenances unto Her said Majesty, her heirs and successors, for ever'.⁶¹ A translation was prepared by Mair, who claimed it to be a 'clear statement in the Maori Language of the within written deed'.⁶² The signatures were witnessed by Judge Scannell and AF Puckey, Clerk of the Native Land Court. Puckey, a licensed interpreter read and explained the contents of the translation to the owners, ensuring that they appeared 'clearly to understand the meaning and purport of the same'.⁶³

On 7 September, the Chief Surveyor approved alterations to the plan of Te Horete block which showed the boundaries of Te Horete 1B1 and Te Horete 1B2.⁶⁴ Judge Scannell of the Native Land Court approved the plan one month later, and on 24 October the details of the transfer were recorded by the Auckland District Land Registrar.⁶⁵ Following this, Horete 1B1 was declared Crown Land.⁶⁶

Mango Whaiapu and Ngapari Whaiapu received £21 14s from the sale of Te Horete 1B1.⁶⁷ This equates to 3s 6d an acre.

Under subsection 8 of section 14 of the Native Land Court Act 1894, the Native Land Court was required to confirm any alienation of land by a Maori, a responsibility that had formerly been the work of the Trust Commissioners, whose posts were abolished by the 1894 Act.⁶⁸ In granting confirmation, the Court was required to be satisfied that a number of criteria were met. For example, the alienation was not to be in breach of a trust or contrary to alienation restrictions, and nor was it to have been paid for in alcohol or weapons.⁶⁹ The Court also had to establish that the title had been properly ascertained, that the purchase money had been received, and that the alienating Maori would not be left without sufficient land for their support.⁷⁰ The deed was to have an attached plan, and was to be translated before any owner endorsed the document with their signature, which was to be witnessed.⁷¹ These last requirements could be waived under certain circumstances.⁷²

Section 55 of the 1894 Act stated that a deed could not be registered without a confirmation order from the Court.⁷³ However, in the case of the alienation of Te Horete 1B1, this clearly appears to have occurred. The transfer document was registered

⁶⁰ Chief Land Purchase Officer to Land Purchase Officer, Thames, 20 June 1896, MA-MLP 1896/244, NA Wellington

⁶¹ Transfer 18621, LINZ, Hamilton

⁶² Ibid

⁶³ Ibid

⁶⁴ ML 2901A, LINZ, Hamilton

⁶⁵ Transfer 18621, LINZ, Hamilton

⁶⁶ Native Lands acquired by Her Majesty declared to be Crown Lands, 6 October 1897, *New Zealand Gazette*, 1897, no 86, pp 1747-1749, at p 1747

⁶⁷ Transfer 18621, LINZ, Hamilton

⁶⁸ Section 14(8), Native Land Court Act 1894

⁶⁹ Section 53(1), Native Land Court Act 1894

⁷⁰ Section 53(2), Native Land Court Act 1894

⁷¹ Ibid

⁷² Section 54, Native Land Court Act 1894

⁷³ Section 55, Native Land Court Act 1894

without having been endorsed with an order confirming the alienation, and an examination of the Hauraki minute book shows that the matter of confirmation was never brought before the Court.⁷⁴ Although the circumstances of the alienation of Te Horete 1B1 were in accordance with the criteria necessary for the granting of confirmation, it remains unsatisfactory that the Auckland District Land Registrar failed to comply with the statutory requirement relating to cases where land was transferred from Maori ownership. In addition to the obvious explanation of oversight, the Auckland District Land Registrar may have registered the transfer without a confirmation order because the transfer had been signed by a judge of the Court, Judge Scannell, who was a witness to the owners' signatures.

1.8 Private Sale of Te Horete 1B2

In his brief block history of Te Horete 1, David Alexander details how Mere H Taipari offered to sell Te Horete 1B2 to the Crown in June of 1892.⁷⁵ Sheridan, chief land purchase officer, sought advice from the Chief Surveyor and the Mining Warden at Thames as to the potential value of the land which, at the time, had not been surveyed. He was told that for Crown land settlement purposes '62 acres in that locality is no use whatever',⁷⁶ and that it had no worth as a part of the goldfield.⁷⁷ Advising the Native Minister, Sheridan asserted that:

It is not at all safe to deal with blocks in such a backward state as this. I think that an offer of £6 for the lot might however be made, that would be equal to 2/- an acre. For another two shillings we could complete the title [by having it surveyed].⁷⁸

In November 1892, this offer was put to Taipari, who had originally offered to sell the land for 6s an acre.⁷⁹ In May 1893, after five months without correspondence on the matter, Taipari offered to sell Te Horete 1B2 for 3s an acre.⁸⁰ Sheridan, however, would not budge from his previous offer to purchase the land for 2s an acre.⁸¹

In August 1897, surveyor Samuel Harding completed a plan of Te Horete 1B2.⁸² The plan was endorsed by the Chief Surveyor on 4 September 1897. It is unclear why this survey was carried out, given that in 1896 the boundaries of Te Horete 1B1 and Te Horete 1B2 had been marked on the plan of Te Horete block and approved by both the Chief Surveyor and Judge Scannell of the Native Land Court. This had been necessary to complete the Crown's purchase of Te Horete 1B1 and it is possible that whoever ordered the survey of Te Horete 1B2 was unaware that an authorised plan of the land already existed.

⁷⁴ Transfer 18621, LINZ, Hamilton

⁷⁵ Alexander, *Hauraki Tribal Lands*, pp 173-174

⁷⁶ Surveyor General to Chief Land Purchase Officer, 23 June 1892, on Registrar Native Land Court, Auckland, to Chief Land Purchase Officer, 18 June 1892, MA-MLP 1896/244, NA Wellington

⁷⁷ Mining Warden, Thames, to Native Minister, 3 November 1892, MA-MLP 1896/244, NA Wellington

⁷⁸ Chief Land Purchase Officer to Native Minister, 7 November 1892, on Mining Warden, Thames, to Native Minister, 3 November 1892, MA-MLP 1896/244, NA Wellington

⁷⁹ Mining Warden, Thames, to Native Minister, 3 November 1892, MA-MLP 1896/244, NA Wellington

⁸⁰ Dearle to Chief Land Purchase Officer, 25 May 1893, MA-MLP 1896/244, NA Wellington

⁸¹ Chief Land Purchase Officer to Dearle, 30 May 1893, MA-MLP 1896/244, NA Wellington

⁸² ML 2901A, LINZ, Hamilton

In 1896, Mere H Taipari died. An application to succeed to Taipari's interest in Te Horete 1B2 was made in November 1900. The application was signed by Mereana Taipari, Hohepa Mataitaua and Gilbert Mair, all of whom made the application as 'Trustees' on behalf of Taipari's young half-brother, Eruini Heina Taipari.⁸³ At a sitting of the Native Land Court held in Auckland before Judge Edger in December 1900, Eruini Heina Taipari, as Mere H Taipari's next of kin, was ordered successor to her ownership of Te Horete 1B2.⁸⁴ Because Eruini Heina Taipari was a minor, being aged 12 years, Gilbert Mair was appointed trustee under the Maori Real Estate Management Act 1888.⁸⁵

Under section five of the Maori Real Estate Management Act 1888, trustees were empowered to sell or lease the trust estate.⁸⁶ When this happened, section 2 of the Amendment Act 1893 required a judge of the Native Land Court to endorse the deed.⁸⁷ When Mair was appointed trustee it was noted that he would 'enable sale to WS Wylie'.⁸⁸ It seems that before Taipari died she had entered into negotiations to sell Te Horete 1B2 to WS Wylie, and had received payment for the land. Alexander states that it was not uncommon for the Court to appoint Pakeha as trustees for a minor when the minor's interest was expected to be purchased. In such cases, the signature of the trustee would complete the purchase. It is Alexander's opinion that:

while it could be viewed as a protective mechanism, to ensure that the minor's interest was dealt with fairly, and above all that a fair price was paid, the appointment of a pakeha as a trustee was never actively sought by Hauraki Maori, and such appointments should therefore also be seen as an assistance . . . to smooth the passage of a purchase.⁸⁹

On 10 April 1901, at a sitting of the Court in Auckland, Judge Mair was asked to grant confirmation of the alienation to Wylie. Mr Miller, a Thames' lawyer representing Wylie, told the Court:

The land was originally sold to Wylie by Meri [sic] Taipari the sister of E.H. Taipari . . . The matter came before Judge Edger and he appointed Captain Mair as the Trustee for the purpose of carrying out the transfer properly.⁹⁰

A deed was produced in Court, but it was not an agreement between Mere H Taipari and Wylie. Rather, it was the Memorandum of Transfer in which Mair, Eruini Heina Taipari's trustee, transferred Te Horete 1B2 to Wylie.⁹¹ This document details that seven pounds, 'the full purchase money', was paid by Wylie to Mere Taipari prior to her death in 1896.⁹² Mair granted confirmation of alienation, recording on the Memorandum of Transfer that he did so under the provisions of the Native Land Court Act 1894, 'after due investigation and inquiry in open Court and the Court being

⁸³ Application to Succeed, 13 November 1900, BACS A622/21a, NA Auckland; Auckland Native Land Court minute book 7, 4 December 1900, fol 157

⁸⁴ Auckland Native Land Court minute book 7, 4 December 1900, fol 157

⁸⁵ Order of the Court, 4 December 1900, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁸⁶ Section 5, Maori Real Estate Management Act 1888

⁸⁷ Section 2, Maori Real Estate Management Act Amendment Act 1893

⁸⁸ Auckland Native Land Court minute book 7, 4 December 1900, fol 157

⁸⁹ Alexander, 'Operations of the Native Land Court in Hauraki', pp 33-34

⁹⁰ Auckland Native Land Court minute book 7, 10 April 1901, fol 174

⁹¹ Transfer 26557, LINZ, Hamilton

⁹² Ibid

satisfied that the alienation purporting to be effected by the within deed has been effected in all respects in accordance with the said Act'.⁹³ Mair also endorsed the Memorandum of Transfer in order to meet the requirements of section 2 of the Maori Real Estate Management Act 1888 Amendment Act 1893, stating that he approved of the terms of the sale 'as evidenced by the foregoing Transfer'.⁹⁴

A number of issues concerning the alienation of Te Horete 1B2 require examination. It is difficult to assess the validity of the transaction given that there is no extant document which records Taipari's agreement to sell the land to Wylie and any payment that he may have made. Miller, Wylie's lawyer, did not furnish the Court with documented evidence of a transaction with Taipari, not even a receipt signed by Taipari upon receiving payment for the land. It appears that the transaction may have been conducted in an entirely verbal manner.

Given the lack of evidence brought before the Court, Judge Mair cannot have been in a position to grant confirmation of alienation with absolute certainty that the transaction had been true and fair. However, owing to the fact that he was also the trustee of Eruini Heina Taipari, and had been responsible for organising the transfer to Wylie, Mair must have been well informed of the particulars of the agreement between Wylie and Mere H Taipari, verbal or otherwise, as furnished to him by Wylie. The negative aspect of Mair having been both Judge and trustee is that, as Judge, he could not have assessed the alienation from a position of complete impartiality. Indeed, by granting confirmation of the alienation it is possible that he may have been acting in the best interests of the Pakeha purchaser, whom he would have known personally.

The Memorandum of Transfer, as noted above, records that Mere H Taipari received £7 for the 62 acres of Te Horete 1B2. This payment equates to approximately 2s 3d an acre and is slightly more generous than the £6 which was offered by the Crown in November 1892, and again in May 1893.

⁹³ Ibid

⁹⁴ Ibid

2. Te Horete 2: Title Investigation, and Alienation of Te Horete 2A, Te Horete 2B, and Te Horete 2C1

2.1 Investigation of Title

The investigation of title of Te Horete 2 followed immediately after that of Te Horete 1. Without discussion, the block was awarded to those who had been named as owners of Te Horete 1. It is noted in the Hauraki Native Land Court minute book that Te Horete 2 was to be 'a reserve for all the persons named in Te Horete N^o 1 Block, so that they and their children can always live and cultivate there.'¹ While the minute book does not record a request having been made by the owners, presumably it was their stated wish that Te Horete 2 be designated a reserve. The Court ordered that it was 'proper' to place certain restrictions on the alienability of Te Horete 2, stating 'that the land . . . be absolutely inalienable in any manner whatsoever being intended to be a perpetual reservation for the persons whose names are registered in Te Horete 1.'² Three of the owners, Aperahama Te Reiroa, Ngapari Whaiapu, and Porokoru Te Weta, were ordered to appear on the certificate of title as 'trustees for the whole of the owners'.³ It is not recorded in the minute book whether the appointment of trustees followed a request by the owners, or whether it was a suggested by Judge Fenton.

Following the Court hearing in December 1873, the plan of Te Horete block was approved. The plan showed the area of Te Horete 2 to be 690 acres. In September 1874, a certificate of title for Te Horete 2 was issued. However, the certificate, was issued incorrectly. It described Te Reiroa, Whaiapu, and Te Weta to be absolute owners, not trustees. The certificate did record, however, that Te Horete 2 'shall be absolutely inalienable to any person in any manner whatsoever without the prior consent of the Governor being given'.⁴

2.2 The Crown's Attempt to Purchase Te Horete 2

Very soon after the investigation of title of Te Horete 2, the Crown paid money for the interest of one of the block's owners, Hori Timo. This was clearly improper of the Crown, given that the Court had ordered that Te Horete 2 was to be an 'absolutely inalienable' reserve. In September 1883, the Crown's acquisition of Timos interest was detailed by George Wilkinson, native agent, who spoke as a witness when the Court heard an application made by Hirawa Te Moananui to succeed to Timo's interest in Te Horete 2. Wilkinson, who mistakenly claimed that all of the owners of Te Horete 1 had sold their interests to the Crown, and that Hirawa Te Moananui had signed the deed, explained that:

¹ Hauraki Native Land Court minute book 8, 17 December 1873, fol 265

² Order of the Court, 17 December 1873, attached to Native Land Court CT 4810, LINZ National Office, Wellington

³ Hauraki Native Land Court minute book 8, 17 December 1873, fol 265

⁴ CT 9/112, LINZ, Hamilton

Te Horete N^o 2 Block was intended to be retained as a Native reserve, but Hori Timo had sold his share to James Mackay and was paid for it on 18 March '74. This purchase was on behalf of the Crown. He was the only one the 20 owners registered who sold.

After this Mr Mackay commenced the purchase of the Horete N^o 1 on behalf of the Government. Out of the 20 owners of it, all sold but the Claimant in this case, Hirawa te Moananui. He sold his share subsequently, on the condition that the purchase money of his share in N^o 1 should redeem[?] the sale of Hori Timo's share in N^o 2.

Hori Timo agreed to this arrangement, as did also his relatives present, and then Hirawa signed the Conveyance of the N^o 1 Block, and handed the money to Hori Timo, on the 29 August 1878. Hori Timo repaid that money to myself & Mr Puckey and . . . [it] was paid into the Public A/c on 26 October 1878. Consequently, since that day the Crown ceased to have any claim on the share of Hori Timo in N^o 2. None of the shares in N^o 2 have since been purchased, it is looked upon absolutely as a Native Reserve.⁵

In May 1878, before Timo repaid the money given to him by Mackay for his interest in Te Horete 2, the Crown notified that monies had been paid for interests in the block, and that the Government was negotiating its purchase.⁶ However, as no purchase eventuated, the Crown notified in June 1881 that it had no further interest in acquiring Te Horete 2.⁷

2.3 Inquiry into the Title of Te Horete 2

In 1897 the discrepancy between the Court's order of 1873 and the certificate of title was identified by the Registrar of the Court in Thames, JW Browne. In a note to E Hammond, the Registrar in Auckland, he explained that:

The only course open for the persons who claim to be entitled is to apply for an Enquiry under Subsection 10 Section 14 of the Act of 1894. You should draw Judge Mair's attention to the matter, and he may have an opportunity of explaining the position to the Natives.⁸

In his reply, Hammond informed Browne that he had 'Fully explained [the matter] to the Natives, who say they will send in an application to the Chief Judge.'⁹

Under subsection 10 of section 14 of the Native Land Court Act 1894, the Court was given jurisdiction, upon the authorisation of the Governor in Council, to establish who were the equitable owners of land that was held by a 'nominal owner or owners in Trust for Natives not named in the title of such land'.¹⁰ The Court's responsibility was:

to determine who are the Natives, if any, entitled beneficially to any land so held in trust, and to order the inclusion of such Natives in the title . . . [and] the cancellation or amendment of any existing instrument of title and the issue of such Crown grants, or other instruments of title as may be necessary . . .¹¹

⁵ Hauraki Native Land Court minute book 15, 24 September 1883, fols 14-15

⁶ Notification of the payment of money on and entry into negotiations for the purchase of Native Lands, 15 May 1878, *New Zealand Gazette*, 1878, no 44, pp 600-608, at p 605

⁷ Notification that Her Majesty has ceased to have any interest in certain Native Lands in the North Island, 14 June 1881, *New Zealand Gazette*, 1881, no 47, pp 756-761, at 758

⁸ Browne to Hammond, 20 August 1897, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁹ Hammond to Browne, 24 August 1897, on Browne to Hammond, 20 August 1897, BOF Te Horete 1 & 2, W-M MLC, Hamilton

¹⁰ Section 14(10), Native Land Act 1894

¹¹ Ibid

In October 1897, an Order in Council was issued ordering the Native Land Court to hold an enquiry into the title of Te Horete 2.¹² The enquiry was held at a sitting of the Court in Shortland on 12 February 1898 before Judge Mair. The Court stated that:

the order of the Court in this case is quite clear but a mistake was made in issuing a title limiting the ownership to the three persons who were intended by Chief Judge Fenton to be Trustees for themselves and the other owners of No 1.¹³

An Order of the Court was issued declaring the owners of Te Horete 2 to be the 20 individuals who had been registered as having had an interest in Te Horete 1. The order declared that 'the share of each owner . . . shall be inalienable'.¹⁴

It seems clear that those individuals who were awarded Te Horete 2 when the title was investigated in 1873 strongly wished to retain the ownership of the land because of its importance as a place of occupation and cultivation. The owners of Te Horete 2 apparently considered the block of more value than the somewhat rugged Te Horete 1 - a large part of which is today included within the Coromandel Forest Park. The mistake made when the certificate of title was issued in 1874, which saw the three nominated trustees appear as absolute owners, was not properly corrected. Instead, the inquiry of 1898 saw the Court make an order which effectively individualised the title of Te Horete 2. There is no evidence to suggest that this was in accordance with the wishes of the owners of Te Horete 2 who remained alive. The record of the inquiry as it appears in the Hauraki Native Land Court minute book does not detail the opinions of any of the land's owners. It seems that the Court's order to issue a fresh title in the names of those who had been awarded Te Horete 1 was a decision that was made by Judge Mair. In the absence of instructions from the owners of Te Horete 2, it would have been proper for the Court to have attempted to restore the title as it had originally been ordered, with three owners appearing on the title as trustees for all of the owners to protect their communal ownership of the land.

2.4 Partition of Te Horete 2

Between the investigation of title in 1873 and the partition of the block in 1914, the Native Land Court heard applications and made orders for 20 succession cases.¹⁵ The consequence of this was that the number of owners registered to have an interest in the block grew considerably. At the time of the block's partition, some 32 individuals were recorded as having an interest in Te Horete 2.

On 27 November 1914, at a sitting of the Native Land Court in Thames before Judge Holland, two applications for the partition of Te Horete 2 were heard. The first application was put before the Court by Tamaiwhiua, who requested that the interests of Hori Aperahama, Puti Pepene, and Papu Pepene be cut out.¹⁶ The combined interest of Hori Aperahama, Puti Pepene, and Papu Pepene in Te Horete 2 was four shares out of a

¹² Order in Council conferring jurisdiction on Native Land Court, 11 October 1897, *New Zealand Gazette*, 1897, no 87, p 1774

¹³ Hauraki Native Land Court minute book 46, 12 February 1898, fol 342

¹⁴ Order of the Court, 12 February 1898, BOF Te Horete 1 & 2, W-M MLC, Hamilton

¹⁵ Memorial of Succession Orders, BOF Te Horete 1 & 2, W-M MLC, Hamilton

¹⁶ Hauraki Native Land Court minute book 63, 27 November 1914, fol 304

total of 20, or 20 percent. There were no objections to Tamaiwhiua's proposal. The Court ordered that an area of 138 acres, to be called Te Horete 2A, be partitioned from the rest of the block. Hori Aperahama, Puti Pepene, and Papu Pepene were named the owners of Te Horete 2A, holding a total of four shares. In accordance with their respective interests in Te Horete 2, Aperahama was apportioned one share, with the remaining three shares being divided equally between Puti Pepene and Papu Pepene, giving them 1½ shares each.¹⁷

It is unclear how the interest of Hori Aperahama, who had died in 1887, almost 30 years earlier, was able to be included within Te Horete 2A given that no one had succeeded to his interest in Te Horete 2. The Court did not appear to question Tamaiwhiua's authority to include Aperahama's interest in the application for partition.

The second application for partition was put before the Court by Hori More, who requested that his interest in Te Horete 2 be cut out.¹⁸ There were no objections to this proposal and the Court ordered that an area of 86 acres 1 rood be partitioned from Te Horete 2 block. This land was to be known as Te Horete 2B.¹⁹

Hori More was one of the 20 individuals who, in 1873, were named as owning the block when the title was first investigated. In September 1907, he succeeded to the interest of another of the block's owners, Ngaroma Whaiapu, who had himself been the successor to a number of interests in the block, and held at the time of his death 2¼ shares.²⁰ Table 1 shows the interests to which Ngaroma Whaiapu succeeded:²¹

Date of Succession Order	Name of Deceased	Interest Succeeded to by Ngaroma Whaiapu
6 May 1885	Winiata Patara	1/3
16 April 1898	Mata Pie	1/4
19 November 1898	Ngapari Whaiapu	2/3
Total		1 1/4

Table 1: Interests in Te Horete 2 Succeeded to by Ngaroma Whaiapu, 1873-1907

In November 1914, when his application for partition was heard, More held 3¼ shares out of the total of 20, or 16¼ percent. However, the area awarded to More equated to approximately 12½ percent of the block's total area, or about 25 acres less than the area to which he was entitled. The only explanation for the shortfall in the area of Te Horete 2B is that an error was made in the calculation of More's interest in Te Horete 2, and that More himself did not know the size of his interest in the block.

The Court made a final order, declaring the residue of Te Horete 2 to be in the names of the block's remaining owners, who numbered 28. This was to be known as Te Horete 2C and contained an area of 465 acres 3 roods.²²

¹⁷ Order of the Court, 27 November 1914, BOF Te Horete 1 & 2, W-M MLC, Hamilton

¹⁸ Hauraki Native Land Court minute book 63, 27 November 1914, fol 304

¹⁹ Order of the Court, 27 November 1914, BOF Te Horete 1 & 2, W-M MLC, Hamilton

²⁰ Memorial of Succession Orders, BOF Te Horete 1 & 2, W-M MLC, Hamilton

²¹ Ibid

²² Order of the Court, 27 November 1914, BOF Te Horete 1 & 2, W-M MLC, Hamilton

The Hauraki Native Land Court minute book does not record that the owners of Te Horete 2 expressed any wishes concerning how the boundaries of the partitions should be positioned. These boundaries seem to have been established in Court, presumably by Judge Holland, immediately after the two applications were heard. The positioning of Te Horete 2A and Te Horete 2B does not appear to have been arbitrarily defined. The blocks were located in the west of Te Horete 2, close to the suburbs of Puriri and the best road access, which did not quite reach either block.²³ This was consistent with section 46 of the Native Land Amendment Act 1913, which recognised and facilitated the relationship between partition and alienation, providing that, for any partition application made by a Maori owner, the land should:

as far as practicable, having regard to the interests of the Native owners, be subdivided into such areas according to quality and utility as will enable each allotment to be disposed of to an individual purchaser or lessee by the Native owner or owners . . . according to law.²⁴

Tom Bennion has identified that, 'Partitions generally were associated with alienations, with applications either being received before negotiations with a potential purchaser, or after a decision had been made to alienate the land, if a group of dissenting owners was identified.'²⁵ This observation is correct in the case of both Te Horete 2A and Te Horete 2B, the owners of which signed transfer documents less than two years after Te Horete 2 was partitioned.

2.5 Survey of the Subdivisions of Te Horete 2

In January 1918, a survey of the subdivisions of Te Horete 2 was carried out by EF Adams 'for [the] Native Owners'.²⁶ The plan of this survey showed the area of Te Horete 2 to be 712 acres 2 roods 24 perches, almost 23 acres larger than it was shown in Creagh's plan of 1873. An explanation given for this difference was that the original survey had been conducted using a less accurate magnetic method.²⁷ The areas recorded in the partition orders of 1914 were, of course, calculated on the basis of Creagh's survey. However, following Adams' survey, the partition orders were amended to show the correct area according to this survey. These amendments are detailed in the following Table 2, which also shows the changes made to the areas of the subdivisions of Te Horete 2C, which was partitioned in September 1917:²⁸

Te Horete 2A, Te Horete 2B and Te Horete 2C1 were all in the process of being purchased at the time of Adams' survey. Consequently, it was necessary for the transfer documents to be amended. Corrections were made to the stated area of land, and to the total purchase price, which was raised in accordance with the agreed price per acre.

²³ ML 10984, LINZ, Hamilton

²⁴ Section 46, Native Land Amendment Act 1913

²⁵ Tom Bennion, *The Maori Land Court and Land Boards, 1909 to 1952*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), July 1997, p 23

²⁶ ML 10984, LINZ, Hamilton

²⁷ Peploe to District Officer, 27 January 1953, on Peploe, 19 January 1953, BACS A449/187g, NA Auckland

²⁸ Orders of the Court, 27 November 1914; Orders of the Court, 14 December 1917; BOF Te Horete 1 & 2, W-M MLC, Hamilton. Maori Land plan 10984, LINZ, Hamilton

Name of Block	Area of Land in Partition Order	Amended Area After Survey of 1918
Te Horete 2A	138a 0r 00p	142a 2r 24p
Te Horete 2B	86a 1r 00p	89a 0r 22p
Te Horete 2C	465a 3r 00p	481a 0r 00p
Te Horete 2C1	112a 0r 20p	115a 3r 00p
Te Horete 2C2	353a 2r 20p	365a 0r 01p

Table 2: Amended Areas of Subdivisions of Te Horete 2 Block Following Survey of 1918

In December 1917, prior to Adams' survey, a caveat over the subdivisions of Te Horete 2 was filed in the name of Harry May, chief surveyor, and recorded on the block's certificate of title.²⁹ The cost of the survey was not detailed on the caveat. The caveat was an 'equitable' charge on the land, being derived from natural principles of justice, as opposed to a 'legal' charge, which is derived from a legal provision.³⁰ A 'legal' charge could have been secured upon application for a charging order to the Native Land Court, under section 398 of the Native Land Act 1909. Section 402 of the 1909 Act provided that interest of 5 percent per annum should be paid from the date that the survey was completed.

2.6 Native Land Act 1909

Under section 207 of the Native Land Act 1909 all existing restrictions on alienation were removed:

All prohibitions on the alienation of land by a Native, or on the alienation of Native Land, which before the commencement of this Act have been imposed by any Crown grant, certificate of title, order of the Native Land Court, or other instrument of title, or by any Act, are hereby removed, and shall, with the commencement of this Act, be of no force or effect.³¹

Combined with the individualisation of the title of Te Horete 2 in 1898, the removal of restrictions on alienation opened the way for the land to be partitioned and sold. The ability of individual owners to partition and sell their interests undermined tribal control over alienation.

Section 217 of the Native Land Act 1909 brought the process of alienation of Maori land under the scrutiny of Maori Land Boards. No alienation could be effected without it being confirmed by the district Maori Land Board.³² In granting confirmation, Boards were to ensure that certain criteria had been met. These criteria were detailed in section 220:

(a.) That the instrument of alienation has been duly executed in the manner required by this Part of the Act:

²⁹ Caveat 5921; CT 9/112; LINZ, Hamilton

³⁰ Heather Bassett and Richard Kay, 'Manaia 1B & 2B Survey Charges', report commissioned by the Waitangi Tribunal, August 1998 (Wai 285 record of documents, doc A3), p 15, footnote 13

³¹ Section 217, Native Land Act 1909

³² In cases where the land was in the South Island or outside a Maori Land District, the Native Land Court performed the role that was elsewhere performed by Maori Land Boards. Heather Bassett, Rachel Steel, David Williams, *The Maori Land Legislation Manual: Te Puka Ako Hanganga Mo Nga Ture Whenua Maori*, Wellington, Crown Forestry Rental Trust, 1994, p 272

- (b.) That the alienation is not contrary to equity or good faith, or to the interests of the Natives alienating:
- (c.) That no native will by reason of this Act become landless within the meaning of this Act:
- (d.) That the consideration (if any) for the alienation is adequate:
- (e.) That in the case of an alienation by way of sale the purchase-money has been either paid or sufficiently secured:
- (f.) That no person acquiring any interest under the alienation is prohibited from acquiring that interest by virtue of the Provisions of Part XII of this Act relating to limitation of area:
- (g.) That the alienation is not in breach of any trust to which the land is subject:
- (h.) That the alienation is not otherwise prohibited by law.³³

Under section 223, 'adequate' payment was to be estimated 'by reference' to a valuation carried out under the terms of the Valuation of Land Act 1908.³⁴ A 'landless native' was defined under section 2 as being an individual whose 'total beneficial interests in Native freehold land . . . are insufficient for his adequate maintenance'.³⁵ However, section 91 of the Native Land Amendment Act 1913 declared that landlessness did not occur where land being sold would in no event provide sufficient support to the Maori owner, or where the Maori owner was provided adequate income from an alternative source.³⁶

2.7 Private Sale of Te Horete 2A

In April 1917, a Memorandum of Transfer was signed by Papu Pepene and Puti Pepene. In signing the document, they transferred to Samuel Kahn, hotel-keeper of Puriri, 'the whole of our and each of our estates and interests in the said piece of land'.³⁷ Papu Pepene and Puti Pepene signed the transfer twice, once for their own interest in Te Horete 2A and once as successors to Hori Aperahama's interest in the land. It was not until August 1917, however, that the Court ordered Papu Pepene and Puti Pepene to be the successors to Hori Aperahama's interest in the land.³⁸ The signatures of Papu Pepene and Puti Pepene were witnessed by a Thames' JP. Also accompanying each of their signatures was that of Thomas Baker, a licensed interpreter, who testified that when the owners signed the transfer 'each of them understood the effect thereof'.³⁹ Baker also provided a written translation of the transfer, which he signed and declared to be 'a true and correct translation into the Maori language of the annexed Transfer'.⁴⁰ The transfer was in consideration of £2 10s an acre, and the total purchase money was recorded to be £345. This amount was calculated on the basis that the area of Te Horete 2A was 138 acres.

On 30 July 1917, an application for confirmation was made to the Waikato-Maniapoto Maori Land Board by EJ Clendon, a Thames' lawyer acting on behalf of Kahn.⁴¹ On 6

³³ Section 217, Native Land Act 1909

³⁴ Section 223, Native Land Act 1909

³⁵ Section 2, Native Land Act 1909

³⁶ Section 91, Native Land Act Amendment Act 1913.

³⁷ Transfer 120005, LINZ, Hamilton

³⁸ Memorial of Succession Orders, BOF Te Horete 1 & 2, W-M MLC, Hamilton [14 Aug 1952, reel 2904]

³⁹ Transfer 120005, LINZ, Hamilton

⁴⁰ Ibid

⁴¹ Application for Confirmation, 30 July 1917, BCAC A110/9109/box 125, NA Auckland

August, Kahn signed a declaration in support of confirmation.⁴² In this declaration, which was sent to the Board, Kahn testified that he did not hold more than the allowable amount of land to which a purchaser was entitled. In late August, a valuation certificate was received by the Board which stated the land's value to be £276, as assessed from a visit to the property earlier in the month.⁴³ In September, the Board was sent two schedules prepared by Clendon, one detailing the owners of Te Horete 2A, and another recording other lands held by the vendors.⁴⁴ The latter schedule showed that both vendors had interests in six other blocks of land, amounting to a total area of almost 32 acres each.

After receiving evidence from Clendon that Kahn was a 'British subject' and not an 'enemy alien', the Registrar advised that the Board was prepared to grant confirmation upon receipt of payment for the land.⁴⁵ On 2 October 1917, Clendon sent the Registrar a cheque for £302 18s 8d. This was the purchase price of £345, less the expected cost of survey, and less amounts that had been paid for rate arrears and to the owners as a deposit.⁴⁶ Three signed and witnessed receipts were enclosed, recording that Papu Pepene had received £10 on 24 April, and that Puti Pepene had received £10 on 28 April and a further £5 on 24 July.⁴⁷

In early October, the Registrar received letters advising that no rates were owed on Te Horete 2A and that no money was payable to the Crown for survey costs.⁴⁸ Following this, on 12 October 1917, after a sitting of the Waikato-Maniapoto Maori Land Board at Thames, the Memorandum of Transfer was endorsed with a certificate of confirmation. The certificate stated that the board, 'after due enquiry', was satisfied that the alienation had 'been effected in all respects in accordance with the law in force at the time'.⁴⁹

In April 1918, Clendon settled the money owing on the survey lien which was apportioned to Te Horete 2A.⁵⁰ This amounted to £24 13s, almost £10 more than the £15 which had been estimated to cover survey charges. On 29 April, the lien was withdrawn in relation to Te Horete 2A.⁵¹

In March 1919, Clendon informed the Registrar of the Waikato-Maniapoto Maori Land Board that his agents had encountered difficulty in registering the transfer. He explained that this was because of a discrepancy in the area recorded on the partition order and that recorded on the transfer, the difference being 4 acres 2 roods 2 perches.

⁴² Declaration in Support of Confirmation, 6 August 1917, BCAC A110/9109/box 125, NA Auckland

⁴³ Valuation Certificate, 28 August 1917, BCAC A110/9109/box 125, NA Auckland

⁴⁴ Particulars of Title of Owners; Schedule of Other Lands Owned by Maori Vendors of Lessors; BCAC A110/9109/box 125, NA Auckland

⁴⁵ Letters of Naturalisation, 8 September 1906, enclosed with Clendon, to Registrar, W-M MLB, 21 September 1917; Registrar, W-M MLB to Clendon, 29 September 1917; BCAC A110/9109/box 125, NA Auckland

⁴⁶ Clendon, to Registrar, W-M MLB, 2 October 1917, BCAC A110/9109/box 125, NA Auckland

⁴⁷ Receipts: Papu Pepene, 24 April 1917; Puti Pepene, 28 April 1917; Puti Pepene, 24 July 1917; enclosed with Clendon, to Registrar, W-M MLB, 2 October 1917, BCAC A110/9109/box 125, NA Auckland

⁴⁸ Clerk, Thames County Council, to Registrar, W-M MLB, 2 October 1917; Chief Surveyor, Auckland, to Registrar, W-M NLC 10 October 1917; BCAC A110/9109/box 125, NA Auckland

⁴⁹ Transfer 120005, LINZ, Hamilton

⁵⁰ Clendon, to Chief Surveyor, Auckland, 12 April 1918, BCAC A110/9109/box 125, NA Auckland

⁵¹ Caveat 5921, LINZ, Hamilton

Clendon calculated that, at £2 10s an acre, the owners of Te Horete 2A were owed a further £11 5s 8d. However, he claimed that against this was the additional money that had been required to cover the expense of survey, £9 13s, which Kahn had paid 'out of his own pocket'. Clendon asserted that this money 'should have been paid by the Natives', and accordingly, enclosed a cheque for the balance. He informed the Registrar that he would have the transfer amended and sealed. On 15 December 1919, a certificate of title for Te Horete 2A was issued, and on the same day, the details of the transfer were entered.⁵²

2.8 Private Sale of Te Horete 2B

In January 1915, less than two months after the Court heard his application for partition, Hori More died.⁵³ Four months later, in May, an order of the Court named the successors to More's interests in Te Horete 2A and other lands.⁵⁴ His successors were Te Hira More, Iwa Ranapiri, Hera Ranapiri, Pare Ranapiri and Nana Ranapiri. Te Hira More's share of the succession was $\frac{5}{8}$, while the four other successors were awarded $\frac{3}{32}$ equally. Te Hira More was appointed trustee to all of the other successors, who were minors, the oldest being 17.⁵⁵

On 3 March 1917, on his own behalf, Te Hira More signed a Memorandum of Transfer. Later, on 12 March, he signed the transfer again, inscribing his signature four times as trustee for each of Hori More's other successors.⁵⁶ In signing the document, Te Hira More transferred 'all our estates and interests' in Te Horete 2B to George Cribb, farmer of Puriri. The transfer was in consideration of £2 per acre, and the total purchase money was recorded to be £172 9s 11d. This sum, of course, was calculated on the basis that the area of Te Horete 2B was 86 acres 1 rood. Each of Te Hira More's five signatures were witnessed by AT Purnell, solicitor of Thames. There is no accompanying signature of an interpreter, nor is there an attached translation. However, in accordance with that part of section 215 of the Native Land Act 1909 which relates to cases where a Maori owner knew sufficient English,⁵⁷ Purnell endorsed the document, stating that:

Te Hira More who has executed this instrument of alienation has a knowledge of the English Language sufficient to enable him to understand and that he did understand the effect thereof before he executed the same.⁵⁸

Under section 180 of the Native Land Act 1909, a trustee was given power to alienate the interests of minors:

a trustee . . . may accordingly exercise in the name and on behalf of the beneficiary all powers in respect of the alienation or other disposition of any such land or property which the beneficiary might himself have exercised had he been under no disability, and had no such trustee been appointed.⁵⁹

⁵² CT 300/182, LINZ, Hamilton

⁵³ Memorial of Succession Orders, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁵⁴ Order of the Court, 14 May 1915, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁵⁵ Order of the Court, 14 May 1915, BOF Te Horete 1 & 2, W-M MLC, Hamilton

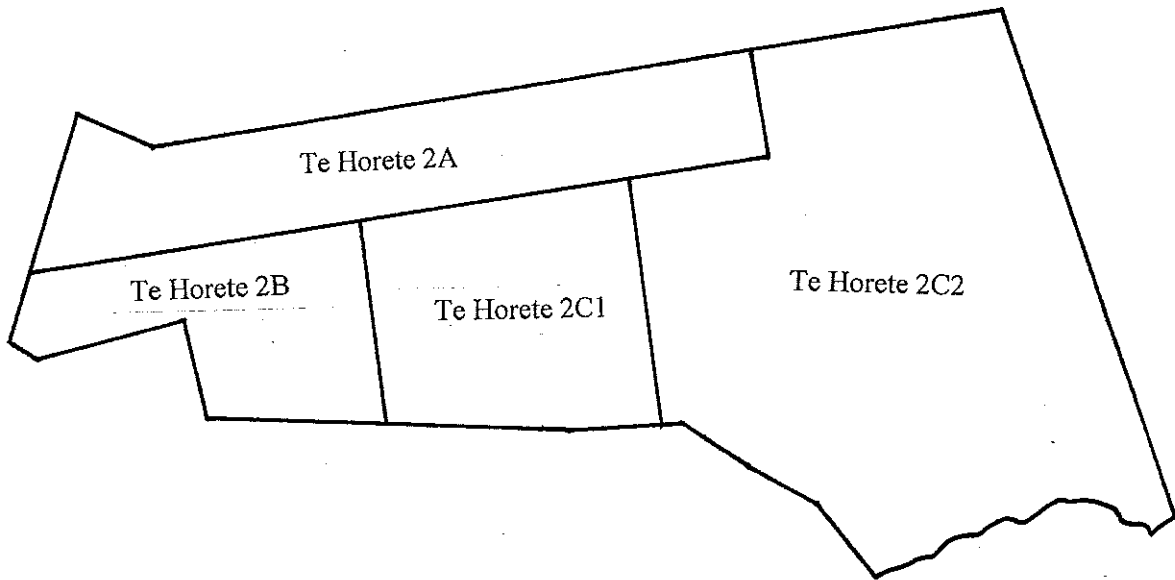
⁵⁶ Transfer 114164, LINZ, Hamilton

⁵⁷ Bassett, Steel and Williams, p 271

⁵⁸ Transfer 114164, LINZ, Hamilton

⁵⁹ Section 180, Native Land Act 1909

Map 3: Subdivisions of Te Horete 2



On 16 April 1917, an application for confirmation was made to the Waikato-Maniapoto Maori Land Board by Buchanan and Purnell, lawyers acting on behalf of Cribb.⁶⁰ Following this, the Board received a schedule of the title of owners, and a schedule of other lands owned by the vendors.⁶¹ The latter showed that all of the owners had interests in several blocks of land, although the total area owned by each of the minors amounted to less than 50 acres. In May, the Board was sent a valuation certificate detailing that a valuation carried out in April showed the land to be worth £130.⁶² The Board also received a declaration in support of confirmation, signed by Cribb on 24 May.⁶³

Date	Payments made to owners and W-M MLB on behalf of owners	Amount
25/5/17	Te Hira More	20:00:00
25/5/17	Te Hira More	87:16:03
14/6/17	Iwa Ranapiri	3:00:00
25/5/17	Iwa Ranapiri and Hera Ranapiri	12:03:09
25/6/17	Iwa Ranapiri, Hera Ranapiri, Para Ranapiri and Nana Ranapiri	24:16:03
18/7/17	Iwa Ranapiri	10:00:00
18/7/17	Hera Ranapiri	10:00:00
18/7/17	Para Ranapiri	10:00:00
18/7/17	Nana Ranapiri	10:00:00
31/7/17	'balance of purchase money' paid to W-M MLB (less 10s for minors' share of Court fees)	24:03:09
19/9/17	'balance of purchase money' paid to W-M MLB (including interest of 12s 3d, less 9s for minors' share of Court fees)	40:03:03
	Total	£252:03:03

Table 3: Money Paid to Owners of Te Horete 2B and to W-M MLB on Behalf of Owners

In June, the Board received receipts, which had been signed and witnessed, for all of the purchase money that had been due to Te Hira More, and for £40 received by him as trustee for the four minors.⁶⁴ A further four receipts, all signed and witnessed, were sent to the Board in July.⁶⁵ The receipts were again for a total amount of £40. This was additional deposit money paid to More for the interests of each of the minors. Enclosed with these receipts was a cheque for £24 4s 6d, described to be the balance of the purchase money, less 10 shillings for Court fees and plus ninepence for exchange. After receiving letters advising that no rates were owed on Te Horete 2B, and that no money was required to cover survey expenses, the Registrar of the Board was sent a final

⁶⁰ Application for Confirmation, 16 April 1917, BCAC A110/8888/box 121, NA Auckland

⁶¹ Particulars of Title of Owners; Schedule of Other Lands Owned by Maori Vendors of Lessors; BCAC A110/8888/box 121, NA Auckland

⁶² Valuation Certificate, 3 May 1917, BCAC A110/8888/box 121, NA Auckland

⁶³ Declaration in Support of Confirmation, 24 May 1917, BCAC A110/8888/box 121, NA Auckland

⁶⁴ Receipts: Te Hira More, 25 May 1917; Te Hira More, 25 May 1917; Iwa Ranapiri and Hera Ranapiri, 25 May 1917; Iwa Ranapiri, Hera Ranapiri, Pare Ranapiri and Nana Ranapiri; 25 May 1917; Iwa Ranapiri, 14 June 1917; enclosed with Buchanan and Purnell, to Registrar, W-M NLC, 26 June 1917, BCAC A110/8888/box 121, NA Auckland

⁶⁵ Receipts: Iwa Ranapiri, 18 July 1917; Iwa Ranapiri, 18 July 1917; Iwa Ranapiri, 18 July 1917; Iwa Ranapiri, 18 July 1917; enclosed with Buchanan and Purnell, to Registrar, W-M NLC, 31 July 1917, BCAC A110/8888/box 121, NA Auckland

cheque from Buchanan and Purnell.⁶⁶ This cheque was for an amount of £40 4s 6d and was described, again, as 'the balance of purchase money', less Court fees and plus exchange and interest. This payment is curious because, as detailed in Table 3, it brought the total money paid for the land to over £250. This amount was much greater than the purchase price recorded in the Memorandum of Transfer, and significantly in excess of the value of the land as stated on the valuation certificate. The only explanation for this is that an administrative error was made by Cribb's lawyer's, Buchanan and Purnell, who made two final payments for the land.

On 17 November 1917, following a sitting of the Waikato-Maniapoto Maori Land Board at Ngaruawahia, the Memorandum of Transfer was endorsed with a certificate of confirmation.⁶⁷ On 9 June 1919, after a payment of £12 2s 7d had been made to cover survey expenses, the caveat lodged by the Surveyor General was withdrawn in relation to Te Horete 2B.⁶⁸ It is unclear who paid this sum. A certificate of title for Te Horete 2B was issued on 15 December 1919, and on the same day, the details of the transfer were entered.⁶⁹

2.9 Partition of Te Horete 2C

In September 1917, the Native Land Court received an application made by Rete Watana for the partition of Te Horete 2C.⁷⁰ The Court heard the application at a sitting held in Thames on 14 December 1917. Rete Watana was represented by Mr Buchanan. The other owners were represented by I Tipene. The Court was requested to list 3¼ shares, out of a total of 13½, as the interest which Watana's application represented. Buchanan requested that an area equating to this interest be cut out next to Te Horete 2B.⁷¹ The Court ordered that 112 acres 20 perches be partitioned from Te Horete 2C block. This land was to be known as Te Horete 2C1, and following Buchanan's request, was positioned next to the boundary of Te Horete 2B.⁷² At this time, as detailed above, Te Horete 2B was in the process of being purchased by George Cribb, who was also to purchase Te Horete 2C1. It is very likely that, prior to the subdivision of Te Horete 2C, Cribb had made an arrangement to purchase the land of those whose interests were to be partitioned, thus explaining why Buchanan, who was Cribb's lawyer, purposefully requested that Te Horete 2C1 be positioned next to Te Horete 2B. It is noted in the minute book that Te Horete 2C1 had no road access.⁷³

The Court's order listed six owners, whose shares in Te Horete 2C1 were not equal. This is detailed in Table 4. It is unclear with what authority Buchanan included within the application the interests of those other than Rete Hemi. It seems that this was not questioned by the Court or by the representative of the other owners.

⁶⁶ Clerk, Thames County Council, to Registrar, W-M MLB, 29 August 1917; Chief Surveyor, Auckland, to Registrar, W-M NLC, 4 September 1917; Buchanan and Purnell to Registrar, W-M NLC, 19 September 1917; BCAC A110/8888/box 121, NA Auckland

⁶⁷ Transfer 114164, LINZ, Hamilton

⁶⁸ Caveat 5921, LINZ, Hamilton

⁶⁹ CT 294/53, LINZ, Hamilton.

⁷⁰ Application for Partition, (received) 21 September 1917, BACS A622/21a, NA Auckland

⁷¹ Hauraki Native Land Court minute book 66, 14 December 1917, fol 17

⁷² Order of the Court, 14 December 1917, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁷³ Hauraki Native Land Court minute book 66, 14 December 1917, p 17

Name of owner	Relative Interest
Mei Ngamokamoka Pepene	½
Miria Parata	1 ¼
Pirimona Watene	½
Rete Hemi (alias Rete Watara)	¼
Rete Watene	¼
Ru Papere	½
Total Shares	3 ¼

Table 4: Owners and Relatives Interests of Te Horete 2C1 as Ordered by the Native Land Court, 14 December 1914

The Court ordered that the residue of Te Horete 2C, consisting of an area of 365 acres 1 rood, be known as Te Horete 2C2. The schedule of owners attached to this order showed 24 individuals to have an interest in the land, in unequal shares.⁷⁴

2.10 Private Sale of Te Horete 2C1

In December 1917, a Memorandum of Transfer was signed by three of the owners of Te Horete 2C1: Rete Hemi, Rete Watene, and Miria Parata. The purchaser of the land was, as explained above, George Cribb, a Puriri farmer. In signing the document, Hemi, Watene, and Parata transferred to Cribb 'all our estates and interests in the said piece of land'. Attached to the Memorandum of Transfer was a translation prepared by Thomas Baker, licensed interpreter, who testified that it was 'a clear and correct statement in the Maori Language setting forth the meaning and purport of the foregoing transfer'.⁷⁵ The signatures of the three owners were witnessed by AT Purnell, a Thames' lawyer. The signatures of Hemi and Watene were not accompanied by the signature of an interpreter. However, in accordance with section 215 of the Native Land Act 1909, Purnell endorsed the document, stating that:

Rete Hemi and Rete Watene who have executed this Memorandum of Transfer have a knowledge of the English Language sufficient to enable them to understand and that they did understand the effect thereof before they executed the same.⁷⁶

Miria Parata's mark was accompanied by the signature of Thomas Baker, who had testified that when the owners signed the transfer 'each of them understood the effect thereof'.⁷⁷ In April 1918, Mei Ngamokamoka Pepene signed the transfer. Her signature was witnessed by Purnell and accompanied by the signature of Thomas Roberts, licensed interpreter.⁷⁸ The transfer was in consideration of £1 10s per acre, amounting to a total of £168 30d. A valuation of the property carried out in May 1918 showed Te Horete 2C1 to be worth £170.⁷⁹

⁷⁴ Order of the Court, 14 December 1917, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁷⁵ Transfer 263749, LINZ, Hamilton

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Valuation Certificate, 7 May 1918, enclosed with Buchanan and Purnell, to Registrar, W-M NLC, 20 October 1919, BCAC A110/10409/box 150, NA Auckland

On 27 April 1918, an application for confirmation was made to the Waikato-Maniapoto Maori Land Board by Cribb's lawyers, Buchanan and Purnell.⁸⁰ In May, Cribb signed a declaration in support of the application, which was sent to the Board.⁸¹ Following this, in October, the Board received a schedule of the ownership details and a schedule of other lands owned by the vendors.⁸² The latter recorded only the details of Hemi, Parata, and Pepene. It detailed that all had interests in other lands, although in Hemi's case her total holding amounted to only 10 acres 36 perches. Rete Watene held no other lands, explaining the absence of details relating to her on the schedule. The Board decided that confirmation could not be granted without 'a satisfactory declaration being filed as to [the] position of Rete Watene who is landless'.⁸³ Following this decision, the Board received a declaration made by Mare Teretiu of Kopu. In this declaration, which was witnessed by Purnell, Teretiu claimed to be 'well acquainted' with Watene. She stated that Watene was married to a serviceman 'at the front' and was entitled to succeed to half of the interests of Hone Wehea and Wiremu Te Huia, who between them had shares in several blocks of land. At the end of the declaration, Teretiu commented on the value of the land which was being sold:

I know the said Te Horete well and that this is poor hill land where to the best of my knowledge no person has ever lived nor do I think any person is ever likely to live as by its rough nature it is quite unsuited for any person to live upon.⁸⁴

The Board approved the declaration, considering that it provided adequate evidence that Rete Watene would not be without some economic security following the sale of Te Horete 2C1.⁸⁵ This decision, and the Board's failure to investigate the circumstances of Rete Hemi, who held just over 10 acres in other blocks, is discussed at the end of this chapter.

In October, the Registrar of the Board received letters advising that rates were not owed on Te Horete 2C1,⁸⁶ nor money payable to the Crown for survey costs.⁸⁷ In January 1919, Buchanan and Purnell sent the Registrar receipts for money that had been paid to Hemi, Watene, Parata, and Pepene as deposits for their interests in Te Horete 2C1.⁸⁸ The receipts, all of which were signed and witnessed, were for an amount that totalled £60 19s. They were accompanied by a cheque for £51 7s 1d, described as the balance of

⁸⁰ Application for Confirmation, 27 April 1918, BCAC A110/10409/box 150, NA Auckland

⁸¹ Declaration in Support of Confirmation, 18 May 1918, BCAC A110/10409/box 150, NA Auckland

⁸² Particulars of Title of Owners; Schedule of Other Lands Owned by Maori Vendors of Lessors, 8 October 1918, BCAC A110/10409/box 150, NA Auckland

⁸³ Note on coversheet of file 9559, BCAC A110/10409/box 150, NA Auckland

⁸⁴ Declaration of Mare Teretiu, undated, Kopu, BCAC A110/10409/box 150, NA Auckland

⁸⁵ Note, 10 October 1918, on *ibid*

⁸⁶ Clerk, Thames County Council, to Registrar, W-M MLB, 16 October 1918, BCAC A110/10409/box 150, NA Auckland

⁸⁷ Chief Surveyor, Auckland, to Registrar, W-M NLC, 17 October 1918, BCAC A110/10409/box 150, NA Auckland

⁸⁸ Receipts: Rete Hemi, 14 December 1917; Rete Hemi, 26 April 1918; Rete Watene, 14 December 1917; Rete Watene, 26 April 1918; Miria Parata, 24 April 1918; Mei Ngamokamoka Pepene, 24 April 1918; enclosed with Buchanan and Purnell, to Registrar, W-M NLC, 23 January 1917, BCAC A110/10409/box 150, NA Auckland

the purchase money owed to Hemi, Watene, Parata, and Pepene, with interest and exchange, less money which had been paid to cover rates and survey charges.⁸⁹

On 30 January 1919, following a meeting of the Waikato-Maniapoto Maori Land Board in Thames, confirmation of alienation of Te Horete 2C1 was granted, 'so far as it affects the shares' of Hemi, Watene, Parata, and Pepene.⁹⁰

In May 1919, the Memorandum of Transfer was signed by the remaining two owners of Te Horete 2C1, Pirimona Watene and Mei Moka, the successor to Ru Papare's interest in the land. The signatures of Watene and Moka were both witnessed by Purnell. Watene's signature was accompanied by the signature of interpreter Thomas Baker. Moka's understanding of both the English language and the document which she signed was testified to by John Glissing, Thames' land agent, who endorsed the Memorandum of Transfer.⁹¹

In August 1919, the Board received a second application for confirmation relating to the purchase of Te Horete 2C1, again made by Buchanan and Purnell on behalf of George Cribb.⁹² The alienating owners were recorded to be Pirimona Watene and Mei Moka. A schedule of other lands owned by the vendors, prepared in September, showed Watene and Moka to have interests in one other block of land. Watene's holding was detailed to be 47 acres 1 rood 30 perches, while Moka's was given to be 84 acres 2 roods 36 perches.⁹³ On 19 September, Cribb signed a second declaration in support of confirmation.⁹⁴ Following this, the Registrar received receipts, signed and witnessed, for the full purchase money that had been paid to Watene and Moka, £51, less money that had been paid on behalf of the owners to cover rates and survey charges.⁹⁵ Enclosed with the receipts was a schedule of title of owners showing the details of Mei Moka's succession to the interest of Ru Papare.⁹⁶

In October, letters were received advising that no rates were owed on Te Horete 2C1,⁹⁷ and no money required to cover survey expenses.⁹⁸ In December, Buchanan and Purnell sent the Registrar a certificate recording the details of a valuation of Te Horete 2C1 carried out in March 1919.⁹⁹ This valuation had been requested in order to show that the

⁸⁹ Buchanan and Purnell, to Registrar, W-M NLC, 23 January 1917, BCAC A110/10409/box 150, NA Auckland

⁹⁰ Transfer 263749, LINZ, Hamilton

⁹¹ Ibid

⁹² Application for Confirmation, 25 August 1918, BCAC A110/10409/box 150, NA Auckland

⁹³ Schedule of Other Lands Owned by Maori Vendors of Lessors, 27 September 1919, BCAC A110/10409/box 150, NA Auckland

⁹⁴ Declaration in Support of Confirmation, 19 September 1919, BCAC A110/10409/box 150, NA Auckland

⁹⁵ Receipts: Pirimona Watene, 31 May 1919; Mei Moka, 31 May 1919; enclosed with Buchanan and Purnell, to Registrar, W-M MLB, 30 September 1919, BCAC A110/10409/box 150, NA Auckland

⁹⁶ Particulars of Title of Owners, enclosed with Buchanan and Purnell, to Registrar, W-M MLB, 30 September 1919, BCAC A110/10409/box 150, NA Auckland

⁹⁷ Clerk, Thames County Council, to Registrar, W-M MLB, 1 October 1919, BCAC A110/10409/box 150, NA Auckland

⁹⁸ Chief Surveyor, Auckland, to Registrar, W-M NLC, 20 October 1919, BCAC A110/10409/box 150, NA Auckland

⁹⁹ Valuation Certificate, 31 March 1919, enclosed with Buchanan and Purnell, to Registrar, W-M NLC, 20 October 1919, BCAC A110/10409/box 150, NA Auckland

value of the property had not changed in the period since May 1918, when it had been last valued.¹⁰⁰ The value of the land was unchanged, remaining at £170.

On 10 May 1920, following a meeting of the Waikato-Maniapoto Maori Land Board in Te Kuiti, confirmation of alienation of the shares of Pirimona Watene and Mei Moka was granted.¹⁰¹

The caveat over the subdivisions of Te Horete 2 block, lodged by the chief surveyor in December 1917, was not withdrawn in relation to Te Horete 2C1 until June 1934,¹⁰² the same time that a separate survey of Te Horete 2C1 and Te Horete 2C2 was completed.¹⁰³ The lien was cancelled following a payment of £2 2s, described as the cost of surveying Te Horete 2C1.¹⁰⁴ Consistent with Adams' survey of 1918, the survey completed in June 1934 showed the area of Te Horete 2C1 to be 115 acres 3 roods, almost four acres larger than the area stated in the Court's partition order of 1917 and, consequently, the Memorandum of Transfer. In order to resolve the problem created by this discrepancy, the Registrar of the Waikato-Maniapoto Native Land Court explained to the District Land Registrar 'that it was intended that the whole of the land in Te Horete No. 2C 1 Block should be transferred'. He continued by stating that the additional purchase money of £4 10s 1d had been paid, 'so that the area in the above mentioned Transfer is confirmed accordingly as 115 acres 3 roods'.¹⁰⁵ A certificate of title for Te Horete 2C1 was issued on 20 June 1934, and on the same day, the details of the transfer were entered.¹⁰⁶

2.11 Evaluation of the Waikato-Maniapoto Maori Land Board

While the process by which Land Boards granted confirmation appears to have contained important safeguards, it has been identified that in practice 'the safeguards often did not apply or were poorly applied.'¹⁰⁷ The difficulty faced by the Land Boards in carrying out their administrative duties, and therefore meeting their statutory obligations, has been described by several authors, whose views are summarised by Alan Ward:

Dr [Donald] Loveridge doubts that the checks required before the confirmation by land [boards] . . . could have been adequate in view of the sheer number of transactions passing through them . . . [John] Hutton, who studied the Waikato-Maniapoto board in some depth, considers that the 1909 Act created a huge work load of work for the boards which were given few additional resources . . . With a steady schedule of meetings, and upwards of thirty applications at each meeting, 'it is difficult to see how the board could have properly

¹⁰⁰ Buchanan and Purnell, to Registrar, W-M NLC, 20 October 1919, BCAC A110/10409/box 150, NA Auckland

¹⁰¹ Transfer 263749, LINZ, Hamilton

¹⁰² Caveat 5921, LINZ, Hamilton

¹⁰³ ML 15510, LINZ, Hamilton

¹⁰⁴ Chief Surveyor, Auckland, to the Registrar, W-M NLC, 13 June 1934, BOF Te Horete 1 & 2, W-M MLC, Hamilton

¹⁰⁵ Registrar, W-M NLC, to District Land Registrar, Auckland, 18 June 1934, attached to Transfer 263749, LINZ, Hamilton

¹⁰⁶ CT 650/208, LINZ, Hamilton

¹⁰⁷ Bennion, *Maori Land Court and Land Boards*, p 28

gauged whether or not the sale was “contrary to equity or good faith or to the interest of Natives alienating”.¹⁰⁸

In granting confirmation of the alienations of Te Horete 2A, Te Horete 2B, and Te Horete 2C1 the Waikato-Maniapoto Maori Land Board did successfully meet many of its statutory obligations. In each case, the instrument of alienation was seen to be correctly executed. Also, the Board ensured that the purchase price was not below government valuation, and that the purchase money was received by the owners.

However, the Board failed to examine whether the alienations were ‘contrary to equity or good faith or to the interests of the Natives alienating’.¹⁰⁹ In relation to landlessness, the Board’s enquiries were especially unsatisfactory. The Board enquired into the situation of only one of the owners, Rete Watene, who was to be made landless by the sale of Te Horete 2C1. This enquiry was less than thorough, the Board being satisfied of Watene’s future economic security on the basis of a declaration signed by an individual claiming to be an acquaintance of Watene. No attempt was made to verify the contents of this declaration, which was prepared and sent to the Board by the lawyer of the purchaser. The Board made no enquiries into the circumstances of owners who had only small holdings in other blocks of land. Rete Hemi, for example, one of the owners of Te Horete 2C1, held in four other blocks a total of just 10 acres 36 perches. Three of the young owners of Te Horete 2B had interests in eight other blocks, amounting to less than 40 acres.

Block	Name of Owner	Number of Interests in Other Blocks	Total Area of Land Held in Other Blocks
Te Horete 2A	Papu Pepene	6	39a 0r 39.35p
	Puti Pepene	6	39a 0r 39.35p
Te Horete 2B	Te Hira More	6	249a 3r 08p
	Iwa Ranapiri	8	45a 2r 04p
	Hera Ranapiri	8	37a 0r 03p
	Pare Ranapiri	8	37a 0r 03p
	Nana Ranapiri	8	37a 0r 03p
Te Horete 2C1	Mei Ngamokamoka Pepene	1	84a 2r 36p
	Miria Parata	4	138a 2r 11p
	Pirimona Watene	1	47a 1r 30p
	Rete Hemi	4	10a 0r 36p
	Rete Watene	0	0a 0r 00p
	Mei Moka	1	84a 2r 36p

Table 5: Other Lands Owned by Owners of Te Horete 2A, Te Horete 2B, and Te Horete 2C1

It seems that the Waikato-Maniapoto Maori Land Board was content to assume that the interests of the alienating owners of Te Horete 2A, Te Horete 2B, and Te Horete 2C1, could not provide them with sufficient support, a circumstance which under section 91 of the Native Land Amendment Act 1913 made allowable the sale of land belonging to Maori with little or no land. To a large extent, it is correct that very little income could have been generated from each owner’s interest. This was the consequence of a system which ensured that Maori land inevitably was held in uneconomic shares. As a result of

¹⁰⁸ Alan Ward, *National Overview: Volume II*, Waitangi Tribunal Rangahaua Whanui Series, 1997, p 392; Ward quotes from Hutton, p 23

¹⁰⁹ Section 220(b), Native Land Act 1909

succession orders, the number of individuals with an interest in Te Horete 2 rose exponentially. If the block had remained in communal ownership, which was the wish of the owners in 1873, it is possible that farming the land may have been a viable economic proposition. However, the individualisation of title in 1898, combined with the removal of alienation restrictions in 1909, determined that Te Horete 2, following a common pattern, was partitioned and sold.

3. Taking of Land from Te Horete 2C2 for a Road

3.1 Background

In June 1934, George Henry Albert Cribb met with the Minister of Public Works, J Bitchener, in Thames.¹ Cribb was the Puriri riding member of the Thames County Council, and son of recently deceased George Cribb, who had purchased Te Horete 2B and Te Horete 2C1. He explained to the Minister that the only access to the land was a paper road. Cribb claimed that, since his father had become possessed of the land, 'a considerable amount of money' had been spent improving it, 'as well as 11 years rates'.² He requested of the Minister that the Public Works Department subsidise a sledge track sufficient for his purpose of farming the land. He asserted that if this could be done he would spend £80 during the next season on wages, and would refund the expenditure on the sledge track 'twofold' in the event of his selling the land within 10 years. Detailing Cribb's request to the Under-secretary of Public Works, the Minister described him to be 'a genuine farmer not a speculator'. Continuing, the Minister expressed that he would 'like to help', but could only do so if the road was legalised:

I thought the Chairman of the Thames County Council should consult with his engineer and get the road legalised. If this was done, I would see if access could be given him though it could not be a very elaborate one. As the length of the road in question was only a short one, I suggested that the County Council should put the matter up later when the road had been legalised and I would then give it consideration.³

The access was examined by the assistant engineer at Paeroa, who informed the district engineer in July 1934 that the most suitable access would be provided by an extension of the paper road, which was legalised to within 15 chains of Cribb's property.⁴ Following the assistant engineer's assessment, legalisation plans were completed and approved, and legal formalities left in the hands of the county solicitor.⁵ The plans showed that to extend the road to Cribb's property it would be necessary to take land from four blocks, including a small area of about 2¼ roods from Te Horete 2C2.

In March 1937, reporting to the Permanent Head of the Public Works Department, the district engineer stated that it 'was not possible to deal with the taking of these lands under the Land Act as it would have been almost impossible to obtain all the signatures of the native owners'. He explained that the Thames County Council intended to take the land from Te Horete 2C2 under Part 4 of the Public Works Act 1928.⁶ However, Part 4 of the Act concerned the taking of Maori customary land, and as Te Horete 2C2

¹ J Bitchener, Minister of Public Works, to Under-secretary, Department of Public Works, 20 June 1934, AATE A948/1616, NA Auckland

² Ibid

³ Ibid

⁴ Assistant Engineer, Paeroa, to District Engineer, Auckland, 5 July 1934, AATE A948/1616, NA Auckland

⁵ Assistant Engineer, Paeroa, to District Engineer, Auckland, 25 July 1934, AATE A948/1616, NA Auckland

⁶ District Engineer, Auckland, to the Permanent Head, Department of Public Works, 22 March 1937, AAQU W3424 34/3613, NA Wellington

was Maori freehold land, the appropriate procedure for the taking of the required land was under section 2 of the 1928 Act, which dealt with general takings. Accordingly, the Under-secretary of the Public Works Department informed Miller, Poulgrain, and Garland, solicitors acting for the Thames County Council, that:

As this land is owned by Natives under title derived from the Crown, the correct procedure under which it should be taken is Part II of the Public Works Act, ie. the procedure set out under Sections 22 and 23 of the Public Works Act should be followed.

You will note, therefore, that the procedure to take this land which is owned by Natives is exactly the same as the procedure under which the European land had to be taken.⁷

3.2 Taking of Land Under Part 2 of the Public Works Act 1928

Following the instructions of the Under-secretary of the Public Works Department, the County solicitors proceeded to secure the required area of Te Horete 2C2 under Part 2 of the Public Works Act 1928.⁸ While Crown-granted Maori land came under the general provisions of Part 2 of the Public Works Act 1928, certain differences existed, including the procedure for giving notice. In cases where the land was not registered under the Land Transfer Act, such as that of Te Horete 2C2, it was not necessary to follow the provisions of section 22 of the Public Works Act 1928. This required that a notice and description of the taking be served on owners and occupiers, and that their names be shown on the plan of the taking.⁹ For land such as Te Horete 2C2, however, it was necessary only to publish a notice in the *New Zealand Gazette*.¹⁰ The notice prepared by the County solicitors stated the location and area of the land to be taken and invited 'well-grounded' objections to be set forth in writing and delivered to the Clerk of the Thames County Council. In May 1937, the notice appeared in the *New Zealand Gazette*, and also twice in a local newspaper.¹¹ The County Solicitors had enquired of the Permanent Head whether an accompanying Maori translation of the notice was required, but were advised that it was not necessary.¹²

On 12 August 1937, Henry Lowe, Chairman of the Thames County Council, made a declaration authorising the taking of land under section 23 of the Public Works Act 1928.¹³ An attached schedule detailed the areas of land that were to be taken from the four blocks, the total of which amounted to 1 acre 3 roods 4.3 perches. An area of 2 roods 8.7 perches was required from Te Horete 2C2.¹⁴ On 1 October 1937, Robert

⁷ Under-secretary, Department of Public Works, to Miller, Poulgrain and Garland, 1 April 1937, AAQU W3424 34/3613, NA Wellington

⁸ Miller, Poulgrain and Garland, Thames, to Permanent Head, Department of Public Works, 9 April 1937, AAQU W3424 34/3613, NA Wellington

⁹ Section 22, Public Works Act 1928

¹⁰ Section 47, Finance Act 1931 (no 2)

¹¹ Thames County Council notice of intention to take land, 24 May 1937, *New Zealand Gazette*, 1937, no 40, p 1402; Miller, Poulgrain and Garland, to Permanent Head, Department of Public Works, 11 May 1937, AAQU W3424 34/3613, NA Wellington

¹² Miller, Poulgrain and Garland, to Permanent Head, Department of Public Works, 11 May 1937, AAQU W3424 34/3613, NA Wellington; Under-secretary, Department of Public Works, to Miller, Poulgrain and Garland, 19 May 1937, AAQU W3424 34/3613, NA Wellington

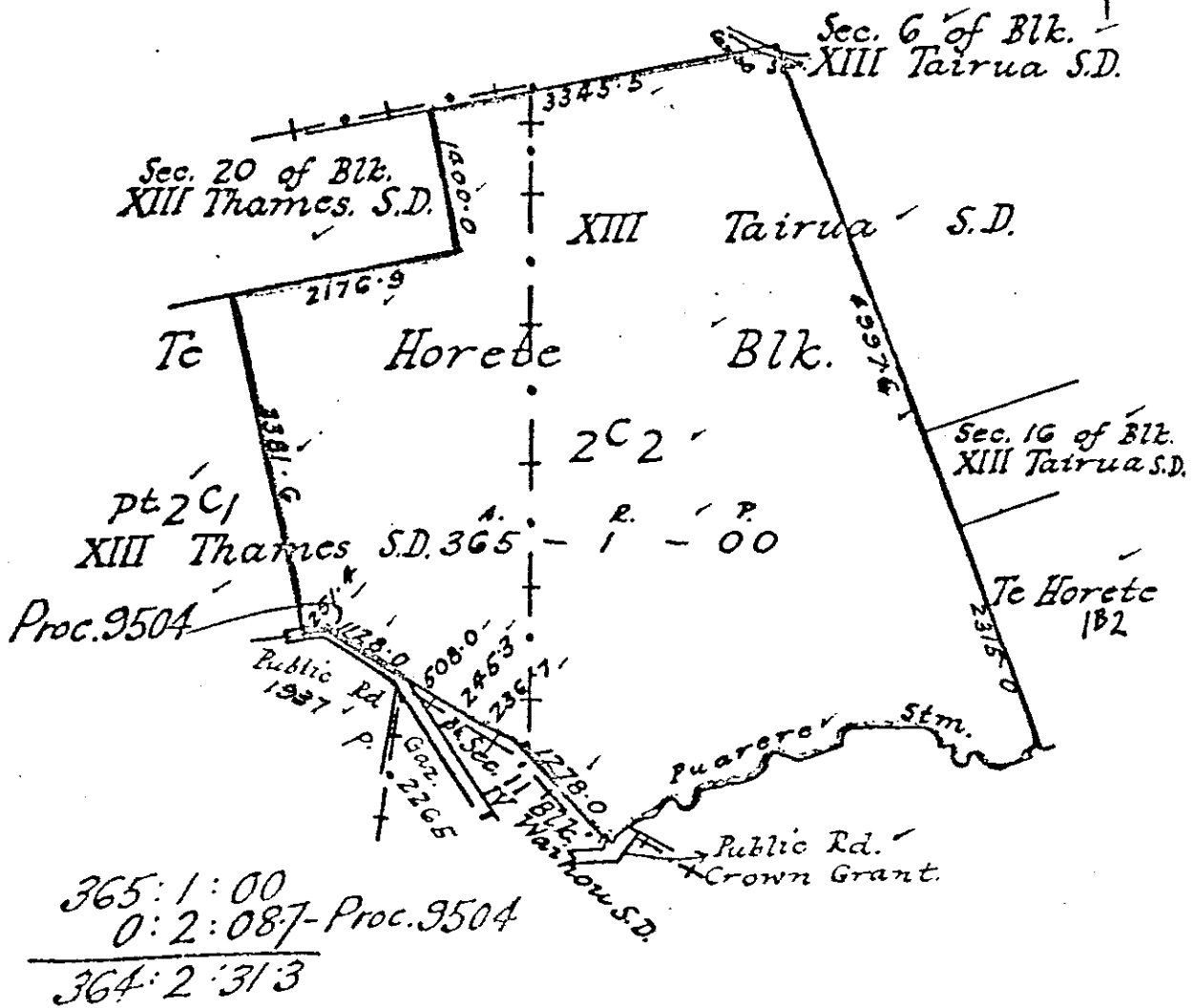
¹³ Declaration of Henry Lowe, 12 August 1937, AAQU W3424 34/3613, NA Wellington

¹⁴ Memorial of Thames County Council, 12 August 1937, AAQU W3424 34/3613, NA Wellington

Map 4: Te Horete 2C2
showing area taken for road

South Auckland Land District

XIII Thames & XIII Tairua S.D.s



Semple, Minister of Public Works, signed a proclamation declaring that all of this land was 'hereby taken for the purposes of a road'.¹⁵ The proclamation appeared in the *New Zealand Gazette*, and the *Thames Courier*.¹⁶ It was entered on the certificate of title of Te Horete 2 block on 15 November 1937.¹⁷

3.3 Failure to Provide Compensation

Under section 42 of the Public Works Act 1928, all persons with an interest in land taken under the Act for public works were entitled to full compensation.¹⁸ Where Maori land was taken, compensation was to be ascertained by the Native Land Court.¹⁹ In cases such as that of Te Horete 2C2, where Maori land had been taken by a local authority, the local authority was required to make an application to the Court within six months of proclamation in order to determine the compensation that was to be paid, and those who were entitled to receive it.²⁰ Every sitting of the Court for compensation matters was to be notified in both the *New Zealand Gazette* and *Kahiti*, although failure to do so could not stop any hearing applied for.²¹

Section 24 of the Public Works Act 1928 stated that a taking proclamation for local body work was not to be issued until the Governor-General was satisfied that sufficient provision for the payment of likely compensation had been made by the local body.²² However, there is no evidence to suggest that the owners of Te Horete 2C2 received any compensation for the 2 roods 8.7 perches which was taken for the purpose of the road. By the end of 1939, some 2½ years after the proclamation, no notice had appeared in the *New Zealand Gazette* advising that compensation was to be determined at a sitting of the Court. An examination of the Hauraki Native Land Court minute books confirms that the Court did not hear an application to determine compensation for the taking from Te Horete 2C2.²³

Cathy Marr considers that the provisions which required the taking authority to make the application for compensation when Maori land was taken 'clearly worked against the interest of Maori owners.' She explains that:

The main reason for this was that the requirement clearly set up a conflict of interest for taking authorities. They were interested in saving money and once land was available for use, their main concern became the construction of the work. There was very little incentive for them to initiate proceedings that required going back to all the paperwork involved in compensation. In fact there were obvious disincentives because compensation was likely to cost money, not to mention all the time and paperwork involved. It is not surprising that taking authorities were in no hurry to initiate

¹⁵ Proclamation, 1 October 1937, AAQU W3424 34/3613, NA Wellington

¹⁶ Proclamation: Land taken for the purpose of a road in Block XIII, Thames Survey District, and Block IV, Waihou Survey District, Thames County, 1 October 1937, *New Zealand Gazette*, 1937, no 67, p 2265; 'Proclamation', *Thames Courier*, 28 October 1937, AAQU W3424 34/3613, NA Wellington

¹⁷ CT 9/112, LINZ, Hamilton

¹⁸ Section 42, Public Works Act 1928

¹⁹ Section 104, Public Works Act 1928

²⁰ *Ibid*

²¹ *Ibid*

²² Section 24, Public Works Act 1928

²³ Hauraki Native Land Court minute books 71-72, 10 August 1937 - 24 June 1948

compensation and routinely comment that compensation procedures were 'overlooked' at the time.²⁴

The amount of compensation to which the owners of Te Horete 2C2 were entitled is unlikely to have been great. In 1952, the capital value of Te Horete 2C2 was stated to be £960, or approximately £2 10s an acre.²⁵ Assuming that the value of the property had remained constant between 1937 and 1952, this valuation suggests that the value of the area taken for the road would have been worth about £1 8s. Divided between the numerous owners of the block, numbering at least 30 in the mid 1930s, the compensation to which each owner would have been entitled was negligible. These calculations do not take into consideration the fact that, under section 28 of the Finance Act 1936 (no 2), a deduction in compensation was required in cases where work improved the land or increased its value. It is very probable that the Native Land Court would have assessed the value of Te Horete 2C2 to have been increased by the works, and therefore the Court would have ordered that no compensation was payable. The road extension provided legal access to the land which hitherto appeared to exist only in the form of a paper road. However, regardless of whether compensation was likely to have been paid or not, the Thames County Council had a statutory obligation to make an application to the Court to have the matter independently determined.

²⁴ Cathy Marr, *Public Works Takings of Maori Land: 1840-1981*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), May 1997, p 217

²⁵ Certificate of Valuation, BACS A449/187g, NA Auckland

4. Private Sale of Te Horete 2C2 Following a Meeting of Assembled Owners

4.1 Appointment of a Receiver

In July 1935, the Thames County Council made an application under section 108 of the Rating Act 1925 for a charging order for rates owing on Te Horete 2C2.¹ On 6 September 1935, the Native Land Court issued a charging order for rates, declaring a sum of £12 12s 8d to be owed for the period 1 April 1933 to 31 March 1935.² At this time, as detailed in the previous chapter, the only access to Te Horete 2 was an unformed paper road.

In November 1940, the Court heard applications made by the Native Minister for the appointment of a receiver to several blocks of land, including Te Horete 2C2, 'to protect both Crown charges for survey & County charges for rates'.³ Under section 497 of the Native Land Act 1931, the Court appointed the Clerk of the Thames County Council, Daniel Mackay, receiver to collect charges owing for the survey of Te Horete 2C2.⁴ Survey charges owing on Te Horete 2C2 were detailed to be £71 4s, including £35 11s 6d interest.⁵ These charges presumably related to the survey of the subdivisions of Te Horete 2 block, which was carried out in January 1918. The caveat lodged over the subdivisions remained in place for Te Horete 2C2 in 1939. It is unclear whether the charges also related to the survey of Te Horete 2C1 and Te Horete 2C2 which was completed in June 1934. Neither of these surveys were initiated by the owners of Te Horete 2C2.

In his capacity as receiver, Mackay was also to recover unpaid rates, although this was not stated in the order issued under section 497 of the 1931 Act which expressly dealt with the recovery of survey charges. The amount of money which Mackay was appointed to collect in order to recover unpaid rates is unclear. In April 1940, however, the Thames County Council made another application for a rate charging order on Te Horete 2C2.⁶ Enclosed with the application was a statement of rates addressed to Hori Parata and Pirimona Watene of Kopu. On 14 June, the Court issued a charging order declaring that rates for the period 1 April 1938 to 31 March 1944, amounting to £15 11s 6d, were 'due and payable'.⁷

In order to recover money in his capacity as receiver, Mackay organised to have a contractor take timber off Te Horete 2C2 at a negotiated price. He was advised by the Registrar of the Court that:

¹ Application for Charging Order for Rates, 2 July 1935, BACS A622/21a, NA Auckland

² Charging Order for Rates, 6 September 1935, BOF Te Horete 1 & 2, W-M MLC, Hamilton

³ Hauraki Native Land Court minute book 71, 20 November 1939, fol 138

⁴ Hauraki Native Land Court minute book 73, 21 September 1948, fol 37

⁵ Order Appointing Receiver, 20 November 1939, BOF Te Horete 1 & 2, W-M MLC, Hamilton

⁶ Application for Charging Order for Rates, 22 April 1940, BACS A622/21a, NA Auckland

⁷ Charging Order for Rates, 14 June 1940, BOF Te Horete 1 & 2, W-M MLC, Hamilton

You are entitled as Receiver appointed by the Court to grant a License to remove timber with the leave of the Court.

The experience here is that the most satisfactory way to dispose of timber is by way of a lump sum after the timber has been appraised by some person qualified to do so.

The Court is prepared to grant leave to dispose of the timber on being satisfied as to the price to be obtained and the ability of the licensee to pay for the timber.⁸

The land was duly visited by a field inspector, who reported to the Commissioner of Crown Lands on how a contract for the removal of timber would be best arranged:

I have discussed this matter with the County Clerk, Mr Mackay, and he states that one contractor, who is a reliable man has made an estimate of the timber on the property. The estimate is as follows: 56,000 ft of fallen timber which has been left by a previous contractor, and 40,000 ft standing timber. Most of the timber is rimu but I understand the contractor may also take tawa for milling. From this it will be seen that it would be difficult and a fairly lengthy job to appraise the whole of the millable timber on the Block.

The royalty offered by this contractor is 3/0d per 100 feet for the fallen timber. These prices are satisfactory and if the fallen timber is left much longer it will have no value and will become waste.

After leaving the County Clerk, then fairly late in the afternoon, I visited the property and I came to the conclusion it was almost impossible for me to even make a guess at the quantity of fallen and standing timber. The fallen timber has been worked into the streams and some is lying all over the property.

I also discussed the matter with Mr D Courtney, Chairman of the Thames County Council, who also lives in the locality, and he expressed his willingness to tally the timber on the skids each week. I consider this is the best procedure to adopt.

I would therefore recommend that the matter be left in the hands of Mr Mackay to accept the royalty on the contractor's estimate (£124.0.0) that the timber be tallied on the skids each week and should the amount of timber be underestimated or exceeded the matter should be adjusted on or before the contract is completed.⁹

The chief surveyor informed the Registrar of the Court that he concurred with the field inspector's recommendation.¹⁰ Mackay was then advised by the Registrar that the Chief Judge was prepared to grant him leave as receiver to dispose of the timber, providing that he did so 'on the basis' of the field inspector's report.¹¹

In July 1947, the Registrar received a letter from the chief surveyor detailing that Mackay had paid all of the principal of the survey charges, £35 12s 6d, and £5 13s of the interest which was owed. He explained that the balance of the interest owing was £45 12s 9d, and that he considered this interest 'should in all fairness be remitted'.¹² The chief surveyor requested that a formal application be lodged under section 503 of the Native Land Act 1931 for the remission of the interest. The Court heard the

⁸ Registrar, W-M NLC, to Clerk, Thames County Council, 4 July 1940, BCAC A110/10409/box 150, NA Auckland

⁹ Ripley, to Commissioner of Crown Lands, 19 July 1940, BCAC A110/10409/box 150, NA Auckland

¹⁰ Chief Surveyor to Registrar, W-M NLC, 23 July 1940, BCAC A110/10409/box 150, NA Auckland

¹¹ Registrar, W-M NLC, to Clerk, Thames County Council, 24 July 1940, BCAC A110/10409/box 150, NA Auckland

¹² Chief Surveyor, Auckland, to Registrar, W-M NLC, 22 July 1947, BCAC A110/10409/box 150, NA Auckland

application in September, and officially recommended that the interest owing be remitted.¹³

The chief surveyor applied to the Court in April 1948 to request Mackay's discharge as receiver of Te Horete 2C2.¹⁴ The Court heard this application on 21 September. It was explained that Mackay had paid the chief surveyor £41 5s 6d for survey charges, and the Thames County Council £62 17s 2d for rate charges.¹⁵ The amount received by the Surveyor General was the principal of the survey charges and part of the interest, all of which had been paid prior to the lodging of the application for the remission of the balance of the interest. This suggests that, between September 1947 and April 1948, the Surveyor General had unsuccessfully sought the payment of the remaining interest. It is unclear what proportion of rates owing were covered by the £62 17s 2d paid to the Council. The Court's order discharging Mackay from his receivership stated that £15 1s 5d, 'held by him in hand, be paid him to cover his fee while acting in his capacity as receiver'.¹⁶

The total of the money paid out by the receiver, and the money kept as his fee, was £119 4s 1d. The estimated royalty for the timber that was to be taken from Te Horete 2C2 was £124. It seems clear that this was the main source of the receiver's revenue, especially given that when an inspection of the land was carried out in 1952 there was little millable timber left on the property. Presumably, the contractor organised by Mackay had been responsible for the removal of this timber.

4.2 Order Under Section 34 of the Maori Purposes Act 1950

In July 1951, three years after the discharge of the receiver, an application was made by the Thames County Council for a charging order for rates owing on Te Horete 2C2.¹⁷ Statements enclosed with the application showed that the unpaid rates, dating from the 1949/1950 financial year, amounted to £16 1s 6d.¹⁸ When the Court heard the application on 10 September, it was explained that there was no nominated occupier of the land, and that the roll of owners was not in order.¹⁹ A rate charging order was not issued by the Court. However, on 20 September, an application 'to execute an instrument of alienation of Te Horete 2C2 Block' was made by Mr Purnell, solicitor for the Thames County Council.²⁰ This application was made under section 34 of the Maori Purposes Act 1950, by which the Maori Land Court had statutory authority to appoint the Maori Trustee as agent for owners to effect an alienation in cases where it was satisfied:

¹³ Hauraki Native Land Court minute book 72, 11 September 1947, fol 318; Order Recommending Remission of Interest, 11 September 1947, BOF Te Horete 1 & 2, W-M MLC, Hamilton

¹⁴ Application for Discharge of Receiver, 14 April 1948, BACS A622/21a, NA Auckland

¹⁵ Hauraki Native Land Court minute book 73, 21 September 1948, fol 37

¹⁶ Order Discharging Receiver, 21 September 1948, BOF Te Horete 1 & 2, W-M MLC, Hamilton

¹⁷ Application for Charging Order for Rates, 19 July 1951, BACS A622/21a, NA Auckland

¹⁸ Statement of Rates for Puriri Riding of the Thames County Council; Statement of Rates for Hauraki Catchment Board; attached to Application for Charging Order for Rates, 19 July 1951, BACS A622/21a, NA Auckland

¹⁹ Hauraki Native Land Court minute book 73, 10 September 1951, fol 330

²⁰ Application to Execute an Instrument of Alienation, 20 September 1951, BACS A622/21a, NA Auckland

- (a) That the land is unoccupied; or
- (b) That the land is not kept properly cleared of weeds which are noxious weeds within the meaning of the Noxious Weeds Act, 1950; or
- (c) That any rates payable in respect of the land, or any moneys recoverable in the same manner as rates are recoverable, have not been paid, and that the amount of the said rates or moneys has been charged upon the land; or
- (d) That the owners of the land have neglected to farm or manage the land diligently and that the land is not being used to its best advantage in the interests of the owners and in the public interest; or
- (e) That any beneficial owner cannot be found . . .²¹

Purnell's application on behalf of the Thames County Council was made upon the following grounds:

- (a) That the land is unoccupied.
- (b) That the land is not properly cleared of weeds which are noxious within the meaning of "The Noxious Weeds Act 1950".²²

The Court heard the application on 11 December, at a sitting held at Thames before Judge Beechey.²³ Purnell called a witness in support of the Council, Edgar George Clark, Deputy Chairman of the Council and a farmer at Totara. Clark claimed to have been familiar with the land for 40 years. He described the front part of the block, between 70 and 80 acres, to be covered in blackberry, bracken, fern, and ponga. The back part, he told the Court, was in 'mixed bush', but only secondary timber as the 'best' timber had been milled. Clark identified the noxious weeds on the property to be blackberry and ragwort, although the ragwort was said to be 'not bad yet or at least doesn't show'. Clark told the Court that, except for the taking of timber, nothing had been done with the land. It was unfenced and no one lived on it. However, Clark claimed that 'well over half is reasonably easy workable country'. He asserted that the land 'should be farmed', and told the Court that adjacent land was 'growing first class pasture'.²⁴

Purnell informed the Court that the owners of Te Horete 2C2 were 'scattered'. A search, he said, showed that there were over 60 owners. Purnell claimed to have spoken to one of the them, Tauranga Matiu, who had had no objection to the application. Purnell suggested that the land should be leased for a term of 21 years, with compensation for improvement.²⁵

It was decided that the Court, subject to a report by the field supervisor, would make an order under section 34 of the Maori Purposes Act 1950, appointing the Maori Trustee to execute an instrument of alienation on behalf of the owners of Te Horete 2C2.²⁶ After receiving the report of the field supervisor, which supported the application, the order was made final.²⁷ The execution of an instrument of alienation occurs both when land is

²¹ Section 34(1), Maori Purposes Act 1950

²² Application to Execute an Instrument of Alienation, 20 September 1951, BACS A622/21a, NA Auckland

²³ Hauraki Native Land Court minute book 73, 11 December 1951, fols 384-385

²⁴ Ibid

²⁵ Ibid, fol 385

²⁶ Ibid

²⁷ Ibid

sold and when land is leased. The Court's order does not specify whether Te Horete 2C2 was to be leased or sold, but it was clearly the suggestion of the applicant that the land be vested in the Maori Trustee for leasing.

4.3 Meeting of Assembled Owners

On 6 February 1952, an application was made under Part 18 of the Maori Land Act 1931 to summon a meeting of owners of Te Horete 2C2. The application was made by Henry Robertson Kennedy, one of the block's owners. There is no evidence to suggest that Kennedy was aware that an order had been passed under section 34 of the 1950 Act. The proposed resolution of the meeting was stated to be:

That the said land be sold to Carthy Casson McLoughlin of Kopu for the sum of one pound (£1) per acre or Government Valuation, whichever is the greater.²⁸

A government valuation of Te Horete 2C2 gave its capital value to be £960.²⁹ The unimproved value of the land was stated to be £880. The district officer of the Valuation Department reported to the Registrar of the Waikato-Maniapoto Maori Land Board, describing the land and its potential to be farmed:

This valuation concerns a block of land situated approximately 1¾ miles east of Puriri, but rather difficult to access in that the legal road is formed via Omahu making the property rather remote. However, if access could be gained from the Puriri Valley road, it would facilitate development of all the good country which is in the front of the block.

This is quite an attractive block of land, fairly well watered and it could be developed to make a good farming unit capable of carrying 50/60 cows and about 300 ewes.

All the workable country is on the western boundary and could be readily brought in by machinery.

As previously mentioned the main drawback is the roundabout legal and formal access which is a detriment to dairying.³⁰

The meeting of assembled owners was scheduled to be held at the Magistrate's Court in Thames on 15 July. It is unclear to what lengths the Waikato-Maniapoto Maori Land Board went to ensure that all the owners of Te Horete 2C2 were informed of the meeting, and encouraged to attend. In the alienation file of Te Horete 2C2, there is a copy of a notice stating the date of the meeting and the proposed resolution.³¹ It seems that some effort was made to send the notice to owners whose addresses were known. The notices were posted on 30 June 1952, about two weeks before the meeting was due to be held.³² One owner, Matthew Rapana Stewart, returned the notice sent to him and requested to have its contents explained to him.³³ It appears that Stewart did not understand the contents of the notice because it had been written in Maori. It is unclear how many of the owners of Te Horete 2C2 were sent or received notices. Section 416

²⁸ Application to Summon Meeting of Owners, BACS A449/187g, NA Auckland

²⁹ Certificate of Valuation, BACS A449/187g, NA Auckland

³⁰ District Officer, Valuation Department, to Registrar, W-M MLB, 12 February 1952, BACS A449/187g, NA Auckland

³¹ Notice of Meeting, BACS A449/187g, NA Auckland

³² Cover-sheet of W-M MLB file WM 17230, BACS A449/187g, NA Auckland

³³ Registrar, W-M MLB, to Matthew Rapana Stewart, 8 July 1952, BACS A449/187g, NA Auckland

of the 1931 Act provided that the failure of an owner to receive notice could not invalidate the resolution passed at the meeting to which the notice related.³⁴

When the meeting was held on 15 July, six owners were present and another five were represented by proxy.³⁵ This is detailed in the following table:

Owners Present	Owners Represented by Proxy
Hoani Te Moananui II	Wairete Ethel Wilton
Peta Tawhira Te Moananui	John Francis Stewart
Mate Te Teira	Meeke Te Moananui
Walter Taipari	Tu Tawhiao (trustee of
Henry Robertson Kennedy	Pangiterewai Tu Tawhiao)
Tauranga Matiu	Atawhai Tu Tawhiao

Table 6: Owners Present and Owners Represented by Proxy
at Meeting of Owners of Te Horete 2C2, 15 July 1952

The shares of the 11 owners who were either present or represented by proxy were calculated to amount to just under 1½ shares out of a total holding of 10¼ shares.³⁶ Under section 417 of the 1931 Act, a quorum was constituted of five owners, either present or represented.³⁷

RE Peplow, the Board's representative at the meeting, was appointed by 'unanimous decision' to be chairman. The proposed resolution was read, and the assembled owners were told that the land was vested for leasing in the Maori Trustee to recover rates and to inhibit the further growth of noxious weeds. During discussion it transpired that none of the owners who were present had visited the land. However, Mate Te Teira told the meeting that she thought there were some trees on it. The following resolution was moved by Henry Robertson Kennedy, seconded by Hoani Te Moananui, and unanimously carried:

That the Te Horete 2C2 block be sold to Carthy Casson McLoughlin of Kopu for £960 all merchantable timber to be excluded and sold to Mr McLoughlin separately at a price to be fixed by the Court.³⁸

This resolution of the assembled owners was confirmed by Judge Beechey at a sitting of the Maori Land Court in Thames on 14 August 1952.³⁹

Following the meeting, the Registrar requested the field supervisor to inspect the block and report on the value of any timber which might exist.⁴⁰ The field supervisor visited the land with CC McLoughlin, the purchaser, and reported that:

A large proportion of the area is light to medium bush and I am informed that the timber was worked many years ago. Apart from tawa and rata there appears to be little

³⁴ Section 416(3), Native Land Act 1931

³⁵ Minutes of Meeting, 15 July 1952, BACS A449/187g, NA Auckland

³⁶ Ibid

³⁷ Section 417(1), Native Land Act 1931

³⁸ Minutes of Meeting, 15 July 1952, BACS A449/187g, NA Auckland

³⁹ Confirmation of Resolution Passed by Assembled Owners, 14 August 1952, BACS A449/187g, NA Auckland [reel 2907]

⁴⁰ Registrar, W-M MLB, to Walker, 22 July 1952, BACS A449/187g, NA Auckland

or no millable timber though there are two large kauri trees somewhere near the eastern boundary which is all bush. In the absence of a defined boundary line it is impossible to say which block these trees are on, though from observation of features of the surrounding country, roads, creek etc., I consider the probability is that these trees are on the adjoining Te Horete 1B2 block which I understand is freehold property.

So far as firewood is concerned there is practically no titree but of course tawa and rata make good firewood and could be sold as such. The matter was discussed with Mr McLoughlin who states he is not in the least interested in cutting any of the timber for firewood as it would not be worth the trouble or expense. He is not prepared to pay a penny more than the amount agreed upon namely £960. It is my opinion that the £960 for this block of land is a reasonable price and I would recommend a sale to Mr McLoughlin at this figure.⁴¹

The field supervisor's report was accepted and it was deemed that there was 'no merchantable timber' on the land.⁴² There is no evidence to suggest that an attempt was made to confirm that the two kauri were located outside the legal boundaries of Te Horete 2C2. The apparent value of the tawa and rata, as firewood, was seemingly overlooked because of McLoughlin's disinterest in cutting and selling the timber for that purpose.

In October, the Registrar of the Waikato-Maniapoto Maori Land Court was advised that rates on Te Horete 2C2 had been paid.⁴³ On 14 October, RE Peploe, on behalf of the Registrar of the Waikato-Maniapoto Maori Land Board, corresponded with Clendon, Vollemaere, and Dodd, solicitors acting on behalf of CC McLoughlin.⁴⁴ He acknowledged that CC McLoughlin had paid the Board £970, being the purchase money and £10 for commission. The solicitors were requested to submit a memorandum of transfer.

Also in October, an application was made for the cancellation of the order issued under section 34 of the Maori Purposes Act 1950 vesting Te Horete 2C2 in the Maori Trustee.⁴⁵ The order was cancelled on 11 December, at a sitting of the Maori Land Court in Thames.⁴⁶

In December, the Registrar of the Waikato-Maniapoto Maori Land Court received a memorandum of transfer for execution by the Maori Trustee.⁴⁷ Despite the cancellation of the order under section 34 of the Maori Purposes Act 1950, the Maori Trustee retained an administrative role in the sale of Te Horete 2C2 to McLoughlin. The Trustee signed the transfer on 27 January 1953, and the alienation was then approved by the Maori Land Court.⁴⁸ On 27 March, a certificate of title for Te Horete 2C2 was issued, and the details of the transfer entered.⁴⁹ The Maori Trustee was responsible for the distribution of the proceeds of the sale, but there is no evidence to indicate the

⁴¹ Walker to Registrar, W-M MLB, 12 September 1952, BACS A449/187g, NA Auckland

⁴² Note on Walker to Registrar, W-M MLB, 12 September 1952, BACS A449/187g, NA Auckland

⁴³ Clerk, Thames County Council, to Registrar, W-M MLC, 3 October 1952, BACS A449/187g, NA Auckland

⁴⁴ Peploe to Clendon, Vollemaere, and Dodd, 14 October 1952, BACS A449/187g, NA Auckland

⁴⁵ Application for Cancellation of Order, 10 October 1952, BACS A449/187g, NA Auckland

⁴⁶ Cover-sheet of W-M MLB file WM 17230, BACS A449/187g, NA Auckland

⁴⁷ Clendon, Vollemaere, and Dodd to Registrar, W-M MLC, 23 December 1952, BACS A449/187g, NA Auckland

⁴⁸ Robertson, note of approval of alienation, 27 January 1953, BACS A449/187g, NA Auckland

⁴⁹ CT 1068/93, LINZ, Hamilton

extent to which he successfully paid the correct amount of money to all who were entitled to receive payment. The ledger of block accounts at the Office of the Maori Trustee in Hamilton records only that on 31 March 1953 a sum of £960 was withdrawn for 'Distribution'.⁵⁰

4.4 Discussion

Between 1917 and 1953, several charging orders for rates and survey costs were issued against Te Horete 2C2. Up until 1937, the owners of Te Horete 2C2 were expected to pay rates when the only access to the land was by way of an unformed paper road. At no time does the block appear to have been occupied or farmed, and it is difficult to recognise what services were provided by the Thames County Council to justify the rating of Te Horete 2C2. The survey expenses that were charged against the block related to surveys carried out in 1914 and 1917, when Te Horete 2 and Te Horete 2C were respectively partitioned. Neither of these partitions were the consequence of applications made by owners of Te Horete 2C2, yet they were required to share the costs of the associated surveys.

Costs relating to rates and surveys were borne by the owners of Te Horete 2C2 in the knowledge that it was unlikely that the land would ever be productively farmed. At the meeting of assembled owners, those present were reminded that the land was rated. This may have influenced the owners in their decision to support the motion put before the meeting by Henry Robertson Kennedy.

The unanimous decision of those who were present at the meeting fell well short of being a unanimous decision of all of the owners of Te Horete 2C2. As detailed above, the motion to sell the land to McLoughlin was passed with the support of owners who collectively held just 1½ shares out of a total of 10¼ shares. While this situation was not contrary to the legislative requirements relating to the constitution of a quorum, it seems improper that the land was sold by such a small proportion of the owners, especially given that the notification procedure meant it was likely that many of the 'scattered' owners of Te Horete 2C2 did not receive notice of the meeting.

⁵⁰ 'Waikato-Maniapoto Sundry Blocks: Te Horete 2C2', Ledger of Block Accounts, Office of the Maori Trustee, Hamilton

5. Tairua Reserves

5.1 Background

The history of the Tairua block, covering the title investigation, leasing of timber cutting rights, sale to the Crown, designation of the reserves, and the hearing of the Tairua Investigation Committee, has been explored by both David Alexander and John Neal.¹ In a more thorough examination of the Tairua Investigation Committee, Robyn Anderson has examined the evidence brought before the committee, and its findings.² A summary of the history of the Tairua block is given here in order to contextualise the alienation of the Tairua Reserves.

In January 1872, James Mackay informed the Minister of Public Works that he believed he could purchase the sizeable Tairua block on behalf of the Government. Mackay explained that the land, 'mostly of a hilly broken character unsuitable for settlement', was believed to be auriferous, gold having been discovered in two or three places.³ He related to the minister that Maori with an interest in the land had asked him to have it surveyed, and had also requested that an application be made to the Native Land Court to investigate the title.⁴

The investigation of the title of Tairua Block (36,000 acres) was heard in November 1872.⁵ Miriama Pehi Pukukauri claimed the land for herself and her children through ancestry and by conquest. Pehi's claim was countered by Hamiora Tu, and by Matene Te Raukura. Mackay contested Tu's claim, asserting that Tu had signed away his rights to the block in order to have his name included in the title to Whakahau Island. Neal argues that, as a land purchase agent, 'it was in Mackay's interest to avoid any hindrance to his program of rapid acquisition. Exclusion of Hamiora [Tu] would have been a benefit to Mackay if that Maori owner posed a threat or hindrance to the expedient purchase of Tairua Block.'⁶ The Court disallowed the counter claims, awarding Tairua Block to Miriama Pehi Pukukauri, Peneamine Tanui, Hori Kerei Tuokioki, Matene Pehi, and Marara Hanata.⁷

In December, the owners leased the timber cutting rights for 40 years to Richard Seccombe and John Carroll Seccombe, formalising an earlier agreement.⁸ Included in the lease was the sale of the timber on the block for £500. The day after the timber

¹ David Alexander, *The Hauraki Tribal Lands*, Volume 8, Part 2, Hauraki Maori Trust Board, Paeroa, 1997 (Wai 100 record of documents, doc A8), pp 89-94; John Neal, 'Tairua Block', report commissioned by the Waitangi Tribunal, July 1998 (Wai 694 record of documents, doc A10)

² Robyn Anderson, *The Crown, the Treaty, and the Hauraki Tribes, 1800-1885*, Hauraki Maori Trust Board, Paeroa, 1997 (Wai 686 record of documents, doc A8)

³ Mackay to Minister of Public Works, 24 January 1872, MA-MLP 1885/18, NA Wellington, cited in Alexander, *Hauraki Tribal Lands*, p 89

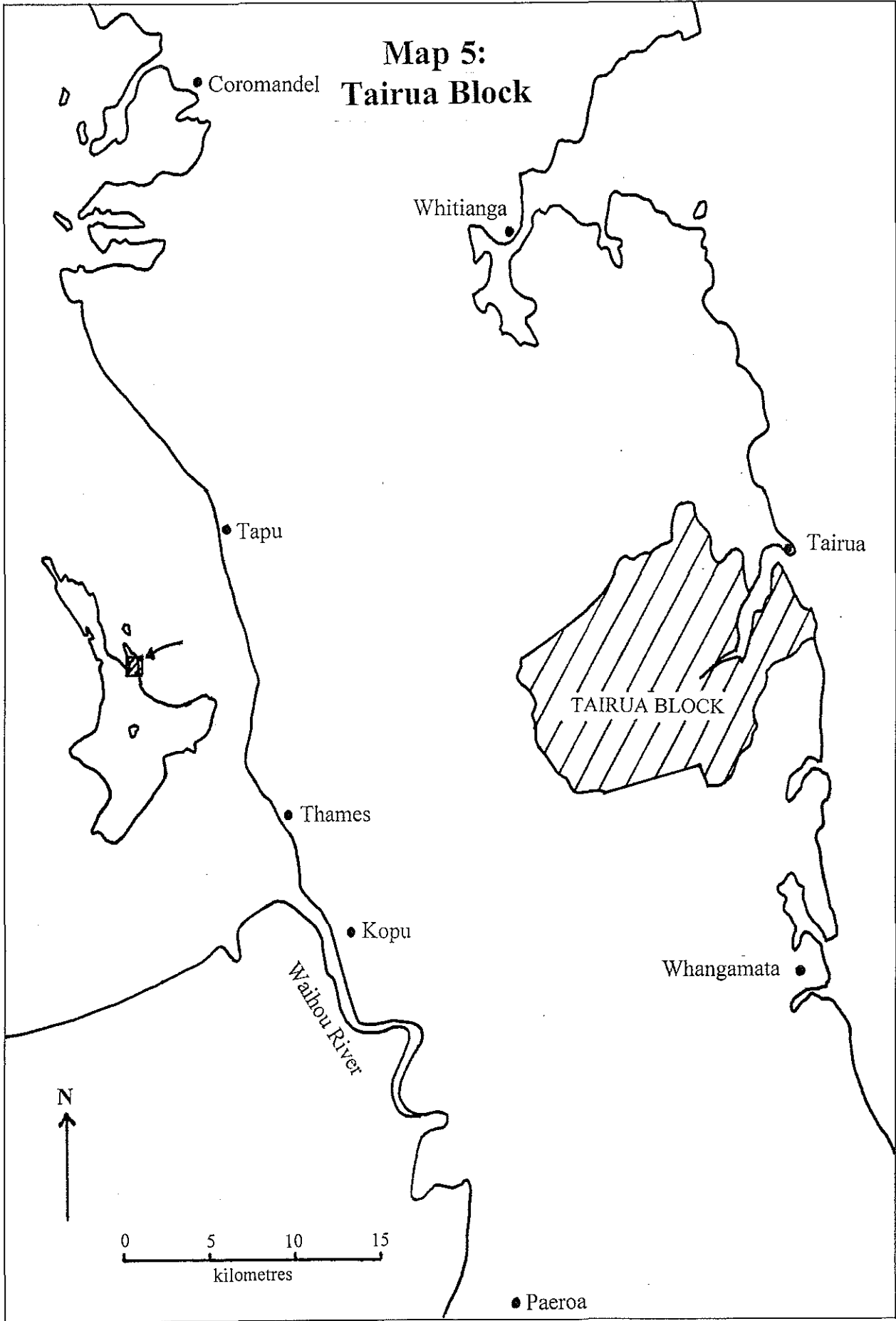
⁴ Ibid

⁵ Alexander, *Hauraki Tribal Lands*, p 89

⁶ Neal, p 3

⁷ Alexander, *Hauraki Tribal Lands*, p 90

⁸ Ibid



cutting rights were leased, the Crown purchased Tairua Block for £2900.⁹ During the final stages of negotiation, Mackay made an addition to the deed which provided for an area of reserve land:

It is hereby agreed that the Governor of New Zealand shall cause to be issued to Miriama Pehi Pukukauri, Penchamene Tanui, Hori Kerei Tuokioki, Matene Pehi and Marara Hauata a Crown Grant for one thousand (1000) acres of land conveyed to the Queen by the within written deed - such land to be selected within three months of the date hereof and to be taken in either one or two blocks at the option of the said Miriama Pehi Pukukauri, expense of survey to be borne by the Crown.¹⁰

In a letter to the Colonial Secretary, Mackay outlined the circumstances which led to the provision of the reserve land. He described that:

In December 1872 I commenced negotiations for the sale of the Tairua block to the Crown. After many discussions of the question a deed was prepared which contained no reservations except those of the rights of Seccombe and Son to kauri timber (which had been acquired in 1864). No mention had been made of a reserve as none had been asked for. The purchase money spoken of was three thousand pounds, but on the day the deed was presented for execution the grantees at the last moment demanded a reserve of two thousand acres or a payment of three thousand six hundred pounds, being one hundred pounds per thousand acres. I then agreed to pay two thousand nine hundred pounds and allow a reserve of one thousand acres which was to be selected within three months, and in not more than two blocks. . . . I did not deem it advisable to alter the conveyance or cumber it with a covenant to produce title deeds. I therefore asked the natives to convey the whole to the Crown on the understanding that a Grant would be issued to them for one thousand acres, and to satisfy them, endorsed the particulars of this arrangement on the back of the deed.¹¹

Within three months of the Crown's purchase of Tairua block, and in accordance with the agreement recorded on the deed, the former owners of the block applied to Mackay to have the reserve surveyed. However, no action was taken by Mackay, who was absent from the Thames district for more than twelve months.¹² In June 1874, when Tairua block was declared Waste Lands of the Crown, the 1000 acre reserve was not excluded from the declaration.¹³ However, it was referred to in a declaration made in April 1875, which defined the Hauraki gold mining district.¹⁴ Following this, in May, when ground near the desired area of the reserve began to be worked,¹⁵ Mackay was again requested by the former owners of Tairua block to have the reserve surveyed.¹⁶ Mackay instructed John Guilding, an interpreter employed by Mackay, to visit Tairua with a surveyor in order to attend to the laying off of the reserve.¹⁷ The reserve was laid off in two portions: 1000 acres at Pukiore and 10 acres at Te Kutakuta.¹⁸

⁹ Ibid, p 91

¹⁰ Auckland Deed 1790, LINZ National Office, Wellington

¹¹ Mackay to Colonial Secretary, 17 July 1875, AJHR, 1875, G-5B, p 2-4

¹² Ibid

¹³ Alexander, *Hauraki Tribal Lands*, p 91

¹⁴ Ibid

¹⁵ Anderson, *The Crown, the Treaty*, p 245

¹⁶ Mackay to Colonial Secretary, 17 July 1875, AJHR, 1875, G-5B, p 2-4

¹⁷ Ibid

¹⁸ Alexander, *Hauraki Tribal Lands*, p 94

In the course of establishing the boundaries, Guilding arranged to lease the Pukioire portion of the reserve land. He acquired the lease for himself and Gerald O'Halloran, a land purchase agent, who, like Guilding, was also employed by Mackay.¹⁹ Prior to leasing the reserve, Guilding had informed Mackay of the prospect: 'Have not got lease of Tairua Reserve, but natives have asked me to lease it. Do not see why I should not take it, as Jackson of Tairua will if I do not; besides which they owe me money.'²⁰ There is no evidence to explain how the owners of Tairua block had become indebted to Guilding.

Following the survey of the reserve land in May 1875, the Provincial Government discovered that the place where it had wished to position a township was located within the boundaries of the 1000 acre Pukioire reserve.²¹ The discovery prompted enquiries into the circumstances behind the establishment of the reserve. Sir George Grey, Provincial Superintendent, was vexed by the situation, especially when it became known that the land had been leased by two of Mackay's employees.²² Grey took out a writ against 'Mackay and others' in the Auckland Supreme Court on the grounds that Tairua block had been purchased without any reservation, or that the provision of any such reservation had lapsed because the location of the reserve had not been selected within the agreed time. Alternatively, if the reserve land had been selected, then Mackay was accused of having transferred it to the only site suitable for a township. In addition to the allegations against Mackay, Guilding and O'Halloran were accused of leasing the reserve while employed by the General Government.²³

The central issue for critics of Mackay and the existing land purchase process was the ill-defined relationship between the public and private capacities of those involved in purchase operations on behalf of the Crown.²⁴ Between August and October 1875, a committee established by the House of Representatives met to investigate the allegations relating to the reserve land within the Tairua block. Anderson explains that testimony brought before the Tairua Investigation Committee showed:

an uneasy blurring of public and personal interest in the activities of agents negotiating the purchase of lands from Maori who were led into the sale of large land blocks for relatively little immediate return and even less thought for their future. There was no active promotion of Maori long-term interests; reserves were made only if demanded, and individuals in semi-official positions took advantage of their relationship with Maori owners to acquire cheap leases for themselves.²⁵

The Committee did not find that Mackay had acted illegally. However, it strongly condemned the confusion caused by the situation whereby the Government was a client of independent land agents. The Committee recommended that, in the future, persons employed by the Government for the purchase of land should be subject to rules of the Civil Service.²⁶ This effectively brought about the end of the land purchase agent

¹⁹ Anderson, *The Crown, the Treaty*, p 245

²⁰ Guilding to Mackay, 25 June 1875, AJHR, 1875, I-1, p 63

²¹ Anderson, *The Crown, the Treaty*, p 243, 245

²² *Ibid*, p 245

²³ Alexander, *Hauraki Tribal Lands*, p 92

²⁴ Anderson, *The Crown, the Treaty*, p 243

²⁵ *Ibid*

²⁶ *Ibid*, p 246

system, with a new system being introduced whereby land purchasing was the responsibility of salaried officers of the Government.²⁷ Following the Committee's findings, Grey's writ against Mackay was withdrawn.²⁸

5.2 Location and Area of the Tairua Reserves

The agreement endorsed on the Tairua block purchase deed did not specify where the reserve land was to be located. Mackay claimed that, during the negotiations for the provision of the reserve land, there was some disagreement amongst the owners as to where the 1000 acres of reserve land should be located. He explained that:

The site of the larger portion of the reserve was fixed at Pukiore, at the head of navigation of the Tairua river, and the position of the remainder was not determined, some of the natives being in favour of taking it at Te Karaka burial ground, and others near the mouth of the river.²⁹

Under the terms of the agreement endorsed on the deed, the reserve was 'to be taken in either one or two blocks', at the option of Miriama Pehi Pukukauri.³⁰ In May 1875, when Mackay received a letter from Peneamine Tanui requesting that the 1000 acre reserve be surveyed, no details were provided as to the proposed location of the reserve land:

We . . . are desirous that our thousand acres at Tairua should be separated (laid off). It will be good for you to at once send a surveyor to exclude our piece from that of the Government, so that we may fix the site for the thousand acres. If you are willing send over John Guilding to assist me in laying off the thousand acres.³¹

In mid June, when Guilding wrote to Mackay advising him that the survey of the reserve land had been completed, he informed Mackay that 'the reserve was 1000 acres, less 10 acres formerly granted to a person named Patterson by the Natives.'³² In his letter to the Colonial Secretary in July 1875, Mackay explained that the reserve had been taken in two portions, 990 acres at Pukiore, and 10 acres at Te Kutakuta, near the mouth of the river.³³ However, the area of the reserve land at Pukiore appears to have been 1000 acres. This area is recorded on the plan of the survey, and also on the Crown grant which was issued in November 1879.³⁴

The agreement which Guilding had reported to Mackay, between the former owners of Tairua block and an individual named Patterson, is not referred to in other documents relating to the Tairua Reserve. It appears to have related to the 10 acres of land that had been surveyed at Te Kutakuta. This land, which was stated by Guilding to have been 'formerly granted' to Patterson, suggests that the former owners of Tairua block had

²⁷ Alexander, *Hauraki Tribal Lands*, p 93

²⁸ Anderson, *The Crown, the Treaty*, p 246

²⁹ Mackay to Colonial Secretary, 17 July 1875, AJHR, 1875, G-5B, p 2-4

³⁰ Auckland Deed 1790, LINZ National Office, Wellington

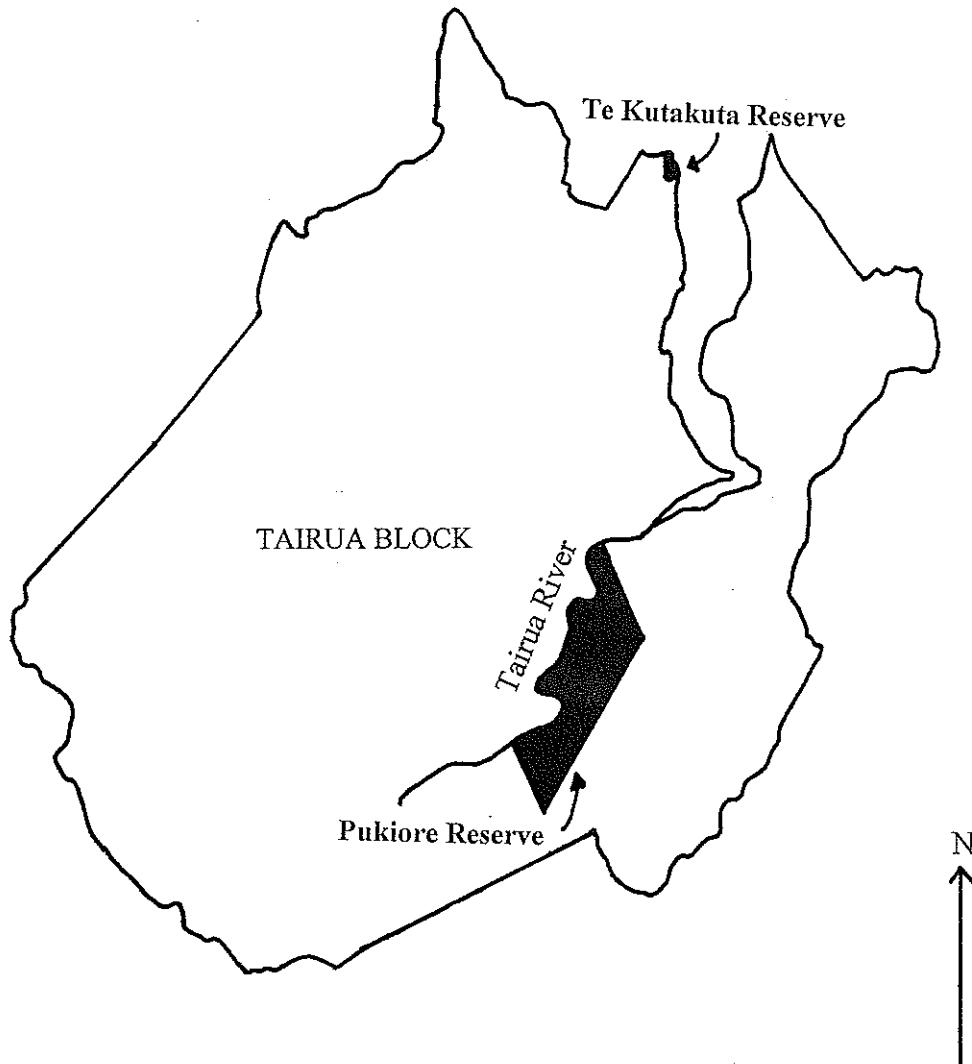
³¹ Tanui to Mackay, 11 May 1875, AJHR, 1875, G-5B, p 4

³² Guilding to Mackay, 16 June 1875, AJHR, 1875, I-1, p 63

³³ Mackay to Colonial Secretary, 17 July 1875, AJHR, 1875, G-5B, p 2-4

³⁴ ML 3390, CT 9/185, LINZ, Hamilton

Map 6: Location of Tairua Reserves



0 5 10 15 20
kilometres

informally sold the land to Patterson. In his letter advising Mackay of the completed survey, Guilding enclosed 'letters from Natives *re* the 10 acres to Patterson', suggesting that the agreement was more than simply a verbal arrangement.³⁵ When a Crown grant was issued for the 10 acres at Te Kutakuta in February 1881, it was in the names of the former owners of Tairua block.³⁶ The land was transferred soon afterwards, but not to Patterson, suggesting that by this time the arrangement between Patterson and the former owners of Tairua block had lapsed or otherwise expired.

Shortly after the survey of the reserve land had been completed, Mackay received further correspondence from Peneamine Tanui, who requested a burial ground to be included within the reserve land:

Friend, we are very much vexed. We do not wish the burial place, known as Te Karaka, at Tairua, to be included within the Government land. We wish twenty acres to be taken there; let it be deducted from the 990 acres at Te Pukioire, leaving there 970 acres. Let there be twenty acres set apart for that burial ground, outside Te Pukioire.³⁷

Mackay did not act on the request, and no evidence exists to suggest that the land at Te Karaka was ever laid-off for the former owners of Tairua block.³⁸

It is unclear why the burial ground at Te Karaka was not surveyed as part of the reserve land at the time when Guilding visited Tairua to establish the boundaries. This raises the question of the extent to which Guilding consulted the former owners of Tairua block. It may have been the case that he followed the instructions of only one, which under the terms of the agreement endorsed on the deed should have been Miriama Pehi Pukukauri, and that following this there was disagreement amongst the others as to what land should have been selected. In a report written 'from purely Native sources' for the Tairua Investigation Committee, the agent of the Provincial Superintendent, George Wilkinson, stated that Guilding had been accompanied by Peneamine Tanui when the boundaries of the reserve land were established.³⁹

A second possible reason why the Te Karaka burial ground was not surveyed in May 1875, is that Guilding may have been aware of the desire to have it laid-off, but refused to do so because the terms of the agreement endorsed on the deed stated that the reserve land was to be taken in either one or two portions. The land at Te Kutakuta was subject to an alienation agreement, and it is likely that Guilding considered it important that the title be properly transferred from the Maori owners to Patterson.

The former owners of the Tairua block attempted to repossess the burial ground at Te Karaka by other means. In June, after the survey had been completed, Guilding sent Mackay an application 'for an old burial-ground, about 30 acres in extent, at Green Point', which was presumably another name for Te Karaka.⁴⁰ Guilding informed Mackay 'that the natives are ready to purchase this piece of ground if the Government

³⁵ Guilding to Mackay, 16 June 1875, AJHR, 1875, I-1, p 63

³⁶ CT 21/17, LINZ, Hamilton

³⁷ Tanui to Mackay, 26 May 1875, AJHR, 1875, G-5B, p 4

³⁸ Mackay to Colonial Secretary, 17 July 1875, AJHR, 1875, G-5B, p 2-4

³⁹ 'Report of GT Wilkinson Laid Before the Committee by Sir G Grey', 2 July 1875, AJHR, 1875, I-1, p 63

⁴⁰ Guilding to Mackay, 16 June 1875, AJHR, 1875, I-1, p 63

do not wish to grant it'.⁴¹ There is no evidence to suggest that the Government ever responded to this request.

5.3 Private Sale of Pukioire Reserve

Under the terms of her will, dated 18 October 1876, Marara Hanata bequeathed to her husband, Teretui Tamati, her interest in the residue of Tairua block which remained in Maori ownership.⁴² In November 1879, the Native Land Court ordered Miriama Pehi Pukukauri the successor to Matene Pehi's interest in the land.⁴³

On 18 November 1879, some seven years after the Crown purchased Tairua block, and more than four years after the reserve land had been surveyed, a Crown grant was finally issued for the 1000 acres at Pukioire.⁴⁴ On 27 November, a caveat over the land was filed in the name of the Auckland District Land Registrar,⁴⁵ and registered on the certificate of title.⁴⁶ The caveat was lodged 'for the protection' of the Union Steam Saw Moulding Sash and Door Company, which held the lease to the timber cutting rights of the Tairua block.⁴⁷

On 26 January, a second caveat was lodged over the land,⁴⁸ and again registered on the certificate of title.⁴⁹ This caveat was filed in the name of John Edward Banks, who claimed to have an interest in the land 'by deed of lease from Miriama Pehi Pukukauri & others to me'.⁵⁰ The reserve at Pukioire had been referred to in earlier correspondence as 'Mr Banks' base', and not long after the Crown grant was issued Banks set about purchasing the land.⁵¹

In March 1880, the four owners of the reserve land at Pukioire signed separate Memorandums of Transfer. In signing the documents, the owners each transferred 'all my estate and interest in the said piece of land' to Banks, who was described as a kauri gum merchant.⁵² Attached to each transfer, was a translation that had been made by John Guilding. As detailed in Table 7, each owner's signature was accompanied by the signatures of two witnesses, who in each case testified that they signed the document 'after the contents had been explained . . . by an Interpreter of the Court and . . . [the owner] appearing to clearly understand the meaning of the same'. Table 7 also shows that the total money paid for the land was £315, which equates to about 6s 2d an acre. With the exception of Miriama Pehi Pukukauri, who had succeeded to a second interest in the land, it is unclear why the owners did not receive equal payments. Presumably, the difference was the result of an agreement between the owners.

⁴¹ Guilding to Mackay, 16 June 1875, AJHR, 1875, I-1, p 63

⁴² Transmission 51, LINZ, Hamilton

⁴³ Order of the Court, 28 November 1879, BOF Tairua Crown Land, W-M MLC, Hamilton

⁴⁴ CT 9/185, LINZ, Hamilton

⁴⁵ Caveat 216, LINZ, Hamilton

⁴⁶ CT 9/185, LINZ, Hamilton

⁴⁷ Caveat 216, LINZ, Hamilton

⁴⁸ Caveat 223, LINZ, Hamilton

⁴⁹ CT 9/185, LINZ, Hamilton

⁵⁰ Caveat 223, LINZ, Hamilton

⁵¹ Carpenter to Under Secretary, Native Department, 23 July 1879, MA MLP 1880/595, NA Wellington, cited in Alexander, *Hauraki Tribal Lands*, p 94

⁵² Transfer 2861, Transfer 2862, Transfer 2863, Transfer 2864, LINZ, Hamilton

Memorandum of Transfer	Date of Execution	Name of Owner	Witnesses	Payment Received
No 2861	1 March 1880	Miriama Pehi Pukukauri	1) R Wigman, JP 2) J Guilding, licensed interpreter	£100
No 2862	1 March 1880	Peneamine Tanui	1) R Wigman, JP 2) J Guilding, licensed interpreter,	£80
No 2863	19 March 1880	Hori Kerei Tuokioki	1) W Wallis, JP 2) J Guilding, licensed interpreter	£35
No 2864	8 March 1880	Teretui Tamati	1) A Russell, Clerk of Resident Magistrates Court 2) J Guilding, licensed interpreter	£100
Total Payment Received				£315

Table 7: Details of Memorandums of Transfer Executed by Owners of Pukioere Reserve Land, March 1880

The Memorandums of Transfer were each endorsed by Theodore Haultain, Auckland District Trust Commissioner, who in each case testified to being satisfied with the findings of enquiries made in accordance with the Native Lands Frauds Prevention Act 1870.⁵³ Unfortunately, none of the surviving records of the Auckland District Trust Commissioner elaborate on the enquiries made by Haultain into the sale of the Pukioere reserve land.

On 3 December 1880, both of the caveats over the land were withdrawn, and the details of the transfers were entered onto the certificate of title.⁵⁴

5.4 Private Sale of Te Kutakuta Reserve

In May 1880, and again in August, a Thames solicitor made enquiries as to when a Crown grant for the 10 acres at Te Kutakuta would be issued, presumably at the request of the owners.⁵⁵ It was not until 4 February 1881, however, that a Crown grant was issued for the land.⁵⁶

On 31 August 1883, the details of a transfer to Walter Birch were entered on the certificate of title.⁵⁷ Unfortunately, the transfer document is not held by Land Information New Zealand, suggesting that it has been either lost or destroyed. Some of the details of the sale were recorded by the Auckland District Trust Commissioner, who noted that it was as an 'absolute sale to Walter Birch for [the] sum of Ten pounds sterling'.⁵⁸ Considering that his enquiries were 'satisfactory', the Commissioner approved the alienation on 7 July, and endorsed the transfer on 2 August.⁵⁹

⁵³ Ibid

⁵⁴ Caveat 216, Caveat 223, CT 9/185, LINZ, Hamilton

⁵⁵ Miller to Government, 8 May 1880 and 15 August 1880, MA-MLP 80/595, NA Wellington, cited in Alexander, *Hauraki Tribal Lands*, p 94

⁵⁶ CT 21/17, LINZ, Hamilton

⁵⁷ Ibid

⁵⁸ Auckland District Trust Commissioner's Register of Certificates Granted, 1882-1885, p 28, BBOP 10116/1a, NA Auckland

⁵⁹ Ibid

5.5 Conclusion

The arrangement by which Mackay provided for the reserve land in the Tairua block was unsatisfactory. Mackay's decision to purchase the entire block and then Crown grant the reserve land back to the former owners was entirely for the convenience of the Crown. It was agreed that an area of reserve land would be set aside at the time the purchase deed was signed. Because Mackay felt it to be inconvenient to 'alter the conveyance or cumber it with a covenant to produce title deeds', the decision was made to Crown grant the land after it had been selected by the owners.⁶⁰ The owners experienced a considerable delay before the reserve land was surveyed, and a further delay before the Crown grants were issued. The Government's failure to take action in response to the request concerning the burial ground at Te Karaka demonstrates the Crown's small regard for the interests of Tairua block's former owners.

This disregard was further demonstrated by the Crown's failure to make the reserve land inalienable. Section 3 of the Native Lands Act 1866 defined the meaning of 'Native Reserve'. Among the lands described as such were those 'reserved by Aboriginal natives from sale on the cession of lands to the Crown where such lands are specified as reserved in the deeds of sale'.⁶¹ This accurately describes the Tairua reserve land. Once the Native Lands Acts of 1866 and 1867 came into force, Crown grants for reserve land had to contain the provision that the land was inalienable by sale, mortgage, or lease for a period longer than 21 years, except when the consent of the Governor was given.⁶² If the Crown grants for the Tairua reserves had been issued promptly, compliance with this provision would have been necessary. However, given the delay, the Crown grants were issued after the passage of the Native Land Act 1873, under which there was no requirement to place alienation restrictions on Crown grants.⁶³ Regardless of the absence of a statutory obligation, it would clearly have been proper for the Crown grants for the reserve land in the Tairua block to have been issued with alienation restrictions. The Crown had a Treaty obligation to ensure that the former owners of Tairua block were left with sufficient lands after the sale of the 35,000 acres. In the case of the former owners of the Tairua block, there is no evidence to suggest that the matter of sufficient lands was ever considered.

Given the small amount of information that was yielded from the available sources, it is difficult to comment on the correctness of the procedure by which the Tairua reserve land was sold. This is especially true for the sale of the 10 acres of land at Te Kutakuta, where the transfer document appears to no longer exist. However, it is known that the Auckland District Trust Commissioner endorsed this document, as he did the four Memorandums of Transfer which related to the sale of the reserve land at Pukioire. In 1871, their first year of operation, Trust Commissioners were instructed to make enquiries to cover:

⁶⁰ Mackay to Colonial Secretary, 17 July 1875, AJHR, 1875, G-5B, p 2-4

⁶¹ Section 3(2), Native Lands Act 1866

⁶² JE Murray, *Crown Policy on Maori Reserves Lands, 1840 to 1865, and Lands Restricted From Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), February 1997, p 26

⁶³ Ibid, p 52

First. Whether [the witness being examined] are the parties executing the deed or other instrument?

Secondly. Whether they understand the effect of the instrument? If they do not, you should proceed to explain it fully to them.

Thirdly. What was the true consideration for the alienation, and particularly to enquire:- (1) Whether such consideration in whole or in part was a supply of fermentous liquors or spiritous liquors; or (2) of arms or warlike stores, etc, or in any way of an illegal nature?

Fourthly. Whether the consideration expressed or agreed to be given, has been paid or given.

Fifthly. What other lands the Natives have.⁶⁴

In order to limit the expense of the Trust Commissioners' work, they were not expected to travel to remote districts themselves, and instead were to depute the making of inquiries to residents already there, preferably Resident Magistrates.⁶⁵ In the case of deeds of land in Mercury Bay, the Auckland District Trust Commissioner from 1873 to 1885, Haultain, arranged for a Justice of the Peace at Whitianga to examine the Maori sellers.⁶⁶ After the passing of the Native Lands Frauds Prevention Act 1881, all applications made to the Trust Commissioners were to be accompanied by a declaration signed by the applicant and the Maori vendor. Alternatively, the applicant and Maori could appear before the Commissioner and be examined under oath.⁶⁷

It is difficult to be confident that Haultain's approval of the alienations of the reserve land at Pukiore and Te Kutakuta is sufficient proof that these purchases were appropriately conducted. Alexander comments that the:

general climate, in favour of alienation, carried over into the degree of inquiry made by the Trust Commissioners. The instructions initially issued were explicit that any inquiry was not to be extensive and searching.

Inquiries made [by] the Trust Commissioners, or on his behalf, were patchy. There was no bringing together of all the owners, but rather some only of them were examined. Those who were examined were then questioned about the signatures on the deed of the other owners. There was a quick turn-around by many of the agents who made inquiries on behalf of the Trust Commissioner, suggesting that there was no effort made to enquire of each and every signatory to an alienation, but rather that only a number of well known owners living close at hand were examined.⁶⁸

Between 1874 and 1884, the Auckland District Trust Commissioner refused only 3½ percent of the applications made to his office.⁶⁹

⁶⁴ 'Instructions to Trust Commissioners', undated, AJLC, 1871, p 162, cited in David Alexander, 'The Operations of the Native Land Court in Hauraki', statement of evidence for Wai 100, 1999 (Wai 686 record of documents, doc E3), p 51. These matters of enquiry remained the same after the passing of the Native Lands Frauds Prevention Act 1881.

⁶⁵ Alexander, 'Operations of the Native Land Court in Hauraki', p 52

⁶⁶ Ibid, p 58

⁶⁷ Ibid, p 60

⁶⁸ Ibid, pp 66-67

⁶⁹ Ibid, 65

Bibliography

Primary Sources - National Archives, Auckland

AATE A948/1616, Te Horete access road
BACS A449/187g, Te Horete 2C2, 1952-1953.
BACS A622/21a, Horete 1 and 2 applications
BCAC A110/9109/box 125, Horete 2A alienation file
BCAC A110/8888/box 121, Horete 2B alienation file
BCAC A110/10409/box 150, Horete 2C1 alienation file

Primary Sources - National Archives, Wellington

Auckland Minute Book
Hauraki Minute Book

AAQU W3424 34/3613, Public Works Head Office File
MA 13/54/A, Lands and Survey Head Office file 14422
MA-MLP 1896/244

Primary Sources - Maori Land Court, Hamilton

Block Order Files
Horete 1 & 2
Tairua Miscellaneous
Tairua Crown Land

Primary Sources - Land Information New Zealand, National Office, Wellington

Auckland Deed 1225
Native Land Court Certificate of Title 4810
Native Land Court Certificate of Title 4811

Primary Sources - Land Information New Zealand, Hamilton

Caveats 216, 223
CTs 9/112, 9/185, 300/182, 21/17, 294/53, 650/208, 1068/93
MLs, 2901, 3390, 10984, 15510
Transfers 2861, 2862, 2863, 2864, 18621, 26557, 114164, 120005, 263749
Transmission 51

Primary Sources - Office of the Maori Trustee, Hamilton

Ledger of Block Accounts

Official Sources

Appendices to the Journals of the House of Representatives
New Zealand Gazette
New Zealand Statutes

Secondary Sources - unpublished

Alexander, David, 'The Operations of the Native Land Court in Hauraki', statement of evidence for Wai 100, 1999 (Wai 686 record of documents, doc E3)

Anderson, Robyn, *Goldmining Policy, Legislation and Administration*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), December 1996

Bassett, Heather and Richard Kay, *Manaia 1B & 2B Survey Charges*, report commissioned by the Waitangi Tribunal, August 1998 (Wai 285 record of documents, doc A3)

Bennion, Tom, *The Maori Land Court and Land Boards, 1909 to 1952*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), July 1997

Marr, Cathy, *Public Works Takings of Maori Land: 1840-1981*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), May 1997

Murray, JE, *Crown Policy on Maori Reserves Lands, 1840 to 1865, and Lands Restricted From Alienation, 1865 to 1900*, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), February 1997,

Neal, John, *Tairua Block*, report commissioned by the Waitangi Tribunal, July 1998 (Wai 694 record of documents, doc A1)

Secondary Sources - published

Alexander, David, *The Hauraki Tribal Lands*, Volume 8, Part 2, Hauraki Maori Trust Board, Paeroa, 1997 (Wai 686 record of documents, doc A10)

Anderson, Robyn, *The Crown, the Treaty, and the Hauraki Tribes, 1800-1885*, Hauraki Maori Trust Board, Paeroa, 1997 (Wai 686 record of documents, doc A8)

Ballara, Angela, in Claudia Orange, ed., *Dictionary of New Zealand Biography, Volume Two: 1870-1900*, Bridget Williams Books and the Department of Internal Affairs, Wellington, 1993, pp 342-344

Bassett, Heather, Rachel Steel and David Williams, *The Maori Land Legislation Manual: Te Puka Ako Hanganga Mo Nga Ture Whenua Maori*, Crown Forestry Rental Trust, Wellington

Ward, Alan, *National Overview: Volume II*, Waitangi Tribunal Rangahaua Whanui Series, 1997

