Confiscation and Regrant: Matakana, Rangiwaea, Motiti and Tuhua: Raupatu and related issues

A report to the Waitangi Tribunal

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1. Introduction

The objective of this brief report is to present to the Tribunal an account of raupatu and immediately post-raupatu issues impacting on the islands of Matakana, Rangiwaea, Tuhua, and Motiti. All four islands fall within the boundaries of the Tauranga confiscation proclamation.

The present writer has been commissioned to write two further reports for the Tribunal, one on Motiti and the other on Matakana-Rangiwaea. It was also anticipated that a report on Tuhua (Mayor Island) would also be commissioned and presented to the Tribunal, although at the time of writing no formal commission has been arranged.

There is already in existence a report on Matakana prepared by Suzanne Woodley as a Waitangi Tribunal staff commission, although this report has not been formally presented in evidence. The main purpose of the present writer's commission was to prepare a full history of Matakana and Rangiwaea right down to the present day, including such issues as the effects of the Ngai Te Rangi Consolidation Scheme, the impacts of the activities of the Maori Trustee and so on, thus ranging much further than Woodley. Since, however, the Tribunal has decided to split the remaining Tauranga hearings into pre- and post-raupatu inquiries it has been decided to present an interim report to the Tribunal dealing with the impacts of the confiscation on all four islands, the intention being to file the completed reports when all of the research is complete. This will result in some duplication of material.

At the last (September) hearing the presiding officer, Judge Kearney, drew particular attention to the activities of Whitaker and Russell. They, and especially their associate W.C. Daldy, had a significant impact on the fortunes of the traditional owners of Matakana Island in the 1870s and this is addressed in full in this report. This may help to clarify to some degree the role of the Auckland business community in the Tauranga confiscations and their immediate aftermath, although it has to be admitted that the activities of Whitaker, Russell and Daldy are a series of murky episodes which are not at all easy to unravel.

Whether researching the history of the Tauranga confiscation with reference to particular *islands* is a particularly helpful or insightful method of analysis may be open to doubt. The islands do not correspond with the land boundaries of any single descent group. There are a number of hapu now particularly associated with Matakana, but these hapu also happen to have rights elsewhere. The other three islands, Motiti, Tuhua and Rangiwaea are primarily associated with just one Ngai Te Rangi hapu, Te Whanau a Tauwhao, but once again this descent group has rights elsewhere (at Katikati). (In the case of Motiti a non-Ngai Te Rangi descent group, the Patuwai, also has a very significant association with the island.) Islands might seem a natural geographic unit today, but whether nineteenth-century Maori saw them in this way is unclear. In any case there is a clear difference between Matakana and Rangiwaea, integral parts of Tauranga Moana and its various ecosystems and human geography, and the two sea islands of Motiti and Tuhua. Despite this the four islands do provide a useful illustration of the varying impacts of the confiscation process. And while, of course, there is a certain artificiality about focusing on a group of islands, it is just (or even more so) as artificial to focus on, say, block or even confiscation line boundaries.

All four islands have in common the fact that although they were included within the boundaries of the Tauranga confiscation proclamation they did not remain permanently confiscated, but were "returned" to the former owners, albeit under a radically new system of land tenure. This meant that the titles to the islands were investigated in the first place not by the Land Court but by commissioners under the Tauranga Lands Acts (Motiti excepted). Other than that, the regime imposed on the owners of the islands was essentially akin to a compulsory imposition of the Native Lands Acts, and led to the same kinds of difficulties and land management problems. This was compounded by the long delays and general chaos that prevailed at Tauranga from the confiscation proclamation in 1864 until the final allocation of Crown grants in 1885-6. During the confusion of the 1870s a powerful Auckland businessman named W.C. Daldy managed to personally acquire over half of Matakana Island and the land was permanently lost to its former owners. This is the principal issue discussed in this report. My argument is that this particular episode was so closely interconnected

with the immediate aftermath of confiscation that it should certainly be seen as an integral aspect of the effects of the confiscations on Ngai Te Rangi.

A further argument developed in this report is that confiscation of land inevitably leads to confusion, misallocation of land, and various kinds of exploitation and land-grabbing by private interests. The general confusion and dislocation creates opportunities from which the astute can profit. This is an obvious point and hardly needs documentation, but it may be of some interest and assistance to the Tribunal if this point is developed a little more fully by comparing the Tauranga confiscation with some confiscations elsewhere. For this reason my report contains a short analysis of confiscation in Early Modern Ireland. There are some particularly close analogies with the process known in Ireland as "surrender and regrant", by which landowners in Ireland were compelled to surrender their existing titles and were regranted titles on the Crown's terms. Analogies are even closer, however, with the much more coercive confiscation policies pursued by the Crown and the English Republic in Ireland in the 17th century, which can be more accurately characterised as confisaction and regrant. The Irish parallels are discussed briefly in chapter 6.

2. Matakana, Rangiwaea, Motiti and Tuhua under human settlement

2.1. Matakana:

Matakana Island is divided into two main geographical sections. There is, firstly the eastern portion of the island which extends between the two harbour entrances at Katikati and Mt. Maunganui. Today this part of the island is mostly covered by pine plantations. Legally this part of the island is part of Katikati Parish. There is also the western or "farmland" (to use Woodley's term) part of the island, facing the harbour and inland, which is joined to the rest of the island by the isthmus at Waihirere. This part of the island is part of Matakana Parish. It is where the main settlements were (and are located) and is today mostly farmland. The remaining areas of Maori freehold land are located in this part of the island.

Matakana was an area of dense Ngai Te Rangi settlement. The two main Ngai Te Rangi pa, according to Hone McMillan, were at Otumoetai and Matakana:[1]

> There were two principal pas in this District viz Otumoetai and Matakana and from Otumoetai to Matakana was inhabited by one people viz Ngaiterangi.

Matakana and Rangiwaea have associations with some of the best-known figures of nineteenth century Maori history. Henare Wiremu Taratoa, missionary and Ngai Te Rangi war leader, who chivalrously took water to the wounded British soldiers at Pukehinahina and who died at Te Ranga, lived at Opounui on Matakana.[2] Hori Tupaea of Te Whanau-a-Tauwhao, leading chief of Ngai Te Rangi, spent his last years living on Rangiwaea, where he died in January 1881; his tangi was held on Rangiwaea where he was buried.[3]

One of the earliest descriptions of the Tauranga harbour islands is given by Dieffenbach, whose account of his travels around New Zealand as the New

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1 Hone McMillan, evidence in Matakana reinvestigation case, (1910) 6 Tauranga MB at 299,

2 Dixon, Ngahuia, "Taratoa, Henare Wiremu", *DNZB* vol 1, 430.

3 The statement by Steven Oliver and Alister Matheson in their article on Hori Tupaea ("Tupaea, Hori Kingi", *DNZB* vol 1, 556) that this great chief was buried on Matakana is incorrect: his monument can be plainly seen in the cemetery adajacent to Rangiwaea marae.

Zealand Company scientist was published in London in 1843.[4] At the time of Dieffenbach's visit the effects of recent tribal conflicts were very evident. He noticed the remnants of a very large village at the base of Mt Maunganui: "in consequence of its being exposed to the attacks of a tribe of Rotu-roa natives, who live at Muketu [sic], and the natives live at the other side of the harbour". Dieffenbach continues:[5]

> Some time before my arrival eleven natives had been seized and slaughtered; and these mutual depredations have now been carried on for several years to such a degree that the natives of Tauranga were unable to plant sufficient ground to supply them with food, having been besieged and shut up in their fortified places: the fertile district in which they live has therefore been of no use to them. The northern head of Tauranga spreads out into low and level land; and some islands of considerable dimensions, and of the same structure and configuration as the mainland, are separated from it by broad channels of the sea. Although at present the principal anchorage for vessels is in the inner harbour, not far from the mission-station, I am inclined to think that the islands just mentioned might offer safe places for anchoring, even for larger vessels.
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> The remarkable phenomenon of these large portions of land being separated from the main shows that great changes have taken place in the geological condition of this coast, which has wasted away, and been separated either by the inroads of the sea or by volcanic agency. The coast at Tauranga and on these islands is from forty to eighty feet above the level of the sea, and in the cliffs thus formed we find that the geological formation is a yellow loam, surmounted in many places by beds of peat, containing a great quantity of undecayed wood, and averaging between four and six feet in breadth: the upper layer is a yellowish earth, or decayed pumiceous matter. The lignite, occurring in large quantities, must be of great importance to Tauranga, as there is no other fuel for several miles around.
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> One of these islands is called Pane-pane, and stretches from Maunga-nui to the southward. It is about three miles broad and seven miles long. Another, running in the same line with the former, but nearer the coast, is called Matakanga [sic]. It is about the same size. A larger one in the same line is called Moa Opareoroi. The one nearest the coast, and of a square shape, is called Tangoia. Off Muketu is the island Motu-iti, of considerable extent, and said to have been purchased by the Americans.

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4 Ernst Dieffenbach, *Travels in New Zealand,* John Murray, London, 1843.
5 Ibid, 404-5.

Henry Williams paid a visit to Matakana with the Rev. A.N. Brown in May 1844, where they met Nuka Taipari, the recently-baptised Ngai Te Rangi chief of Maungatapu:[6]

> Left Tauranga after dinner and proceeded in Mr Brown's boat to Matakana a small pa on an island about half way across the inland sea. Here we found Nuka the chief of Maungatapu, who has lately made a profession of christianity. The christian party jhere is increasing in influence but there has been much to hinder their progress.

Today the main hapu resident on Matakana are Ngai Tamawhariua, Ngati Tauaiti and Ngai Tuwhiwhia.[7] All of these hapu affiliate to Ngai Te Rangi. Ngati Tauaiti have been described in the Minute Books as a "branch of Ngaitamawhariua".[8] Older records also use the hapu name Ngati Ha, although the extent to which Ngati Ha is separate from Ngai Tamawhariua is a vexed question - some have claimed that Ngati Ha and Ngai Tamawhariua are virtually indistinguishable, while others have insisted they are separate. Another Matakana hapu name recorded in the minute books - but which is apparently no longer in contemporary use - is Ngati Tamapeke (Tamapeke being a son of Tamawhariua):[9]

> When the descendants of the ancestors I have mentioned settled on this land the descendants of five of them lived permanently on the land - the sixth Tamapeke lived at Kutaroa with his brother Tauiti.[10] That was the permanent kainga from his time down to the present day. Tamapeke's descendants have only one kainga on Matakana and it is a recent one. The question of this kainga has been brought before a general Committee of the whole of Ngaiterangi and they have decided that Ngati Tamapeke were entitled to it.

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6 Frances Porter (ed), *Turanga Journals*, 283.

7 Heeni Murray, *Matakana Island*, 1990, 6-7.

8 Evidence of Tatari Wiri Kake, Matakana No 1 reinvestigation case, (1910) 6 Tauranga MB

9 Hone McMillan, evidence in Matakana reinvestigation case, (1910) 6 Tauranga MB at 299,

10 Kutaroa is the name of a block and also of the former Ngati Tauaiti marae on Matakana: Tamapeke and Tauiti were brothers and the sons of Tamawhariua and Whakahinga.

Yet another earlier hapu name is Ngati [Popuera], a group said to own part of Matakana at the time when Ngaiterangi gifted land at Uretureture to Ngati Ha during the conflicts with Ngati Maru of Hauraki.[11]

Ngai Tuwhiwhia and Ngati Tauaiti did not originally have interests only at Matakana, any more than Whanau-a-Tauwhao are confined to Rangiwaea. There was a reserve for Ngai Tuwhiwhia in the Kaimai block title to which was investigated by Commissioner Brabant in early September 1881.[12] As I noted in my Ngai Te Rangi overview report, the existence of this reserve indicates that some at least of the Ngai Te Rangi hapu had certain rights far inland (perhaps for food-gathering) and that it may be a mistake to insist on a rigid separation between Ngai Te Rangi hapu of the coastal areas and Ngati Ranginui hapu living inland in the forest zone. The descendants of Tauaiti successfully advanced claims in the Compensation Court to a block known as Hopukiore in 1881, in a case in which Akuhata Tupaea (Hori Tupaea's son), Hori Ngatai, Enoka and Te Moananui all appeared, mainly to advance claims on the basis of different lines of descent from Tauaiti.[13]

The great chief Hori Tupaea, although primarily affiliated to Whanau-a-Tauwhao, was also descended from Tauaiti, according to the following whakapapa given by Akuhata Tupaea (Hori's son) before Commissioner Brabant in 1881:[14]

Tauaiti m. Hineorangi
Te Motutu = Taha
Te Utanga
Turua
Te Waru
Hori Tupaea
Akuhata Tupaea

The marae on the islands are at Matakana tuturu (the house is named Te Rangihouhiri, the founding ancestor of Ngaiterangi), Rangiwaea, and Opureora, associated with the Ngai Tamawhariua, Tauwhao, and Ngai Tuwhiwhia hapu

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11 Evidence of Tatari Wiri Kake, Matakana No 1 reinvestigation case, (1910) 6 Tauranga MB

12 See RDB vol 125, 48186.

13 Hopukiore no. 1 case, (1881) Commissioner Brabant's Notes of Evidence, DOSLI Hamilton, Box 3, Folder 16, RDB 125, 48185-87.

14 Hopukiore no. 1 case, (1881) Commissioner Brabant's Notes of Evidence, DOSLI Hamilton, Box 3, Folder 16, RDB 125, 48185-87.

respectively. Marae were also formerly located at Oponui and Kutaroa. Some of the buildings at Kutaroa were moved to Opureora when the former marae was closed in 1982 and the house there, named Tauaiti, was demolished. This means that Opureora marae now serves the needs of two hapu, Tauaiti and Ngai Tuwhiwhia.[15]

2.2. Rangiwaea, Tuhua, Motiti and Te Whanau a Tauwhao

Although in close proximity to Matakana, Rangiwaea Island has particular associations with a quite distinct kin group, Te Whanau a Tauwhao. Te Whanau a Tauwhao were associated particularly with Katikati, Tuhua (Mayor Island), Rangiwaea and Motiti. They also had rights at the islands known as Ruamaihio (The Aldermen).[16] Although, as mentioned above, the great chief Hori Tupaea could claim descent from Tauaiti, his principal association was with Te Whanau a Tauwhao and it is on Rangiwaea that he is buried. J.A. Wilson gives the ancient form of the name of this hapu as Te-whanau-o-ngai-i-tai-whao (known also as Te Whitikore) and groups them with the "ancient people of Tauranga".[17] Tuhua (Mayor Island) was occupied by a section of Te Whanau a Tauwhao known - following an attack by Ngati Maru - as Te Urangawera, as Moanaroa Whakatotara explained in 1884:[18]

> The name "Te Urangawera" is confined to that portion of the Whanau a Tawhao who are resident on Tuhua. They took the name from an incident that arose during an invasion by

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15 Heeni Murray and others, *Matakana Island,* 1990, 6-7. Murray's excellent book is distinguished also by its superb photographs. At p. 6 is a photograph of the house Tauaiti at Kutaroa shortly before its demolition in 1982.

16 Reneti Te Whauwhao, Motiti South reinvestigation case, (1884) 2 Tauranga MB 217.

17 See Wilson, J.A., in White, *Ancient History,* vol 5, 206: "Thus, about a hundred and fifty years ago, Nga-i-te-rangi obtained possession of Tauranga, and drove the remnant of its former people, Nga-ti-peke-kiore, away into the hills to the sources of the Wai-roa and Te-puna Rivers, where, although now related to the conquerors, they still live. Another *hapu* (family tribe) of the ancient people of Tauranga are Te whanau-o-nga-i-tai-whao, also called Te-whiti-kiore. They hold Tuhua (Mayor Island), and in 1835 numbered one hundred and seventy people. Their chief was Tangi-te-ruru, but now Tupaea, chief of Nga-I-te-rangi proper, is also chief of both these tribes."

18 Motiti South Part subdivision case, (1884) 2 Tauranga MB 195, at 214, per Moanaroa Whakatotara (Whanau a Tauwhao): "The Paunahi and Whanau a Tawhao did occupy Motiti. The actual residents on the Island were known as the "Papaunahi" Some of the Urangawera, living on Motiti, were barracouta fishers - these were known as Papaunahi".

> the Ngati Maru. A pa was attacked: - the people escaped, but Ngati Maru occupied the pa, and "burned their pillows"; - hence this appellation. It is quite in accordance with Maori custom that such a thing done to the men of rank should originate a name for the whole of their people. I cannot say why the rest of Ngai Tauwhao did not adopt this name: - it is confined to the Tuhua branch exclusively.

Te Urungawera, a section of Whanau a Tauwhao, were themselves split into nine hapu.[19]

Te Urangawera's interests were not confined to Tuhua. There is some correspondence preserved by DOSLI Hamilton relating to Te Urangawera's reserve at Katikati. The reserve, covering 164 acres, although promised to Te Urangawera at Hori Tupaea's request by Donald McLean many years before, was not formally set aside until 1881, when following a report by H W Brabant the area was vested in Te Urangawera under s. 144 of the Land Act 1877.[20] This did not, however, resolve the issue of Whanau-a-Tauwhao rights in the Katikati area. In the 1880s and 1890s Reneti Te Whauwhau (Whanau a Tauwhao) lodged a number of petitions complaining of the injustices inflicted on Ngati [Remu], Te Urangawera and Whanau a Tawhao by the Katikati-Te Puna purchase.[21] Reneti Te Whauwhau, who seems to have been Whanau-a-Tauwhao's leading chief at this time (he certainly spoke on their behalf in the Native Land Court on many occasions) lived at Katikati.[22] I have found no evidence of Te Urangawera rights to Rangiwaea itself, although of course the various Whanau a Tauwhao kin groups are closely connected.

The section of Te Whanau a Tauwhao living on Motiti were known as the Papaunahi, perhaps because they specialised in fishing for barracouda, although this name was also apparently used in earlier times as an alternative name for the

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19 See below.

20 The correspondence is found on DOSLI Hamilton file Box 5 Folder 28 [Papers on Awards in Katikati-Te Puna purchase]. Te Urangawera filed a petition with parliament seeking a formal grant to the reserve (Petition 1880?/97). In his capacity as Resident Magistrate (i.e. rather than as Commissioner) Brabant wrote to the Native Department on 23 May 1881 as follows (see RDB 127, 48858): "This is a block of land granted by sir Donald McLean some years ago to Te Urangawera in consideration of their claims on the Katikati purchased block. The grant was made at the request of the late chief Hori Tupaea, and the Ngaiterangi who were supposed to have had moneys which might more properly have been paid to the Urangawera."

21 For a discussion of these petitions see Kathryn Rose, "The Impact of Confiscation: Socio-Economic Conditions of Tauranga Maori", Jan 1997, Wai 215 doc#A38, 30-31.

22 Motiti South Part subdivision case, (1884) 2 Tauranga MB 217.

whole of Whanau a Tauwhao.[23] The various sections of Whanau a Tauwhao seem to have followed a seasonsal lifestyle, spending part of the year on the islands but also cultivating at Rangiwaea and Katikati as well. This is indicated by the reserve set aside for the Urangawera people of Tuhua. Moanaroa Whakatotara described the lifestyle of his Whanau a Tauwhao kin in the 1880s as follows:[24]

> We are at present resident on Tuhua and our cultivations are at Tuhua, Katikati and Rangiwaea; we live from time to time at all these places, and, while resident at any of them, cultivate.

In the same case Reneti Te Whauwhau stressed that all sections of Whanau a Tauwhao had interests in all of the hapu lands:[25]

> I am of the Whanau a Tauwhao, and live at Te Katikati. I desire to explain how the branches of that tribe are related as regards our lands. In the lands of Motiti we are all joint owners; also in Tuhua, Tauranga and the Ruamaihio Islands. No one party has a greater right than the others; all are on an equal footing. As regards our residences, we all live together; and are on terms of strict amity. We all bear the one name, as regards the block; we are Whanau a Tauwhao.

It appears then that Te Whanau a Tauwhao were very much a maritime people with a seasonal economy, spending some of the year cultivating at Rangiwaea and Katikati, and also cultivating and fishing at Tuhua and Motiti. The latter two islands are Te Whanau a Tauwhao's ancient home and despite their links with Ngai Te Rangi and Ngati Awa they seem at least in those places to have rights by settlement and descent quite unconnected with the Ngai Te Rangi conquest and settlement of Tauranga led by Te Rangihouhiri.

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23 Motiti South Part subdivision case, (1884) 2 Tauranga MB 195, at 211, per Moanaroa Whakatotara (Whanau a Tauwhao)

24 Motiti South Part subdivision case, (1884) 2 Tauranga MB 195, at 212, per Moanaroa Whakatotara (Whanau a Tauwhao).

25 Ibid, at 217, per Reneti Te Whauwhau (Whanau a Tauwhao).

3. Raupatu

3.1. Introduction

In August 1864 Ngai Te Rangi formally surrendered to Grey at Tauranga. Grey promised Ngai Te Rangi that because of the honourable manner in which they conducted the fighting no more than a quarter of "rebel" lands would be confiscated.[26] Grey's words to the tribes have been repeated *ad nauseam* in the various reports prepared for the Tauranga claims and hardly need to be restated.[27] He also stated that lands regranted to Ngai Te Rangi, including the islands in the harbour, would be inalienable. This stipulation of Grey's is often referred to in subsequent documents. In a report prepared for the Fox-Vogel-McLean government in 1871 on lands available for settlement at Tauranga A F Halcombe advised that the Ngai Te Rangi grants "as also of the Island lands" were inalienable and not available for purchase:[28]

> I gather from Mr Clarke that, under a distinct agreement made with Sir George Grey by the Ngaiterangi in 1864, the grant of these lands, as also of the Island lands, are made inalienable; they are not, therefore, open to purchase. Much of this land is, moreover, under profitable occupation by the Maori owners, and what they do not use themselves they will probably make some arrangement to let temporarily to Europeans.

A report on confiscated lands published in 1873 states the terms of the agreement a little differently: the *cultivable* sections of Rangiwaea-Matakana as well as certain other blocks were to be inalienable:[29]

> In August, 1864, the Ngaiterangi Tribe, who had surrendered after the defeat they had experienced at Te Ranga, ceded to the Governor the whole of their lands, roughly estimated at 212,000 acres.

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26 Stokes, *History of Tauranga County*, 81; Stokes, *Te Raupatu o Tauranga Moana*, vol 1, 36.

27 See e.g. Fiona Hamilton, *Ngai Te Ahi Historical Report*, 18-19. The original source is *Notes of Speeches Made at the Pacification Meeting of His Excellency the Governor with Ngaiterangi Tribe at Te Papa, Tauranga, 5th and 6th August 1864*, 1867 AJHR A-20, p 5.

28 Halcombe to Vogel, 20 October 1871, *Report upon lands suitable for the settlement of immigrants at Tauranga*, 1872 AJHR D-6, 2.

29 See *Further Papers relative to confiscated lands*, 1873 AJHR C-4B.

In consideration of the humane manner in which they had carried on their warfare, His Excellency Sir George Grey returned to them three-fourths of of the land thus ceded; and it was at the same time agreed that the lands north of Te Puna (included in the three-fourths given back) should be sold at the rate of three shillings per acre to the Government.

A provision was also made that the cultivable land on the Rangiwaea-Matakana Island, and those at Ohuki and in its neighbourhood, should be made inalienable so as to preserve to the Tauranga Natives a sufficiency of land for their own use.

The actual confiscation proclamation was not made until 18 May 1865, some time after Grey's Tauranga meeting of August 1864. The government thought it had confiscated between 212,000-214,000 acres at Tauranga[30], although this is certainly an underestimate. The Sim Commission found that the actual figure was more like 290,000 acres,[31] the difference being explained by the extension of the confiscation boundaries in the 1868 Act.[32] The amount actually retained by the Crown was about 50,000 acres. The balance of the confiscated area was of course made up by the Katikati-Te Puna blocks, where the confiscation was purportedly legitimated by subsequent purchasing (about 93,000 acres) and by land revested in the various hapu of Ngai Te Rangi and Ngati Ranginui on an individualised tenure (about 137,000 acres). Confiscation, of course, is a complex process and amounts to much more than a means of land acquisition by the government: it also allows the Crown to redraw the tenurial map of the proclaimed area to suit itself, and in particular to convert returned areas to an individualised tenure. Confiscation is both land-grabbing by the government and a coercive variant of the Native Land Court process.[33]

Matakana people participated in the fighting against the Crown. People of the Ngai Tamawhariua and Ngati Ha crossed to the mainland to take part in the battles and returned to their cultivations on Matakana and Rangiwaea when

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30 214,000 acres is the figure given in the Schedule to the confiscation proclamation of 18 May 1865

31 See the discussion in Stokes, *Allocation of Reserves*, 1997, vol 1, p. 9.

32 My thanks to counsel for this point.

33 See Spiller, Finn and Boast, *A New Zealand Legal History*, 1995, 142; the same point is also well made by O'Malley: see Vincent O'Malley, *The Aftermath of the Tauranga Raupatu, 1864-1981*, 35.

peace was made with the government. Others remained on the island for the duration of the conflict:[34]

> I do not know whether or not this land was confiscated by the Government. I was too young at the time of the war but my parents were in rebellion but they afterwards made peace with the Crown. They were living at Matakana before the war - on the whole of the Matakana Block and at Matahue which is outside. Some continued to live on the land during the war. After peace was made Ngaitamawharuia and Ngatiha returned to Matakana and occupied the parts they had occupied prior to the war. They are still on those same cultivations now. All the persons including myself belong to the Ngaitamawharuia hapu.

The various Whanau-a-Tauwhao hapu were likewise involved in the conflict. When the Crown forces arrived at Tauranga in 1864 the islands of Tuhua and Motiti were temporarily abandoned. After the defeat at Te Ranga the people scattered to Whangamata and Hauraki in order to sustain themselves by digging kauri gum[35] and also because of fears that Arawa would seize the opportunity to invade Tauranga. In 1884 Reneti Te Whauwhau (of Whanau a Tauwhao) said:[36]

> During the war time the people abandoned both Tuhua and Motiti, and concentrated at Tauranga to fight the Europeans. After the close of the war some of us went to Otumoetai, others elsewhere. When peace returned, we laid down our arms, but did not remain at Tauranga: - we went to Whangamata to purvey ourselves clothing etc. by digging gum. We had another reason for going in our having joined the Hauhau party. Then we heard that we were to be attacked by the Arawa; though it was but a false alarm; - so we fled to Hauraki and were therefore out of the way when the Motiti case was brought on in the Court.

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34 Evidence of [Te Ripihina Urupika], Matakana No. 1 rehearing, (1910) 6 Tauranga MB 285.

35 From the late 1860s gum-digging became an important economic mainstay for all the Maori people of the Tauranga area. In 1870 Gilbert Mair reported that "a great portion of the Queenite Natives are in the neighbourhood of Katikati gumdigging": 1870 AJHR A16, 7.

36 (1884) 2 Tauranga MB 219 (Motiti South reinvesitigation case).

In 1865 Hori Tupaea was captured by Arawa in the bush near Okataina. He was held prisoner at Kahuwera on Lake Rotiti and then handed over to the government to be held for a time in jail at Tauranga.[37]

3.2. The revesting process

The legal vehicle for the process of investigation and return of the confiscated lands was the two Tauranga District Lands Acts of 1867 and 1868. Under this legislation commissioners were empowered to investigate titles and issue Crown grants. The Tauranga District Lands Act 1867 contained a long recital referring to (a) the confiscation proclamation of 18 May 1865; (b) Grey's promise of 6 August 1864 that three-fourths of the land would be returned "after due enquiry"; (c) the enquiries and arrangements already entered into with the "said tribe" (Ngaiterangi); and (d) the doubts that had arisen "as to the validity of the said arrangements". Section 2 of the Act validated "all grants awards contracts or agreements" already made since 18 May 1865 and "all grants awards contracts or agreements of or concerning any of the said lands *hereafter to be made*". The legislation gave the government power to redraw the tenurial map within the confiscation boundaries more or less as it liked, and also retrospectively validated any failure to comply with the requirements of the New Zealand Settlements Act 1863 and its various amendments. The Act does not in fact refer to "commissioners" at all, or give any indication as to how the inquiries required to be conducted by s. 2 were to be carried out. The 1868 Act does nothing except vary the legal description of the confiscated block in the Schedule to the Act.

The first commissioner was Henry Tacy Clarke (1868-76, 1878), succeeded by Herbert Brabant (1876-78), J A Wilson (1878-81) and then Brabant again in 1881.[38] Other historians involved in the Tauranga claims have already made some important points about the process of investigation which can be noted briefly here. Evelyn Stokes has argued that the "process of inquiry and allocation

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37 See D. Stafford, *Te Arawa*, 389-91; *Landmarks of Te Arawa*, vol 2, 28-9; *Founding Years in Rotorua*, 42.

38 Woodley. *Matakana Island*, 7.

of lands to Maori in the Tauranga confiscated lands fell far short of the independent judicial process that Maori as British subjects might have expected from the Crown."[39] O'Malley has noted that the Commissioners were not under a specific obligation - unlike the judges in the Native Land Court - to make their findings on the basis of Maori customary law.[40] Although "the return of lands might broadly follow customary landholding rights, this was not the sole criterion."[41] Stokes stresses, similarly, that the Commissioners were "not bound by considerations of traditional or ancestral rights in deciding the location of reserves and land grants".[42] Fiona Hamilton has drawn attention to the fact that "unlike the Native Land Court there were no requirements for open hearings, nor for the records of title investigations to be kept".[43]

The real problem, however, is the paucity of documentation relating to the Commissioner's court, a point already discussed in my earlier report.[44] It is very difficult to know exactly what the Commissioners did or how they went about doing it. The only really full record relates to a small number of cases heard by Commissioner Brabant from 1881-2, and even here there are a number of omissions.[45] From such material as survives it seems to the writer that the actual process conducted in the Commissioner's Court was not very different from the Native Land Court. Claims seem to have been argued in the same kind of way, mainly by relaince on whakapapa and evidence of cultivations, with a number of claimants and counter-claimants. Hearings seem to have been open, and records were kept; but they were not very good records and nearly all of them have been lost. (Besides one needs to be careful when comparing the Commissioner's Court to the Native Land Court, as the latter process was itself far from perfect.)

The government itself on the whole seems to have regarded the Tauranga Commissioners' court as an equivalent to the Native Land Court. One aspect of

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39 Stokes, *Allocation of Reserves*, vol 1, 98.
40 O'Malley, *Aftermath of Tauranga Raupatu*, 27.
41 Ibid.
42 Stokes, *Te Raupatu o Tauranga Moana*, vol 1, 155.
43 Hamilton, *Ngai Te Ahi Report*, 42.
44 Boast, *Ngai Te Rangi before the Confiscation*, 34-39.
45 Now held by DOSLI Hamilton; see *Raupatu Document Bank* vol. 125.

this is that applicants were expected to meet survey costs themselves, as P. Sheridan, a Native Department official, later explained in 1914:[46]

> In the case of several blocks of confiscated lands granted to loyal Natives as rewards for military services the Government paid for the surveys, and in the case of other small blocks awarded to Natives as residence sites the survey costs were remitted as the lands were made inalienable.
>
> Lands returned to Natives under the Tauranga District Land Acts 1867 and 1868 were in an entirely different position as they were returned to the former Native owners who had to be ascertained by a Commissioner in the same manner as the owners of ordinary Native lands are ascertained by the Native Land Court.

For this reasons applications to the Commissioner's Court required the production of a survey.

2.3. The Matakana grants and purchases

(a) Overview

To fathom exactly what happened on Matakana from 1865-1885 is very difficult, and indeed is the worst possible scenario for any historian: extreme intricacy combined with extreme paucity of documentation. With that caveat in mind, the main steps seem to have been as follows:

- Russell and Whitaker acquire land in western Matakana in 1868-70;
- W C Daldy acquires land in eastern Matakana in 1869;
- The Crown acquires the blocks acquired by Russell and Whitaker and revests them in local Maori on 2 April 1874;
- Grants are issued to at least some of the eastern Matakana Blocks on 7 August 1877;
- A certificate of title under the Land Transfer Act 1870 is issued to Daldy on 3 August 1878. This relates to the Wiakoura, Oturoa, Paretata, Omanuwhiri, Ohinetama, Wairaka, Pukekahu, Okotare and Hori Tupaea's Pa blocks.

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46 P Sheridan, memo, 14 August 1914, AAMK 869/203a, WNA.

- There is a serious dispute between Daldy and local Maori in 1884 over some of the blocks he claims to have acquired;
- Grants are issued to the eastern Matakana blocks and Rangiwaea in 1885-6;
- Clarke lists undated certificates to the eastern Matakana blocks in his report of 4 May 1886.

(b) The Whitaker-Russell deeds

The process by which the eastern Matakana blocks came into the hands of William Crush Daldy has already been discussed by Woodley and by Stokes.[47] The exact sequence of events is far from clear, partly because the process was quite intricate, and partly because, as Stokes has noted, "there is little specific documentation".[48] Murkiest of all are the activities of the two politician-businessmen-lawyers Russell and Whitaker who also bought some land on Matakana in 1868-69. Their purchases were then reacquired by the government on 2 April 1874, this being because (according to the relevant deed) "the Honorable Donald McLean is desirous of reserving the Island of Matakana for public purposes".[49] The official return of Maori lands purchased for 1874 records a transaction organised by H T Kemp by which the Crown purchased 7,917 acres on Matakana for £857.[50] This records the date of the transaction as 2 April 1874, and represents, one must assume, the money the government spent on reacquiring the blocks acquired by Whitaker and Russell. In a history replete with more than its share of obscurities and puzzles, this repurchase and

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47 See Woodley, *Matakana Island*, 14-23; Stokes, *Allocation of Reserves*, 221-8.

48 Stokes, *Allocation of Reserves* 221.

49 Deed No 170, Linz Head Office Wellington, cited Stokes, *Allocation of Reserves*, 222. The full text of the deed is as follows: "Whereas the said Frederick Whitaker and the said Thomas Russell have purchased from the Native owners various blocks of land situated on the Island of Matakana in the Harbour of Tauranga as appears by the several agreements Specified in the Schedule to this deed, And whereas the amount expended by the said Frederick Whitaker and Thomas Russell in part payment for the said land together with interest and expenses amounts to the sum of £857, And whereas the Honorable Donald McLean on behalf of the Colonial Government of New Zealand is desirous of reserving the Island of Matakana for public purposes and has requested the said Frederick Whitaker and Thomas Russell to accept the amount expended by them in purchasing the said Blocks of land and to transfer all their right and interest to Her Majesty the Queen which they have consented to do.

revesting is the most puzzling of all, and there is virtually no information about it. Assuming that the Whitaker-Russell blocks are not the same as the Daldy blocks, we are left with the rather bizarre situation of two powerful businessmen and politicians unlawfully purchasing a substantial acreage of confiscated land which is then reacquired from them at public expense. The expenditure is then buried in the ordinary Native Department expenditure on Maori land purchasing.

In 1879 H.T. Clarke, in the course of giving evidence to the Native Affairs Committee, discussed the reacquisition with Grey (a member of the Committee). This exchange indicates that Russell approached McLean to obtain his approval for the purchases. McLean sought advice from Clarke, who advised that Matakana was part of the reserved area promised by Grey. McLean then bought out the interests of Whitaker and Russell and the land "was restored again to the Natives."[51] The transactions were, it should be added, incomplete. Some of them required proof of title in the Native Land Court, strange in itself as Whitaker knew perfectly well that the Court had no jurisdiction over ungranted lands within the area of the Tauranga confiscation. So perhaps Whitaker and Russell were lucky to be able to recover the money they had spent.

It is certain that the Whitaker-Russell and – until they were subsequently validated – the Daldy purchases were legally void. Quite what the legal status of the land within the confiscation boundaries was at this time is unclear, but it was probably Crown land rather than Maori customary land. Either way, it could have made no difference. If Matakana was Crown land at this time, then of course purported purchases directly from Maori could be of no legal effect; if on the hand the island was Maori customary land (which it might have been, provided that its owners were "loyal", which does not seem to have been the case) then it could not be privately purchased until it had been first investigated by the Native Land Court.

Chief Judge Fenton had earlier taken the stance that despite the confiscation proclamation there was no reason why the Native Land Court could not hear and determine cases at Tauranga acting under its ordinary jurisdiction

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50 See 1874 AJHR C4, 4.

under the Native Lands Act 1865. In October 1865 he directed Judge Smith to proceed with hearing the cases listed in the panui for Tauranga, on the basis that he had "not been able to satisfy myself that we had any right to deprive any considerable class of Her Majesty's subjects of the benefit of the laws established in the Colony".[52] Whitaker, Agent for the General Government at Auckland at this time, tried to dissuade Fenton from hearing cases at Tauranga; to proceed would just be a waste of time, Whitaker argued, as it is "impossible for the Court to deal with land belonging to the Crown, and recently declared to be Crown land by proclamation".[53] Fenton disagreed, and thought that this was to prejudge the issue:[54]

> Whether the pieces of land to be investigated at the Court are included in the Block confiscated by the order in Council of May the 18th 1865 I have at present no means of knowing. This is I apprehend a question of fact which must be proved in the usual way, viz. by evidence.

There were constitutional issues at stake as well, in Fenton's view. The applicants had "a right to be heard" and the Chief Judge could not "imagine that the Crown can step in and demand the closing of a court in which the involvement of its own interests puts it in the position of a quasi-defendant".[55]

The immediate problem was solved when all the Tauranga claims set down for hearing at the projected Court sitting for 28 December 1865 were withdrawn. This did not solve the broader jurisdictional issue and tensions between the Court and the government were exacerbated when the Native Department reprimanded Fenton for listing Tauranga cases in the Court panui in the first place.[56] Fenton again had to point out that the Land Court could not

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51 1879 AJHR I-4.

52 Fenton to Judge Smith, 28 October 1865, DOSLI Hamilton Box 2, Folder 8, RDB 125, 47888-47889.

53 Whitaker to Fenton, 14 December 1865, DOSLI Hamilton Box 2, Folder 8, RDB 125, 47893-94.

54 Fenton to Whitaker, 18 December 1865, DOSLI Hamilton Box 2, Folder 8, RDB 125, 47895-91.

55 Ibid. Fenton also doubted that he had any legal power under the Native Lands Act 1865 to stop a sitting of the Court once it had been advertised.

56 Rolleston (Under-Secretary, Native Department, to Fenton, 4 January 1866, DOSLI Hamilton Box 2, Folder 8, RDB 125, 47904: "I was instructed to state it is the opinion of the

assume that the Court had no jurisdiction at Tauranga on the government's say-so. Whether the Court had jurisdiction was a "judicial act" which "cannot with propriety be settled by me in Chambers still less by the Executive Government".[57] Quite what the confiscation proclamation had achieved was not at all clear, given that "no block of land had been confiscated at Tauranga but merely the lands of a certain Tribe in a defined Territory":[58]

> If the Courts over which I have the honor to preside have no Jurisdiction how will the question of which are the lands of this tribe be settled?

The Government then referred the question to the Attorney-General, James Prendergast, for his views. Prendergast partly agreed and partly disagreed with Fenton, but of course the Attorney-General's views were not binding on Courts of law. The issue had resolved by statute – by placing the settlement of Tauranga lands in the hands of commissioners. One objective of the Tauranga Lands Acts was specifically to keep the Native Land Court out. It was not able to hear cases at Tauranga until the commissioners' work had run its course. Fenton must be said to have had a point: how could the status of any one parcel within the confiscated be clarified without the Native Land Court having the opportunity to make a determination on it? Later cases, however, incline to the view that land confiscated under the New Zealand Settlements Act was Crown land, and indeed there is recent authority on the Tauranga confiscation specifically to that effect (in the case of the Tauranga confiscation, in the High Court's view, the critical thing was the wording of the Tauranga District Lands Act 1867).[59] If that is correct (and it is an arguable point) then Whittaker, Russell

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government after perusal of correspondence that, if as it would appear you do not consider it advisable to suspend the proceedings of a Court which has been summonsed to be held, there is the greater need to take care before it is so summonsed that it has jurisdiction which apparently in the case in question it does not possess".

57 Fenton to Native Minister, 7 January 1866, DOSLI Hamilton Box 2, Folder 8, DRB 125, 47905-7.

58 Ibid.

59 *Faulkner v. Tauranga District Council* [1996] 1 NZLR 357. In this case the High Court was confronted with the two conflicting Privy Council decisions in *Te Teira Te Paea v. Te Roera Tareha* [1902] AC 56 and *Kapua v. Haimona* [1913] AC 56. In *Te Teira Te Paea* the Privy Council held that the confiscation proclamation relating to the Mohaka-Waikare block in Hawke's Bay was sufficient was sufficient to extinguish the customary title and convert the whole block into Crown land, which status it retained until re-granted to Maori (on the background to this case see R.P.

and Daldy were attempting to purchase areas of ungranted Crown land by means of private contract, which could have had no legal effect. For Daldy's purchases to be effective it was necessary for the Crown to take action to make them effective, by issuing backdated grants and certificates of title, which was indeed done. In other words the government of the day was to prove willing to assist in the direct transfer of a substantial parcel of confiscated land, arguably in Crown ownership, directly into the hands of a powerful Auckland businessman.

Evelyn Stokes has noted that it is hard to imagine that the special legal position of Matakana was not known to Whitaker and Russell[60] - of all people. In fact the point can be taken a little further than that. Whitaker, as seen, himself tried to dissuade Fenton from dealing with lands within the confiscation boundaries on the basis that the land belonged to the Crown. Yet it is Whitaker who in association with Russell – and Daldy, too, (probably) - becomes involved in buying up the Matakana blocks before any grants had been issued. Not only that: some of the transactions depend on title being proved in the Native Land Court! His behaviour is remarkably inconsistent, to say the least. What he and and Russell were presumably hoping to do was to extinguish Maori claims by deed and then directly obtain certificates of title under the Land Transfer Act from the Crown, which could be backdated if necessary.

Boast, *The Mohaka-Waikare Confiscation: Consolidated Report*, (1995), 102-122). In *Kapua v. Haimona*, however, which was concerned with the Te Akau block within the Waikato confiscation, the Privy Council (per Vicount Haldane L.C.) came to a different conclusion with regard to the Waikato confiscation. Because the Waikato confiscation Order in Council specifically exempted the lands of "loyal inhabitants of the said district" from confiscation it "did not extinguish the native title or other title of any loyal inhabitant" ([1913] AC 764-5). When a grant was made it "conveyed the legal estate out of the Crown and transformed the native into a freehold title, the relative interests of the grantees remaining equivalent in value and extent to what they were before" (ibid, 766-7; query however "legal estate").

In *Faulkner* Blanchard J. concluded that the Tauranga confiscation resembled the Mohaka-Waikare confiscation rather than the Waikato confiscation. The wording of the Tauranga and Waikato confiscations was argued to be similar, but Blanchard J. found that even so the Tauranga District Lands Act 1867 had the effect of vesting the whole of the confiscated area in the colonial government as Crown land. The "Tauranga District Lands Act actually said and declared that "the whole of the said land [ie the whole district] was duly and effectually set apart reserved *and taken* under the said Act [ie the New Zealand Settlements Act] as sites for settlements for colonization" (emphasis added). The stipulation that the land was "taken" may be inconsistent with what the governor had said and with the Order in Council but the Act expressly operated to take the whole of the Tauranga district, although in anticipation that three-quarters of it would be returned by means of the process of inquiry and the issue of certificates by commissioners."

60 Stokes, *Allocation of Reserves*, 222.

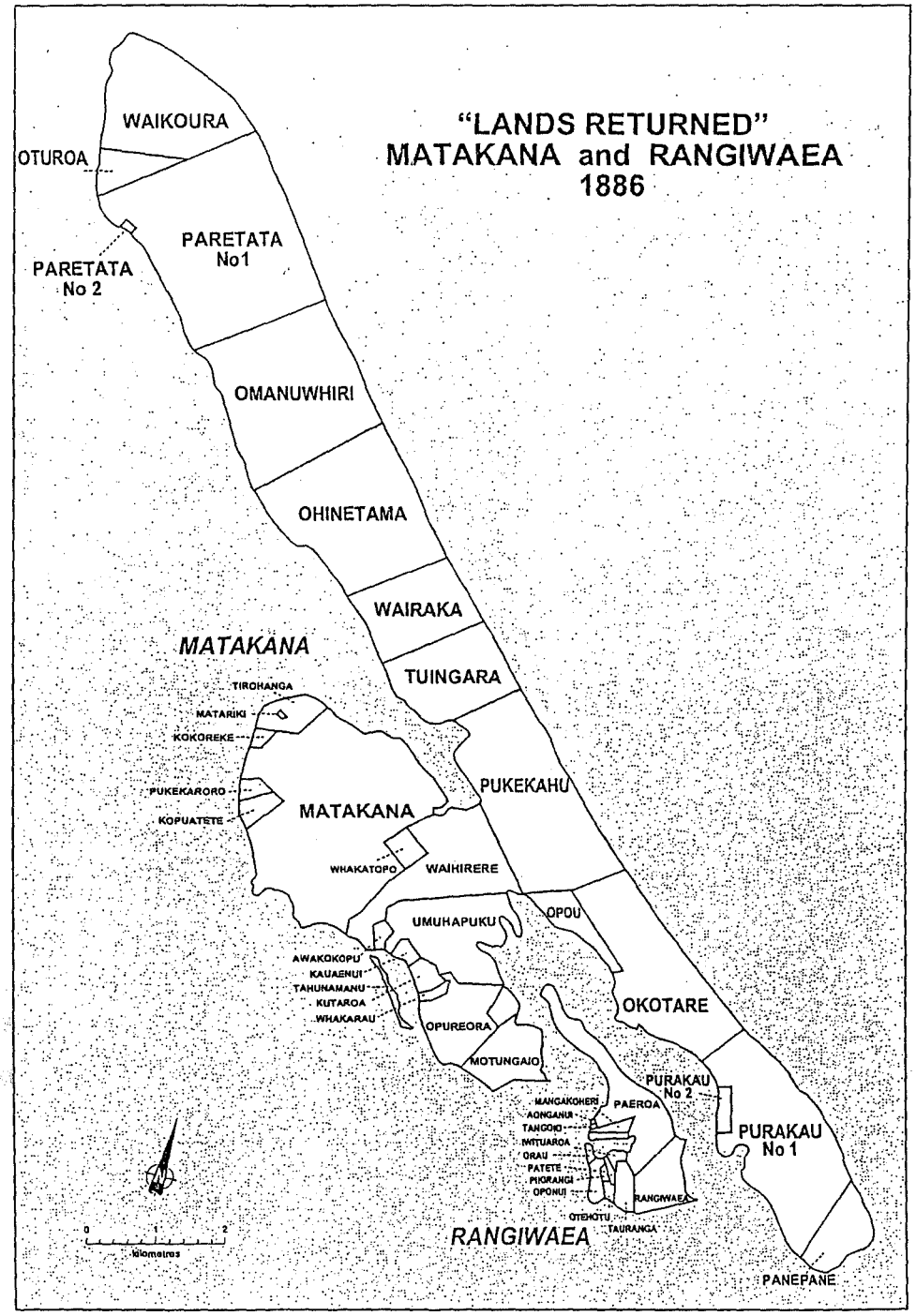

Figure 30

Stokes, *History of Tauranga County*, 201

It is not clear where exactly the blocks purportedly acquired by Russell and Whitaker were actually located. There were a total of 20 transactions in total. The names of six of the blocks acquired by Whitaker and Russell correspond to some of the modern blocks on the eastern ("farmland") side of the island (Te Awa Kokopu, Waihirere, Kopuatete, Te Whakatupo, Opau - the block now known as Opou, presumably - and Pukekaroro. None of the rest of the names correspond to any existing blocks - but then how the existing blocks got their names is not known, and no doubt a particular surveyed area could have any number of possible names drawn from a range of landscape features and settlements. My opinion is that it is unlikely that Russell and Whitaker and Daldy were acting in opposition to each other, and it seems more probable that the three of them had tried to acquire the whole of Matakana Island in partnership, Whitaker and Russell buying up the western side of the island and Daldy the eastern.

(c) The Daldy transactions

At the same time as Russell and Whitaker were purportedly acquiring interests on Matakana, William Crush Daldy was doing the same thing. The Daldy and Whitaker-Russell transactions all took place at more or less the same time (Oct 30 1868-Dec 17 1870 and December 1869 respectively). Whitaker and Russell are of course well-known figures.[61] Daldy is not so well-remembered today, but in fact he was a powerful figure in his time, a leading Auckland businessman and politician who belonged to the same Auckland business circles as Whitaker and Russell.[62] From 1861-64 Daldy was a member of the Auckland Provincial

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61 For a compelling portrait see R C J Stone's entry on Russell in*DNZB* vol 1, 377-9. Russell withdrew from politics when the colonial capital was moved from Auckland to Wellington in 1865.

62 Bizarrely there is no entry on Daldy in the *DNZB*. There is however a short if rather bland article on him by Enid Evans, librarian of the Auckland Institute and Museum, in A H McLintock (ed), *Encyclopaedia of New Zealand*, 1966, vol 1, 441, and he is also the subject of a biography by L. N. Dugdale (*Captain William Crush Daldy*, Heritage Press, Waikanae, 1993). William Crush Daldy was born in Rainham, Essex, in 1816 and died in Auckland in 1903. His father was a reasonably prosperous coal-merchant. William Daldy spent much of his early life at sea. In 1840 he sailed his own schooner *Shamrock* from Liverpool to Auckland, and for some time traded between Auckland and New South Wales. In 1844 Daldy was Captain of Brown and Campbell's vessel *Bollina* and sailed to England with Auckland's first cargo of exports. In 1847

Council; he was one of the first auditors of the Bank of New Zealand (established, of course, by Thomas Russell), and in 1871 he became the first chairman of the Auckland Harbour Board. Daldy has been described by B J Dalton as "one of the largest Auckland merchants engaged in trade with Maoris". Dalton has noted also that Daldy made a name for himself in the Assembly as an opponent of Crown pre-emption and a supporter of direct purchase of Maori land.[63] Stone has described in his *Makers of Fortune* how the Auckland business community was divided in its views on Maori policy: the larger grouping, which included Daldy along with W T Buckland, Samuel Jackson, Hugh Carleton and J C Firth "believed that the Maori must be subdued and that Maori lands must, by whatever means, come more freely into European hands".[64] In short, Daldy was an influential and very well-connected Auckland businessman with some firm views on direct purchase of Maori land. His lawyer and friend Thomas Russell was one of the most powerful men in the colony: as Professor Stone has noted "there were persistent rumours that powerful friends of Russell in government were all too ready to grant favours to him" and he cites William Rolleston's observation that "the vulgar idea...is said to exist, that Mr Thomas Russell is not the representative of the Colonial Government, but the Colonial Government is the representative of Mr Thomas Russell."[65]

Daldy had a number of business interests in the Bay of Plenty. As well as his Matakana speculation he also was involved in a project to lease land at the

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Daldy established a timber mill in Auckland and in 1849 he established the shipping firm of Coombes and Daldy, which, says Miss Evans, "flourished for nearly 50 years". From 1855-60 was a member of the House of Representatives and was Minister without portfolio in the Fox administration of 1856. From 1861-64 he was a Member of the Auckland Provincial Council. In 1859 Daldy founded the New Zealand Insurance Co. and later became chairman of the Auckland Harbour Board. Daldy was in short a self-made man, probably lacking the social graces of Campbell, Whitaker and Russell, but nevertheless a powerful and well-connected leader of the Auckland business community. (His letters written in the 1880s are sometimes slightly off-idiom and ungrammatical, evidence of his comparative lack of education - and of his determination to better himself.) His second wife, Amey Daldy, who he married on 17 March 1880, was a noted suffragist. See also G H Scholefield, *Dictionary of N Z Biography*, volume 1, 1940, 190

63 See B J Dalton, *War and Politics in New Zealand*, 86-7. Daldy also, as a supporter of direct purchase, opposed the government's disastrous Waitara purchase of 1859, which led to war in Taranaki and the abandonment of Crown pre-emption: see Dalton op,cit, 115. These matters are discreetly not mentioned in Miss Evans' article in the *Encyclopaedia of New Zealand.*

64 Stone. R.C.J. *Makers of fortune: A colonial business community and its fall*, Auckland U.P./Oxford U.P., Auckland 1973.

65 R C J Stone, "Russell, Thomas", *DNZB* vol 1, 377-9, at 378.

Tarawera river near Matata for sulphur works.[66] As noted, it seems reasonable to assume that Daldy, Whitaker and Russell acted together in buying up Matakana land in 1869-70. (Daldy's solicitors in Auckland were in fact none other than...Whitaker and Russell!) The acquisitions of the Matakana blocks by these three seem to be part of a planned campaign by Auckland business interests to grab as much of the confiscated lands around Tauranga as they could. The legality of the transactions was doubtful, to say the least, but hopefully some advantages could be wrung out of the transactions all the same - as indeed turned out to be the case.

Daldy's purchases were vitiated by exactly the same legal flaws as Whitaker's and Russell's. The real puzzle is quite why Whitaker and Russell's interests were bought out by the government, whereas Daldy declined to take, or was perhaps not offered, the government pay-out and remained in possession. Daldy presumably preferred to take the land rather than the money, although another possibility may be that it was the more fertile and better-watered harbour side of the island which was historically more densely settled and which the government regarded as more important for Maori settlement. There is simply no documentation, however. For Daldy to receive grants the purchases had to be retrospectively validated. Daldy's 1869 deeds (and one additional one for Ohinetama made in 1873) all predated the issue of Crown grants to the eastern Matakana blocks in 1877, to say nothing of Clarke's somewhat baffling recommendation, not made until 1886, that unrestricted Crown grants be issued to the blocks that Daldy had acquired. Stokes guesses that in fact no grants were ever made for any of the blocks Daldy had bought[67], which is another way of saying that the Crown granted the blocks to Daldy by issuing Land Transfer Act certificates of title directly to him (the first issue of a Land Transfer Act title is legally the same thing as conferring a Crown grant). Woodley is of the same opinion: "it is possible that [the] preamble to the certificate was the actual grant to Maori of these blocks".[68] Although Daldy's certificate of title for his Matakana

66 On 27 Jan 1876 Daldy wrote to the Native Department asking whether "government will lease land at Tarawera for sulphur works": ND 76/836, MA 3/9 and MA 2/14 WNA [Register and index entry only; original letter no longer existence]; also MA 2/14 76/4864

67 Stokes, *Allocation of Reserves*, 226.

68 Woodley, *Matakana Island*, 23.

blocks recited that grants had been made to the Maori owners on 7 August 1877, no *actual* grants have been located[69] and it may be that some 7 August 'grants' were only notional. (This is not true of all of these blocks as grants were certainly made to Panepane, an eastern block that Daldy did not acquire, and in fact the Native Land was making succession orders in respect of it as early as 1878, and to Tuingara, granted to Raimona and others on 7 August 1877.[70]) As Woodley has pointed out, the recital in Daldy's certificate of title in any event lists only one name from each block, and although this cannot have any effect on the legality of the certificate of title it perhaps does raise a doubt as to whether all of the owners were aware of the transactions. All these dealings were managed on Daldy's behalf by Russell and Whitaker, barristers and solicitors. What may have been done with the blocks bought by Daldy was to collapse the 'grants' and the issue of Land Transfer titles into basically one transaction, and to place the transactions beyond reach by issuing Land Transfer Act titles. This was a kind of short-cut, one effect of which was that Daldy's transactions were simply accepted at face value and not proved in any manner. (As it happens, some of the transactions turned out to be disputed, as will be seen.) As the Native Department files, if any, recording this have gone up in smoke, and Russell and Whitaker's files have presumably been lost to posterity the full details will never be known.[71] Commissioner Brabant, later directed to mediate in a dispute between Matakana Maori and the Crown found that as the transactions took place before the establishment of Trust Commissioners in 1870 there was no official documentation to which he could refer.[72]

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69 See Woodley, *Matakana Island*, 23.

70 See Tuingara succession claim, (1884) 2 Tauranga MB 235-6. This gives the registered no. of the Tuingara grant as 66582. Here Ngawiki Te Muri applied to succeed to the interests of her father Te Uri in Tuingara. Succession orders were made in favour of Ngawiki and Te Muri's two grandchildren, Te Arihi Iharaima and Noho Rikihana.

71 It is sometimes supposed that the firm of Whitaker and Russell evolved into Russell McVeigh, but this is not the case: Russell McVeigh was founded by John B Russell, Thomas Russell's brother. Whitaker and Russell later became known as Buddle Weir and Co and this later merged with the well-known Wellington firm of Bell Gully and Co to create Bell Gully Buddle Weir. If the firm has still kept its early files they would make interesting reading, to say the least. See Peter Spiller, "The Legal Profession", in Spiller, Finn and Boast, *A New Zealand Legal History*, Brooker's, 1995, 237.

72 Brabant to Lewis, 23 October 1884, RDB 49023.

Some grants were issued to land within the confiscation boundaries during the 1870s, but the state of the grants seems to have been chaotic and confusing to all concerned. The Tauranga minute books commence in 1878 with a series of succession cases which evidence this confusion very clearly. One sees statements such as "the Crown grant is probably in Auckland";[73] "Taho appears and states he does not know where the Crown grant is";[74] Hoani Toharangi appears...he has not yet received a Crown grant";[75] "the Court informs him that a telegram will be sent to Mr Clarke inquiring into the matter [of the grant]";[76] "Putere Maiho appears and states the Crown grant is in the possession of Archdeacon Brown or Government";[77] "Akuhata Te Ninihi appears and states the Crown grant is on its way from Auckland".[78] In a succession claim relating to Motuhoa the applicant, Purangataua, believed that "the Crown grant is in Auckland"[79], but the Court was unsure whether a grant existed or not: the "Court had searched, but failed to find one". The Crown grant for Motiti had also been misplaced and was unavailable at the time of a succession claim made by the children of Te Ninihi. Akuhata Tupaea told the Court:[80]

> I went to get the Crown Grant at Mr Beckham's Court in Auckland where I was shown a paper by some officers of the resident magistrate's court. The Crown Grant was given to myself and father Hori Tupaea. The Crown Grant was given to us to bring down here. Mr Gill asked for it, it was given to him lest it should get burnt.

Hori Tupaea on the same occasion complained that "I have applied three times to Mr Clarke for the Crown Grant and he has refused to give it to me."

3.4. Explaining the sales

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73 (1878) 1 Tauranga MB 6.
74 (1878) 1 Tauranga MB 7.
75 (1878) 1 Tauranga MB 9.
76 Ibid.
77 (1878) 1 Tauranga MB 10 (Puhipoto succession).
78 (1878) 1 Tauranga MB 10 (Motiti succession).
79 (1878) 1 Tauranga MB 69 (Motuhoa succession)
80 (1878) Tauranga MB 69.

Why did the Matakana grantees sell land to Whitaker, Russell and Daldy at this time? The most likely explanation is likely to be sheer poverty. This report is not a social impacts study, but it seems clear that both from anecdotal and demographic evidence the Tauranga hapu were economically devastated by the confiscations. One measure of this is child-woman ratios, which for Ngaiterangi are calculated by Pool as .81 in 1874 and .78 in 1881, very low figures indeed and much less than the national Maori averages (1.16 on both occasions).[81] There is also evidence that after the confiscations many of the Ngai Te Rangi hapu turned to gum-digging for economic survival, presumably because the confusions over land tenure and the general destruction caused by the war made farming difficult. In 1884 Reneti Te Tauwhao, a leading chief of Whanau a Tauwhao, told the Native land Court that "when peace returned, we laid down our arms, but did not remain at Tauranga: - we went to Whangamata to purvey ourselves clothing etc. by digging gum."[82] Significantly, Daldy later became embroiled in a major dispute with some Matakana and Katikati people who continued to dig for gum on land at Matakana that Daldy claimed to have purchased.[83]

3.5. The Native Land Court and the Matakana grants in the 1870s

As noted above, the Native Land Court Tauranga minute books commence in 1878. The cases, however, are confined to re-granted blocks within the Tauranga confiscation boundaries, or to areas outside those boundaries completely. An example of the former is Panepane, a block on the eastern side of Matakana to which succession applications were made by Tawhio Te Amohau and Hohepa Paama in 1878.[84] There clearly was an actual grant to this block,

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81 See Pool, *Te Iwi Maori*, 96. See also the discussion of Te Whanau a Tauwhao and Tuhua, below. Te Whanau a Tauwhao seem to have been in an even worse plight than Ngai Te Rangi generally.

82 (1884) 2 Tauranga MB 219.

83 See below. For further details on social and economic conditions in Tauranga at this time see the excellent discussion by Kathryn Rose, *The Impact of Confiscation: Socio-Economic Conditions of Tauranga Maori, 1865-1965*, Wai 215 Doc#A38. Conditions in the 1880s are discussed in ibid, 53-58. Epidemics such as measles and "low fever" seem to have been very prevalent at this time and the cause of high mortality rates in children. Maori people seem also to have been simply hungry a lot of the time.

84 See (1878) 1 Tauranga MB 64-5.

which must have been made prior to 12 July 1875 as that was the date when Hemi Paama died, Hemi being one of the seven Panepane grantees (the others being Kupa Te Amohau, Te Kuka, Te Ninihi, Te Paikea, Te Ropiu, and Hohepa Hikutaia). The area of the Panepane block is given at this time as 1170 acres, significantly larger than the later Panepane block at the very southern end of Matakana, and perhaps included the block later known as Purakau.

Since Panepane had definitely been Crown-granted the Native Land Court was satisfied that it had jurisdiction to deal with it, and Judge Wilson made the necessary orders:

> Ordered that Hohepa Palmer and his sister Mata Te [Tanahure?] do succeed to the share of Hemi Paama deceased in the Block known as Panepane 1170 acres and that the shares of each respectively be decided when the Block is divided at a further sitting of the Court. Ordered that Tawhio Te Amohau and Maihi Te Amohau do succeed to the share of their father Kipa Te Amohau deceased in the Block known as Panepane 1170 acres.

As noted above, there was also an actual grant made for Tuingara (in 1877), and as with Panepane the Court also made succession orders in respect of it before 1886.[85] The Court could, however, deal only with Crown-granted blocks, which explains why there is no record of any of the eastern Matakana, Rangiwaea or Tuhua blocks in the Court until after the grants were made in 1885-6. This is illustrated by Purangataua's succession application made in respect of Motuhoa in 1878. There being no grant proved in evidence, the Court could not deal with it.[86]

> The Court stated that it had no knowledge of the existence of a Crown grant. The Native Land Court had searched, but failed to find one. It is the business of the claimant to produce Crown grants. The Native Land Court makes search for its own convenience. The Court will proceed with the case if claimant produces a document from Mr Clarke stating that the land had been promised to Te Kuka deceased.

3.6. Investigation of Rangiwaea

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85 See Tuingara succession claim, (1884) 2 Tauranga MB 235-6.

There appears to be practically no information on the Rangiwaea Island blocks until 1885, when a number of the Rangiwaea Island blocks are listed in the Crown grants issued for that year. Quite when the Commissioners investigated these blocks is unknown (in 1885, one assumes), and the only certain thing is the date of the grants.

3.7. Investigation of Tuhua

Tuhua itself was vested in Te Whanau a Tauwhao by Commissioner Brabant in August 1882.[87] Some information about the context of the hearing is provided by a petition sent by Reneti Te Whauwhau to the Native Affairs Committee in 1895. According to this document Bryce, the Native Minister, took a personal interest in Tuhua and made various threats against the Te Urangawera forcing them to proceed with the case:[88]

> It was the Honourable Mr Bryce Native Minister who insisted on this island being passed through the Court and he used many threats against us. When it had passed through the Commission enquiry, we all requested that this island should be restricted and entailed on us and our descendants. The Court gave its consent. We also applied to be allowed to pay the survey liens, the Court agreed. We then paid a small sum toward the amounts.

The applicant was Reneti Te Whauwhau who claimed the island on the basis of ancestral descent (take tupuna):[89]

> Our claim is from a tupuna, viz Koroua. It is not from conquest. We have never been conquered. They always lived there (the tupunas). My fire has always been there.

The claim was uncontested, and no detailed evidence, or at least Brabant did not record any. The Court vested the island in nine separate Te Urangawera hapu each with a separate ownership list. Confusingly one of these lists, all of them

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86 (1878) 1 Tauranga MB 69.

87 (1882) Commissioner Brabant's notes of evidence, 97-8, DOSLI Hamilton Box 3 Folder 16, RDB 125, 48285-6.

88 Petition of Reneti Te Whauwhau and 50 others, 1895/392, AAMK 869/302a WNA.

89 Ibid.

sections of "Te Urangawera o Ngai Tauwhao" was Ngati Kuku. As far as the writer is aware Ngati Kuku are not usually regarded as a hapu of Te Urangawera and perhaps this was a group of Ngati Kuku representatives included in the title to reflect traditional or economic interests in the island of some kind. The full list is as follows:

Table 1
List of hapu of Te Urangawera granted ownership of Tuhua, 1882
[source: DOSLI Hamilton Box 3 Folder 20, RDB 128, 28,385-418]

1. Ngati Hinewai
2. Ngati Kuku
3. Ngati Koroua
4. Ngati Te Ruahihi
5. Ngati Waitarere
6. Ngati Taha
7. Ngati Parehahu
8. Ngati [Kirewehi]
9. Ngati [Koroere?]

A full list of the Tuhua grantees also happens to be preserved on the Native Department Tuhua file. This is as follows:

Table 2
Tuhua grantees
[source: AAMK 869/203a WNA]

No.	Name	Shares
Male Adults		
1.	Akuhata Te Ninihi	4
2.	Petera Te Ninihi	4
3.	Akuhata Tupaea	3
4.	Maihi Tinipoaka	3
5.	Rotohiko Te Aha	5
6.	Reneti Te Whauwhau	6
7.	Tarau Kaka	2
8.	Morehu Kaka	2
9.	Te Wharehera	2
10.	Petera Taiawhio	1
11.	Kaka Te Puranga	2
12.	Te Mata Hapara	2
13.	Hape Te Riha	2
14.	Haimona Te Ahiatua	2
15.	Pakari Marino	1
16.	Menehira Turere	1
17.	Hirini Te Ruapa	2
18.	Taiharuru Matiu	3
19.	Ngahipi Hopara	2
20.	Kawhena Pakau	2
21.	Te Kiriwai Taaiki	2
22.	Hekara Moko	1

23.	Tawe Hohoaia		2
24.	Te Moanaroa		2
25.	Paora Kamoki		3
26.	Ereuti Te Hanauru (Benjamin Edwards)		2
27.	Tame Erueti Te Heketua (Thomas Edwards)		2
28.	Te Kiritoha Whakana (Christopher Faulkner)		1
29.	Hone Romana		1
30.	Te Wiremu Te Rangihiwana		1
31.	Te Ipu	[sold]	1
32.	Te Kani	[sold]	1
33.	Te Rangihau	[sold]	1
34.	Haki Te Riha		2
35.	Te Raiwa Taaiti		1
36.	Whare Tikurena		1
37.	Te Rata Taera		1
38.	Houwhenua Te Patu		1
39.	Te Taikato Te Patu		1
40.	Makahi Paikea		1
41.	Te Hakiwiria Horohau		1
42.	Te Metera Motatau	[sold]	2
43.	Matui Tarera		1
44.	Heta Tarera		1
45.	Hamiora Tupaea		1
46.	Iraia Te Waru		1
47.	Matahou Te Waru		1
48.	Tupaea Akuhata	[sold]	1
49.	Te Roretana Kereti		1
50.	Ngawaka Te Waru	[sold]	1
51.	Tutera Marupo		1
52.	Te Pene Te Wharengaio		1
53.	Te Whakaturou		1
54.	Nepia Te Whakaturou	[sold]	1
55.	Ihakura Te Whakaturou	[sold]	1
56.	Henare Pererika		1
Female Adults			
57.	Hariata Rotohiko		5
58.	Heemi Tiwai		3
59.	Rautahi Ihaka		2
60.	Ngakohe Rotohiko		4
61.	Paua Kawhena		2
62.	Ngata Te Kotuhi		1
63.	Te Aurere Te Ninihi		3
64.	Meri Akuhata		1
65.	Meri Tarahaha	[sold]	1
66.	Te Ngaroahiahi Kauri	[sold]	2
67.	Raiha Kauri		2
68.	Te Papapine Haimona		2
69.	Maro Turere		3
70.	Neko Matiu		3
71.	Mokomoko Tohu		1
72.	Pare Pikake Piri		2
73.	Tokerau Te Wiremu		2

74.	Tangi Matiu		3
75.	Irena Tame		1
76.	Te Ngaropo Tame		1
77.	Mariana Te Porua		1
78.	Rea Romana		1
79.	Harata Te Manukahu		1
80.	Te Waiunuka		1
81.	Ngakai Meretaka		1
82.	Ngapati Te Pakaru		1
83.	Hana Te Pakaru		1
84.	Paehuka Hone		1
85.	Maria Tarau		1
86.	Rania Pono		1
87.	Repeka Tikirena		1
88.	Hera Te Paimata		1
89.	Te Omeroa Te Maioha		1
90.	Parepikake Tupaea		1
91.	Rakapa Tinipoaka		1
92.	Aporina Taura		1
93.	Taroa Te Kotuhi		2
Male children			
94.	Rawiri Whakana		2
95.	Wiremu Whakana		3
96.	Poti		1
97.	Ruru Karowhare		1
98.	Mutu Kawhena		1
99.	Te Umupakaroa Hirini		1
100.	Tawhiti Akuhata		1
101.	Te Kapu Te Ninihi		1
102.	Koraurau	[sold]	1
103.	Ngamanuoterangi Hamiora	[sold]	1
104.	Tutua Menehira		1
105.	Te Atarau Menehira		1
Female children			
106.	Riripeti Whakana		2
107.	Te Hineau Pounamu Tarau		1
108.	Rautahi Tarau		1
109.	Meriana Kereti		1
110.	Rihi Paetai		1
111.	Tukua Te [Muhani?]		1
112.	Paerauta Menehira		1
113.	Mere Moetiaha		2
114.	Te Huirama Menehira		1
115.	[ ] Te Wiremu		2
116.	Ahi Te Pene		2
117.	Maraea Whakana		2
118.	Tauminingarangi	[sold]	1
119.	Hinehou Hana		1
120.	Te Araroa Taiki		1

There were thus 56 men, 37 women, and 27 children of Te Whanau a Tauwhao alive at the time of the grant, giving a child-woman ratio of only .73:1 (i.e., for every 100 adult women there are only 73 living children), a sure indication of a population in very serious trouble. (Child-woman ratios are a standard demographic technique and are regarded as a reliable measure of rates of fertility and infant mortality). The figures for Te Whanau a Tauwhao are a little lower than for Ngaiterangi as a whole in 1881 (.78), but both are very low compared to the national average of 1.16 (itself not very high, of course).[90] The 1881 figures indicate especially low child-woman ratios for all iwi affected by raupatu (Atiawa: .67; Ngaiterangi .78; Ngati Ruanui .86; Taranaki .61, Waikato 90, for example). Te Whanau-a-Tauwhao are clearly in a significant plight in 1886 at the time of the grant, with high infant mortality, low fertility, and largely dependent on gum digging for susbsistence.

3.8. The Native Land Court and Motiti

The earlier history of Motiti has already been covered in my earlier report on Ngai Te Rangi history and need not be repeated here in detail. The island had played a key role in Ngai Te Rangi history during the 19th century. Te Morenga of Nga Puhi defeated Ngai Te Rangi at Matarehua on Motiti Island in 1818, but Te Waru, Ngai Te Rangi's leading chief at that time, escaped, thus depriving Te Morenga of full satisfaction and necessitating a further attack.[91] Later the island was famously disputed between Ngai Te Rangi and Arawa and rights to it were also asserted by a Ngati Awa group, Nga Patuwai. Motiti was somewhat exceptional in that it was the only area within the boundaries of the Tauranga confiscation proclamation to be the subject of a full investigation of title by the Native Land Court. This took place in 1867 when Judge Fenton, sitting at Maketu, presided over an investigation of title to Motiti which generated a substantial volume of evidence. The jurisdictional situation with this case was somewhat unusual, as was explained by Fenton himself when (strangely) giving

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90 See Pool, *Te Iwi Maori*, 95-98. Pool argues that in the case of Ngaiterangi the correlation between confiscation and very low child-woman ratios is clear (ibid, 97-8).

91 See Crosby, *Musket Wars*, 57.

evidence in the Land Court in a later Motiti case in the 1880s. The case had only been able to proceed because Commissioner Clarke had waived the Crown's rights:[92]

> Mr Fenton then said, having himself been the Judge when the case was heard, he could best reply to the question which the Court had raised - he proceeded to read a [ ] of the Judgment then delivered by him, on the 18 Oct 1867. This grant was made to Hori Tupaea alone, in consequence of the limitation of the number of names that could legally be inserted in any Grant to Ten.
>
> No formal Order of Court was made in this case, because the land was not really within the Jurisdiction of the Court being confiscated land - Mr HT Clarke, then Commissioner of the District, had agreed to abandon the Crown right. The abandonment set up the Jurisdiction of the Court, and it was therefore tried: - but, as the abandonment of the Crown had not been formally or legally made, no Order of Court followed. The Crown Grant, however, embodied the [decision?] and was made upon the lists in it.

The 1867 Motiti hearing may have been related to the wording of the confiscation proclamation, which included the lands of Ngai Te Rangi as described in the schedule and "such portions of Motiti or Flat Island as shall be adjudged to belong to the Ngai Te Rangi tribe". This envisaged that some kind of investigation was to take place after which the Ngai Te Rangi portion of the island would fall within the confiscated area and become Crown land, subject to such regrants as were appropriate. In reality the Motiti case was more like an ordinary investigation of title by the Native Land Court.

In 1867 the tensions over Motiti were still explosive. Te Maruki of Te Patuwai gave evidence in which he said that he did not know "what right Hori Tupaea had to the island" and categorically denied that Ngati Whakaue or any of the Arawa groupings (except Pikiao) had any right to the island, calling his opponents liars into the bargain:[93]

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92 F.D. Fenton, Motiti South Part subdivision case, (1884) 2 Tauranga MB 195, at 196.

93 (1867) 1 Maketu MB 37 (Motiti investigation of title).

> I do not know what right Hori Tupaea has to the island. The Ngati Pikiao have a claim. Ngati Whakaue have no claim. Tuwharetoa have no claim. You can tame the beasts of the field and the birds of the air but not man's tongue.

Those hearing this restrained themselves with difficulty. Wiremu Maihi Te Rangakaheke told the Court that only a few more words from Te Maruki in this vein would lead to them resorting to arms:[94]

> William Marsh stated that a very little would made [sic] the assembled Natives take up arms on hearing the statements of the witness Te Maruki.

Evidence was given by witnesses representing Te Patuwai, Whanau a Tauwhao, and various sections of Te Arawa. Hori Tupaea and Te Patu o Whenua gave evidence for Whanau a Tauwhao. Hori Tupaea denied that Ngaiterangi lost control over Motiti after the battle of Te Tumu in May 1836:[95]

> When Tumu fell Maketu alone came intp possession of the Arawas, not Motiti. Te Amohau said to me let the Patuwai return to Motiti and I did. I never asked leave of the Arawas.

Hori Tupaea was willing to admit the Patuwai claim, but told the Court the boundaries were disputed:

> The Patuwai have one end. The boundary line commences at Wairomaki, thence to [ ] (witness points out the boundary on the plan). The Patuwai wanted the boundary to be at Te [Horetu], this is an old dispute. The Patuwai's new pa Karioi was built by me but it was taken possession of by the Patuwai after I left.

At the time of writing it has not been possible to gain acess to the Land Court block order files held in Hamilton (this would make researching the Court's orders relating to Motiti a simple matter). However what was done is apparent from evidence given in later cases. The island was split between Te Whanau a Tauwhao and the Patuwai. The grant to the larger Whanau a

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94 (1867) 1 Maketu MB 45 (Motiti investigation of title).
95 (1867) 1 Maketu MB

Tauwhao portion was made, said Judge Fenton, "to Hori Tupaea alone, in consquence of the limitation of the number of names that could legally be inserted in any Grant to Ten".[96] As the island was part of the Tauranga confiscation no formal order was made, but the names as fixed by the Court were, one assumes, then inserted into the Crown grant. Although the Motiti case was heard by Fenton, the Court awards were made by Judge Munro on 27 April 1868. According to Akuhata Tupaea, "Judge Munro made the award to Hori Tupaea in trust for Whanau a Ngaitawhau [sic] and a separate award for Patuai [sic]".[97]

Motiti next makes an appearance in the Minute Books in 1878 with the succession claim lodged on behalf ot three children of the Te Whanau a Tauwhao rangatira Te Ninihi. Their claim was presented to the Court by Akuhata Tupaea, Hori Tupaea's son. There was some confusion as to what exactly had happened to the Motiti Crown Grant by this time, but it was clear that (apart from the Patuwai section) there could be no succession claim to Te Ninihi's interests, Hori Tupaea being the only grantee. This seems to have been a confusing outcome to all concerned, as Akuhata Tupaea and Hori Tupaea were themselves both present in Court to support the claim. But Judge Wilson was in no doubt. According to a notation in the Minute Book, "as Hori Tupaea only named grantee succession by descendants of Te Ninihi, one of the owners under Maori custom, was rejected by NLC."[98]

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96 F D Fenton, in Motiti South subdivision claim, (1884) 2 Tauranga MB 196.
97 Akuhata Tupaea, (1878) 1 Tauranga MB 69.
98 (1878) 1 Tauranga MB 78.

4. The Rangiwaea-Matakana blocks after 1880

4.1. Daldy's dispute with Matakana Maori (1884)

A certain amount of light is thrown upon the history of Matakana by the records of Daldy's dispute with local Maori in 1884. On 5 July 1884 Daldy wrote to Brabant (Resident Magistrate at Tauranga) complaining that local Maori, with the encouragement of the storekeepers at Katikati, had been removing kauri gum from land at the northern end of Matakana which Daldy claimed to own.[99] It appears from Daldy's letter that he had recently leased the land for gum digging but that the lessee's agent had been unable to persuade the Maori gumdiggers to leave. This put Daldy in an awkward position with regard to his tenant, and put at risk Daldy's efforts to finally derive some income from the neglected Matakana blocks he had bought years before. Nor was this the first occasion when gumdigging rights had been disputed:

> For some years the natives have been taking gum off the land encouraged by the shopkeepers at Kati Kati. Seven years since I send [sic] a person down who understood the native language who warned them not to continue doing so. About 5 years since I sent another accompanied by a policeman from here [Auckland] who gave the printed notices and for a time they desisted. Two months ago I had the opportunity of leasing the land for gum digging. This person sent a man down to live on [the] land and make arrangements with Natives or White men for working . On his arrival he found a large number of Natives residing on the land at Kati Kati end and large quantities of gum being removed. I gave Mr Mooney the person referred to a Power of Attorney and printed notices in Maori to the Natives and in English to the storekeepers, also [a] plan of the land shewing boundaries that there might be no mistake about position etc.

Daldy complained that "not less 50 Tons of gum have been removed":

> I have borne with this a long time but now I have the opportunity of making something out of the property I am determined after trying all fair means if I fail to proceed legally which I trust I shall not be forced to as it may create ill feeling.

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99 Daldy to Brabant, 5 July 1884, Box 5 Folder 31, DOSLI Hamilton, RDB 127, 49040-1.

Daldy hoped that Brabant would be able to use his influence to resolve matters without creating creating too much fuss: "I know that you have great influence amongst the Natives in the district and if you can use it to effect a quiet settlement I shall be much obliged to you."

Brabant took the trouble to contact the local chiefs who told him that they were digging gum on their own land:[100]

> I have communicated with the chiefs of the party gum digging there. Their reply is that they do not admit having sold the whole of the land to you and that they are digging on the portion which they maintain is theirs. I have of course no knowledge of the facts of the case and merely repeat their statement for your information.

It does seem a little surprising that Brabant, with his long experience in Tauranga lands issues had no knowledge whatever of the circumstances surrounding Daldy's claims, but it is hard to see what to make of this. Daldy for his part professed to be very surprised by the assertion that the land was not his:[101]

> I never supposed the Maories would for one moment set up the plea they had not sold all the land to me and therefore did not say how I purchased.

Daldy stated that "Mr Commissioner Clarke had the island surveyed and subdivided and lithograph plans prepared also Crown grants issued to them" and that he had bought the land via one S J Edmonds. As noted above Daldy had received Land Transfer Act certificates of title to the blocks - whether there had ever been any actual grants to Daldy's vendors seems unlikely. What Daldy really meant was that he had obtained Land Transfer Act certificates of title to the blocks and was relying on these, as the law probably entitled him to do, as conclusive evidence of his title - as his letter goes on to indicate:

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100 Brabant to Daldy, 15 July 1884, Box 5 Folder 31 DOSLI Hamilton, RDB 127, 49039.

101 Daldy to Brabant, 8 August 1884 , Box 5 Folder 31 DOSLI Hamilton, (RDB 49036-7).

> I have now obtained from the Land Transfer Office a copy of the names on the grants who conveyed to me and from which my certificate of Title is issued and now send them to you.
> Lot 4. Te Ruka. Akuhoto Te Nineha. Pouha Tunoa.
> Lot 5. Enoka.
> Lot 6. Wharenui, Harawera Kotai, Kerete Te Moananui, Herewini Wharerua.
> Lot 8. Hemi Parua, Hohepa Panea, Keepa Te Amohau, Te Kuka.
> Lot 9. Keepa Te Amohau.
> Lot 14. Merehaka, Akuhata Tupaea, Hori Tupaea.
> Lot 15. Pika Kurawhero, Harawara [sic] Kotai, Timi Te Rua, Te Kairini Tewhera.
> Lot 16. Kereti Te Moananui, Te [Wharenui?], Harawira Kotai, Te Kerewini Wharerua.
> Lot 17. Hohepa Te Kai, Wiremu Parera.
> It is hard to decipher some of the signatures and they may be spelt wrong. No 14 is the very small lot. At the present time they are squatting on 15 and 4 which are large blocks: nearly 2000 acres each.

As far as Daldy was concerned it was impossible that any land on the Katikati end of Matakana remained unsold: "if they will not acknowledge my rights although very reluctant to do so I shall commence proceedings to prevent them further robbing me". Daldy stressed that he wanted "to avoid anything like a quarrel" and asked Brabant "if you think there is any hope of them giving me peaceable possession" - that is to say he wanted Brabant, by some means or other, to persuade the Maori people digging the gum to move away with a minimum amount of fuss.

Brabant responded on 21 August. He had found out some more details by this time:[102]

> I have the honour to ack. the receipt of yr. second letter of August 1 on the subject of the Maoris digging gum on land owned by you at Matakana Island. I have seen several of the chiefs of the party digging gum. Their story is that Lot 4 was owned by three persons ([ ] trustees for the hapu) of whom two only sold to you, that Lot 15 was owned by four persons of whom three only sold to you. The other lots they ackowledge the complete sale of - that they have and do keep possession of lots 4 and 15 until the purchase is completed. They offered to bring evidence of the truth of their statements which however I declined to hear having no jurisdiction to enquire into the matter.

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102 Brabant to Daldy, 21 August 1884, Box 5 Folder 31 DOSLI Hamilton (RDB 49035).

Brabant also informed Daldy that he had no intention of exerting himself further on his behalf without instructions from the Native Department:

> If you wish to avoid legal proceedings I should advise you sending a competent agent to see the natives on the subject. I do not think I should be requested to interfere further unless I were asked to do so by the Govt.

On 9 September 1884, however, following representations by Daldy to the Native Department, Brabant was requested by the Department to intervene in order "to endeavour, if possible, to bring about amicable settlement of this matter".[103] (One gets the impression from the correspondence that Brabant was unenthusiastic about getting involved). Brabant went to see "the Matakana Natives" again, but found that they continued to insist, as Brabant put it in his letter to Daldy, the following:[104]

1. That all the shares of the land were not bought by you and that a balance of the purchase money remains unpaid.
2. That they have always and do retain possession of the land pending settlement.
3. They further say they are endeavouring to collect money to contest the matter in the Supreme Court.

The last statement is particularly intriguing. What might the legal issue have been? Clearly the local people thought that there was one.

Brabant, clearly nonplussed by the whole affair, felt it difficult to take the matter any further without seeing Daldy's documentation, and Daldy did not help by refusing to send him any.[105] Daldy in fact rested his claim on his Land Transfer Act certificate of title, but of course this was well before the law relating to indefeasibility of title had settled into its modern shape. (The leading case on

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103 T W Lewis, Under-Secretary, Native Department, to Brabant, 9 September 1884, Box 5 Folder 31 DOSLI Hamilton, RDB 49030.

104 Brabant to Daldy, 8 October 1884, ibid, RDB 49026-9.

105 See Daldy to Brabant, 10 October 1884, ibid, RDB 49024-5: "Copies of deeds I have no doubt would be sent by the Government if applied to, who searched the title and received every document they needed when they granted me title under the Land Transfer Act, and who are responsible to me." The implication appears to be that now having a Land Transfer Act certificate of title there is no need to produce any further documentation.

indefeasibility and Maori freehold land, the Privy Council decision known as *Assets v. Mere Roihi,*[106] was not decided until 1905.) It is clear law today that Daldy would have had an indefeasible title in the absence of fraud, but that was not so certain in 1884, and iny case perhaps the Maori complainants thought there *was* fraud. On 23 October Brabant wrote back to the Native Department describing the steps he had taken, and pointing out that two of the blocks were disputed:

> The land for which I understand Captain Daldy has a Land Transfer Title consists of 8 blocks (in all 8000 acres). Each block was granted to from four to six individuals, I presume quasi-trustees for the hapu. The Natives as far as I know all admit the sale of six of these blocks. In regard to the other two, some of the grantees are dead – those alive tell the hapu that the sale was never completed...They say they have never relinquished possession – whether this is true I do not know.
>
> Had I been placed by Captn Daldy in possession of full information and had the information been such as would justify me in advising the natives they were clearly in the wrong, it is quite possible they would have given in quietly – at least I thought so from what they said, but as Captn Daldy does not enclose his documents and accounts I do not know how I can assist him. The sale is stated to have taken place in 1869 before the days of Trust Commissioners and I have no means of obtaining information from any official source. I have asked Judge Clarke if he knows anything of the transaction. He says he only heard in a general way that Captn Daldy was negociating [sic] for these lands.

Lewis then directed Brabant to take no further action and there the matter seems to have ended. Daldy's certificate of title remains the basis of private title to the land on the ocean side of Matakana at the present time.

4.2. Brabant's Matakana and Rangiwaea awards, 1885-6

Although the minutes of Brabant's investigation have not been located, it seems clear that his investigation of the main Matakana block (and most of the others perhaps) took place in 1885. There is admittedly some fragmentary evidence pointing to a rehearing or reinvestigation of some of the Matakana titles

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106 [1905] AC 176.

in the late 1870s. On 8 August 1877 Ripeka Wiremu Turipana, wrote to the Native Department from an address given as Matapani, Hauraki enquiring "when Matakana will be adjudicated upon" (the letter is indexed in Native Department records as "Matakana rehearing").[107] R W Turipana wrote again on September 17, "relative to lands at Matakana Island".[108] Exactly what all this indicates is not clear at present. The Matakana tuturu block was investigated by Brabant in 1885, assisted by the Arawa chief Rotohiko Haupapa as assessor who kept a copy of the minutes of the case: the minutes were subsequently handed in to the Native Land Court in Tauranga in 1906 by Rotohiko's son.[109]

Hone McMillan (Hone Te Rangihua) told the Land Court in 1910 what Brabant had done in 1885:[110]

> Hone Te Rangihua is my name in the list, Ngati Tamawhariua is my hapu. This land was awarded to six ancestors at the investigation by the Commissioners. The land was situated within the Confiscated boundary. Under the Act of 1867 and its amendments and under the Act of 1868. One fourth of the land was taken in payment and 3/4 returned to the Ngaiterangi tribe. I contend that this land returned was held by the Ngaiterangi under their customs and usages the same as it was before the confiscation. The Commissioner investigated the land in accordance with Maori custom and awarded it to six ancestors. At the investigation cases were set out and the Court decided that the following ancestors were supplied, viz: **[298]** Te Mapua, Koteo, Taremokai, Tamapeka, Ngatiha, [Korotai?].

Brabant was also said to have awarded a piece of land at Matakana known as Uretureture to a desent group known as Ngati Ha (this is discussed fully below).[111]

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107 See MA 2/15 [Register], ND 77/3606. The original of this letter is of course lost.

108 MA 2/15, ND 77/4222. The register notes the letter as simply 'filed' (27 Oct 1877).

109 Rotohiko Haupapa's son was Wharetutaki Rotohiko, who lived at Ohinemutu. On 22 Feb 1906 he told the Court (see (1906) 6 Tauranga MB 92: Matakana Appellate Court case): "My father Rotohiko Haupapa sat with Mr Brabant as assessor. I was present with him in 1885. The papers produced are his minutes of proceedings in his own writing. Rotohiko died August 1 1887. These papers have been in my keeping ever since." What has become of Rotohiko's minutes since then is uncertain.

110 Hone McMillan, Matakana reinvestigation case, at (1910) 6 Tauranga MB 297 (in Appendix).

111 Evidence of Tatari Wiri Kake, Matakana No 1 reinvestigation case, (1910) 6 Tauranga MB: "the land was investigated and awarded by Mr Brabant to Ngati Ha".

The dates of the grants to the various Matakana and Rangiwaea blocks – apart from the blocks acquired by Daldy - are known. Mostly these grants were made in May 1885, with a few later grants being made in December 1885 and in March and June 1886. The grants are set out in the two tables below. By far the largest of the Crown-granted blocks on the two islands was Matakana proper, covering 1999 acres and granted to Te Wi Paratene and others on 18 May 1885. The largest Rangiwaea block was Rangiwaea 1 of 196 acres, granted to Akuhata Tupaea (Te Whanau a Tauwhao, and Hori Tupaea's son) and others by Brabant, also on 18 May 1885. Many of the blocks were very small, only a few acres or so, and look like partitions set aside for particular family groups.

Table 3
Matakana grants

[source MA 14/14 WNA]

Block Name	Date	Area	Grantees	Commissioner
Te Awakokopu	14 May 1885	29-0-00	Ti Wiuku Hohepa and others	Brabant
Kauenui	14 May 1885	34-1-00	Akuhata Tupae and others	Brabant
Kikoheke	18 May 1885	4-0-00	Kaui Atamatea and others	Brabant
Kokoreke	14 May 1885	16-2-00	Hori Ngatai and ors	Brabant
Kopuatete	14 May 1885	59-0-00	Te Hakiwria Horohau and others	Brabant
Kutaroa	14 May 1885	5-0-00	Te Puru Te Mea and others	Brabant
Matakana	18 May 1885	1999-0-00	Ti Wi Paratene and others	Brabant
Matariki	14 May 1885	5-0-00	Te Ipu Hikareia and others	Brabant
Motungaio	9 May 1885	234-0-00	Hamiora Tuipau and others	Brabant
Opuhi	14 May 1885	11-2-00	Te Puru Te Mea and others	Brabant
Opureora	18 May 1885	346-0-00	Hohepa Paawa and others	Brabant
Pukekaroro 1	18 May 1885	34-2-00	Akuhata Tupaea and others	Brabant
Pukekaroro 2	18 May 1885	5-0-00	Te Rikihana Winiha and others	Brabant
Tahunamonu	14 May 1885	3-0-00	Te Apa Tuterangipou-ri and others	Brabant
Tauaroa	14 May 1885	5-0-00	Te Puru Te Mea and others	Brabant
Tirohanga	14 May 1885	142-0-00	Ruka Tawakohe and others	Brabant
Umuhapuku No 1	19 June 1886	593-0-00	Akupita Te Tewe and others.	Brabant

			Kairoi Hone and others (minors).	
Umuhapuku No 2	19 June 1886		Tu Mauao, or Hamiora Tu and others. Kairoi Hone and others (minors)	Brabant
Waihirere	10 Dec 1885	678-0-00	Hohepa Paawa and others	Brabant
Whakarau 1	14 May 1885	12-0-00	Nga Pire Marata Moananui	Brabant
Whakarau 2	14 May 1885	9-1-00	Moananui Wharenui and others	Brabant
Whakatopo 1	14 May 1885	50-0-00	Hori Ngarae and ors.	Brabant
Whakatopo 2	14 May 1885	20-0-00	Te [Riunana] Te Moananui and others	Brabant

Table 4
Rangiwaea Grants
[source MA 14/14 WNA]

Rangiwaea 1	18 May 1885	196-0-00	Akuhata Tupaea and others	Brabant
Rangiwaea 2	18 May 1885	5-0-00	Akuhata Tupaea and others	Brabant
Aonganui	8 May 1885	8-2-30	Te Awohau Puimanuka and others	Brabant
Mangakoheri	9 May 1885	21-1-23	Te Hatiwira Te Horo-ka and others	Brabant
Motuotangaroa	8 May 1885	4-2-36	Hohepa Paawa and others.	Brabant
Oponui 1	8 May 1885	39-2-00	Tawhio Puimanuka and others.	Brabant
Oponui 2	8 May 1885	10-0-00	Hohepa Paawa and others	Brabant
Orau	9 May 1885	6-0-08	Tawhio Puimanuka And others	Brabant
Otehotu	4 March 1886	14-2-00	Hone Taharangi and others	Brabant

Brabant's final report is dated 4 May 1886.[112] His report is made up of a number of separate returns. Enclosure 1 consists of a list of blocks dealt with by the Commissioners under the Tauranga Districts Lands Acts. Brabant's list includes some, but by no means all, of the Matakana Island blocks and none of the Rangiwaea blocks.

Table 5
Tauranga Moana Islands Blocks listed as investigated in Brabant's 1886 Report
[source: 1886 AJHR G10]

Block Name	Area	Commissioner by whom investigated	Date of certificate

112 H.W. Brabant to Under-Secretary, Native Department, 1886 AJHR G-10.

Waikoura	824-0-0	H T Clarke	Not dated
Oturoa	206-0-0	H T Clarke	Not dated
Paretata 1	1527-0-0	H T Clarke	Not dated
Paretata 2	3-0-8	H T Clarke	Not dated
Omanuwhiri	1317-0-0	H T Clarke	Not dated
Ohinetama	1412-0-0	H T Clarke	Not dated
Wairaka	713-0-0	H T Clarke	Not dated
Tuingara	337-0-0	H T Clarke	Not dated
Pukekaha [sic]	1340-0-0	H T Clarke	Not dated
Purakau 1	1170-0-0	H T Clarke	Not dated
Purakau 2	44-0-0	H T Clarke	Not dated
Okotare	767-0-0	H T Clarke	Not dated
Panepane	144-0-0	H T Clarke	Not dated
Motuhoa Island	249-0-0	H T Clarke	Not dated

Of these 14 blocks, no less than nine are also listed as blocks which have been allowed to be purchased by private individuals: Waikoura, Oturoa, Paretata 1 and 2, Omanuwhiri, Ohinetama, Wairaka, Pukekahu and Okotare (leaving Purakau 1 and 2, Tuingara, Panepane and Motuhoa). The Matakana blocks in Brabant's 1886 list are all blocks on the eastern or ocean beach side of the island. The nine purchased blocks were, of course, those already acquired by Daldy from 1869-1873.[113] Quite why the harbourside Matakana and Rangiwaea blocks are not in the list seems puzzling, in especially in view of the fact that grants to these blocks had in fact been issued in 1885, as stated above. It looks as if the main grants were all made in 1885, and the matter was then tidied up by putting in the 1886 list the blocks already bought by Daldy, although in fact the certificate of title for the Daldy blocks gives the date of the grants as 1877.

Brabant stated that a total of 210 blocks totalling 136,191 acres had been investigated by himself and previous Commissioners under the two Tauranga Lands Acts. He noted that Crown Grants to the listed blocks were now being issued by the Crown Lands Department. The area investigated by the Commissioners was "exclusive of the large Katikati-Te Puna Government Purchase, of the compensation awards to loyal Natives, and of the reserves made for surrendered rebels, and of the actually confiscated block." Once the Crown

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113 This is strange in itself. Brabant gives the impression from his report that grants should now be issued to all of the blocks. But of course he knew very well, as he had been involved in the recent dispute relating to Daldy's purported Matakana acquisitions, that Daldy already held certificates of title to the blocks he had purchased, and which, purportedly at least, had already been granted.

grants had issued to the blocks investigated by the Tauranga Commissioners those remaining in Maori hands would become Maori freehold land:

> Applications have been and are being received from Natives for the subdivision of these lands, but these will be left for the ordinary operation of the Native Land Court after the Crown titles have issued.

The key issue, of course, is the extent to which Brabant's decisions reflected customary ownership. Here the points adverted to above briefly need to be recalled. The process of investigation under the Tauranga Land Acts was not quite the same as that under the Native Lands Acts. The essential process was one of compensation, not investigation of title, and this certainly did affect the outcome to some degree. In the Native Land Court's decision on the Umuhapuku Block (on Matakana) Brabant's approach was characterised as follows:[114]

> The land was granted as compensation...It would seem that Mr Brabant when sitting as Commissioner held some kind of an enquiry as to the persons entitled according to Native Custom but was only, the Court thinks, for the purpose of placing the Natives as far as could be done on the Land they originally owned and thereby inflicting as little hardship as possible. That he did not intend that the original owners should take exclusively is shown by the number of outsiders included in the list.

4.3. Subsequent history of Matakana-Rangiwaea: an introduction

In 1888 the Matakana block was partitioned.[115] Tutu Ruka Tamakohe and Riki Tauhenga sought and obtained orders that a portion of 23 acres be cut out of the block for themselves. Then in 1904 the Native Land Court heard an application for partition of Matakana 1; there were two parties in court, one led by Wahia Te Maihi seeking a partition and the other led by Hone McMillan, who were totally opposed it. Hone's group were annoyed with the Court for deciding that all the initial shares in Matakana 1 (and, it would follow, all "returned"

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114 Umuhapuku No 1 case, 7 Tauranga MB 134-6.

115 (1888) 3 Tauranga MB 89.

raupatu blocks) were held in equal shares, rather than in accordance with Maori customary law.

Of course if the owners according to Maori custom received the lion's share of the Matakana blocks that correspondingly diminished the value of the interests awarded by Brabant to compensate for land lost elsewhere (if that is in fact what Brabant did). The Court, however, held that it was obliged to follow Commissioner Brabant's statements that the shares in all of the returned blocks were held in equal shares:[116]

> The people represented by Hone McMillan decline to take any part in the settling of the division lines: they are aggrieved because the Court declared the shares equal. The Court had no alternative but to do so, in view of the absolute statement of Judge Brabant the Commissioner who investigated the original title, that in all lands dealt with by the Tauranga Commissioner, it was distinctly understood that the shares were equal. Further, the Court became aware during the progress of the case, that the two parties are so intermixed as to be really one people. This was clearly shown by the frequent discussion as to which side a particular person was to be considered as belonging to,

The Court then proceeded to partition Matakana 1. The partition seems to have favoured Hone McMillan's group:[117]

> In dividing the land Hone McMillan's side gets practically all their cultivations, as well as the land of best quality. The former occupation has to some extent been intermixed. The Court has paid most consideration to the present houses, cultivations and fences.

Enough was at stake. however, for the matter to be taken to the Maori Appellate Court, which in 1906 alllowed the appeal and ordered a full reinvestigation of Matakana 1.[118] The Appellate Court noted that the certificate of title for Matakana 1, made on 23 March 1886, was made when the Native Grantees Act 1873 – which was based on a presumption of unequal shares - was

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116 See (1904) 6 Tauranga MB 24 (in Appendix).
117 (1904) 6 Tauranga MB 26 (in Appendix)
118 (1906) 6 Tauranga MB 112 (in Appendix).

in force.[119] The certificate did "not declare the shares equal and the Native Land Court was not justified in holding the shares equal without full enquiry".

Broader legal questions were at stake with this. What was the legal nature of the "returned" blocks within the Tauranga confiscation? Were they simply Crown lands which the Crown had, out of its own good nature as it were, decided to vest in its Maori subjects (in which case the presumption would be that all shares were equal), or where they based on Maori customary ownership in some manner? This question was not unique to Tauranga but was also troublesome in Hawkes Bay and the Waikato. On Matakana, and no doubt elsewhere in the Tauranga area, opposing factions had formed within the Maori community, depending on whether it was believed the shares should be in equal shares or according to Maori custom (Wahia's and Hone's groups). Presumably the former were descended from those who had lost land elsewhere in the Tauranga area as a result of the confiscation and who had been inserted into the Matakana titles by Brabant, and the latter represented the customary owners of the island. The two groups were, however, very closely intermixed; in the Court's view "the two parties are so intermixed as to be really one people": this was shown "by the frequent discussion as to which side a particular person was to be considered as belonging to."[120]

The reinvestigation of Matakana finally took place in 1910.[121] By this time those supporting a division into equal shares - and who had opposed the appeal - were led by Hohepa Te Moananui. The evidence and submissions given in this case are very informative on Matakana history and the functioning of the confiscation. The issue of the nature of the Matakana shareholdings was, however, complicated by a separate claim advanced by a section of Ngatiha, who claimed that a substantial portion of Matakana No 1 had been gifted to them long ago by Ngaiterangi for services rendered in the tribal conflicts with Ngati

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119 See Native Grantees Act 1873, s.4. The statute law relating to shares in Maori land was based generally on a presumption of non-equality. Section 111 of the Native Land Court Act 1886 stated that "in any grant hereafter to be made, and, except as herein excepted, in any grant heretofore made to several Natives, such grantees shall be deemed to have been, from the date of the grant, or the antevesting date thereunder, whichever may be earliest, tenants in common; but the estate or interest of the grantees shall not be deemed to be or to have been equal, or of equal value, unless so stated in the grant."

120 (1904) 6 Tauranga MB 24.

Maru. (Ngatiha were said to be descended from an ancestor named Whatukauanui and were still living on a part of Matakana set aside for them years before by Ngaiterangi.[122]) The argument is confusing, at least for the present writer, in that all before the Court seemed to be agreed that the hapu known as Ngatiha and Ngaitamawhariua were virtually indistinguishable in any event.

Those supporting a division into equal shares were represented by Mr Tudhope, a Tauranga solicitor. Tudhope began his argument by referring to Commissioner Brabant's "positive statement" that the shares were intended to be equal:[123]

> I rely in the first place on the positive statement of Mr Comr. Brabant and on the fact that the land was confiscated Native land and the Native title was thus extinguished. I refer to the case of *Te Teira Te Petera* [sic][124] *v. Roera Tareha & ors.* As the title was a Crown grant to the Ntaives it must be assumed that the shares were equal despite the Native Grantees Act 1879 which simply enacts that shares under Crown Grants shall not necessarily be equal.

It is appropriate to comment here briefly on the *Te Teira Te Paea* case relied on by Tudhope. This case was a decision of the Privy Council dealing with confiscated land not at Tauranga but rather with the conceptually very similar confiscation of the Mohaka-Waikare block in Hawke's Bay in 1867. The counterpart to the Tauranga Lands Acts in this confiscation was the Mohaka and Waikare Districts Act 1870. This 1870 Act was repealed before any Mohaka-Waikare grants grants had been issued, and so by sections 7 to 9 of the Native Land Acts Amendment Act 1881 the Native Minister was empowered to apply to the Native Land Court for a determination as to who were the owners of the Mohaka-Waikare blocks; the Court could "issue certificates in accordance with such determinations, and may fix therein the dates on which the legal estate therein should respectively vest". By s 8 of the 1881 Act Crown grants could be issued in accordance with the

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121 (1910) 6 Tauranga MB 280 et seq.

122 Ibid, 284,

123 Ibid, 281.

124 Tudhope is referring here to the decision of the Privy Council in *Te Teira Te Paea v. te Roera Tareha* [1902] AC56.

certificates; and in respect of a block named Kaiwaka (the block in issue) a grant was duly issued on November 13 1895. In the Privy Council Lord Lindley stressed in 1902 that the proclamation of 1867 made under the New Zealand Settlements Act 1863 combined with the plain intention of the 1870 and 1881 Acts could only mean that the Mohaka-Waikare lands ceased to be Maori land and became Crown land. Lord Lindley agreed with the New Zealand courts that the Mohaka-Waikare lands "were forfeited to the Crown by reason of the rebellion, and could be retained by the Crown or granted out by it as it pleased, and that such lands were not native lands withing the meaning of the Native Land Acts after the proclamation of January 12, 1867, was made".[125] The argument a Hawke's Bay chief named Tareha took Kaiwaka as a trustee was rejected. As the lands were undoubtedly Crown land and the Crown was the legal owner, it had to be shown that the *Crown* had intended that Tareha take Kaiwaka as a trustee. (But the indications were quite to the contrary.[126]) Similarly, Tudhope argued, Matakana became Crown land on the point of confiscation; legally the Crown could reallocate Maori customary interests however it liked, and in view of the fact that the land was returned as compensation it made sense to regard the shares as equal.

125 [1902] AC 71.
126 Ibid, 65.

5. Motiti and Tuhua after the first investigations

5.1. Motiti

Hori Tupaea died at Rangiwaea on 25 January 1881, his heirs being Akuhata Tupaea and Maria Ngaone Tupaea and their half-brother Hamiora Tupaea. On 1884 Akuhata Tupaea applied to the Native Land Court on behalf of all three children to succeed to their father's interests in respect of Motiti. This was to be subject to the same trusts on behalf of Whanau a Tauwhao. Akuhata claimed to succeed, along with his sister and half-brother, "to my father's personal interest in this Estate: - and, individually, to represent him in the trusts, named in the Grant, and held by him in connection therewith".[127] This succession, however, was a prelude to fully individualising the Motiti titles.

The Court then proceeded to hear a subdivision (partition) claim to a part of Motiti generally referred to in the Court's minutes as the "southern portion", although in fact the case essentially seems to have been a kind of reinvestigation of title to the island generally. The applicant for partition was Akuhata Tupaea, who filed a list of beneficial owners "entitled to rank as cestuis que trusts under the crown grant".[128] But the case was contested by other sections of Te Whanau a Tauwhao. Reneti Te Whauwhau, chief of Te Urangawera, disputed Akuhata Tupaea's list and asked "that proof of the persons so named be adduced".[129] (Reneti Te Whauwhau was himself not on Akuhata Tupaea's list.) There were other claims as well, by Tutu Ruka, sister to a man named Te Aria ("in like manner ignored by Akuhata"[130]), by Te Kohu Paraone, Rotohiko Te Oha, Te Tonga Whatikiri, Mere Taka, Hamuera Te Paka, and others not listed by the Court, 12 in all ("none of these claims were acknowledged by Tupaea"[131]). Also present in Court, to add to the complexity, was ex-Chief Judge Fenton, no less, at

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127 (1884) 2 Tauranga MB 194-5.
128 (1884) 2 Tauranga MB 195
129 Ibid.
130 Ibid.
131 (1884) 2 Tauranga MB 196

this time apparently practising as a barrister after having retired from the Bench, there to represent the interests of the lessee, one Mr Douglas.[132]

The case began with Fenton explaining what the Court had done in 1868, Fenton being in a good position to know as he had himself been the judge. Following this the various competing claims were grouped together into five main claims, not including the principal claim of Akuhata Tupaea, these being the counter or cross-claims of Reneti Te Whauwhau, Tutu Ruka and Te Aria, Te Puru, Hamuera Te Paki and Paikea. All of these claimant groups claimed descent from Tauwhao, and the issue in the case was whether other Tauwhao groups, Te Urangawera especially, were entitled to claim rights on Motiti. To a very large degree the Urangawera claim rested on the fact that many of them had gone to Motiti at the summons of Hori Tupaea in order to protect the island from attack by Tohi Te Ururangi of Ngati Whakaue and his Arawa supporters. Reneti Te Whauwhau told the Court that "in the lands of Motiti we are all joint owners; also in Tuhua, Tauranga and the Ruamaiko Islands":[133]

> As regards our residence, we all live together; and are on terms of strict amity. We all bear the one name, as regards the block. We are Whanau a Tauwhao.

But Akuhata Tupaea strongly denied this. The position of his group was that the Te Urangawera people had no rights at Motiti. Te Patu, principal witness for the Tupaea claim. made their position very clear:

> I absolutely deny the truth of what Reneti Te Whauwhau has deposed to, in respect of the occupation of Motiti. The people he has named never had any residential rights there, they only mustered on the island, at the summons of Hori Tupaea, in order to concentrate their strength to resist the expected assault of Tohi Te Ururangi. I know what originally occasioned the dispersion of the tribe to their separate settlements at Motiti, Tuhua and Tauranga. The Tuhua branch have no rights at all over Motiti, nor to the name Te Whanau a Tauwhao, which belongs exclusively to the Motiti and Tauranga sections.

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132 See (1884) 2 Tauranga MB 196: "Mr Fenton prayed leave to appear on behalf of Mr Douglas, the lessee in possession; - under the provisions of the Native Lands Division Act 1882." Leave was granted. Another peculiarity of the case was that it was heard by the then Chief Judge, Judge Clarke stepping down from the bench at the start of the hearing and returning when it was over. Clearly the case was seen as uniquely important.

133 (1884) 2 Tauranga MB 217.

The Whanau a Tauwhao claim (i.e. not including Te Urangawera of Tuhua) was endorsed by ex-Chief Judge Fenton, who told the Court that in 1868 the "only name mentioned then was that of Hori Tupaea; no other names were disclosed; but it was distinctly understood that the land belonged to a particular family." This was accepted by the Court. A brief judgment was given on 4 December 1884:[134]

> There is no doubt that, by whatever name the ancestors of those claiming adversely to Akuhata Tupaea may have at some time been called or known, - they were in the year 1868 (being the time to which we have to look) Urangawera, and nothing else.
> The Urangawera having at one time occupied Motiti is explained by the fact that they did so at the request of Hori Tupaea, to assist in repelling a threatened incursion of a common enemy.

Having eleminated the Urangawera claim, the block was partitioned into Motiti A (200 acres) and Motiti B (890 acres), the former to be inalienable except by consent of the Govenor-General in Council. Motiti B was held subject to the rights of George Alexander Douglas as lessee.

5.2. Tuhua

On December 18 1885 the Native Department received a letter from Te Ipu Hikareia and others ("me tahi atu") offering to sell Tuhua, or their interests in at least, to the government.[135] The Native Department considered this proposal for some months. Although quite well aware that Te Ipu was a non-resident and that the principal owners were opposed to selling,[136] in March 1886 the Under-

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134 (1884) 2 Tauranga MB 227.

135 Te Ipu Hikareia et al to Gill (Under-Secretary, Native Department), December 1885, AAMK 869/203a [Tuhua, Part 1], WNA ("This is an application of ours requesting that you will agree to buy Tuhua Island, in the district of Tauranga, that is, that the Government may buy it.")

136 See Departmental memo, 7 January 1886, AAMK 869/203a: "The principal owners and those residing on the island are opposed to the sale. Te Ipu is a non-resident and one of the subsidiary owners. The island though an interesting one is not suitable for settlement. There are few spots capable of cultivation and most of them are used by the Natives themselves."

Secretary of the Native Department, T.W. Lewis, recommended that Brabant be authorised "to pay a few pounds on the island in order that it may be proclaimed", even though there was "no immediate prospect of completing a purchase of it".[137] The Native Minister (Ballance) agreed. Brabant did as he was bid, and reported from Tauranga on 5 April that he had paid out two owners, Te Ipu Hikareia and one Te Kani, thus giving the Crown a toehold on the island for the the princely expenditure of £4. The point of this, of course, was to enable the island to be proclaimed under the Government Native Land Purchase Act 1877, thus preventing the owners from selling to the private sector and which would have the effect of allowing the government to control the purchase:[138]

> I have today seen Te Ipu Hikareia and a relative of his named Te Kani and made to each a *final* payment, purchasing their respective shares in the island at £2 each. A deed has been signed by them in duplicate and the proclamation may now be made.

P. Sheridan of the Native Department replied to Brabant that "if any shares are offered to you in the meantime you will I think be acting quite within your instructions to purchase them at two pounds each".[139] Lewis meanwhile recommended to Ballance that the island should now be formally proclaimed and that Brabant be formally authorised to continue purchasing shares, all of which was approved by the Minister on 18 May.[140] "Mayor Island or Tuhua" was then formally proclaimed under the Government Native Land Purchase Act 1877 on 6 October 1886.[141]

On 12 May 1889, however, the leadership of the Te Urangawera section of Whanau a Tauwhao wrote to the Native Minister's denouncing the government's purchasing activities and urging that purchasing be halted forthwith. By this

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137 T W Lewis, Memo, 18 March 1886, AAMK 869/203a.

138 Brabant to Lewis, 5 April 1886, AAMK 869/203a WNA.

139 Sheridan to Brabant, 17 April 1886, AAMK 869/203a WNA.

140 See T W Lewis to Ballance, 18 May 1886, AAMK 869/203a: it is "recommended that the proclamation be at once placed over the island and Mr Brabant authorised to purchase any shares that may offer at a rate not exceeding 2/6 per acre."

141 *New Zealand Gazette*, 1886, 1281.

time the total number of sellers had increased to four. The letter was signed by Hekara Moko and others on behalf of all the hapu of Te Urangawera:[142]

> This is a petition from us in consequence of our distress on account of our land Tuhua praying that the (intended) sale of it by these four Maoris be not given effect to. Let it remain to us and our children after us. This block was heard before the Commissioners for Tauranga and was decided in our favour. We there "pledged" ourselves, with the approval of the Court, to have the land placed under restrictions, and in order that our claim to the same might be confirmed we applied to the court to pay the cost of the survey which was assented to. Sometime after this half the cost of the survey was paid into the hands of the Commissioner, but after this the Commissioner advanced moneys to persons who were secretly bargaining for a secret sale. The conclusion therefore that we have come to is that this "mate" emanated from you, and such transactions as this will remain a cause of trouble to you and us.

Lewis was unimpressed however, and merely advised his Minister that the non-sellers needed to be told that no-one was forcing *them* to sell, and that they had "no right to question or interfere with the sale by other owners."[143] This, of course, was quite true in point of law, but the Department's stance only serves to illustrate the risks posed to hapu title by individualised tenure, whether carried out via the Native Land Court or (as here) by means of surrender and regrant under confiscation legislation. The Crown purchases, it is fair to say, had caused consternation to the Te Urangawera people, who repeatedly complained about them during the 1890s (and beyond). In a letter to the Department sent from Katikati on 24 May 1890 by Te Kapuairi, Te Hatiwira Horohau, Hekana, Kaka, "otira na matou katoa na te nui ingoa hapu na Te Urangawera" the owners denounced the "fraudulent" sales and offered to pay the government a refund for the few shares it had managed to acquire:[144]

> This is to declare to you most emphatically that we are entirely opposed to any sale of our land being made. We are therefore perfectly willing to refund the amount which the

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142 Hekara Moko et el to Native Minister, 12 March 1889, AAMK 869/203a WNA (original in Maori, citing ET on file).

143 Lewis to Native Minister, 13 May 1889, AAMK 869/203a; approved by Minister 22 May 1889, ibid.

> Government paid to these persons together with the cost of the surveys on the Tuhua block.

A letter to the same effect was sent by Te Moanaroa Piri from Rangiwaea on 22nd March 1891, signed by 76 people including Akuhata Tupaea and Akuhata Te Ninihi.[145]

The notion of a refund by the owners did not suit the Native Department's purposes at all. Perhaps Lewis was concerned about the risks of setting an undesirable precedent. In any event he was firmly of the view that no refund be entertained, and Mitchelson, the Liberal Native Minister, accepted his advice.[146] The owners however, still rankling, then took the Tuhua issue to the parliamentary Native Affairs Committee in 1895, Te Reneti Te Whauwhau of Te Whanau a Tauwhao petitioning on behalf of himself and 50 others "of the Urangwera hapu of Ngai Tauwhao".[147] This petition is a fascinating document which deserves to be cited in full, demonstrating as it does Tuhua's special importance:[148]

> This is a petition from us your petitioners who pray your Honorable House to carefully consider our prayer in regard to our land Tuhua (Mayor Island) that no further authority shall be given by the government to its land purchase officers authorising the purchase of this said island. That this Island should be left alone for us and our descendants it being a very sacred burying place, over 10,000 dead are buried there, some are resting in caves in the rocks and others are scattered all over the land, a very little vacant space is unused. The Government would be therefore quite unable to reserve our burial grounds. We all strongly object to our island being sold: if we are deprived of it then a great injustice will be done us: the way in which the government and its land purchase officers have

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144 Te Kapuairi and others to Native Minister (Mitchelson), 24 May 1890, AAMK 869/203a, WNA.

145 Te Moanaroa Piri et al to Mitchelson, 22 March 1891, AAMK 869/303a, WNA: "We address you with reference to our land Tuhua which (certain) persons have fraudulently sold without our knowledge. This is our word to you, we are entirely opposed to selling our land and we are willing to refund the money which these persons received from the Government. We will also pay the amount paid by Government for the surveys of Tuhua. Friend, we have no other land besides this: this is our only land. We request that our land be returned to us according to the declarations we have made, namely, that we will pay the amount due."

146 See T W Lewis, Memorandum, 21 April 1891, AAMK 869/209a, WNA: "We have purchased during the last five years 7 shares out of 195. The Natives resident on the island are opposed to the sale. I do not think this offer should be accepted or sustained at present."

147 Petition No 1895/392.

acquired signatures anounts almost to theft because we the owners of the land have not seen them. Now friends and Honourable Members of the colony I wish to draw your attention to the fact that it was the Honourable Mr Bryce Native Minister who insisted on this island being passed through the Court and he used many threats against us. When it had passed through the Commission enquiry, we all requested that this island should be restricted and entailed on us and our descendants. The Court gave its consent. We also applied to be allowed to pay the survey liens, the Court agreed. We then paid a small sum toward the amounts. After all this now the government are purchasing it. Honorable Members this is what it means: very soon the Government will be throwing men alive into the blazing fires to roll about in their agony. So it appears to us.

Therefore now cancel the purchase and demand the return of the money paid to these persons who have already sold to the Government: they should be forced to return such money and if they are unable to do so then send them to prison for as many years as would pay their debt. These persons who have sold have not paid their share of the survey liens.

We refrain from saying more just now but we have a lot left.

The Native Department, asked to report on the petition, claimed that the purchasing had originally been initiated "partly to prevent private dealings, against which the Natives asked to be protected" (of which there is no evidence, at least not on the Native Department file). The Department also claimed that the shares purchased were "forced upon the Land Purchase Officer", which is something of an exaggeration, to put it mildly.[149] After reviewing the documentation the Native Affairs Committee recommended that the island should be proclaimed "a permanent Native reserve for the benefit of the Native owners thereof".[150] This was of never done, and the Department continued to press for the island's acquisition.

The Tuhua matter dragged on well into the 20th century, and generated a massive amount of documentation – at least six bulky files. Obviously the full

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148 Translation on AAMK 869/203a WNA.

149 Report on petition No 392, Te Reneti Te Whauwhau and others, AAMK 869/203a, WNA. The Department also stated that it had no immediate plans to acquire the island in any case: "no active steps have been taken to acquire the island, the shares having been forced upon the Land Purchase Officer. It is of no use for settlement purposes and unless required in the future for marine purposes there is no likelihood of its ever being taken possession of by the Government but in any case the Native residents would not be disturbed."

150 Native Affairs Committee, Report on the petition of Reneti Te Whauwhau, 17 October 1895, copy on AAMK 869/203a.

story cannot be recounted here, although some of the more important later details can be noted. In 1912 Reneti Te Whauwhau again petitioned parliament over Tuhua, this time asking that the House enact legislation giving a special jurisdiction to the Native Land Court to deal with the Tuhua successions.[151] (Quite why the petitioners believed that special legislation was necessary is unclear.) Then in 1913 the existing Crown share was partitioned out and set aside as Crown land, giving the Crown 258 acres for its 16 shares.[152]

After this the government turned its attention to acquiring the rest of the island. From the mid-1920s onwards representatives of various recreational deep sea-fishing organisations began to pressure the governmet to acquire the island, and both the Lands and Native Departments were certainly of the view that it should be acquired.[153] The Lands Department was interested in the island as a bird sanctuary and for its unusual geology and scenery. In 1926 the Native Department obtained a valuation for the island, which valued Tuhua at £890. In a report dated 18 February 1926 R J Knight, the Native Land Draughtsman of the Department of Lands and Survey, claimed that "the Natives themselves expressed a wish that the Crown should take over the island", but when a very well-attended meeting of owners was held at Tauranga on 8 May 1926 the owners declined absolutely to sell the island to the government. In fact they came back with a counter proposal: that the government sell its shares to them.[154] The failure of the meeting of owners to accept the government's offer forced the Crown to resort to individual purchasing of individed shares in order to force a further partition, but at least in this case this strategy failed dismally: the owners would not sell. By 1947 the island was still Maori owned (the small Crown block aside). How the Crown finally managed to get title to the island is beyond the scope of this report.

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151 Petition of Te Reneti Te Whauwhau and 30 others, [No 87/1912], copy on AAMK 869/203 a, WNA.

152 Registrar, Waiariki District Maori Land Board to Under-Secretary, Native Department, 26 August 1924, AAMK 869/203a, WNA.

153 Under-Secretary of Lands to Under-Secretary, Native Department, 27 August 1925, AAMK 869/203a, WNA.

154 Registrar, Waiariki Native Land Court to Under-Secretary, Native Department, 11 May 1926, ibid.

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154 Registrar, Waiariki Native Land Court to Under-Secretary, Native Department, 11 May 1926, ibid.

6. Conclusions

6.1. Confiscation, surrender and regrant: some Irish parallels

The very particular flavour of the New Zealand Settlements Act 1863 is apparent from its title. It was, pre-eminently, an act designed to facilitate military settlement on confiscated land. As such it has affinities with British practice in other places, most particularly in Ireland and the South African colonies. The New Zealand Settlements Act was not at all an aberrant act of a settler regime but is instead an example of a legal device which had already had a long history by the time it was employed in this country, and which continued to be used in other colonies, in southern Africa especially, until comparatively recently. (There is, unfortunately, very little literature on the effects of confiscation in the Cape Colony and Natal, which occurred at roughly the same time as in New Zealand and with one very significant factor in common: Governor Grey.) The very name of the 1863 Act echoes the most notorious of the Irish confiscation statutes, the English Republic's Act of Settlement of 1652 which, in tandem with other legislation, set in place what is generally known as the Cromwellian confiscation. It is I think useful and illuminating to set confiscation in New Zealand into a broader imperial context but, of course, this should not be pushed too far. Confiscation evolved in New Zealand in its own, highly localised, manner, in which one important ingredient was the still formidable military strength of the Crown's Maori opponents and the government's inability to enforce confiscation without deals and tradeoffs of various kinds. But then a mis-match between the tidy realities of confiscation in theory and the appalling chaos and disorder of confiscation "on the ground" was as true of Ireland as it was of New Zealand.

Ireland is a famous example of a colony (or, perhaps, of one of the Crown's 'multiple kingdoms') in which confiscation of land and military settlement were important planks of government policy, roughly in the period from 1550 to 1700. There were three main waves of confiscation in Ireland. The first, following earlier, more limited Tudor policy of "surrender and regrant" (by which Irish chieftains were required to surrender their titles to the Crown and

receive them back as freeholders, and thus under Crown grant[155]) came in the first decade of the 17th century, after the Crown's victory over the O'Neill leaders of the Ulster rebellion. The second came in mid-century, a particularly ruthless programme following parliament's victory over its English, Scottish and Irish enemies. The last wave came in the 1690s after the defeat of James II's forces by William of Orange.

The Commonwealth's 1652 legislation, which I will focus on here, reprinted in Firth's *Acts and Ordinances of the Interregnum,* is comprised of two main enactments. The first is the Act of Settlement of 12 August 1652, "An Act for the Setling of Ireland". The preamble gives thanks to God for Cromwell's crushing of the Irish rebels:

> Whereas the Parliament of England, after the expence of much Blood and Treasure for suppression of the horrid Rebellion in Ireland, have by the good Hand of God upon their undertakings, brought that Affair to such an Issue, as that a total Reducement and Settlement of that Nation may, with Gods blessing, be speedily effected...

This fearsome statute is, for the most part, an Act of Attainder aimed at the Irish governing class, "Old English" and Irish alike. The Act reassuringly announces that Parliament does not intend to "extirpate the whole Irish Nation" and enacts a general pardon of the "inferior sort", but then goes on to detail those exempted from pardon, these being all those involved in any way in the rebellion of 1641 against the Crown, all Jesuits and Catholic priests who had aided or abetted the rebellion, and lastly a large number of individuals listed by name, including James Butler, the Duke of Ormonde - not, of course, a rebel, but the Crown's

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155 On suurender and regrant in the Tudor period see especially Steven Ellis, *Ireland in the Age of the Tudors,* Longman, London and New York, 1998, 5-6, 150-53, etc. Surrender and regrant in the Tudor period is particularly associated with the governorship of Anthony St Leger, deputy and Lord Deputy in Ireland in the period 1544-1556. Various Irish lords, Gaelic and "Old English" were required to sign an indenture agreeing to recognize the King as liege lord and to apply for a Crown Grant. This was (Ellis, op.cit., 150) "followed by detailed negotiations between government and individual chiefs and the precise terms agreed were then incorporated into another indenture to be signed by the chief before the grant of a charter. By this second indenture the chief agreed to renounce his Gaelic title - the use of the patronymic alone - in return for an English one, to accept, assist and obey the machinery of royal government - courts, writs and laws - throughout his lordship, to do military service and pay rent as specified, to adopt English customs and language, and to encourage tillage, build houses, and generally reorganize the socio-economic structure of his territories on more Englsih lines."

viceroy, and as such an enemy of the English Republic - and Ullick Burke, the Earl of Clanricade (Clanricade was the leading moderate in the Irish nobility). Finally, all the Irish forces remaining under arms were given 28 days to surrender on pain of being exempted from the pardon. Catholic or Anglican, Gaelic Irish or Old English, Crown officer or indigenous chieftain: all were the same in the eyes of the parliamentarian victors of the civil wars (much as in New Zealand everyone on the opposite side to the government was classified as "Hauhau"). Thus the confiscation was not an action of the "English" against the "Irish", but was rather the reflection of the triumphant republican regime against all of its enemies, Catholic, Royalist and Native Irish.

It is not until section 8 that the Act finally gets down to the business of extinguishing title to land. This provided that all Catholics who had not "manifested their constant good Affection to the Interest of the Commonwealth of England" (and, in the complicated three-way struggle that had engulfed Ireland between the 1641 rebellion and Cromwell's invasion, there could not in the nature of things have been many) were to forfeit one third of their estates, and were to have the remaining two-thirds regranted in "such place in Ireland...as the Parliament shall think fit". (This, under separate legislation, was the province of Connaught.) The situation at Tauranga is almost uncannily similar: one-quarter forfeited, the remaining three-quarters regranted. Everyone else in the country who had not actually been in arms on the parliamentary side were to have one-fifth of their estates confiscated, which would have struck at many Anglican Royalists almost as much as it did at Catholics.

Thus the 1652 Act did two things; it pardoned and exempted from pardon; and it obliterated virtually all existing land tenures. Those Catholics who were to receive estates in Connaught would receive them under a new, government-granted tenure. As was later to be the case in New Zealand, however, the statute did not stand alone, but was flanked by other, less well-known enactments; in the Irish case the principal supplementary statute was the Adventurers in Ireland Act of 17 September 1653. Its objectives are laid bare in the Act's formal title:

An Act for the speedy and effectual Satisfaction of the Adventurers for Lands in Ireland, and of the Arrears due to Soldiery there, and of other Publique Debts, and for the Encouragement of Protestants to plant and inhabit Ireland.

The Adventurers in Ireland Act, which is verbose, lengthy and turgid even by the standards of seventeenth-century legislation, was an unsuccessful attempt to deal with the Commonwealth government's two most pressing problems, the army (which was owed hundreds of thousands of pounds of arrears of pay) and debts owed to its general creditors. The war in Ireland was financed by advances from speculators, mostly connected with the City of London, who expected to recoup their gains in land. The Adventurers in Ireland Act set up a special scheme for ten counties, seven in Leinster and three in Ulster; half of the lands of the ten counties were charged with the debt of £360,000 owed to the "adventurers" and the other half was to be surveyed off and allocated to soldiers in satisfaction of their arrears of pay.

There is no satisfactory study in existence of this massive tenurial revolution (Canny calls it "a massive exercise in social engineering"[156]), although by common consent it was a complete failure. As Canny points out, the Republican regime did not have very much time to implement its programme, as it was itself ousted in 1660 and the Crown restored. This led to a reconsideration of the matter of Irish lands, and many estates were restored, but it seems that while Anglican Royalist supporters of the Crown got much of their land back, the dispossession of the Gaelic Irish of Leinster, Ulster and Munster was permanent.

The intricacies of the Restoration settlement, and of the Williamite confiscations thirty years later, cannot be pursued here. But enough has been said to make some aspects of the nature of confiscation in Ireland clear. The confiscation is instituted as punishment for rebellion, but is also necessary to discharge the goverment's debts incurred in crushing the "rebellion" in the first place. The confiscation is an exercise in land-taking, but it is also an exercise in tenurial remodelling: although some land is returned, it is done so under a

156 Nicholas Canny, "Early Modern Ireland, c. 1500-1700", in R.F. Foster (ed), *The Oxford Illustrated History of Ireland*, Oxford University Press, Oxford and New York, 1989, 104, 147.

wholly new tenurial dispensation. Lastly, the confiscation has a pronounced military aspect; much of the land is set aside for ex-soldiers. All of these features also typified the confiscations that took place in nineteenth-century New Zealand. Lastly, although confiscation may have some analogies to the ancient common law doctrine of forfeiture, by which the estates in land of those convicted of high treason were forfeit to the Crown (I cannot, logically, hold under the feudal theory of tenure an estate which I have betrayed by my treason), neither in Ireland nor New Zealand (nor the Cape Colony) did the Crown rely on prerogative powers. To obtain individual convictions for treason was much too difficult. Moreover Irish tenures were very confused in the Early Modern era, a mixture of feudal and Irish customary tenure, and neither in New Zealand nor South Africa did the indigenous population hold their lands under Crown grant. Confiscation had to be done by statute.

Contemporary critics of land confiscation in 19th-century New Zealand turned naturally to Irish precedent as a frame of reference. Sir William Martin, the retired chief justice of the colony, denounced the confiscations in a paper published in 1863:[157]

> The example of Ireland may satisfy us how little is to be effected towards the quieting of a country by the confiscation of private land; how the claim of the dispossessed owner is remembered from generation to generation, and how the brooding sense of wrong breaks out from time to time ion fresh disturbance and crime.

Nor was this the only occasion on which Martin had attacked the government's policy towards the Maori people.[158] To an Englishman of Sir William Martin's generation, Irish "disturbances and crimes" were one of the most central, intractable, and worrying problems of British politics (as they still are); and it was natural for him to explain Ireland's troubles as a consequence of punitive actions by the Crown against private individuals. His prophecy was prescient and all too accurate; confiscation helped to enmesh the New Zealand state in a

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157 See Sir William Martin, *Observations on the proposal to take Native lands under an Act of the Assembly.* reprinted in 1864 AJHR E-2, 7-8.

158 See generally G.P. Barton, "Martin, William", *Dictionary of New Zealand Biography,* vol 1, 277-9.

decade of war after 1863 and a "brooding sense of wrong" characterises pretty well the sense of injustice and alienation felt by the victims of the Waikato confiscations of 1864-5.

That someone like Martin naturally turned to Irish precedent as a rhetorical framework does not itself prove that the New Zealand government saw the policies of the Commonwealth in the 1650s as desirable and something to be emulated. The Irish links with a related enactment, the Suppression of Rebellion Act, also of 1863, are well-known: this was quite specifically based on legislation of the Irish Parliament passed in the wake of the 1798 Rebellion. But there is no evidence that those who drafted the 1863 New Zealand Settlements Act used Irish enactments as a statutory blueprint in the same way. Nevertheless Ireland provided a model of coercive precedent which could be drawn upon where necessary, and there are a number of striking similarities. As in Ireland, the legislation was designed to use land confiscated from "rebels" as a means of paying for the costs of suppressing them; to punish by taking land; to remodel tenures and cancel customary tenures; and to facilitate military settlement.

At Tauranga the process of confiscation can be seen to have some marked parallels with events in seventeenth-century Ireland. The Tauranga confiscation legislation has the same mixture of land-seizing and compulsory regranting seen with an statute such as the Act of Settlement of 1652. The four islands of Matakana, Rangiwaea, Tuhua and Motiti illustrate the diverse ways this process of forced surrender and regrant could work out in practice.

6.2. General conclusions

The varying fates of Matakana, Rangiwaea, Tuhua and Motiti show the diverse outcomes that could be realised within the broad framework of confiscation and regrant.

Matakana was returned on an individualised tenure in a number of separate blocks to representatives of the former owners. During the long and confusing regranting process a considerable amount of the island was permanently lost to the customary owners through a private purchase of dubious legality. The purchase probably took place as an outcome of the general disorder

and poverty that affected the Tauranga region after 1864, although quite how the money Daldy paid was actually distributed and to whom is not known. The blocks finally "returned" to Maori ownership seem to have ended up in the hands of more or less the same hapu that were there previously (it is difficult to be sure, and the claimants will have their own views on this).

It is clear however that the titles were in a troublesome state. Newcomers from elsewhere may have been introduced as compensation for losses in other parts of the region. Traditional interests and rights have been so thoroughly churned and re-churned by the dislocating and time-consuming regranting process that it is very hard to be sure, however. Indeed the present writer is under the impression (which may or may not be right) that not only is it difficult for an outsider to reconstruct traditional rights in the area but that the claimants themselves have been reduced to a state of some uncertainty about the details of their own history. In many ways the 1870s seem to be a kind of "black hole" of Tauranga history, a break in continuity which separates the well-known history of the wars of the 1860s from the comparatively clear, but radically changed, pattern which emerges after the final regrants in the 1880s. The owners of the Matakana blocks were, however, bequeathed a considerable amount of difficulty and division over the terms on which the post-raupatu grantees took their grants, an issue which had to be fought out in the Native Land Court in the twentieth century on a number of occasions.

There is much less information on Rangiwaea, but probably the pattern was rather similar to the "returned" Matakana blocks.

With Motiti, the outcome was rather different. The island was split between the Patuwai and Whanau a Tauwhao, but this then resulted in disputes and divisions over which sections of Whanau a Tauwhao were entitled to claim rights in the island. The Urangawera people, associated mainly with Tuhua, brought a claim to the island, but this was unsuccessful, leaving them with little but their interests on Tuhua, although perhaps this group may have received some rights at Rangiwaea and possibly at Katikati. It is difficult to draw the broader threads together, but perhaps in the 1880s the reality was that few resources in the Tauranga area remained in Maori hands and under the pressures that this caused divisions and tensions within kin groups were

exacerbated. Thus we see different sections of Whanau a Tauwhao at loggerhéads in the Land Court over Motiti. It is also clear that at this time Ngai Te Rangi and Te Whanau a Tauwhao were in very difficult social and economic circumstances, and with the demographic structure being what it was were even beginning to face something like extinction. (Fortunately the population stabilised and then began to slowly recover after the 1890s.)

Tuhua itself reveals yet another dimension of the changes brought about by Crown policy. While, as Stokes points out, events at Matakana "provide a case study of an area in the 'Lands Returned' where there was little protection from would-be purchasers",[159] in the case of Tuhua it was the Crown itself which was the purchaser. The individualisation of title brought about by the Tauranga District Lands Acts allowed some individual owners to sell undivided shares in the block to the Crown. Probably sheer poverty and destitution explains why a few owners were willing to exchange their rights in Tuhua for a few pounds from the government's purchase officers. Under an individualised tenure Te Urangawera were powerless to prevent such sales by individuals. It is noteworthy however that even when the hapu offered to compensate the Crown for the interests it had acquired the Native Department was not interested and preferred to retain its interests in Tuhua. These were later partitioned out and then were followed by a long campaign to acquire the balance of the island.

In my first report on Ngaiterangi history I described pre-raupatu history as a "chiefly" society, in which chiefs such as Hori Tupaea and Nuka Taipari had real power. Hori Tupaea died in 1881 and was greatly mourned by both the Pakeha and Maori communities at Tauranga. The *Bay of Plenty Times* referred to the death "of our old veteran chief, Hori Tupaea", the "last remaining chief of the old generation now past and gone".[160] Hori Tupaea's son Akuhata belonged to a different world: educated at a Native School and a devout Roman Catholic, he was made an Assessor in 1878 and successfully mediated a number of disputes between Maori and Pakeha and Maori and Maori in Tauranga.[161] Hori Tupaea's tangi went on for months, and many Pakeha and Maori went to Rangiwaea to

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159 Stokes, *Allocation of Reserves*, 221.

160 Cited Heeni Murray and others of te Iwi o Matakana, *Matakana Island*, 87.

pay their respects. Those who attended included Rangitukehu of Whakatane, with a large delegation of his people, and the Tamihana family of Ngati Haua. The costs of the immense tangi were a huge drain on Ngai Te Rangi resources. By the time of Hori Tupaea's death Maori society at Tauranga had been greatly changed. As Hori Tupaea had ruefully admitted in the Land Court in 1867, while once the chiefs had all the power, "now the law is the power". By the time he died this was even more true.

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161 Ibid, 89-90.

Appendices:
Chronology

1864 **(29 April)** Battle of Gate Pa.

(21 June) Battle of Te Ranga.

(5-6 August) Ngaiterangi formally surrender to Grey at Tauranga. Grey promises Ngaiterangi on August 6 that because of the honourable manner in which they conducted the fighting no more than a quarter of their lands would be confiscated.[162]

1865 **(18 May)** Order-in-Council made bringing the Tauranga district under the provisions of the New Zealand Settlements Act 1863.[163]

1867 **(10 October)** Tauranga District Lands Act 1867.
The Native Land Court conducts an investigation of title to Motiti.[164] Subsequently a grant is issued to Hori Tupaea as trustee with a separate award to the Patuwai people (Ngati Awa).

(16 October) Tauranga District Lands Act 1868.

1868-9 Whitaker and Russell acquire a number of Matakana blocks, probably on the western (harbour) side of the island.

(December) W.C. Daldy acquires a number of blocks on the eastern (ocean) side of Matakana.

1871 **(20 Oct.)** In a report to Vogel A F Halcombe advises the government that the Ngaiterangi grants "as also of the Island lands" were inalienable and not available for purchase.[165]

1874 **(2 April)** The Matakana blocks acquired by Frederick Whitaker and Thomas Russell are reacquired by the government.

1877 **(7 August)** Daldy is issued a Land Transfer Act title for his Matakana blocks

1882 **(August)** Brabant vests Tuhua in Te Urangawera.[166]

1884 **(5 July)** W C Daldy writes to Brabant (RM, Tauranga),

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162 Stokes, *History of Tauranga County*, 81.
163 Stokes, *History of Tauranga County*, 94.
164 (1867) 1 Maketu MB, *passim.*
165 Halcombe to Vogel, 20 October 1871, *Report upon lands suitable for the settlement of immigrants at Tauranga*, 1872 AJHR D-6.
166 (1882) Commissioner Brabant's notes of evidence, 97-8, DOSLI Hamilton Box 3, Folder 16, RDB 125, 48285-6.

complaining that local Maori have been digging kauri gum on blocks on Matakana Daldy claims to own.[167]

1885 **(May)** Crown grants are issued for most of the Matakana and Rangiwaea blocks, including Matakana proper, Opureora, and Rangiwaea Nos. 1 and 2.

(December 18) Te Ipu Hikareia offers to the government his share in Tuhua.[168]

1886 **(4 May)** Commissioner Brabant files his report on blocks returned to Ngaiterangi under the Tauranga District Lands Acts.[169] Brabant's list of blocks "dealt with" under the Tauranga Acts includes a number of the Matakana blocks and Motuoha.

1888 First partition of the Matakana Block.[170]

(12 May) Te Urangawera protests to the Native Minister about the government's Tuhua purchasing activities.[171]

(24 May) Te Urangawera again protest about Tuhua, denouncing the sales as "fraudulent" and offering to pay the government a refund in respect of the interests it had already acquired.[172]

Reneti Te Whauwhau and 50 others petition the Native Affairs Committee at parliament on the Crown's Tuhua purchasing programme. On 17 October the Committee recommends that the island be set aside as a "Native reserve", but nothing is done to implement this.

1904 **(9 Feb)** Native Land Court rules that all shares in Matakana 1 are equal, rather than based on Maori custom. A section of the owners led by Hone McMillan are strongly opposed to the shares being equal and refuse to assist the Court in partitioning the block.[173]

1906 Native Appellate Court annuls NLC decision that shares in

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167 Daldy to Brabant, 5 July 1884, Box 5 Folder 31, DOSLI Hamilton, RDB 127, 49040-1.

168 Te Ipu Hikareia et al to Under-Secretary, Native Department, December 1885, AAMK 869/203a, WNA.

169 H.W. Brabant to Under-Secretary, Native Department, 1886 AJHR G-10.

170 (1888) 3 Tauranga MB 39.

171 Hekara Moko et al to Native Minister, 12 March 1889, AAMK 869/203a, WNA.

172 Te Kapuairi and others to Native Minister (Mitchelson), 24 May 1890, AAMK 869/203a WNA.

173 Matakana No 1 partition, (1904) 6 Tauranga MB 24-26.

Matakana 1 are equal. The case is returned to the NLC which is required to conduct a full reinvestigation.[174]

1910 **(19 April)** Matakana No 1 reinvestigation begins in the Native Land Court, presided over by Judge Browne.[175]

1981 Tauranga Moana Trust Board Act 1981. Section 7 of this Act awards $250,000 to the Tauranga Moana Trust Board "in full and final settlement of all claims...arising out of the confiscation or other acquisition of any of the said land by the Crown."[176]

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174 (1906) 6 Tauranga MB 112 (in Appendix).

175 See (1910) 6 Tauranga MB 280 et seq.

176 Tauranga Moana Trust Board Act 1981, s 7. See Woodley, *Matakana Island*, 2.

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Transcribed Documents:

1. Correspondence relating to Captain Daldy's dispute re Matakana Island
[source Dosli Hamilton, Box 5 Folder 31, RDB 12749018-41]

(a.) Daldy-Brabant, 5 July 1884. RDB 49040-41.

Dear Sir,
I take the liberty of writing you re Matacanna [sic] Island hoping that you will exercise your known influence to prevent litigation and a great deal of trouble to all. The facts are these.

I am and have been for some years owner of 8000 acres on Matacanna island (tracing enclosed) extending from Kati Kati end to the native reserve.

For some years the natives have been taking gum off the land encouraged by the shopkeepers at Kati Kati. Seven years since I send [sic] a person down who understood the native language who warned them not to continue doing so. About 5 years since I sent another accompanied by a policeman from here [Auckland] who gave the printed notices and for a time they desisted. Two months ago I had the opportunity of leasing the land for gum digging. This person sent a man down to live on [the] land and make arrangements with Natives or White men for working . On his arrival he found a large number of Natives residing on the land at Kati Kati end and large quantities of gum being removed. I gave Mr Mooney the person referred to a Power of Attorney and printed notices in Maori to the Natives and in English to the storekeepers, also [a] plan of the land shewing boundaries that there might be no mistake about position etc.

From all I can learn not less than 50 Tons of gum have been removed during the past 12 months with a Royalty of £3 per Ton. I pay rates about 9 1/2 pence per acre and Property Tax. I have borne with this a long time but now I have the opportunity of making something out of the property I am determined after trying all fair means if I fail to proceed legally which I trust I shall not be forced to as it may create ill feeling.

I could give you some names but I think you know the principal men amongst them and it is no use proceeding against those who have nothing and no influence.

I know that you have great influence amongst the Natives in the district and if you can use it to effect a quiet settlement I shall be much obliged to you.
Yours faithfully, William Daldy.

(b) Brabant-Daldy, 15 July 1884 (RDB 49039)

Sir, I have the honor to ack. the receipt of your letter dated 5th. instant with reference to natives digging gum on land owned by you on Matakana Island. I have communicated with the chiefs of the party gum digging there. Their reply is that they do not admit having sold the whole of the land to you and that they are digging on the portion which they maintain is theirs. I have of course no knowledge of the facts of the case and merely repeat their statement for your information.
H.W. Brabant.

(c) Daldy-Brabant, 8 August 1884 (RDB 49036-7).

I now acknowledge yours July 15th and am very much obliged for it. I never supposed the Maories would for one moment set up the plea they had not sold all the land to me and therefore did not say how I purchased. Mr Commissioner Clarke had the island surveyed and subdivided and lithograph plans prepared also Crown grants issued to them and I bought from the same through Mr S J Edmonds. Every inch of the land at Kati Kati end was sold even one small lot of about one acre. I have now obtained from the Land Transfer Office a copy of the names on the grants who conveyed to me and from which my certificate of Title is issued and now send them to you.
Lot 4. Te Ruka. Akuhoto Te Nineha. Pouha Tunoa.
Lot 5. Enoka.
Lot 6. Wharenui, Harawera Kotai, Kerete Te Moananui, Herewini Wharerua.
Lot 8. Hemi Parua, Hohepa Panea, Keepa Te Amohau, Te Kuka.
Lot 9. Keepa Te Amohau.
Lot 14. Merehaka, Akutata Tupaea, Hori Tupaea.
Lot 15. Pika Kurawhero, Harawara [sic] Kotai, Timi Te Rua, Te Kairini Tewhera.
Lot 16. Kereti Te Moananui, Te [Wharenui?], Harawira Kotai, Te Kerewini Wharerua.
Lot 17. Hohepa Te Kai, Wiremu Parera.
It is hard to decipher some of the signatures and they may be spelt wrong. No 14 is the very small lot. At the present time they are squatting on 15 and 14 which are large blocks: nearly 2000 acres each.

If you would kindly point out to these natives the impossibility of there being any land at the Kati Kati end unsold and say that if they will not acknowledge my rights although very reluctant to do so I shall commence proceedings to prevent them further robbing me. The quantity of gum removed is very large and realising over £50 per ton.

I trust that you will excuse my troubling you so much but I want to avoid anything like a quarrel and should feel greatly obliged if you will inform me if you think there is any hope of them giving me peaceable possession or my Attorney Mooney. I remain Dear Sir,
Yours faithfully, William C. Daldy.

(d) Brabant to Daldy, 21.8.84

Sir,
I have the honour to ack. the receipt of yr. second letter of August 1 on the subject of the Maoris digging gum on land owned by you at Matakana Island. I have seen several of the chiefs of the party digging gum. Their story is that Lot 4 was owned by three persons ([ ] trustees for the hapu) of whom two only sold to you, that Lot 15 was owned by four persons of whom three only sold to you. The other lots they ackowledge the complete sale of - that they have and do keep possession of lots 4 and 15 until the purchase is completed. They offered to bring evidence of the truth of their statements which however I declined to hear having no jurisdiction to enquire into the matter.

If you wish to avoid legal proceedings I should advise you sending a competent agent to see the natives on the subject. I do not think I should be requested to interfere further unless I were asked to do so by the Govt.

(e) Copy of Messrs Jackson & Russell's Search, original sent to Native Secretary Auckland August 28th 1884.[177]

Cap. W C Daldy.
Dear Sir,
In accordance with your request we have searched the Title to Allotments 4 and 15 Parish of Katikati for which you hold Certificate of Title under the Land Transfer Act. With regard to No. 4 we find it was granted by the Crown to three Natives Te Kuka Akhuhata, Te Miniki and Pouhina it was conveyed to you by deed dated 24th Dec 1869 which was signed by all three grantees and duly interpreted to them before signature. Allotment 15 was granted to four Natives, Pika Harawira Kotai Tuine Te Pua and Te [Kau{ill]] and was conveyed to you by deed signed by all four of them in the presence of an interpreter who explained the meaning of the deed to them before execution.

The very fact of the Land Transfer Office issuing a certificate of Title for these Lands is conclusive proof that your Title is complete.
Yours faithfully, Jackson and Russell.

(f) Daldy-Brabant, 28 August 1884:[178]

I now acknowledge yours August 22nd which I have forwarded to the Native Minister requesting you may be authorised to make further enquiries into this matter also a letter from my Solicitors, showing that every native in Crown grants had signed the Conveyances - and then acceptance by the Land Transfer office proves that they were completed in proper form - having delivered these deeds into the Land Transfer Office and received Title I cannot get them without authority Government to produce them in Court shewing their signatures - but I enclose you certificate of my Solicitors as sent me for your information.

If the Government do not authorise you to act I shall take action in such form as will put the onus on the Natives to prove their Title not mine.

Thanking you for the trouble you have taken in this Matter,
I remain your obt, Servant William C Daldy.

(g) T.W. Lewis (Under-Sec. Native Dept.) to Brabant, 9 September 1884:[179]

I have the honor by direction of the Native Minister to forward herewith a letter from Capt Daldy of Auckland with reference to a difficulty he has with some Natives in connection with his property at Matakana Island and to request you will be good enough to endeavour, if possible, to bring about an amicable settlement of this matter.

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177 RDB 49033.
178 RDB 49032.
179 RDB 49030-31.

(h) Daldy to Brabant, 16 September 1884:[180]

I have received a letter dated 9th advising me you will be requested to settle the difficulty referred to in my letter.

The only difficulty I can see is did the Natives who held Crown grant sign conveyance to me. If the[y] had not the Land Transfer Office would never have issued the Certificate of Title. I have no doubt the officers of that Department will give you all the information necessary. They have taken in the Crown grants and conveyances to me and I cannot produce them without the Government place them in your hands to show to the Natives.

If the proceeds they received from me were misapplied I can have no knowledge of that.

Should you require anything of me of I can assist in any way I shall be happy be to do so but as I have told the Govt. I am determined not to sit still and be robbed.

(i) Brabant to Daldy Oct 8 1884:[181]

Sir,
I am in receipt of your letter of the 16th instant and also of a letter from the N. Department asking me to endeavour if possible to bring about an amicable settlement of your dispute with the Matakana Natives. I have accordingly had another meeting with the Natives but they still contend:

1. That all the shares of the land were not bought by you and that a balance of the purchase money remains unpaid.
2. That they have always and do retain possession of the land pending settlement.
3. They further say they are endeavouring to collect money to contest the matter in the Supreme Court.

I was asked by the Natives a number of questions as to when, where and by whom the purchase money was paid to.

If you think right to forward a statement showing when where and by whom the various payments [ ] this land were made [ ] copies of the original deeds (I [ ] them at Tauranga department will not part with originals) I will have the various documents explained to the natives.

At present it seems to me that the natives have no doubt themselves that they are in the right - possibly giving them full information as to how their title was obtained might change their opinion.

(j) Daldy to Brabant, Oct 10 1884.[182]

I now acknowledge yours 8th and now reply.
No. 1. Every sixpence of purchase money was paid in the presence of S J Edmonds, and I now hold the authority of and for No. 15. I hold the signatures of Harawira Kotai, Piko Kurawhero, Tini Te Rua, Tikauni Tuinera grantees, and Mr

180 RDB 49029.
181 RDB 49026-9.
182 RDB 49024-5.

Com. Clarke certified they were the owners. I would send the document but fear it might be lost, it is witnessed by S J Edmonds and W De Thierry.

No 2. On no occasion have they raised this claim before.

3. No reply.

4. All the purchase money was paid in the presence and with the knolwedge of S J Edmonds my agent.

Copies of deeds I have no doubt would be sent by the Government if applied to, who searched the title and received every document they needed when they granted me title under the Land Transfer Act, and who are responsible to me.

All the Surveys were made by Government surveyors under direction of Mr Com. Clarke and I had no negotiation until the Crown Grants were ready to issue, and hold authorities from the Natives named Crown [sic] for use of my Solicitors, Messrs Jackson and Russell to receive them and did so.

The whole of this claim is fictitious and if the question of Title is raised I shall call upon the Govt to join in defence.

If you would appoint anyone here to examine the documents I shall be happy to show them.

If you will give me the names of those residing on the land I will take proceedings.

Lot 4. I hold signatures of Te Kuka, Perehurau, her mark, Turoa, Akuatoa [Niniha?] C grantees. Witness Edmonds, De Thierry.

W C Daldy,

(k) Brabant to Lewis, 23 Oct 1884

Sir, I have the honor to ack the recpt of your letter noted in the margin with reference to Captn Daldy's dispute with the Katikati natives.

I saw a number of the Natives who had been digging gum on Captn Daldy's land and thereafter wrote him a letter explaining what they said.

I enclose copy of this letter and the reply I have received.

You will perceive that Captn Daldy declines to send me his documents and accounts as I requested.

The land for which I understand Captain Daldy has a Land Transfer Title consists of 8 blocks (in all 8000 acres). Each block was granted to from four to six individuals I presume Quasi-trustees for the hapu. The Natives as far as I know all admit the sale of six of these blocks. In regard to the other two, some of the grantees are dead - those alive tell the hapu that the sale was never completed and [ ] [ ] continuous [ ] to occupy. They say they have never relinquished possession - whether this is true I do not know.

Had I been placed by Captn Daldy in possession of full information and had the information been such as would justify me in advising the natives they were clearly in the wrong, it is quite possible they would have given in quietly - at least I thought so from what they said, but as Capt Daldy does not enclose his documents and accounts I do not know how I can assist him. The sale is stated to have taken place in 1869 before the days of Trust Commissioners and I have no means of obtaining iformation from any official source. I have asked Judge Clarke if he knows anything of the transaction. He says he only heard in a general way that Captn Daldy was negociating for these lands. If the Hon Native Minister [ ] I should [go?].

HWBt