# 'JUSTICE, SEASONED WITH MERCY'

## A report on the Katikati Te Puna purchase

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*A Report Commissioned by the Waitangi Tribunal*
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# CHAPTER ONE: INTRODUCTION

The Waitangi Tribunal commissioned this research report on aspects of the Katikati Te Puna purchase for the Tauranga inquiry. The commission, appended to this report, specified that my research should not duplicate material already on the record of that inquiry. The Tribunal also designed my commission to run parallel to Professor Russell Stone's commission. Professor Stone's commission focuses on the political and professional backgrounds of some of the main actors in the story of Tauranga Moana during the 1860s. I have, therefore, deliberately avoided including that kind of background material in my report.

This report will attempt to place the Katikati Te Puna purchase within the context of what Governor George Grey called the 'ultimate settlement' of Tauranga land. The report will also attempt to place the purchase in a broader colonial political context. As foreshadowed in my January 2001 scoping report, the purchase appears to have been an extension of a 'cession' strategy first tested in Tauranga Moana.[1] Grey's conflict with ministers over the implementation of the New Zealand Settlements Act 1863, particularly with Premier Frederick Whitaker, Native Minister William Fox, and Defence Minister Thomas Russell, clearly influenced his actions in Tauranga during 1864. In the scoping report I indicated that Grey initially opted for 'voluntary' cession rather than confiscation, while his ministers favoured a hard line.[2] At the same time, further research on the initiation of the Katikati Te Puna purchase (summarised in chapter three) suggests that Grey acted in concert with his ministers over the purchase. The broader context in late 1864, however, featured a continuing clash between Grey and his ministers.

The 1863 Act empowered the Crown to establish military and other settlements, supposedly to ensure peace and security for loyal subjects. The Crown's implementation of this Act in Tauranga Moana raised a major historical problem. Although the Crown proclaimed the entire 'Tauranga District' to be under the Act by its 18 May 1865 order in council, did this effectively confiscate everything within the declared district boundaries? The May 1865 proclamation, considered in chapter six, did not interfere with the completion of

[1] Barry Rigby, 'Whitaker and Russell in Tauranga Moana', report commissioned by Waitangi Tribunal (Wai 215 record of inquiry, doc K1), p 9
[2] Rigby, Whitaker and Russell, pp 6-8, 10

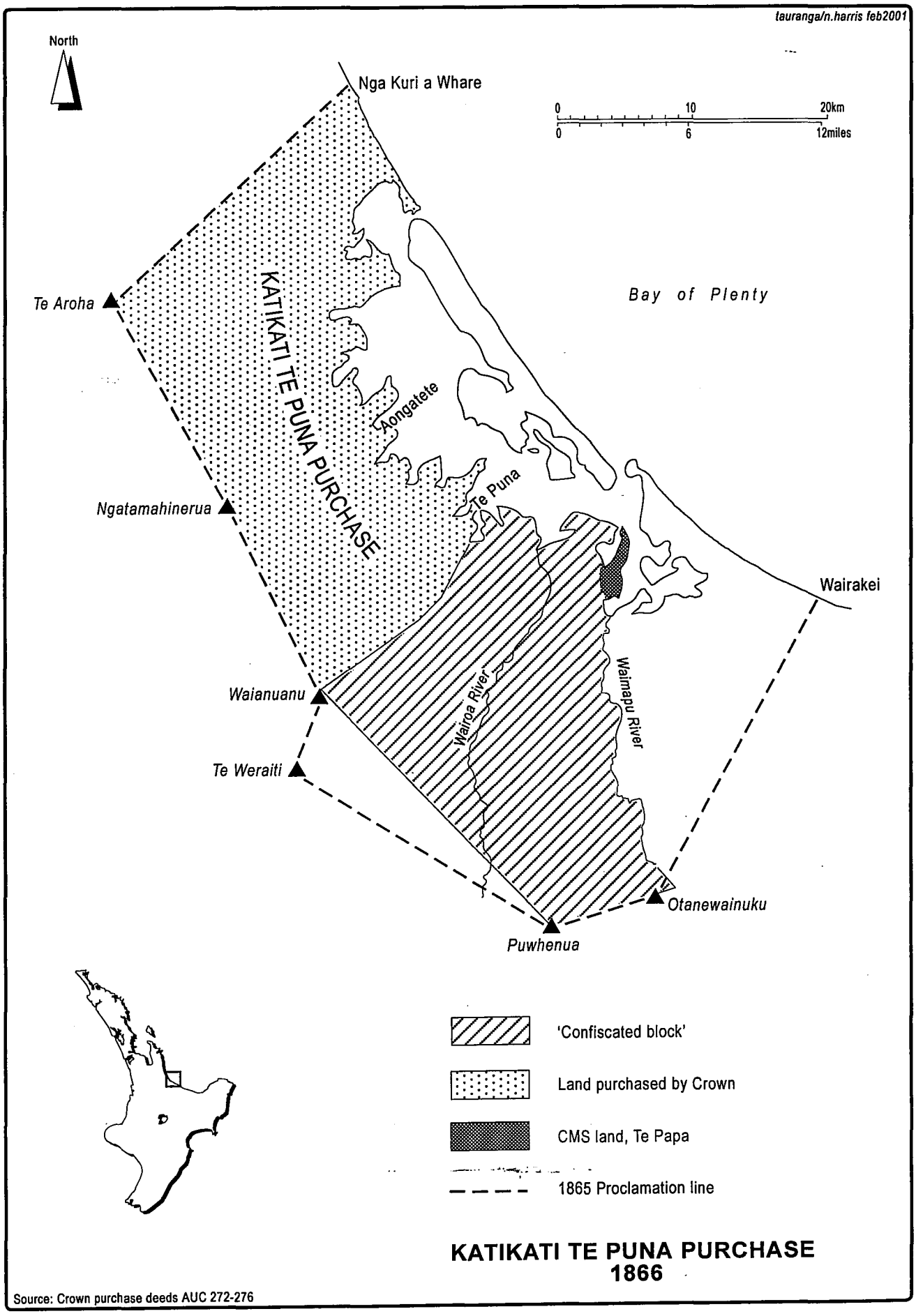
the Katikati Te Puna purchase. Indeed, that purchase virtually defined the northwestern quadrant of the declared district.[3]

In chapter two, entitled 'Cession or Confiscation' I introduce the question of the imperial response to the passage of the New Zealand Settlements Act. Edward Cardwell, the Secretary of State for the Colonies after early April 1864, guided Grey in his implementation of the Act. In fact, I have borrowed the words of Cardwell's private advice to Grey for the title to this report. Cardwell wanted Grey 'to limit the measures of cession and confiscation to the requirements of justice, seasoned with mercy'.[4] This, I think, forms part of the imperial context for understanding Crown actions in Tauranga Moana. If Grey was supposed to seek cession as his first option in Tauranga, why did he invoke the provisions of the 1863 Act?

In my concluding chapter I examine the individual contributions of Grey, Whitaker, Fox and Russell. Briefly, I argue that Grey remained the crucial decision-maker throughout. Whitaker and Fox played an important role in the initiation of the purchase. Fox dropped out of contention after November 1864, but Whitaker came back, in 1866, as agent for the general government and as Superintendent of Auckland Province, to play a crucial role in the completion of the purchase. Russell featured only very briefly in the Tauranga story during 1864.

Finally, by way of disclaimer, I wish to emphasise that this report is about Crown actions in Tauranga Moana during the 1860s. It is not about the rich Maori history of that area. The interpretation that follows focuses almost entirely on what Crown agents recorded. I am fully aware that these agents may have described the people of Tauranga Moana inaccurately. They invariably described the hapu of the area as affiliated with 'Ngaiterangi'. Such a description may have been inaccurate in many cases, but that is for others with greater expertise to say. I merely repeat the term 'Ngaiterangi' used by Crown officials. I have usually put quotation marks around the word Ngaiterangi to indicate that it was the Crown's term, not mine.

[3] See what I have called the '1865 Proclamation line' on the Katikati Te Puna purchase map on p 4.
[4] Cardwell to Grey, 26 April 1864 (Private), Grey Papers, GNZ MSS, 38/2, pp 132–133, Auckland Public Library, Auckland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Te Aroha
KATIKATI TE PUNA PURCHASE
Bay of Plenty
Aongatete
Te Puna
Ngatamahinerua
Wairakei
Waianuanu
Wairoa River
Waimapu River
Te Weraiti
Otanewainuku
Puwhenua
'Confiscated block'
Land purchased by Crown
CMS land, Te Papa
1865 Proclamation line
KATIKATI TE PUNA PURCHASE
1866
Source: Crown purchase deeds AUC 272-276

# CHAPTER TWO: CESSION OR CONFISCATION?

This chapter examines the character and context of the Katikati Te Puna purchase. It focuses on the extent to which the purchase can be considered a voluntary act by Maori, and on whether it was consistent with the cession of land anticipated by Cardwell.

Fox, in September 1864, described the purchase as 'a forced acquisition of Native Lands under colour of a voluntary sale'.[5] Fox helped initiate purchase negotiations with Whitaker immediately after attending the Tauranga Pacification hui with Grey and General Duncan Cameron (commanding imperial forces in New Zealand) on 5–6 August 1864. At that hui, Fox witnessed the first and only major 'cession' of Maori land to conclude hostilities. The term cession should be used with care, both in describing what transpired at the Pacification hui, and in the subsequent Katikati Te Puna purchase negotiations.

Cession may imply the voluntary transfer of authority and/or property. The *Concise Oxford Dictionary* defines the meaning of the verb cede as 'give up, grant, admit, surrender (territory)'.[6] Maori expressions (translated into English) at the August 1864 hui approximating cession included Enoka Te Whanake's statement to Grey that 'I have given up the *mana* of my land to you; it is in your hands' (emphasis in original). Enoka prefaced this with (again, in the Crown's translation): 'We have made submission to the Queen, and are under the shadow of her laws; henceforth we will be obedient to her commands'.[7]

This Tauranga cession was voluntary only in a nominal sense. 'Ngaiterangi' ceded authority to Grey in the aftermath of military defeat and privation. They had given up their arms, and they were largely dependent on Crown food relief.[8] The enormous advantage that allowed the Crown to set the terms of pacification is illustrated by the fact that Grey paid £100 annuities 'to those Tauranga Natives who did not go into rebellion'. We do not know whether Grey paid leaders such as 'Turere' this princely sum in 1864, but we do know that

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[5] Fox to Grey, 24 September 1864, G 17/3, National Archives, Wellington

[6] *The Concise Oxford Dictionary of Current English*, 7th edition, JB Sykes (ed), Oxford, Oxford University Press, 1982, p 148

[7] 'Speeches . . . at the Pacification Meeting', 5–6 August 1864, AJHR, 1867, A-20, pp 5–6

[8] On the Crown relief operation, see Fox to HE Rice, 19 July 1864; E Shortland to Rice, 27 August 1864; HH Halse to Rice, 20 October 1864, MA 4/6, National Archives, Wellington

these payments continued for several years, and that the Crown would cease payment if it suspected that the recipients were less than loyal.[9]

Similarly, Fox questioned the voluntary character of the Katikati Te Puna purchase. It arose out of the same circumstances as the more general cession that immediately preceded it. The purchase was a logical extension of what Fox referred to as 'the "Cession" principle'.[10] The purchase merely extended the apparent general transfer of authority at the Pacification hui into a specific transfer of a property.

Nonetheless, Fox identified the problem with a transfer of authority preceding a transfer of property. Grey assumed at the hui that 'Ngaiterangi' had exclusive authority within the area that included the subsequent purchase. A few weeks after the initial purchase negotiations, Hauraki-based groups absent from the Pacification hui challenged Grey's assumption by asserting rights at Katikati. Fox stated that he expected 'unlimited claims of the same sort' whenever the Crown attempted cession. None of these claims would have arisen, in his view, had the Crown carried out a straightforward confiscation at Tauranga.[11]

Whether Fox liked it or not, Grey decided to apply 'the "Cession" principle' in Tauranga. Grey did so in accordance with his instructions from London. Cardwell, immediately after succeeding the ailing Duke of Newcastle as imperial Colonial Secretary, instructed Grey very explicitly on the vital question of cession or confiscation.[12] Cardwell backed up his official instructions to Grey with a private letter that made imperial intentions crystal clear.

Cardwell's instructions expressed imperial concerns about the sweeping nature of the New Zealand Settlements Act. Cardwell believed that the effect of 'the compulsory power of acquiring land within a proclaimed district . . . applied alike to the loyal and the disloyal' would be 'to form a standing qualification of [or to] the treaty of Waitangi'.[13] His remark about the Treaty apparently referred to article 2, by which the Crown guaranteed Maori full and free ownership of all of their property.

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[9] GS Cooper to HT Clarke, 11 June 1873, MA 4/67, pp 362–364; Clarke to Civil Commissioner, Tauranga, 23 July 1873, ibid, pp 465a–465b, National Archives, Wellington. I am indebted to Vincent O'Malley for this reference, and to Marinus La Rooij for retrieving the information.

[10] Fox to Grey, 24 September 1864, G 17/3

[11] Ibid

[12] On Cardwell's personal and political background, see William P Morrell, *British Colonial Policy in the Mid-Victorian Age*, Oxford, The Clarendon Press, 1969, pp 23–24

[13] Cardwell to Grey, 26 April 1864, AJHR, 1864, Appendix to E-2, p 20

Cardwell indicated that, because the imperial government conducted military operations and paid for them, it could 'require that the cession or confiscation of territory shall not be carried further than may be consistent with the permanent pacification of the island and the honour of the English name'. Cardwell insisted that Grey, not his ministers, must control the implementation of the Act. He specified that, if possible, 'the proposed appropriation of land should take the form of a cession imposed by yourself and General Cameron upon the conquered tribes, and made by them . . . as a condition [of] . . . clemency'. Only if Grey failed to compel cession was he to resort to confiscation.[14]

Tauranga, it turned out, became the first and only practical application of this instruction. Although cession was undoubtedly more humane than confiscation, it was (in Cardwell's words) to be imposed on 'conquered tribes', even though it was also to be 'made by them' to Grey. If Maori refused to make an acceptable cession as a token of their submission to the Crown, Grey was to resort to 'just and moderate' confiscation. Cardwell, however, anticipated more cession than confiscation. He instructed Grey that when he had 'received all the cessions . . . [he deemed] necessary for the permanent pacification' of the North Island, he was to announce a 'general amnesty'.[15]

Cardwell communicated imperial intentions even more directly in his private letter sent on the same day as his official instructions. He confided in Grey that he understood 'that the Plan of establishing Military Settlements is originally your own: derived from your own experience at the Cape [Colony] . . .'. He knew Grey began to have misgivings about the scale of confiscation proposed by the Whitaker-Fox ministry. He noted, however, that Grey supported the New Zealand Settlements Act, and the imperial government wished to support him. In Cardwell's words:

> We intend to give full effect to what we believe to be your advice, and to limit the measures of cession and confiscation to the requirements of justice, seasoned with mercy.[16]

Cardwell was aware of Grey's conflict with his ministers over the implementation of the Act, and in this conflict he believed that Grey must prevail in the interests of justice.

Imperial concerns remained, however. Three months later, Cardwell again wrote privately to Grey. He reported that the House of Commons passed the New Zealand Loan Bill

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[14] Ibid, pp 21–22
[15] Ibid, p 22
[16] Cardwell to Grey, 26 April 1864, (Private), Grey papers, GNZ MSS, 38/2, pp 132–133, Auckland Public Library

with great reluctance. Cardwell described 'an almost universal feeling of disinclination and dislike' towards the Bill and, by implication, towards the confiscation with which it was associated. He referred to allegations that:

> Your Ministers, in opposition to yourself, are determined to make use of the occasion [of confiscation] for the purpose of aggrandizing the Province of Auckland and enriching themselves.[17]

Opposition to confiscation mounted in the House of Commons during 1864. Charles Buxton, a son of the noted colonial reformer, Fowell Buxton, condemned the war and confiscation as a violation of the Treaty of Waitangi.[18] Imperial concerns clearly functioned to strengthen Grey's hand as the person charged with carrying out either cession or confiscation.

Cardwell's instructions made a major difference in Tauranga. Grey claimed that the publication of these instructions in New Zealand induced 'in no small degree . . . the surrender of the rebel natives at Tauranga'.[19] Whitaker disputed Grey's interpretation of the causes of this 'surrender', but he could hardly dispute the fact that the Cardwell instructions effectively set the terms Grey was prepared to accept on 5–6 August 1864.

Grey indicated at the Pacification hui that although he was unfamiliar with the extent of the land 'Ngaiterangi' chose to transfer to his care, he would ensure that they were well taken care of. In return for the 'honourable manner' in which they fought, Grey promised them 'that in the ultimate settlement of your lands the amount taken [by the Crown] shall not exceed one-fourth part of the whole lands'.[20] Grey's promise to return three-quarters of Tauranga Moana land to 'Ngaiterangi' dominated much of the subsequent history. It was the most significant part of the cession agreement. It also set the scene for the subsequent Katikati Te Puna purchase.

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[17] Cardwell to Grey, 26 July 1864, (Private), Grey papers, GNZ MSS, 38/2, pp 137–143, Auckland Public Library

[18] Morrell, *Mid-Victorian Colonial Policy*, p 302

[19] Grey to Cardwell, 26 August 1864, AJHR, 1864, D-5, pp 8–9

[20] Speeches, 5–6 August 1864, AJHR, 1867, A-20, pp 5–6

# CHAPTER THREE: THE INITIATION OF THE PURCHASE

The initiation of the Katikati Te Puna purchase in August 1864 was both complicated, and poorly documented. This chapter attempts to explain the fundamentals of the transaction, without revisiting the detailed narrative available in other reports.[21]

The complicated nature of the purchase followed from the way Whitaker and Fox apparently initiated it in August 1864. Whitaker and Russell discussed the purchase both during and immediately after the Pacification hui in Tauranga, and they arranged for a group of chiefs to accompany them back to Auckland to receive a £1,000 deposit. Tauranga Civil Commissioner Henry Clarke provided the most complete account of what 'the Natives' agreed to in Tauranga and Auckland. He recorded that they agreed 'to sell ... all the lands to the North of Te Puna' for three shillings an acre. In return, the Crown 'promised that a Military settlement should be formed at Te Puna ... at the earnest request of the Natives themselves ...' Clarke believed 'Ngaiterangi' lived in fear that Hauraki-based groups 'would ... take advantage of the[ir] weakened and disarmed condition ...' unless the Crown provided them with military protection.[22]

Certainly, the Katikati Te Puna purchase allowed Whitaker and Fox a greater measure of control over post-war Tauranga than Grey was prepared to allow them elsewhere. Yet it appears unlikely that Grey opposed their involvement. According to Riseborough, when Whitaker and Fox proceeded to Auckland via Kawau on the government steamer *Sandfly* to pay the £1,000 deposit, Grey came aboard.[23] This suggests that he acted in concert with his ministers, or at least gave passive approval to the purchase.

According to Theophilus Heale, a former business partner of Whitaker, Crown officials promised the chiefs four things on 18 August 1864 in Auckland:

1. That surveyors should be sent back with them.
2. That roads should be commenced, and the Natives be employed on them.
3. That European settlers should speedily be sent.
4. That Crown Grants should be issued to the Natives, &c.[24]

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[21] For these more detailed accounts of the purchase, see Evelyn Stokes, 'Te Raupatu o Tauranga Moana', (Wai 215, A2), pp 39–41, 91–115; Hazel Riseborough, 'The Crown and Tauranga Moana', (Wai 215, A23), pp 24–41; and Kirstie Ross, 'The Katikati Te Puna Purchase Reserves', (Wai 215, K3), pp 10–23

[22] HT Clarke to JC Richmond, 10 May 1867, AJHR, 1867, A-20, pp 61–63

[23] Riseborough, Crown and Tauranga, pp 29–30

[24] Heale memo, 27 June 1865, AJHR, 1867, A-20, pp 14–15

Heale failed to identify the officials who made these promises. Nor did officials record the promises in the brief published records of the payment of the Katikati Te Puna deposit, the receipt for which Clarke prepared on 26 August 1864.[25]

The brief receipt failed to identify the precise boundaries of the purchase. The boundaries extended north to 'Ngahuria Whare' [sic] and inland 'round the outside boundary of all the Ngaiterangi claims'. The southern boundary was 'from Te Puna . . . right across to the inland boundary'.[26] The identification of the inland or western boundary with the extent of 'all Ngaiterangi claims' was remarkably imprecise. One of the maps ministers tabled in the General Assembly during 1864 showed a 'Ngaiterangi' area extending as far west as the Waihou River.[27] Since Clarke described the purchase as one intended to provide for the protection of 'Ngaiterangi' from possible attack from Hauraki, such an extension into the heart of Hauraki would have been self-defeating.

The possibility of an extended Katikati Te Puna purchase provoking the opposition of Hauraki groups apparently caused General Cameron some concern. Cardwell reported to Grey in early 1865:

> At Tauranga the submission of the Natives has been complete, and the only danger which has been suggested in that quarter is that which General Cameron apprehends may arise if the Colonial Government persist in their intention of purchasing a very large extent of country, a portion of which is at a great distance from his posts, while the right to sell it is disputed by one of the tribes of the Thames.[28]

Cameron may have been referring to Katikati, but he also may have been referring to a situation in which no one had identified precise boundaries. In situations such as these, people often imagine the worst.

After this complicated and poorly defined initiation of the purchase, the Crown failed to do anything very rapidly. The Katikati Te Puna purchase eventually became a series of long drawn-out parallel transactions when Hauraki-based groups took advantage of delays to assert their rights. At the same time, Grey sought to consolidate his right to control post-war settlements along the lines of the August 1864 pacification of Tauranga.

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[25] 'List of Natives who received the £1,000 . . .'; Receipt, 26 August 1864, AJHR, 1867, A-20, p 6
[26] Receipt, 26 August 1864, AJHR, 1867, A-20, p 6
[27] 'Map of the Districts proposed to be included within the operation of the New Zealand Settlements Act', encl in Grey to Cardwell, 3 September 1864, BPP, 1865–68, vol 14, pp 128–134
[28] Cardwell to Grey, 26 January 1865, AJHR, 1865, A-6, p 12

# CHAPTER FOUR: THE POLITICAL CONTEXT

Although it appears that Grey and his ministers reached a compromise over Tauranga in August 1864, this failed to produce an improvement in their general political relations. Conflicts over colonial responsibility for native affairs, the treatment of Maori prisoners, the terms of military surrender, and the implementation of the New Zealand Settlements Act escalated during August–November 1864.[29]

On the question of the implementation of the New Zealand Settlements Act, Grey repeatedly clashed with Whitaker. A few days before he ceased to be Premier, Whitaker fired his final volley on his differences with Grey over this subject. Whitaker recorded how, in the aftermath of the military engagements at Orakau and Gate Pa (Pukehinahina), he recommended that Grey consider proclaiming Waikato, Tauranga and Hauraki as districts under the Act. The maps prepared to illustrate the extent of these districts included one which showed the 'Ngaiterangi' area extending to the Waihou River (draining the Hauraki plains). On 17 May 1864, when ministers presented this proposal to Grey, they considered that Tauranga warranted inclusion because they then believed that 'three-quarters' of the people there could be described as 'rebel'. Grey objected to this. He believed that the 'rebels' were in a clear majority only in the case of Waikato.[30]

Accordingly, ministers agreed to drop the draft proclamation prepared for Tauranga and Hauraki. They then, on 28 May 1864, redrafted an order applying only to Waikato. Grey evidently signed this order, but afterwards he refused to issue it. During the subsequent months Grey appeared to play a game by seeking greater specificity on the boundaries of the proposed Waikato district. Whitaker believed the Act required Grey and Cameron to generate this information. Grey also sent the maps ministers had prepared in May to London to illustrate the vast acreage he believed they wished to confiscate.[31] Whitaker argued that this created a misleading impression. In his view, the proclamation of a district under the New Zealand Settlements Act:

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[29] For different interpretations of these conflicts, see James Rutherford, *Sir George Grey KCB 1812–1898: A Study in Colonial Government*, London, Cassell, 1961, pp 491–515, and; BJ Dalton, *War and Politics in New Zealand 1855–1870*, Sydney, Sydney University Press, 1967, pp 186–205

[30] Whitaker memo, 18 November 1864, AJHR, 1864, E-2c, pp 1–3

[31] Map encl in Grey to Cardwell, 3 September 1864, BPP, 1865–68, vol 14, pp 128–134

> did nothing more than describe the outside limits within which any land taken for settlement must be situate. A separate, specific and distinct Order in Council would be necessary to take even an acre of land under the Act.[32]

Grey sent the misleading 'Map of the Districts proposed to be included within the operation of the New Zealand Settlements Act' to Cardwell again on 24 November (without Whitaker's explanation of why it was misleading). Cardwell then once again ordered it to be printed in colour in *British Parliamentary Papers*.[33]

Grey used his access to the imperial government in this way to consolidate his power in New Zealand. By October 1864 the Whitaker-Fox Ministry was completely at odds with the Governor. Grey issued his own Peace Proclamation on 25 October against ministerial advice. In this proclamation, Grey pardoned all 'rebels' who were prepared to surrender 'and make the cession of such Territory as may in each instance be fixed' by Cameron and himself.[34] Again, Grey saw Tauranga as a model pacification in which cession prevailed over confiscation.

Fox told his friend Donald McLean that he did not expect Waikato 'rebels' to heed Grey's Peace Proclamation. At that time, Grey could not even persuade the prisoners of war who escaped from Kawau in August 1864 to come to terms. Fox realised that the cession strategy could only work in exceptional circumstances, such as those that prevailed in Tauranga. He confided in McLean that he was very much looking forward to leaving his 'very weary and irritating post' as Colonial Secretary and Native Minister in late November.[35] Grey was in command, but whether he could muster any colonial support remained to be seen.

When Frederick Weld took office to replace Whitaker as Premier, Grey believed he could rely upon 'a large majority of the Assembly' to support his views on post-war settlements.[36] Yet Weld's Attorney General, Henry Sewell, soon began recording the same sort of distrust that underlay Grey's conflicts with the Whitaker-Fox Ministry. Sewell ardently opposed the passage of the New Zealand Settlements Act in 1863. He regarded Grey, not Whitaker, as the man who inspired it.[37] Sewell believed that Grey's refusal to

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[32] Whitaker memo, 18 November 1864, AJHR, 1864, E-2c, p 3
[33] Map No 3, encl in Grey to Cardwell, 24 November 1864, BPP; 1865–68, vol 14, pp 233–241
[34] Proclamation, 25 October 1864, encl in Grey to Cardwell, 27 October 1864, BPP, 1865–68, vol 14, p 184
[35] Fox to McLean, 12 November 1864, McLean papers, MS32, folio 278, Alexander Turnbull Library, Wellington
[36] Grey to Cameron, 22 November 1864, G 36/4, pp 147–148
[37] See Henry Sewell, *The New Zealand Native Rebellion: Letter to Lord Lyttleton*, Auckland, printed privately, 1864

implement the Act in 1864 was an attempt to disguise his role in inspiring it during the previous year. He recorded in his personal journal how untrustworthy Grey could appear:

> as we talk to him, we watch the expression on his face, and the turn of his eyes, with the view to deciphering his meaning if we can, being perfectly assured that he is all the time playing with us, and no doubt writing dispatches behind our backs, undermining us.[38]

Ironically, Sewell, the man who condemned the Grey-inspired 'Policy of 1863' as a 'plot against Native Rights' of 'gigantic wickedness', later cooperated with Grey in implementing that policy.[39]

When Waikato 'rebels' failed to follow the Tauranga precedent by ceding their land before the Peace Proclamation's 10 December 1864 deadline, Grey proclaimed a vast area as Crown land without any reference to the New Zealand Settlements Act. The area Grey proclaimed to be Crown land included 'all the land in the Waikato taken by the Queen's Forces, and from which the Rebel Natives have been driven . . .'. This included virtually all Waikato as far north as the Hunua ranges (within 20 miles of Auckland). In addition, he proclaimed as Crown land all South Auckland 'rebel' land as far north as Manukau and Waitemata, and all 'rebel' land 'in the country between Wanganui and New Plymouth'. [40] The Executive Council, with Grey and all ministers in attendance, endorsed this sweeping proclamation at its 29 December meeting. The council resolved that within the boundaries Grey had proclaimed on 17 December:

> The lands of all Natives believed to have been implicated in the Rebellion shall by Proclamations from time to time issued by the Governor be brought under the provisions of the New Zealand Settlements Act.

At the same council meeting Sewell submitted draft orders bringing the sites of South Auckland military settlements under the Act.[41] The council approved Sewell's orders, and published the detailed descriptions of each settlement site in the *New Zealand Gazette*.[42]

Sewell defended these actions against Fox's accusation that the 17 December proclamation confiscated everything that Grey had refused to confiscate under the previous ministry. Sewell maintained that Fox and Whitaker had earlier 'insisted on a principle of

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[38] Sewell journal vol 2, 16 December 1864 , pp 294–295, ATL, Wellington
[39] Sewell journal vol 2, 17 November 1863, pp 222, ATL, Wellington
[40] Proclamation, 17 December 1864, *New Zealand Gazette*, 1864, no 49, p 461
[41] Executive Council minutes (29 December 1864), EC 1/2, pp 610–613, National Archives, Wellington
[42] Order in Council, 5 January 1865, *New Zealand Gazette*, 1865, no 1, pp 1–2

indiscriminate confiscation of land'. In contrast, according to Sewell, 'our proclamation limits and defines the maximum extent'.[43]

On the face of it, Fox appeared to be perfectly justified in stating that Grey's proclamation of 17 December 1864 signalled confiscation on a massive scale. Sewell's defence, however, suggested that this proclamation only defined the area within which the Crown could establish military and other settlements. Whitaker had described his earliest draft orders in the same way.[44] In effect, the act of confiscation was not the 18 December proclamation, but the subsequent 29 December South Auckland order in council which defined specific land within the area proclaimed 11 days earlier.

The pattern of a general proclamation followed by a specific order under the Act appeared to be a logical one. This pattern was not one that seemed to apply to Tauranga. Although the Crown had failed to conclude the Katikati Te Puna purchase, its pattern of cession as an alternative to confiscation in Tauranga was well established. Grey had announced to the Whitaker-Fox ministry in October that he would not bring the New Zealand Settlements Act 'into operation until he had failed in obtaining cessions of land in the manner proposed by the [25 October Peace] Proclamation . . .'.[45] While Waikato, South Auckland, and Taranaki were destined to suffer the consequences of the Act, Tauranga in late 1864 appeared to be safely outside the effects of its implementation.

[43] Sewell journal, vol 2, 19 January 1865, pp 60–61
[44] Whitaker memo, 18 November 1864, AJHR, 1864, E-2c, p 3
[45] Grey memo, 10 October 1864, encl in Grey to Cardwell, 27 October 1864, BPP, 1865–68, vol 14, pp 166–167

# CHAPTER FIVE: FALTERING FOLLOW-THROUGH

The Crown's failure to complete the Katikati Te Puna purchase in 1864 can probably be attributed to its preoccupation with war and confiscation elsewhere. This faltering follow-through almost invited Hauraki-based groups to press their claims within the largely undefined purchase area. Thus, as indicated previously, the purchase became a series of parallel transactions with different groups. Eventually, James Mackay, the Hauraki Civil Commissioner, as well as Clarke, his Tauranga counterpart, participated in ongoing negotiations.

Mackay and Clarke jointly arbitrated between Hauraki-based groups, and 'Ngaiterangi' in December 1864 and in early 1865. They decided in December 1864 that Ngati Tamatera and 'Ngaiterangi' shared rights to Katikati.[46] They then chose to recognise Te Tawera rights at Te Puna in early 1865.[47] Eventually, Mackay and Clarke negotiated five separate 'deeds of conveyance' with three Hauraki-based, and two Tauranga-based groups.[48]

These Katikati Te Puna negotiations should have followed a proper survey of the precise boundaries of the purchase. Yet they did not. From the limited available evidence, it appears that at least two factors intervened to prevent the completion of the necessary survey of exterior boundaries. The earliest 1864–1865 surveys were devoted to what the Crown considered to be the most pressing priority: the location of military settlements. Secondly, this early survey activity between Te Papa and Te Puna came to be associated with the so-called 'confiscated block'. This excited Maori opposition, which then gained the support of the Pai Marire and Kingitanga movements.

Theophilus Heale (later to become a national Inspector of Surveys) arrived in Tauranga in September 1864 to direct local surveys.[49] Heale maintained that in late 1864 local Maori fully supported the establishment of protective military settlements. When he completed a Te Puna township survey in November 1864, he wrote, he 'was continually

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[46] Clarke and Mackay arbitration report, 27 December 1864, encl in Mackay to W Mantell, 10 January 1865, AJHR, 1867, A-20, pp 7–8

[47] 'Report on Te Tawera and Ngaiterangi claims', encl in Mackay to Native Minister, 22 June 1865, AJHR, 1867, A-20, pp 10–11

[48] Turton published copies of these deeds, but not all the plans (an omission to be discussed below). H Hanson Turton, *Maori Deeds of Land Purchases in the North Island*, Wellington, Government Printer, 1877, vol 2, pp 633–642

[49] On Heale's professional background, see Harold Jenks, *Forgotten Men: The Surveys of Tauranga and District 1864–1869*, Tauranga, Tauranga Historical Society, 1991, pp 19, 61–62

pressed with inquiries as to when the military were coming to occupy it . . .'.[50] When the First Waikato Militia Regiment failed to occupy the site, private land speculators began dealing with Maori over prime land along the harbour shores, while Maori began to oppose the extension of surveys inland from Te Papa. Heale believed that the uncertainty surrounding the Crown's failure to complete arrangements begun in August 1864 meant that those arrangements could become null and void unless the Crown acted decisively. He recommended two things: the establishment of a further settlement at Aongatete in the middle of the Katikati Te Puna purchase area; and the proclamation of 'the whole Ngaiterangi territory under the Settlements Act . . .'. This, he wrote, would allow the Crown 'to adjust all the land claims within' the area 'on the most comprehensive plan'. [51]

In a further report filed as he was about to leave Tauranga, Heale reminded his superiors of Grey's August 1864 promise to return three-quarters of Tauranga land to 'Ngaiterangi'. He believed that the Crown had also promised them surveys, roads, settlements, and secure Crown grants for Maori. He stated that 'As these terms were then accepted, I conceive that this has become an absolute treaty engagement'.[52]

Mounting Maori opposition deterred the Crown from acting on all of Heale's recommendations in 1865. In early 1865 Crown agents were particularly alarmed by the rise of the Pai Marire movement in the Tauranga area. They arrested local rangatira, Hori Tupaea, for his Pai Marire activities in February 1865.[53] According to Clarke, Wiremu Tamihana objected to both the Te Puna and the 'confiscated block' surveys in late 1864 and in early 1865.[54] Maori opposition stopped further surveying for almost a year. After Heale's departure in mid–1865, FC Utting did not replace him as District Surveyor until March 1866.[55]

Meanwhile, the extent of the Katikati Te Puna purchase remained undefined. Preoccupied with Maori opposition both in Tauranga and elsewhere, the Crown failed to follow-through on most of its initial 1864 undertakings during the following year. Heale had only begun the surveys of military settlements, and the Katikati Te Puna purchase remained in abeyance. The only Crown action in Tauranga worthy of note during the year 1865 was one apparently at variance with its undertakings of the previous year. That action was the

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[50] Heale to Defence Minister (H Atkinson), 7 April 1865, AJHR, 1867, A-20, pp 8–9
[51] Ibid
[52] Heale memo, 27 June 1865, AJHR, 1867, A-20, pp 13–15
[53] Grey to HH Greer, 13 February 1865, G 36/4, National Archives, Wellington
[54] Clarke to Mantell, 23 June 1865, AJHR, 1867, A-20, pp 12–13
[55] Jenks, *Forgotten Men*, pp 26, 28–29

Crown's 18 May 1865 proclamation of Tauranga as a district under the New Zealand Settlements Act. This is the subject of the following chapter.

# CHAPTER SIX: ORDER IN COUNCIL 18 MAY 1865

Until May 1865 Tauranga and the Katikati Te Puna purchase appeared to be safely outside the effects of the New Zealand Settlements Act. Then on 18 May, almost without warning, the Executive Council proclaimed the still largely undefined 'Tauranga District' as under the Act. What was the significance of this action? How did it affect the incomplete Katikati Te Puna purchase?

The Executive Council minutes provide only a very sparse record of what took place on 18 May 1865. Only Grey, Native Minister Walter Mantell, and Defence Minister Harry Atkinson attended the meeting. Premier Frederick Weld, and Attorney General Sewell did not. The minutes do not record who submitted the draft order to bring Tauranga under the Act. In the minutes the description of the district was exceptionally vague, and its reference to Grey's promise to return land had to be corrected subsequently. The minutes recorded that the order was to apply to:

> All land belonging to the Ngatirangi [sic] Tribe at Tauranga with the exception of *one-fourth* returned to them by promise made by the Governor. [Emphasis added.][56]

Crown officials corrected and expanded this order when they printed it in the *New Zealand Gazette* almost six weeks later. The Gazette notice corrected the amount of land covered by Grey's promise, and it dated the promise. It ordered:

> that in accordance with the promise made by His Excellency the Governor at Tauranga, on the sixth day of August, 1864, *three-fourths* in quantity of the said lands shall be set apart for such persons of the tribe Ngaiterangi as shall be determined by the Governor, after due enquiry shall be made. [Emphasis added.]

The attached schedule described the district as 'estimated to contain 214,000 acres'. It gave the coastal boundaries as 'Ngakuria-whare Point' in the north and 'Wairaki' creek in the south. It also gave compass bearings for a line from Wairakei to the main divide of the Kaimai ranges. The western or inland boundary followed that divide north to 'the summit of the Aroha Mountain' (see 1865 Proclamation line on Katikati Te Puna purchase map, p 4).[57]

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[56] Executive Council minutes, 18 May 1865, EC 1/2, pp 628–629, National Archives, Wellington

[57] The district also included Tuhua (Mayor Island) and those parts of Motiti 'adjudged to belong to . . . Ngaiterangi'. Order in Council, 18 May 1865, *New Zealand Gazette*, 1865, no 22, p 187

Several questions arise from this order in council: How did it affect the Katikati Te Puna purchase? Why did the Crown take this action in May 1865? And, was it consistent with the pacification agreement of the previous year?

On the question of the affect of the order on the purchase, a few things can be noted. Firstly, the New Zealand Settlements Act 1863 refers to the possibility of a ceded or purchased area coming within its provisions. Section 20, the very last section of the Act, states that the Governor's powers under the Act:

> shall ... apply to any land which shall be obtained by cession or purchase... for the purposes of such settlements although such land shall not be situate within the limits of a [proclaimed] District ... [58]

The Katikati Te Puna purchase was wholly within the proclaimed 'Tauranga District', whereas the Act contemplated ceded or purchased areas outside such a district. Nonetheless, the final section of the Act offers the possibility that cession and purchase, and not just confiscation, could create the legal basis of settlements.

Heale's 7 April recommendation to Defence Minister Atkinson 'to proclaim the whole Ngaiterangi territory under the Settlements Act' appears to explain the timing of the 18 May order in council. On the basis of this recommendation, Atkinson may have prepared the draft order for consideration by the Executive Council. In any event, the circumstances surrounding Heale's recommendation were the mounting Maori opposition to confiscation, and the danger that, unless the Crown acted decisively, everything agreed to in August 1864 might become null and void.[59]

Was the 18 May 1865 order in council consistent with the August 1864 pacification agreement? Clearly, its explicit reference to Grey's 6 August promise to return three-quarters of 'Ngaiterangi' land signalled the Crown's intention to honour that part of the pacification agreement. On the other hand, the order was apparently inconsistent with the fact that pacification was based on cession. Cardwell's April 1864 instructions setting up cession as Grey's first option meant that Grey was to implement the Act only when he failed to compel cession. As Grey himself put it on 10 October 1864, Cardwell required him not to bring the Act 'into operation until he has failed in obtaining cessions of land ... '.[60]

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[58] The New Zealand Settlements Act, 3 December 1863, *New Zealand Statutes*, 1863, no 8, p 23
[59] Heale to Defence Minister, 7 April 1865, AJHR, 1867, A-20, pp 8–9
[60] Grey memo, 10 October 1864, encl in Grey to Cardwell, 27 October 1864, BPP,1865–68, vol 14, p 167

On the other hand, one should not assume that bringing a district under the Act was an unambiguous act of confiscation. As related above, section 20 of the Act provided for it to apply to areas ceded and/or purchased. During his May 1864 debate with Whitaker over the meaning of the Act, Grey argued that it authorised the Crown to establish settlements, not to undertake 'such general confiscation' as that he believed his ministers sought.[61] Whitaker then stated that Grey misrepresented the position of ministers on this question. He said that an initial order proclaiming a district merely indicated where the Crown might confiscate land for establishing settlements. 'A separate, specific and distinct Order in Council would have been necessary to take even an acre of land under the Act'.[62] Certainly this was the sequence the Crown followed with regard to South Auckland settlements. It followed up a general 17 December 1864 proclamation with a very specific description of settlement sites by order in council on 29 December.[63]

In other words, the 18 May 1865 order in council may not have confiscated anything within the Tauranga district. A strict interpretation of the Act, in line with Grey and Whitaker's views noted above, suggests that the general Tauranga order enabled the Crown to establish settlements by subsequent specific orders. For that reason, on the map included in this report I have described the boundaries declared on 18 May as the '1865 Proclamation line', not the 'Confiscation boundary line' (see map of Katikati Te Puna purchase, p 4).[64] The general area within this proclamation line was probably an approximation of the area ceded by Maori to the Crown in August 1864. On that occasion it was definitely *ceded* by Maori (albeit under duress), not *confiscated* by the Crown.

Why would the Crown confiscate the entire Katikati-Te Puna purchase area that eventually occupied the northwestern quadrant of the 'Tauranga District'? The Crown evidently needed the legal authority to establish settlements, both within the Katikati Te Puna area, and within what came to be know as the 'confiscated block' (of approximately 50,000 acres) between Waimapu and Te Puna (see 'Confiscated block' on Katikati Te Puna purchase map, p 4). The 18 May 1865 order apparently provided it with that authority. It may also have

[61] Grey memo, 11 May 1864, AJHR, 1864, E-2, pp 40–41

[62] Whitaker memo, 18 November 1864, AJHR, 1864, E-2c, p 3

[63] Proclamation, 17 December 1864, *New Zealand Gazette*, 1864, no 49, p 461; Order in Council, 29 December 1864, *New Zealand Gazette*, 1865, no 1, pp 1–2

[64] One of the early Crown maps of the area, created by the Waikato Lands office in 1871 and entitled 'Plan of the Tauranga Confiscated Block', refers to this line as the 'Confiscated Boundary Line'. Statutory Miscellaneous Plans, AAFV/A78, National Archives, Wellington

been designed to send a signal to Maori opponents of survey activity that such opposition would not deter the Crown.

# CHAPTER SEVEN: THE COMPLETION OF THE PURCHASE

Whatever the Crown's intentions, its 18 May 1865 order in council changed very little for the people of Tauranga Moana. Just as the Crown had failed to follow-through on its initial pacification agreement and Katikati Te Puna purchase, so it failed to get surveyors back 'on the job' in Tauranga until March 1866. Far from deterring Maori opposition, renewed survey activity had the opposite effect. Eventually, the surveyors had to organise themselves into a paramilitary unit as 'Volunteer Engineers' before they could complete their work in the Tauranga area in 1868.[65]

Even then the surveyors did not complete the exterior survey of the Katikati Te Puna purchase. Remarkably, as late as 1881 the Crown had still not completed the exterior survey.[66] S Percy Smith, Auckland's Chief Surveyor during 1880–1881, opposed the completion of the exterior survey. He believed that if the Crown chose to complete the Katikati Te Puna survey 'there was a great danger in opening up the question of the confiscation boundary . . .'. Smith acknowledged that because the Crown's 'knowledge of the country was exceedingly limited' in 1865, the 'confiscation boundary' was inaccurate. He recommended that the matter be referred to Mackay, but Mackay (in Smith's words) 'declined to give the Govt. any information!'.[67]

Whitaker attempted to complete the Katikati Te Puna purchase in 1866 in his dual capacity as agent for the general government in Auckland and Superintendent of Auckland Province. Whitaker convinced himself in November 1866 that he had completed the purchase he helped initiate. He reported that:

> I have been compelled to pay the Tauranga Natives the balance of the [money for] Land purchased from them by the Governor in 1864. It would have been most disastrous with the present state of Tauranga, that any difficulty should have taken place in the settlement of this matter.[68]

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[65] Jenks, *Forgotten Men*, pp 36–38, 40

[66] Morpeth to JA Wilson, 18 August 1880, MA 4/30; TW Lewis to GV Stewart, 10 February 1881, MA 4/31. I am indebted to Vincent O'Malley for these references.

[67] Smith to Surveyor General, 23 July 1880, encl in Smith to HW Brabant, 5 April 1881, Waitangi Tribunal, Raupatu Document Bank [RDB], vol 124, pp 47791–47796

[68] Whitaker to Colonial Secretary, 26 November 1866, No 628, Agent for the General Government-Auckland records (AGG-A) 3/1, National Archives, Wellington

Whitaker's reference to the 1864 purchase as Grey's suggests that he saw it as an integral part of the overall pacification agreement. His 'final' payment, he believed, avoided the 'disastrous' consequence of the possible voiding of everything agreed to in August 1864.

Atkinson's successor as Defence Minister, Colonel Theodore Haultain, visited Tauranga in February 1866 in an attempt to give effect to the August 1864 agreement. He announced to 'Ngaiterangi' his determination to 'settle the question of land now so long pending', and to return 'three-quarters of this land . . .' as Grey had promised. He antagonised his audience, however, by insisting on the Crown's absolute right to the 50,000 acre 'confiscated block' as its share in Grey's 'ultimate settlement'. Enoka Te Whanake even questioned the legitimacy of the Katikati Te Puna purchase. He declared that it was 'the work of the men who went to Auckland', without the consent of 'all the tribe'. He even asked Haultain: 'Can you tell me where the boundaries are?'.[69]

Haultain then travelled to Auckland where he consulted Grey and Whitaker to see what could be done to salvage the situation. Whitaker and Grey decided to go to Tauranga together. Haultain told McLean that he expected the Governor and the former Premier to 'bring that most complicated question of confiscated land in that District to a satisfactory issue'.[70]

According to Clarke, the crucial 26 March 1866 meeting between Grey, Whitaker and Maori representatives in Tauranga proved to be as contentious as Haultain's encounter the previous month. Grey reportedly stuck to the Crown's position that it was entitled to the 50,000 acre 'confiscated block' as its 'one-fourth' share of Tauranga land. Maori present objected to this interpretation of the August 1864 agreement, but Grey apparently told them 'that he would resort to extreme measures if they would not comply'.[71] Grey hoped that, having threatened Maori in this way, they would then allow the surveys of the disputed area to resume. This proved to be a forlorn hope.

Nonetheless, Whitaker acted in concert with Grey in a vigorous push to complete all arrangements initiated in 1864. Even before they departed for the 26 March Tauranga meeting, Whitaker made a series of payments to Hauraki claimants in Auckland. He agreed with Tareha, the Ngati Tamatera rangatira, on 10 March to pay him (and three other chiefs) the equivalent of two shillings per acre for a place called Takapuwharawhara 'at the head of

[69] 'Proceedings of a Meeting held with the Tauranga Natives', 26 February 1866, AJHR, 1867, A-20, pp 19–20
[70] Haultain to McLean, 13 March 1866, McLean papers, MS Micro 0535, reel 060, ATL, Wellington

Katikati harbour'. According to the fragmentary record of this transaction, this payment was consistent with 'that laid down by Ngaiterangi, and Mr Whitaker formerly . . .'.[72] Whitaker evidently believed that he had agreed to this rate per acre in August 1864. Clarke's recollection, however, was that the Crown had agreed to pay 'Ngaiterangi' three shillings an acre.[73] Whitaker made three further payments to Hauraki claimants prior to departing from Auckland for Tauranga with Grey. In each of these payments he acted as the Superintendent of Auckland Province.[74] Then, after the 26 March Tauranga meeting, Whitaker wrote to Clarke that:

> Te Puna is not settled. I have adhered to the purchase, and it has been arranged that a meeting of all interested [parties] shall take place at Katikati, at which Mr Mackay and Mr Clarke are to be present, not to discuss the purchase, but to settle who are to receive the money.[75]

Whitaker's determination to complete the Katikati Te Puna purchase paralleled Grey's efforts to end Maori opposition to the designation of the 'confiscated block' as the Crown's share in Tauranga land. Whitaker instructed Mackay verbally on 26 October 1866 to complete 'the negotiations for the purchase of Te Puna and Katikati blocks . . .'.[76] Together with Clarke, Mackay negotiated on 1–2 November 'with the Ngaiterangi hapus for their claims to Te Puna and Katikati blocks'. Without waiting for a full survey to ascertain acreage, 'Ngaiterangi' representatives evidently 'agreed to take £6,700 for their claims'. They also apparently agreed to accept 6000 acres to be reserved for them within the (still unsurveyed) purchase boundaries.[77] Although Mackay reported continued obstruction of surveys in the disputed 'confiscated block', he insisted that 'Ngaiterangi' were 'perfectly contented with the arrangements entered into for the purchase of the Puna and Katikati . . .'.[78]

Prior to signing the 'Ngaiterangi' deed on 3 November 1866, Mackay signed similar deeds with 'Ngatihura o Ngatipaoa' on 10 August, and with 'te Tawera o Ngatipukenga' on

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[71] Clarke was unable to attend the meeing. His account is therefore based on hearsay. Clarke to Richmond, 10 May 1867, AJHR, 1867, A-20, pp 61–63

[72] This agreement included a deposit of £25. Agreement, 10 March 1866, RDB, vol 124, p 47779

[73] Clarke to Richmond, 10 May 1867, AJHR, 1867, A-20, p 62

[74] Receipt, 10 March 1866 (payment of £30 to Tareha for Tongaparaoa), RDB, vol 142, p 47778; Receipt, 15 March 1866 (payment of £25 to Moananui for Katikati land), ibid, p 47768; Receipt, 15 March 1866 (payment of £30 to Taraia for 'Katikati and Tauranga' land), ibid, p 47771

[75] Whitaker memo, 10 April 1866, encl in Clarke to Richmond, 10 May 1867, AJHR, 1867, A-20, p.64. Also encl (but undated) in Mackay to Richmond, 22 November 1866, ibid, p 34

[76] Mackay to Richmond , 22 November 1866, AJHR, 1867, A-20, p. 27; Mackay report, 26 June 1867, Legislative records, (LE) 1/1867/114, as copied in RDB, vol 7, pp 2341–2342

[77] The £6,700 did not include the £1,000 deposit paid in August 1864. Mackay to Richmond, 22 November 1866, AJHR, 1867, A-20, p 27

[78] Ibid, p 30

14 August. He signed a further deed with 'Ngatimaru o Ngatitamatera' on 3 November.[79] Although Turton titled the Te Tawera deed as 'Te Puna and Katikati Block No. 2', the original deed is titled 'Te Puna, Katikati & Confiscated Block' on its cover. The plan on the Te Tawera deed, which Turton chose not to copy, extended to the southern inland extremity of the proclaimed Tauranga district (see 'Confiscated block' on Katikati Te Puna purchase map, p 4).[80] The inclusion of the 'confiscated block' in the Te Tawera deed is further evidence that the Crown treated both areas as part of the same August 1864 agreement.

Whitaker was quite mistaken in his belief that he had completed Katikati Te Puna payments in November 1866.[81] Mackay completed payments of £100 to Ngatihura, £500 to Te Tawera, and £1,180 to Ngatimaru on the days their representatives signed the respective deeds. On the other hand, 'Ngaiterangi' received only £700 (out of the £6,700) on 3 November 1866. 'Ngaiterangi' had to wait for two further £3,000 payments from Clarke in June 1867 and in January 1868.[82] Finally, Clarke negotiated a further deed with 'Pirirakau e Ngatihinerangi' in 1871.[83]

Mackay's 26 June 1867 report, titled 'Report . . . on the Katikati Purchase and other questions relating to the District of Tauranga', gave further background to the conclusion of the purchase. Grey evidently wanted this report published in the *Appendices*, but ministers evidently neglected to do so.[84] Mackay's report demonstrates quite clearly that purchase negotiations could not be isolated from the disputes arising in the 'confiscated block'. In fact, his report deals much more with those disputes, than with purchase negotiations. Although the purchase was less controversial than the Crown's actions in the adjoining 'confiscated block', Katikati Te Puna and 'confiscation' disputes were part and parcel of the same 'ultimate settlement' Grey had spoken of in August 1864.[85]

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[79] Crown purchase deeds, AUC 272 (Ngaiterangi), AUC 274 (Ngatihura), AUC 275 (Te Tawera) and AUC 273 (Ngatimaru), Land Information New Zealand, National Office, Wellington. See copies in Turton, Maori Deeds, vol 2, pp 633–641

[80] Crown purchase deed (and plan), 14 August 1866, AUC 275 (Te Tawera), LINZ, Wellington

[81] Whitaker to Colonial Secretary, 26 November 1866, No 628, AGG-A, 3/1, National Archives, Wellington

[82] These payments are recorded on the Crown purchase deed dated 3 November 1866, AUC 272 (Ngaiterangi), LINZ, Wellington; Turton Maori Deeds, vol 2, pp 640–641

[83] Crown purchase deed, 16 May 1871, AUC 276, LINZ; Turton Maori Deeds, vol 2, pp 641–643

[84] The cover sheet of the report states that it was 'presented to the General Assembly' by Grey, and tabled in the House of Representatives on 21 August 1867. Mackay report, 26 June 1867, RDB, vol 7, p 2316

[85] Ibid, pp. 2317–2355

# CONCLUSION: THE RESPECTIVE INDIVIDUAL ROLES

This concluding chapter will attempt to weigh up the individual roles of Governor George Grey, Frederick Whitaker, William Fox and Thomas Russell in the negotiation and completion of the Katikati Te Puna purchase. It will traverse the political circumstances that conspired to delay the completion of the purchase. Finally, it poses a question about whether the Crown fulfilled its obligations to Maori in the 'ultimate settlement' of Tauranga land.

As foreshadowed in my scoping report, the available evidence supports the view that Grey made the most crucial decisions affecting the purchase. Grey made Tauranga a test case for the cession strategy Cardwell outlined in his 26 April 1864 instructions. Cardwell's private letter of that date encouraged Grey to believe that he would enjoy the full support of the imperial government in carrying out this strategy. Above all, Grey was to exercise restraint and magnanimity with regard to either cession or confiscation.[86]

Grey's contest with his ministers during 1864 over who would control post-war settlements gave him every incentive to make his mark in Tauranga. This is essentially what he did in August 1864. The Katikati Te Puna purchase appears to have emerged as a compatible by-product of what amounted to an involuntary cession by 'Ngaiterangi' to the Crown. The military reverses, division and privation suffered by 'Ngaiterangi' gave the Crown the upper hand, and made cession the best alternative on both sides. True to Cardwell's instructions, Grey and Cameron 'imposed' the cession by force of arms, and by weight of resources.[87]

The Katikati Te Puna purchase was entirely compatible with the terms of cession concluded at the Tauranga pacification hui. In the first place, the purchase allowed Whitaker and Fox to participate in the Tauranga settlement. They appear to have initiated the purchase. At the same time, Grey appears to have supported their initiative. The only recorded opposition came from Cameron who evidently thought the ministers may have overreached themselves.[88] The purchase was also compatible with the principle of cession. Both purchase and cession implied 'Ngaiterangi's voluntary participation. Of course, the military situation allowed the Crown to control the terms of the transfer of authority and land. Tauranga Moana

[86] Cardwell to Grey, 26 April 1864, Grey papers, GNZ MSS 38/2, pp 130–136, Auckland Public Library
[87] Cardwell to Grey, 26 April 1864, AJHR, 1864, Appendix to E-2, p 22
[88] Cardwell to Grey, 26 January 1865, AJHR, 1865, A-6, p 12

in August 1864 was an occupied zone. 'Ngaiterangi' was at the mercy of the Crown, but Grey led them to believe that the Crown would arrange its 'ultimate settlement' in a merciful way.

'Ngaiterangi' sought the Crown's protection from armed adversaries. According to Clarke, they saw military settlements, including one within the Katikati Te Puna purchase, as a source of protection.[89] Although Crown officials may have overestimated the extent to which 'Ngaiterangi' feared attack from Hauraki, Theophilus Heale, and James Mackay, as well as Clarke testified to the Crown's offer of protection.[90] All three officials believed that the Katikati Te Puna purchase was originally intended to provide 'Ngaiterangi' with protection from possible attack from Hauraki.

Thomas Russell, the Minister of Colonial Defence in 1864, had very little to say about the location of a military settlement at Te Puna. Grey and Cameron controlled the deployment of the first Waikato Militia Regiment. In early 1864 they decided that this regiment would be eventually stationed at Te Papa.[91] Heale surveyed a township at Te Puna in late 1864, but other pressing military priorities prevented the establishment of a settlement there for many years.[92] Russell, therefore, played virtually no role at any stage in the negotiation of the Katikati Te Puna purchase.

The roles of Whitaker and Fox changed when they resigned as ministers in November 1864. Fox played no further role in the purchase. In September 1864 he had criticised the Cardwell-Grey cession strategy with regard to Katikati Te Puna. He believed that a cession and a purchase invited multiple claims, such as those Te Tawera asserted that month. He much preferred a straightforward confiscation as the only way to discourage the clamour of cross-claims.[93] Fox published a scathing critique of the Cardwell-Grey strategy in Britain in 1866, but by then he was well out of the picture as far as Tauranga was concerned.[94]

After resigning as Premier in late November 1864, Whitaker came back into the Tauranga picture as agent for the general government in Auckland, and as Superintendent of Auckland Province, in late 1865. After acrimonious exchanges with Grey over almost everything during 1864, Whitaker appears to have made his peace with the imperious Governor. In late 1866, Grey wrote to Whitaker inviting him to bring his wife with him to

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[89] Clarke to Richmond, 10 May 1867, AJHR, 1867, A-20, pp 61–63
[90] Heale memo, 27 June 1867, AJHR, 1867, A-20, pp 13–15; Mackay report, 26 June 1867, RDB, vol 7, pp 2319–2320
[91] Grey to Cameron, 26 August 1864, G 36/4, pp 123–124, National Archives, Wellington
[92] Heale to Defence Minister, 7 April 1865, AJHR, 1867, A-20, p 8
[93] Fox to Grey, 24 September 1864, G 17/3, National Archives, Wellington
[94] William Fox, *The War in New Zealand*, London, Elder & Co, 1866

Kawau as his guests. Not only that, Grey wanted to discuss with Whitaker 'the present state of the Waikato, and the time for the occupation of Taupo'. He wrote, in apparent deference to the former Premier:

> When I know your own views on this subject, and the grounds on which they rested, I could form my own opinion with greater confidence.[95]

One wonders what was behind this rapprochement. Undoubtedly, Whitaker's change of position had a lot to do with it. As agent for the general government in Auckland, he became what amounted to a collaborator with Grey in completing the Katikati Te Puna purchase in 1866.

Whitaker's relationship with Grey was also affected by the changing Tauranga situation. This situation deteriorated during 1865 when the Crown failed to follow-through on the original terms of its pacification agreement. 'Ngaiterangi' expected a prompt completion of the Katikati Te Puna purchase, together with the establishment of military settlements, and the allocation of the 'three-quarters' of the land that Grey promised to return to them. By designating 50,000 acres a 'confiscated block', the Crown excited Maori opposition to the earliest inland surveys. This opposition then attracted both Pai Marire and Kingitanga support.[96]

This growing Maori opposition may have provoked the 18 May 1865 order in council proclaiming the Tauranga district as under the New Zealand Settlements Act 1863. On the face of it, this Crown action violated the terms of the 1864 pacification agreement, because that agreement was based on cession. Whitaker played no direct role in what appeared to be a Crown shift away from cession and purchase, and towards confiscation and coercion in Tauranga. Grey continued to call the shots during 1865.

The paucity of evidence regarding the May 1865 Tauranga order makes it impossible to say exactly what was behind it. Heale certainly recommended proclamation of the district in accordance with the Settlements Act. He made this recommendation in a report to Harry Atkinson, Russell's successor as Defence Minister, just over five weeks before the Executive Council met. The council consisting of Grey, Atkinson, and one other person (Native Minister Mantell) decided to issue the order on 18 May 1865.[97] It is also difficult to judge the effects of the order. Grey may have seen it as authorising the establishment of military

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[95] Grey to Whitaker, 6 December 1866, G 36/4, National Archives, Wellington
[96] Heale memo, 27 June 1865, AJHR, 1867, A-20, pp 13–15
[97] Order in Council, 18 May 1865, EC 1/2, pp 628–629, National Archives, Wellington

settlements, rather than as an act of confiscation. Both Grey and Whitaker declared in 1864 than an initial proclamation merely identified where the Crown might establish settlements under the Act. A subsequent specific proclamation appeared to be necessary to exercise compulsory acquisition of a defined area.[98]

Whatever the effect of the May 1865 order in Council, the Katikati Te Puna purchase formed a significant section of the proclaimed district. In fact, the boundaries declared in the schedule attached to the order eventually defined the inland boundaries of the purchase (however imprecisely) as far south as Te Puna. When Whitaker re-entered the Tauranga picture in early 1866, however, the purchase remained incomplete. He teamed up with Grey in March 1866 in an effort to bring to a successful conclusion the process begun in August 1865. This was, of course, to be the 'ultimate settlement' of Tauranga land. In March 1866, Grey appeared to be much less generous than he had been in August 1864. According to Clarke, he told 'Ngaiterangi' that 'he would resort to extreme measures if they would not comply [with his interpretation] that they succumbed and agreed to give up 50,000 acres' adjacent to the purchase.[99] Whitaker and Grey then left it to Clarke and Mackay to make the necessary local arrangements to give effect to this 'ultimate settlement'.

What the ultimate settlement left for the people of Tauranga Moana was a strange combination of cession, purchase and confiscation. If historians today struggle to explain the Crown's rationale, how comprehensible could it have been to Maori during the decade of the New Zealand Wars? Grey promised 'Ngaiterangi' on 6 August 1864 that he would return to them 'three-quarters' of their land. Did he honour that promise? Cardwell asked Grey 'to limit the measures of cession and confiscation to the requirements of justice, seasoned with mercy'. We must ask: how just was Grey's 'ultimate settlement' in the area that the Crown proclaimed as the 'Tauranga District'?

[98] Grey memo, 11 May 1864, AJHR, 1864, E-2, pp 40–41; Whitaker memo, 18 November 1864, AJHR, 1864, E-2c, p 3
[99] Clarke to Richmond, 10 May 1867, AJHR, 1867, A-20, p 62

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# APPENDIX: DIRECTION COMMISSIONING RESEARCH

Wai 215

**WAITANGI TRIBUNAL**

**CONCERNING** the Treaty of Waitangi Act 1975

**AND** the Tauranga Moana district claims

**DIRECTION COMMISSIONING RESEARCH**

1) Pursuant to clause 5A(1) of the second schedule of the Treaty of Waitangi Act 1975, the Tribunal commissions Dr Barry Rigby, a member of staff, of Wellington to complete a report on the Katikati-Te Puna purchase for the Tauranga inquiry, covering the following matters, but in no way duplicating material already on the Wai 215 Record of Documents:

   a) The character and context of the Katikati-Te Puna purchase initiated in 1864, (with reference to the New Zealand Settlements Act 1863, and Crown intervention in Tauranga during 1864).

   b) The roles of Governor George Grey, Frederick Whitaker (Premier, Attorney General and later Superintendent of Auckland Province), William Fox (Native Minister) and Thomas Russell (Defense Minister) in the negotiation and completion of the Katikati-Te Puna purchase.

2) The commission commences on 15 January 2001

3) The commission ends on 1 March 2001

4) The report may be received as evidence and the author may be cross-examined on it.

5) The Registrar is to send copies of this direction to:

   Dr Barry Rigby
   Solicitor General, Crown Law Office
   Director, Office of Treaty Settlements
   Secretary, Crown Forestry Rental Trust
   Counsel for Claimants
   Claimants

**DATED** at Wellington this 9th day of February 2001

Judge R.R. Kearney
Presiding Officer
WAITANGI TRIBUNAL