Tuhoe and the Native Land Court
1866 to 1896

Clementine Fraser

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A Report for the Waitangi Tribunal

Table of Contents

TABLE OF CONTENTS 1

LIST OF MAPS: 3

LIST OF TABLES: 3

LIST OF ABBREVIATIONS: 4

THE AUTHOR: 5

CHAPTER ONE: INTRODUCTION 6

1.1: Sources Used 6
1.2: Outline of the Report 7
1.3: The Native Land Court 8
1.4: Native Land Court Issues Discussed in the Report 11
1.5: Some Background on Conflict Involving Tuhoe in the Period up to 1871 15
1.6: Te Whitu Tekau 18

CHAPTER TWO: THE WAIKAREMOANA CESSION BLOCKS 21

2.1: The Background to the Court Hearing 21
2.1.1: The East Coast Land Legislation 1866-1896 ..... *21*
2.1.2: The Wairoa Deed of Cession *23*
2.1.3: Tuhoe and Te Kooti *24*
2.2: The Court Hearing 24
2.3: Conclusion 32

CHAPTER THREE: WAIMANA, WAIOHAU AND HERUIWI 1-3 34

3.1: Outline of Native Land Court Hearings 34
3.1.1: Waimana: *34*
3.1.2: Waiohau: *38*
3.1.3: Heruiwi 1-3 ..... *47*
3.2: Issues 50
3.2.1: Leases *50*
3.2.2: Surveys *54*
3.2.3: Native Land Court Procedural Failings *57*
3.3: Conclusion 60

CHAPTER FOUR: THE EARLY 1880S - MATAHINA AND KUHAWAEA 62

4.1 Outline of Native Land Court Hearings 62
4.1.1: Matahina *62*
4.1.2: Kuhawaea No.1 and No. 2 ..... *72*
4.2: Issues 74
4.2.1: Procedural Failings of the Native Land Court *74*
4.2.2: Land Purchase Officers' Activities and Impact *77*
4.2.3: Surveys *84*
4.3: Conclusion 86

CHAPTER FIVE: THE LATE 1880S – TAHORA 2 AND WAIPAOA 89

5.1: Outline of Native Land Court Hearings 90
5.1.1: Tahora 2: *90*
5.1.2: Waipaoa: *98*

5.2: ISSUES ARISING 101
5.2.1: Tahora 2 and Survey *101*
5.2.2: Waipaoa and Survey *109*
5.3: CONCLUSIONS 113

CHAPTER SIX: THE 1890S – WHIRINAKI, HERUIWI, TUARARANGAIA, AND RUATOKI.. 115

6.1: OUTLINE OF NATIVE LAND COURT HEARINGS 115
6.1.1: Whirinaki: *115*
6.1.2: Tuararangaia *119*
6.1.3: Heruiwi 4 ..... *125*
6.1.4: Ruatoki *133*
6.2: ISSUES ARISING 141
6.2.1: Surveys *142*
6.2.2: Pressures from Other Iwi and Government Policy *151*
6.2.3: Costs of Attending Hearings *151*
6.2.4: The Role of the Assessor – Reha Aperahama *153*
6.3: CONCLUSIONS 154

CHAPTER SEVEN: CONCLUSION 155

7.1: REASONS FOR ENGAGEMENT WITH THE NATIVE LAND COURT 155
7.1.1: Leasing *155*
7.1.2: Protection of Claims *156*
7.2: IMPACT OF THE NATIVE LAND COURT ON TUHOE HAPU 156
7.2.1: Surveys and Their Cost *156*
7.2.2: Procedural Failings *160*
7.2.2.1: Inconsistency of Court Process 160
7.2.2.2: Costs of Attending Hearings 162
7.2.2.3: Lack of Protective Mechanisms 163
7.3: PREJUDICE AND THE NATIVE LAND COURT EXPERIENCE 165

APPENDICES: 169

APPENDIX ONE: TIME LINE 169
APPENDIX TWO: BREAKDOWN OF LAND TITLE AWARDS 172
APPENDIX THREE: CLAIMANT POSITION IN RELATION TO FINAL AWARDS 173
APPENDIX FOUR: THE UREWERA DISTRICT NATIVE RESERVE 174

BIBLIOGRAPHY: 180

List of Maps:

Figure 1: General Map of Native Land Court Blocks in Urewera Inquiry 1866-1896 12

Figure 2: Waikaremoana Cession Blocks 20

Figure 3: The 1870s – Waikaremoana, Waimana, Waiohau and Heruiwi 1-3 26

Figure 4: The Early 1880s – Matahina and Kuhawaea 61

Figure 5: Matahina 69

Figure 6: The Late 1880s – Tahora and Waipaoa 88

Figure 7: Tahora No. 2 Block 95

Figure 8: The 1890s – Whirinaki, Heruiwi 4, Tuararangaia, and Ruatoki 114

List of Tables:

Table 3.1.1: Waimana Subdivisions 38

Table 4.1.1a: Areas Awarded to Hapu in Matahina Rehearing 1884. 70

Table 4.1.1b: Land Taken from Matahina C and Matahina C1 in Satisfaction of Survey Costs 71

Chart 4.1.1b: Land Taken for Survey Costs in Matahina C and C1 71

Table 5.1.1: Subdivided Land Blocks Awarded to Hapu in Tahora 2 96

Table 6.1.2: Land Awarded in Tuararangaia 123

Chart 6.1.2: Showing Relative Areas of Land Awarded in Tuararangaia 123

Chart 6.1.3: Amount of Land Awarded to Hapu in Heruiwi 4 130

Table 6.2: Land Taken From Tuararangaia Blocks in Satisfaction of Survey Liens 149

Chart 6.2: Showing Relative Area Taken for Survey Lien of Tuararangaia 1 150

Chart 7.2: Area of Land in Acres Lost as a Result of Survey Costs 159

Table 7.2a: Estimated Native Land Court Hearing Costs for Tuhoe Hapu or Individuals 162

Table 7.2b: Location of Native Land Court Hearings in Urewera 163

Table 7.3: Relative Percentage of Land Awarded to Tuhoe and Non-Tuhoe Hapu in Native Land Court Blocks 166

List of Abbreviations:

AJHR	Appendices to the Journals of the House of Representatives
ATL	Alexander Turnbull Library
CFRT	Crown Forestry Rental Trust
MB	Minute Book
MLC	Maori Land Court
NA	National Archives (now Archives New Zealand)
NLC	Native Land Court
ROD	Record of Documents
Wai	Refers to the number assigned to a claim by the Waitangi Tribunal and used to identify documents relating to each claim.

The Author:

My name is Clementine Fraser and I am a freelance researcher based in Auckland. I have a Master of Arts degree in History with first class honours from the University of Auckland, and was previously a research officer at the Waitangi Tribunal Business Unit, where I researched and wrote two reports; a block history for the Muriwhenua inquiry and an examination of the administration of the Nelson Tenths Reserves. I also assisted Professor Alan Ward with research for a report for the Wai 145 Wellington Tenths inquiry and acted as the facilitator for the King Country and Central Auckland districts.

Chapter One: Introduction

This report was commissioned to examine Tuhoe's experience of the Native Land Court in the nineteenth century. In total, fourteen blocks of land either claimed or contested by Tuhoe were heard before the Native Land Court. These blocks surrounded what became the Urewera District Native Reserve in 1896, the end of the period covered by this report. The blocks involved are Tukurangi, Waiau, Ruakituri, Taramarama, Waimana, Waiohau, Kuhawaea 1 and 2, Matahina, Tahora, Waipaoa, Tuararangaia, Ruatoki, Whirinaki, and Heruiwi 1-4.[1]

1.1: Sources Used

The primary sources examined for this report are official documents; particularly the Native Land Court records. The reliability of Maori Land Court minute books has been discussed elsewhere by Angela Ballara, and here it will suffice to say that in the investigation of Native Land Court proceedings I have chosen to put most of the emphasis onto the judgement and the procedure. Claimants will no doubt present their own information relating to their traditional rights to this area. This report will therefore not delve into the complexities of land ownership or customary rights, but restricts itself to an analysis of whether or not the processes of the Native Land Court disadvantaged Tuhoe because of a perception of them as rebellious and non-sellers.

Each block relevant to this report has been covered in a detailed block history report by other historians. These detailed reports cover the traditional history of each block, as well as events leading up to and after the Native Land Court hearings. As such, this report will limit itself to brief outlines of the Native Land Court hearing and relevant survey histories of each block and directs the reader to the specific reports for greater detail. Other secondary sources used are predominantly reports related to the work of the Waitangi Tribunal.

Although there is a large amount of information to be found in the primary sources used for this report, there is a certain degree of inconsistency regarding the quality of the

[1] See Figure 1, General Map of Native Land Court Blocks in Urewera Inquiry 1866-1896.

sources. Because of the twenty two year period between the first Land Court hearing in the Urewera and the last, and the different judges and clerks active in each Land Court, some block histories are clearer than others in small factors. For instance, while at some times information on court costs is clearly recorded in the Land Court minute books, in many cases I have found nothing in the record that states how much the court fees were and whether or not they were paid and by whom. This is possibly because of a difference in style of court clerks. In Waimana, for instance, Judge Halse's clerk recorded the fees payable for court costs on the order for the title whereas those cases heard by Judge Gudgeon have daily entries of 20 shillings (£1) as fees to be paid recorded next to the testimony of claimants and counter-claimants. Another example of inconsistency and lack of clarity in primary sources is the lack of clear information on the role played by Maori assessors in the Native Land Court. Although an important figure in the court and potentially a very influential one (as is stated in section 1.3, the assessor had at least nominal power because both the assessor and the Judge had to agree on the judgement), the assessor is often a shadowy figure with very little known about him or what role he played. That they were important in some cases we know, but it is difficult to draw wider conclusions based on only a few hearings.

One thing that these sources cannot tell us is the exact attitude of the individual judge towards the Tuhoe claimants. This is important for one of the major issues of this report, namely whether or not Tuhoe's reputation as rebellious people disadvantaged them in the Native Land Court. There is very little explicit information on this that I have found, but there are inferences that can be made from the nature of the judgements made in the Land Court sittings, the background of the judges in question, and the wider role of the Native Land Court as an instrument of alienation, and also through wider patterns of Land Court title determinations and their relationship with leasing and sales.

1.2: Outline of the Report

The purpose of this report is to draw out issues visible in these Native Land Court histories and to ascertain if there was any pattern to Tuhoe's experience in the Land Court. As such, each chapter will begin with a short narrative outlining events in the title

investigations of several blocks (grouped together chronologically) before proceeding to an analysis of issues raised in those investigations.

Several blocks are grouped in each chapter. Each block is dealt with in turn. Analysis is then offered at the end of the chapter. The reason for this approach is that useful comparisons can be made between blocks heard in the same time period. Some of these blocks were heard by the same Land Court Judge. The Waikaremoana cession blocks hearing in 1875 was Tuhoe's first Native Land Court experience, and because of the nature of the title investigation, and its close relationship with the Crown's mechanisms of confiscation, it constitutes somewhat of an anomaly compared to the remaining Native Land Court blocks discussed in this report. As such, it is dealt with separately in Chapter Two. Chapter Three examines three widely separated land blocks heard before the Native Land Court in the later 1870s: Waimana, Waiohau, and Heruiwi blocks 1-3. Chapter Four discusses the early 1880s and the Land Court hearings of Matahina and Kuhawaea. The late 1880s are examined in Chapter Five, covering the hearings for Tahora No. 2 and Waipaoa. The final chapter looks at four blocks heard in the 1890s: Tuararangaia, Heruiwi 4, Whirinaki, and Ruatoki. Three of these blocks were heard within months of each other by the same Judge, offering some interesting comparisons. Chapter Seven concludes the report with a summary of the themes and analysis presented in the report.

The remainder of this introduction will briefly canvass the role and purpose of the Native Land Court; issues relating to the Native Land Court which are discussed in this report; some background material on Tuhoe's involvement in various conflicts with the Government in the period up to 1871; and the establishment of Te Whitu Tekau, Tuhoe's attempt at autonomous administration.

1.3: The Native Land Court

The Native Land Court was established by the Native Lands Act 1862, but no hearings were held until 1864 and it was not until the Native Lands Act 1865 that the Court process became fully functional.[2] The purpose of the Court was to determine customary

[2] Evidence of Fiona Small and Philip Cleaver, 'Rongowhakaata and the Native Land Court 1873-1900', Report Commissioned by the Crown Forestry Rental Trust, October 2000, p. 76.

title to Maori land and convert it into European title. Each hearing was presided over by an appointed Land Court Judge and two Maori assessors.[3] The assessors were supposed to act as 'experts in tikanga Maori contributing to the decisions of the Court',[4] but David Williams notes that following Chief Judge Fenton's appointment under the 1865 Native Lands Act this role was 'circumscribed' as the position of the Land Court judges became increasingly 'elevated'.[5] Assessors were not allowed to act in hearings in their home districts. While at first they had been an integral part of the decision making of the Land Court, their agreement with the Judge required by law before an order could be made, by 1894 they were only required to be a part of the Court in some instances and even then their agreement with the decision of the Judge was not needed for an order to be made.[6] The actual role played by these assessors is not always clear from the Court records, and their impact (or lack thereof) on the outcome of the hearing is not always easy to ascertain.

There appears to have been no requirement to possess legal training in order to become a Land Court Judge at this time. Although James Alexander Wilson, who was appointed a Land Court Judge in 1878, was dismissed in 1880 because he had no legal training, he was later reinstated in 1886, giving support to his claim that he was dismissed on political and personal grounds. William Gudgeon, another prominent judge in this period, also had no legal training and neither did Gilbert Mair.[7] Although Native Land Court judges appear to have been men who had had significant previous experience with Maori in one capacity or another, their lack of legal expertise meant that they were adjudicating on legal matters from a purely 'common sense' and individual standpoint.

Under the 1865 Act, the certificate of title issued to the owners at the end of the hearing was restricted to a maximum of ten named owners for any block smaller than 5000 acres.

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[3] Ibid., p. 76.
[4] David V. Williams, *'Te Kooti Tango Whenua' The Native Land court 1864-1909*, Huia Publishers, 1999, p. 325.
[5] Ibid., p. 325.
[6] Ibid., p. 325.
[7] See J. Rorke, 'Wilson, John Alexander – 1829-1909', *Dictionary of New Zealand Biography*, updated 30 September 2002, URL http:/www.dnzb.govt.nz, and P. Savage, 'Mair, Gilbert 1843-1923', *Dictionary of New Zealand Biography*, updated 30 September 2002, URL http:/www.dnzb.govt.nz, and D. Green, 'Gudgeon, Walter Edward 1841-1920', *Dictionary of New Zealand Biography*, Volume Two (1870-1900), 1993.

Fiona Small and Philip Cleaver, in their report 'Rongowhakaata and the Native Land Court 1873-1900', state that irrespective of the actual size of the block, the ten owner rule was 'enforced' in all certificates of title to Native Land Court blocks.[8] Although those listed on the certificate may have been acting as representatives, they were now made legal and absolute owners of sometimes vast tracts of land. This made the alienation of the land much easier.[9] The ten owner rule persisted until the Native Land Act 1873 replaced it with a requirement that every owner to a block of land be named on the certificate of title along with their proportionate shares.[10] This increased individualisation of title 'facilitated the peaceful and successful acquisition of Maori land through purchase'. It did this through allowing prospective buyers to 'acquire individual interests without any reference to communal structures of authority'.[11] David Williams cites T. W. Lewis, private secretary to Donald McLean in 1869 and later Native Department under-secretary from 1879-1891:

> ...the whole object of appointing a Court for the ascertainment of Native title was to enable alienation for settlement. Unless this object is attained the Court serves no good purpose, and the Natives would be better without it, as, in my opinion, fairer Native occupation would be had under the Maori's [sic] own customs and usages without any intervention whatever from outside....
>
> Bearing in mind that the foundation of all settlement in the country is the ascertainment of title, in my opinion the Natives should not be allowed to keep their lands out of Court....The object of the Native Land Court is to ascertain the Native titles for the purposes of settlement. It is the duty of Government to provide land for settlement.[12]

Once purchased, the individual shares had to be subdivided out of the total block, a procedure which only Maori owners could initiate until the Native Land Act Amendment Act 1877 which allowed for Crown interests to be cut out upon application by the Native

[8] Small and Cleaver, p. 76.
[9] Ibid., p. 77.
[10] Ibid., p. 77.
[11] Ibid., p. 77.
[12] Minutes of Evidence, *Appendices to the Journals of the House of Representatives*, 1891 Session II, G-1, p. 145, cited in Williams, pp. 99-100.

Minister. Private purchasers could only apply to have the shares they had bought cut out after the passage of the Native Land Division Bill in 1882.[13]

1.4: Native Land Court Issues Discussed in the Report

The analysis offered by this report discusses how Tuhoe's experience in the Land Court hearings for these blocks may have been affected by their status in the eyes of the Government as a rebellious and obstructive people. The existence of a negative bias against Tuhoe is a central part of the current Wai 36 claim to the Waitangi Tribunal. Section 1.4 will provide a very brief overview of Tuhoe's involvement in the conflicts of the 1860s and early 1870s. This will provide the context for the perception of Tuhoe people as rebels and the difficult relationship they often had with the Crown.

David Williams has argued that the Crown 'consciously used the Land Court to ensure Maori land became available for alienation to the Crown and to private purchasers'.[14] He further states that this use of the Land Court was 'quite inconsistent with Treaty and Treaty-principle obligations on the Crown to actively protect tribal rangatiratanga over land'.[15] Williams argues that this close relationship between the Crown and the Native Land Court was not restricted to the role played by the Land Court in the land confiscations on the East Coast in the 1860s (see section 2.1.1), but that 'the archives are replete with examples of correspondence indicating the close liaison between Government officials, Crown ministers and chief judges', and further that this liaison lasted until 1952, when Land Court judges became less political and increasingly judicial officers independent of government policy.[16] The evidence examined for this report does not provide explicit examples of such policy or liaison, but the Native Land Court did act (even if only indirectly) to further Crown policy of opening up the Urewera for colonisation. The very existence of the Court, which denied Maori the exercise of rangatiratanga over their lands by imposing an alien land title structure on them and denying them the right or authority to determine title for themselves, effectively

[13] Small and Cleaver, p. 78.
[14] Williams, p. 3.
[15] Ibid., p. 19.
[16] Ibid., pp. 39-40.

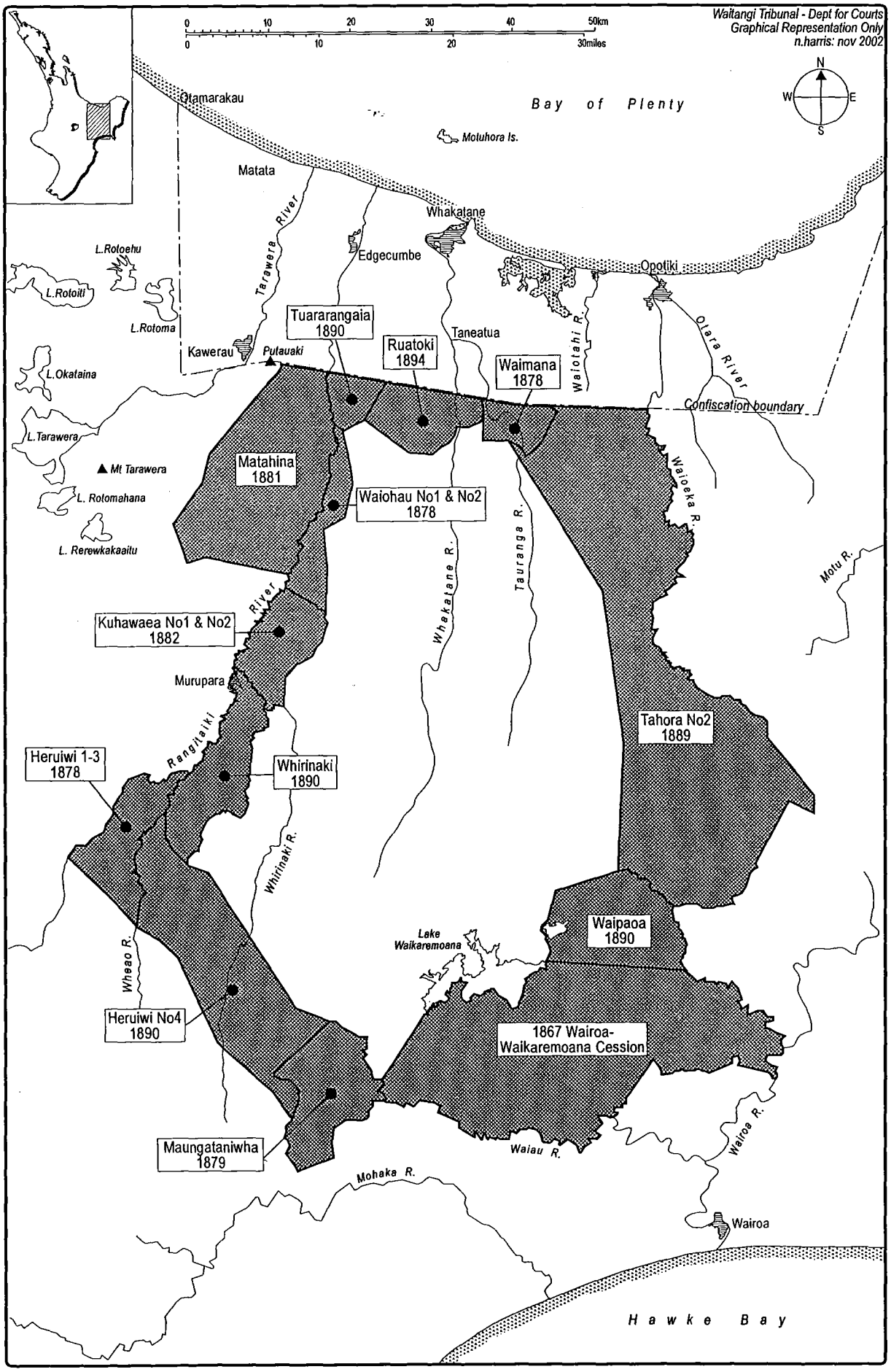

Figure 1 : General map of NLC blocks in Urewera inquiry 1866 - 1896

facilitated the alienation of Maori land to the Crown through individualised titles and high Court and survey costs.

The report also discusses several other very significant issues relating to the actual processes of the Native Land Court, such as the notification of hearings, the rehearing process, the impact of lengthy hearings, and the inconsistency between judges in different areas and periods of time. The report will discuss at points the extent to which sufficient protective mechanisms existed in order to safeguard Tuhoe interests through the Native Land Court process. That there were few safeguards in force can be seen by the difficulties experienced in applying for some block investigations to be reheard. This was especially pertinent in two blocks examined in this report, Kuhawaea and Waiohau, where a lack of notification of a hearing and subsequent refusals to allow a rehearing for the Tuhoe claims to be heard resulted in extremely unfair losses for the Tuhoe people. The bureaucracy of the Land Court and the differing attitudes and actions of a variety of Judges in this one district also influenced the outcome of hearings.

Another important issue examined in this report is how the poverty exacerbated by the conflicts of the 1860s led to leases of these blocks which in turn led to surveys and Native Land Court hearings. The Eastern Bay of Plenty confiscations and the Wairoa cession left Tuhoe with little agricultural land. The conflicts of the 1870s further damaged the economy, especially because of the Government's scorched earth policies. For many Tuhoe people, leasing was seen as a way to earn money while not completely alienating the land. The Tuhoe council, Te Whitu Tekau, was politically against leasing but some chiefs and hapu (for instance, Erueti Tamaikoha) felt that it was a sensible option, or in some instances their only option. In some ways it was a means of asserting independence and autonomy, and certainly groups such as Ngati Manawa who had links to Tuhoe but were coming out from under their control, were keen to lease the lands bordering on Tuhoe's stated rohe. Leases required a certificate of title to be valid under New Zealand law, and to get a title the land had to be taken before the Native Land Court. Leases also influenced the opinion of the Court as to ownership of the land. It will be shown that many cases indicate a strong correlation between who was leasing the land prior to the Native Land Court, and who ended up with the title to it. Claudia Geiringer has stated that:

> Recognition of an interest in the land was contingent on appearing or being represented in Court. Such a system naturally worked in favour of land selling Maori, who obviously were more likely to instigate a claim than those who did not contemplate sale. Factors such as defective notification procedures and the long distances to travel probably deterred many other legitimate claimants from participating in the Court system.[17]

Many Tuhoe were aware that the surveys and Land Court process frequently resulted in the alienation of the land and did not want to introduce them. They were given little option in some cases where rival hapu or iwi applied for lands contested by Tuhoe to be surveyed or leased. As Fiona Small and Philip Cleaver said in relation to claimants to the Native Land Court, 'Maori who sought an investigation of title were divided into those who wished to sell, and those who wished to protect their ownership'.[18] It will be seen that some surveys conducted by Tuhoe were carried out as pre-emptive measures under the threat of others surveying the land, and that the control of the survey very often correlated to perceptions of who controlled the land. Guiding and influencing the survey appear in most cases to be a measure of authority. This conceptual link between application for survey or holding a lease and possessing the mana over a land block played a large role in many areas. The opposition to surveys is notable in several blocks covered by this report, and was expressed as a political belief by Te Whitu Tekau as well as through physical opposition by people on the land. In the context of this opposition the link between surveying and control is important to bear in mind. In looking at competing claims, this report investigates overall patterns as to where and when Tuhoe initiated surveys and title investigation and where other hapu/iwi applied to the court, in order to examine the causal effects of those applications

A very important issue arising from the survey of these lands is the impact of survey liens on Tuhoe. This was significant in several blocks and sometimes resulted in great losses of land. The cost of surveys becomes particularly pertinent when Tuhoe hapu were faced with paying the costs of a survey that had been initiated by other hapu. This problem is especially notable in the case of Tahora No. 2 where Tuhoe were liable not only for the costs of an unauthorised survey, but also for those of a survey instigated by someone who

[17] Claudia Geiringer, 'Historical Background to the Muriwhenua Land Claim, 1865-1950', Wellington 1992, p. 73, cited in Small and Cleaver, p. 78.

possessed no rights to the land at all. The lack of Crown protection in instances like this is also examined, as is the role of survey liens in acquiring land for the Government and opening up the Urewera.

The costs of attending the hearings also had an impact on Tuhoe and all Maori who either took land before the Court or attended as counter-claimants to defend their interests. The standard fee for a title investigation was £1 per day for claimants, and counter-claimants appear to have been required to pay £1 for every day that they presented evidence or cross-examined other witnesses. If the claimant was unable to pay the fee, it could be charged against the land.[19]

A final issue is that of the possible prejudice faced by Tuhoe in the Native Land Court springing from their reputation as non-sellers and isolationists. Pressure to open the Urewera was exerted not only on Tuhoe but also, in some instances, on the iwi surrounding Tuhoe. The Native Land Court may not have actively sought to disadvantage Tuhoe because of this reputation, but it appears to have perpetuated the prejudicial actions of others outside the Court, such as Land Purchase Agents and other Government officials.

1.5: Some Background on Conflict Involving Tuhoe in the Period up to 1871

The Tuhoe-Waikaremoana Maori Trust Board claims that the Native Land Court 'displayed a continuing unfavourable bias in respect of Tuhoe...where "loyalist" tribes such as Ngati Awa, Ngati Pukeko, and Ngati Kahungunu were claiming the same land resulting in Tuhoe land being wrongly awarded to loyalist tribes'.[20] This context of tension with the Government is important in understanding the experience of Tuhoe at the Native Land Court. The remainder of this introduction will cover briefly the history of conflict leading up to the first Native Land Court hearings involving Tuhoe. The reader is directed for more in depth engagement with these issues to the reports of Judith

[18] Williams, p. 190.
[19] See Small and Cleaver, p. 95.
[20] Wai 36 Statement of Claim, paragraph 5.1.7.

Binney, 'Encircled Lands Part One: A History of the Urewera from European Contact Until 1878', and Anita Miles' Rangahaua Whanui report on the Urewera.[21]

The perception of Tuhoe people as rebels arose from their involvement in actions against the Government in the Waikato and the Bay of Plenty in the 1860s, and also from many Tuhoe people's support of the Pai Marire movement and Te Kooti.[22] The confiscations in the Bay of Plenty in 1866 followed incursions by Government forces into the Urewera in 1865 to find Kereopa and Pai Marire followers (blamed among other things for the murders of Volkner and Fulloon), said to be being sheltered by Tuhoe in Urewera. These attacks included the plunder of land and food, which left many Tuhoe people having to rebuild their economy as well as their homes. After the confiscations, continued expeditions into the Urewera were countered with expeditions into the confiscated lands by Tuhoe people led by the chief Erueti Tamaikoha. In 1868, lands at Waikaremoana were confiscated under new legislation that dispensed with the need for a compensation court.

Te Kooti escaped from Government imprisonment in 1868. Eventually he fled to the Urewera where at a hui in March 1869, many Tuhoe chiefs 'committed themselves and their land to Te Kooti'.[23] Armstrong makes the point that 'while Ngati Manawa sided with their Te Arawa kin and the Crown in an effort to preserve their lands and integrity, Patuheuheu and Ngati Whare decided to join their Tuhoe neighbours in a strategy of armed resistance, under the leadership of the messianic Te Kooti, designed to achieve much the same ends'.[24] Some chiefs, however, including Tamaikoha, did not support Te Kooti. Miles states that:

> Te Kooti offered Tuhoe moral support and spiritual leadership...and held out the hope of restitution of confiscated lands. Tuhoe, however, would pay dearly for their support of the man seen as the primary enemy of the Government and settler population. In their hunt for the fugitive, the Government conducted a ruthless scorched-earth

[21] See Anita Miles, 'Te Urewera: Rangahaua Whanui District 4', Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), March 1999, and Judith Binney, 'Encircled Lands Part One: A History of the Urewera From European Contact Until 1878', April 2002.
[22] See Binney and Miles for in depth discussion of Tuhoe's actions during these years of conflict and the development of the perception of them as rebels.
[23] Miles, p. 498.
[24] Armstrong, David, 'Ika Whenua and the Crown: 1865-1890', (Wai 212: E9), pp. 25-6.

> campaign in the Urewera in an effort to destroy the support network that sustained Te Kooti and his party. This meant that Tuhoe homes, livestock, stores, and crops were destroyed, permanently weakening the tribe.[25]

The terms of Major Keepa's peace with Tamaikoha in March 1870 were that 'there would be neither survey nor settlement of the remaining Tuhoe lands, the kupapa forces would withdraw, and prisoners would be released. For his part Tamaikoha would cease supporting Te Kooti and opposing the government'.[26] Although this peace was intended to extend to all the Urewera,[27] the Government continued its expeditions into the Urewera as Te Kooti was still at large and being assisted by the people. It had made it quite clear that the only terms of surrender they would accept were the removal of people from their land (for example that of Ngati Whare and Patuheuheu from their lands at Heruiwi and Galatea)[28], and their relocation to Te Putere, on the Bay of Plenty coast between Matata and Thornton, under the supervision of Ngati Awa and Arawa. This served a dual purpose in not only subjugating the people, but opening up the land.[29] As McLean wrote to William Mair:

> it is highly important that the Urewera tribe should be got out of their mountain fastness, land for cultivation will be assigned to them on the coast, in positions where they can in a great measure support themselves by fishing and cutting flax for sale to Europeans. The reserve at Putere, near Matata, will be devoted to this purpose.[30]

Tamaikoha stated to McLean: 'I do not like the invitation to come out here [Te Putere]; I will remain in my own country. I do not like the appearance of these people who have surrendered; they are living upon the government, and we have heard that they are even now begging for food and clothes. I cannot beg; I do not know how...'.[31] The Government occupied Ruatahuna and Maungapohatu in October 1871.

The conflicts in the 1860s had a dislocating effect on traditional hapu allegiances. Tuhoe fought against the invading government forces and other iwi such as Ngati Manawa and Te Arawa hapu became known as loyalist tribes for their assistance to the government.

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[25] Miles, p. 499.
[26] Armstrong, pp. 32-3.
[27] See Binney, Part I, pp. 209-210.
[28] Armstrong, pp. 36-7.
[29] Ibid., p. 34.
[30] *AJHR*, 1870, A8b, pp. 72-3, cited in Armstrong, p. 39.

Nicola Bright notes that this was significant for the future of these hapu. Bright asserts that this 'identified Ngati Manawa, and Ngati Apa who were living with them, as loyalists or "kupapa", and of course caused friction with their near neighbors [sic] and relatives'.[32] Similar friction affected Tuhoe's relationships with other iwi and hapu who surrounded their rohe. Tuhoe's relationship with the Crown was also affected.

In 1871, Tuhoe sent people to meet with Donald McLean, the Native Minister, and to negotiate the surrender of Tuhoe. Under the terms agreed to, McLean 'agreed to a regional autonomy for the Urewera, and to recognise each chief as having the authority within his own district on condition that Te Kooti was given up to the law'.[33]

1.6: Te Whitu Tekau

Tuhoe took the 1871 compact with McLean very seriously, and in 1872 they formed Te Whitu Tekau, to 'underpin' a political union of the Tuhoe tribes. Following a meeting of this Council of chiefs, they issued a description of the boundaries of Tuhoe land to McLean and informed him that this council had been established to protect the lands.[34] It is fairly certain that Tuhoe believed their establishment of a ring boundary around their lands and their declaration of self-government to be sanctioned by the Government. The boundaries of Tuhoe land given by Te Whitu Tekau to the Native Minister in 1872 were as follows:

> The meeting of the Tuhoe (Urewera) has taken place at Ruatahuna on the 9th June. The first thing we decided were the boundaries of the land. My district commences at Pukenui, to Pupirake [Puhirake], to Ahirau, to Huorangi, Tokitoki, Motuotu, Toretore, Haumiaroa, Taurukotare, Taumatapatitit, Tipare Kawakawa, Te Karaka, Ohine-te-rakau, Kiwinui, Te Terina [Te Tiringa-o-te-kupu-a-Tamarau], Omataroa, Te Mapara, thence following the Rangitaiki River to Otipa, Whakangutu-toroa, Tuku-toromiro, Te Hokowhitu, Te Whakamatau, Okahu, Oniwarima [Aniwaniwa], Te Houhi, Te Taupaki, Te Rautahuri [Te Rau-tawhiri], Ngahuinga, Te Arawata [Te Arawhata], Pohotea [Pokotea], Makihoi, Te Ahianatane [Te Ahi-a-nga-tane], Ngatapa, Te Haraungamoa, Kahotea, Tukurangi, Te Koarere [Te Koareare], Te

[31] *AJHR*, 1871, F6a, pp. 8-9, cited in Armstrong, p. 49.
[32] Bright, Nicola, 'The Alienation History of the Kuhawaea No. 1, No. 2A, and No. 2B Blocks', November 1998 (Wai A36: A1), p. 28
[33] Miles, p. 500.
[34] Ibid., p. 500.

> Ahu-o-te-Atua, Arewa [Anewa?], Ruakituri, Puketoromiro, Mokomirarangi [Mokonui-a-rangi], Maungatapere, Oterangi-pu, and on to Puke-nui-o-raho, where this ends.[35]

Miles notes that in the decisions to make each chief in the Tuhoe districts responsible for roads leading into their lands, together with the determination of chiefs like Tamaikoha to prevent people entering his lands without permission, and the establishment of carved posts marking the boundaries of their lands, Tuhoe were reasserting 'a physical control over their district'.[36]

Not all Tuhoe hapu were happy about this centralisation of tribal authority, and continued to do things their own way. The role of Te Whitu Tekau was to 'keep out obvious manifestations of Government authority within the Tuhoe rohe', including the leasing and selling of land, roads, and the process of the Native Land Court. They also denied access to the Urewera without consent.[37] Te Whitu Tekau was responsible for preventing the application for a survey or title investigation from any individual, but on the question of land leasing the hapu differed in opinions.[38] Problems were also encountered with other iwi such as Ngati Manawa and Ngati Awa, who contested the lands around the borders of the Tuhoe Rohe as laid down by Te Whitu Tekau.

[35] 'Te Whenuanui, Paerau...and All the Tribe to the Government', 9 June 1872, AJHR, 1872, F-3A, p. 29, cited in Miles, p. 116.
[36] Miles, p. 195.
[37] Ibid., p. 500.
[38] Ibid., p. 501

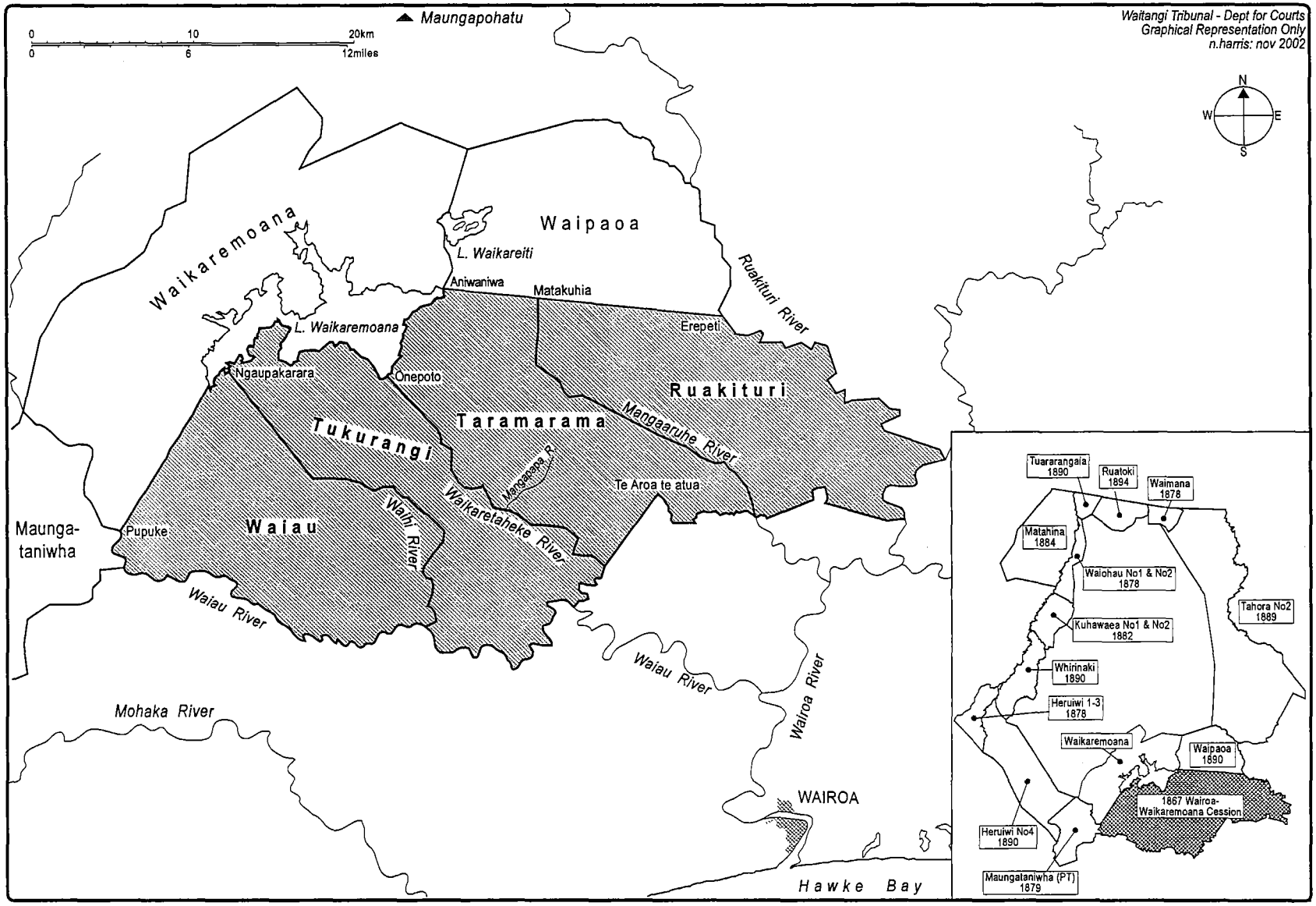

Figure 2 : Waikaremoana cession blocks

Chapter Two: The Waikaremoana Cession Blocks

Tuhoe's experience in the Waikaremoana cession blocks differs markedly from that undergone in the other Native Land Court blocks discussed in this report. The four cession blocks, Ruakituri, Waiau, Taramarama, and Tukurangi, were the first blocks from the Urewera to go through the Native Land Court process. This chapter gives a brief outline of the legislation surrounding the cessions before discussion the Wairoa cession and the Native Land Court hearing.

2.1: The Background to the Court Hearing

The history of the 1867 Wairoa Cession and the subsequent creation of these four Waikaremoana blocks is covered in several reports. Two of these are Cathy Marr's draft report, 'Crown Impacts on Customary Interest in Land in the Waikaremoana Region in the Nineteenth and early Twentieth Century', and a report by Vincent O'Malley, 'The Crown and Ngati Ruapani: Confiscation and Land Purchase in the Wairoa-Waikaremoana Area, 1865-1875'. Only a brief outline of the events leading to the Native Land Court hearing will be given here, and the reader is directed to these reports for detailed analysis of the confiscations.

2.1.1: The East Coast Land Legislation 1866-1896

Following heavy criticism of the confiscations carried out under the New Zealand Settlements Act 1863, the Government introduced new legislation to provide for new means of confiscating land from 'rebels' in the East Coast district. The East Coast Land Titles Investigation Act 1866 was intended to allow only those lands deemed to belong to 'rebels' to be confiscated and forfeited to the Crown. Individual Maori deemed 'loyal' were to retain their land. Under the 1866 Act, the Native Land Court was to investigate land in the East Coast prior to confiscation. The Court was given additional powers to enable it to determine who owned the land and who of those owners were 'rebels'. The certificates of ownership granted by the Court would allow the making of Crown grants

to those who had not been in rebellion.[39] As Cathy Marr states, this meant that the Native Land Court in this area 'was essentially to become an instrument in the confiscation process'.[40] This is especially apparent in the Court's new powers under the 1866 Act, which meant that it could investigate title to land in this area regardless of whether Maori had applied for a hearing. Specifically, it allowed for claims to be brought to the Court by non-Maori.[41]

There were several 'glaring errors' in this 1866 Act, and in 1867 an Amendment Act was passed to rectify some of these and to revise the boundaries of the Act which at this point were unclear. The revision of the boundaries extended the amount of land covered by the Act and therefore liable to confiscation. The confiscation district as laid out in the 1867 Amendment Act now extended into the Waikaremoana region. Yet another piece of legislation was passed a year later repealing the 1866 and 1867 Acts. The East Coast Act 1868 allowed for land owned by both rebels and non-rebels to be awarded in entirety to the loyalist group. This was an optional provision, and it was just as possible for the Court to award such overlapping claimed land to the Crown instead.[42] However, the East Coast Act 1868 retained the 1866 Act provision that the Court was not to award title to land to those who had been in rebellion against the Crown.[43] It was under the 1868 Act that the 1875 Native Land Court hearing for the four Waikaremoana blocks was conducted.

The boundaries of these four blocks were determined largely by natural boundaries in the shape of rivers rather than by traditional tribal delineations. The Waiau block fell between the Waiau River and the Waihi Stream, and the block between this stream and the Waikaretaheke River became known as Tukurangi, Taramarama ran from there to the Mangaaruhe River and Ruakituri fell between this river and the northern boundary of the district.[44] Vincent O'Malley has found that these blocks do not properly fit with the boundaries in the 1868 Act. He points out that the whole of the Waiau block fell outside

[39] See Cathy Marr, 'Crown Impacts on Customary Interests in Land in the Waikaremoana Region in the Nineteenth and early Twentieth Century', Draft, July 2002, pp. 104-7.
[40] Ibid., p. 106.
[41] Ibid., p. 107.
[42] Ibid., pp. 109-112.
[43] Ibid., p. 112.
[44] O'Malley, p. 5. See Figure 3 Waikaremoana Cession Blocks.

the area covered by the East Coast Land Titles Investigation Amendment Act 1867 and the East Coast Act 1868 boundaries, as did most of Tukurangi. This took them out of the legal jurisdiction of the 1868 Act. At the time they were 'apparently universally assumed...to fall within it'. [45] The incorrect but widespread assumption regarding the authority of these Acts over these blocks was shared by the Government as well as by local Maori who also assumed that all four blocks fell totally within the East Coast confiscation district.[46]

2.1.2: The Wairoa Deed of Cession

The land in what became the Tukurangi, Waiau, Taramarama and Ruakituri blocks was affected by the 1867 Wairoa Cession. This deed was promoted as a voluntary act, but was clearly 'agreed to under duress'.[47] Cathy Marr discusses the interpretation of certain references in the deed to the rights and claims of the 'loyal' chiefs. She argues that the implication is that 'the Government was deciding the extent of the rights of the loyal chiefs without the benefit of any inquiry'.[48] The central point of this deed for the purposes of this report was the agreement that the Crown would relinquish all claims it might be able to make to lands belonging to rebels in the Waikaremoana district in return for the relinquishment of Maori claims to what became the Kauhouroa block. Marr notes that 'the Crown was only agreeing to withdraw its possible claims in the remainder of the district. This was a far cry from actually having confiscated the remainder and then *returning* it.'[49] The final clause of the 1867 deed noted that the 'agreement may be made a rule of the said Native Lands Court'.[50] Marr suggests that this showed the Government's intention that the role of the Native Land Court in this procedure would be solely to ratify agreements that had already been made.[51] The signatories to the deed and the Government's choice of these without requiring an investigation into ownership first,

[45] Ibid., p. 6.
[46] Ibid., p. 7.
[47] Vincent O'Malley, 'The Crown and Ngati Ruapani: Confiscation and Land Purchase in the Wairoa-Waikaremoana Area, 1865-1875', p. 2.
[48] Marr, p.125.
[49] Ibid., p. 126, emphasis in original.
[50] Deed no. 42 in *Turtons Deeds* Volume 2 North Island, pp. 546-49, cited in Marr, p. 127.
[51] Marr, p. 127.

is discussed by Cathy Marr, who concludes that the Government 'kept for itself the right to decide who it would deal with'.[52]

2.1.3: Tuhoe and Te Kooti

Tuhoe were characterised as rebels for their support of the King Movement and their continuing involvement in the Waikato wars culminating in the support of Tuhoe warriors at the battle of Orakau in March to April 1864. As early as October 1863, Whitmore (the Civil Commissioner for Ahuriri) had apparently told some Ngati Kahungunu chiefs that Tuhoe had already forfeited rights to their lands which he thought would do well as military settlements.[53]

In between the date of the negotiated deed of cession and the Native Land Court hearing for these blocks, the Urewera was plunged into further warfare with the campaigns against Te Kooti. O'Malley points out that although the coastal Ngati Kahungunu were 'staunchly' pro government, the inland Wairoa chiefs were sympathetic to the King Movement, to the extent that inland Ngati Kahungunu people fought at Orakau in April 1864. He argues that the perceived threat posed by a Government victory in the Waikato was enough to unite Tuhoe and Ngati Kahungunu (who were often engaged in conflict with each other) against a common foe.[54] However, Ngati Kahungunu involvement in the Waikato wars was never as great as that of Tuhoe, and they were overall neutral throughout the fighting. This 'helped to solidify a general impression of the tribe as on the whole "loyal"'.[55]

2.2: The Court Hearing

The land was then awarded back to certain Maori in a deed of agreement signed on 6 August 1872. Despite the existence of this Deed, no Crown grants were issued in respect to the land and the blocks went before the Native Land Court in 1875 for investigation,

[52] Ibid., p. 128.
[53] Ibid., p. 15.
[54] O'Malley, p. 14.
[55] Ibid., p. 14.

following the start of negotiations for purchase of the lands from Ngati Kahungunu and Tuhoe by the Government.[56]

At a hui at Ruatahuna in early 1874, Locke had encouraged Tuhoe to take these lands to the Native Land Court in a joint application with Ngati Kahungunu. This was done and joint applications were submitted in May 1874.[57] Binney notes that despite this engagement with the Native Land Court process Tuhoe remained unhappy about the situation. Ferris acknowledged this but informed them that the Government could have awarded the lands to any tribe they wished to and both Tuhoe and Ngati Kahungunu could have missed out entirely. He hoped to persuade them to accept the Government position on the status of the blocks and come to an agreement with the Ngati Kahungunu leaders in the Wairoa. Binney argues that 'the Government's underlying purpose would soon become apparent: to get the land. Therefore it wanted only potential sellers to be recognised as owners, as it intended to acquire all titles'.[58] Their line of argument that they presented to the owners was that the only real way to settle the boundary disputes between Tuhoe and Ngati Kahungunu was for the land to be sold to the Government.[59]

Advance payments for the purchase of these lands were paid from mid 1875. Binney argues that apart from the threats of Locke that Tuhoe were lucky to be receiving anything, the fact that the chiefs in the lower Wairoa were already accepting payments for their interests from Hamlin put pressure on Tuhoe to maintain their rights by doing the same thing.[60]

The four blocks came before the Native Land Court on 28 October 1875. Binney states that 'the prices for the four blocks were organised in advance. Everything smacked of an arranged deal'. [61] Despite this, Locke became concerned at the news that Tuhoe had turned up in large numbers for the hearing. He told McLean that 'the Urewera if possible will object in every way to dealing with any rights they may have'.[62] The hearing was

[56] Ibid., p. 2
[57] Binney, Part I, p. 308.
[58] Ibid., p. 308.
[59] Ibid., p. 308.
[60] Ibid., pp. 309-310.
[61] Ibid., p. 311.
[62] MS Papers 0032:0394, ATL, cited in Binney, Part I, p. 311.

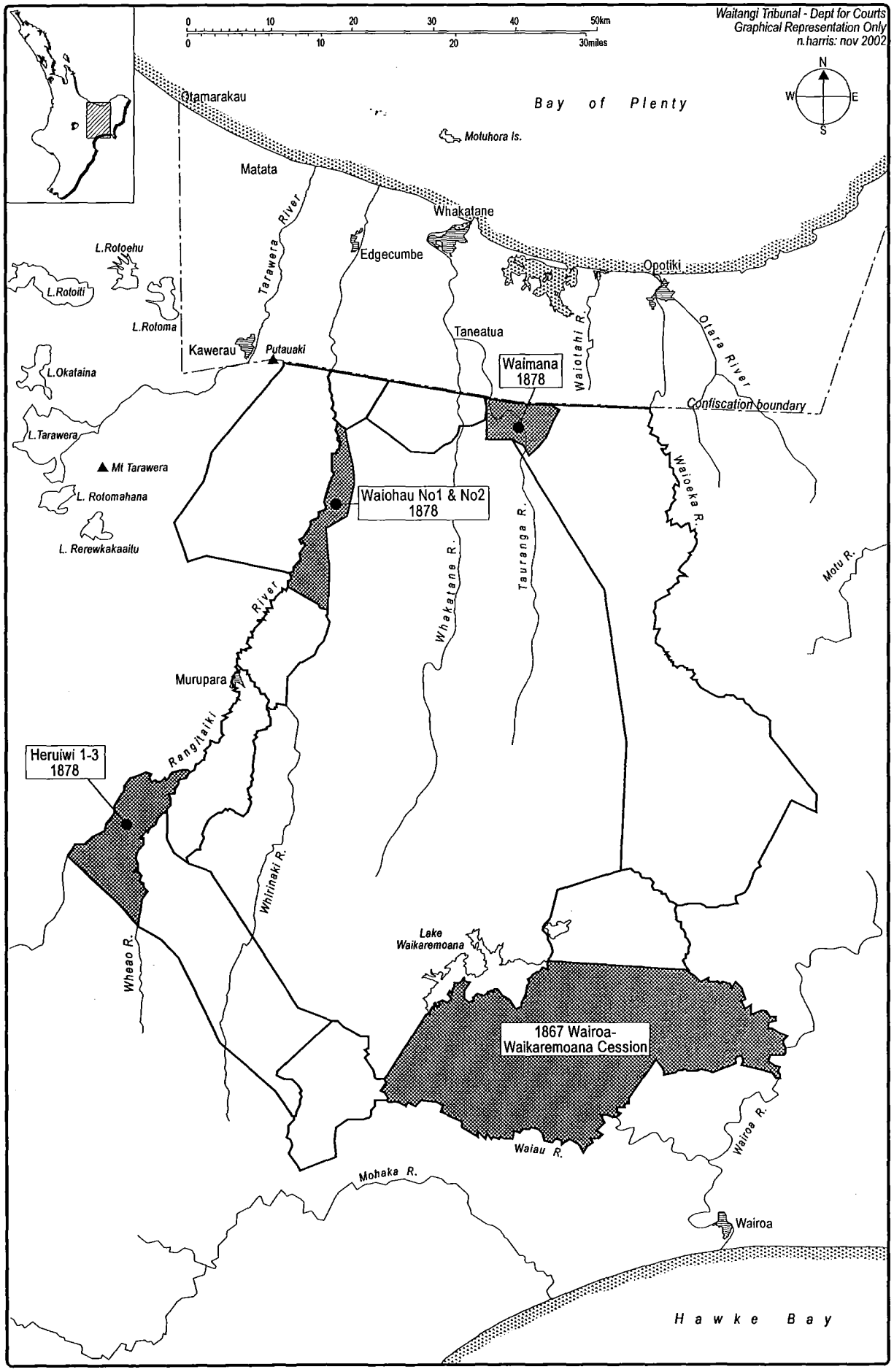

Figure 3 : The 1870s - Waikaremoana, Waimana, Waiohau and Heruiwi 1 - 3

postponed as a result, and a meeting held the following day between Ngati Kahungunu and Tuhoe.

It was at this meeting that Locke inadvertently acknowledged Tuhoe's rights over this land when he stated that the reason the blocks had been confiscated was because 'the principal owners of the land' had fought against the government in the rebellion.[63] This statement, as Binney points out, takes in Te Waru and his Ngati Kahungunu hapu of the upper Wairoa as well as Tuhoe and Ngati Ruapani, but the lands involved were also inhabited by other hapu whose claims to the land 'overlapped'.[64] But one thing that was made very clear to both iwi is that either they participated in the sale of the lands to the Government 'or their land would be treated *as if it had been confiscated.*'[65]

On 4 November 1875, Tukurangi, the first block of the Wairoa cession, came up for investigation. The Tuhoe and Ngati Ruapani claim was put forward by Hori Wharerangi who presented a list of 228 Tuhoe and Ngati Ruapani members who it was claimed were owners through ancestry and conquest. Wharerangi claimed that it was the chief cultivation site of Ngati Ruapani. He argued that the Tuhoe hapu had lived at Tukurangi until driven off by the Government forces in the 1860s and Makarini Te Wharehuia stated that 200 Tuhoe and Ngati Ruapani had occupied a pa on this block until the wars. Since the wars, the remaining Ngati Ruapani were resident at Waikaremoana.[66]

Ngati Kahungunu objected to Wharerangi's list and presented their own. Ihaka Tuatara, who presented the Ngati Kahungunu claim, maintained that the boundary between Tuhoe and Ngati Kahungunu was at Huiarau, on the other side of the lake, and although he accepted the claims of some of Ngati Ruapani to the land he did not accept those of Tuhoe. According to Ihaka, his occupation of Tukurangi was only disturbed by the Government, and Hapimana Tunupaura alleged that Tukurangi had never been occupied by Wharerangi, whose interests were at Waikaremoana and Ruatahuna.[67]

Regarding the case or position of the Crown, in response to a question by the Court as to whether this block had ever been confiscated, Locke stated that after the land had been

[63] *AJHR* 1876, G-1A, p. 1, cited in Binney, Part I, p. 312.
[64] Binney, part I, p. 313.
[65] Ibid., p. 314, emphasis in original.
[66] O'Malley, p. 128.

taken under the ECLTIA the Crown had only retained a portion of the ceded block and left the rest to the original owners. As O'Malley points out, this is a major departure from his statement a few days before that the land had 'been confiscated from its *principal owners* on account of their rebellion but given over to "loyal" Maori of the district'.[68]

The Ruakituri block was heard the next day. Similar evidence was presented. Although the Tuhoe-Ruapani claim was now presented by Wi Hautaruke, the same names were submitted as owners of this block as were for Tukurangi. Wi Hautaruke named several places that the two hapu had cultivated on this block until the wars with the Government. They included Erepeti, Rautahere, Mangaaruhe and Whataroa. He alleged that Ngati Kahungunu had never cultivated on this block.

The Ngati Kahungunu claim was presented by Tamihana Huata who challenged nearly all evidence given by Tuhoe-Ruapani. According to Huata, not only had Tuhoe or Ruapani never cultivated on this block they had never had a pa there either. He stated that they properly belonged to Waikaremoana. He claimed that Ngati Kahungunu had been in constant occupation from the time of the ancestor Hinganga.[69]

When the remaining two blocks were heard, it was stated that the evidence for these was identical to that already given for the previous two blocks. Judge Rogan stated that it was pointless to go over the evidence again and that a proper survey needed to be made. He felt that the "two statements made by the claimants and counter claimants were totally at variance with each other and were exceedingly contradictory'.[70]

The Judge wrote to McLean on November 6 1875, the day of the Court adjournment for the survey. He did not discuss the survey but remarked that given the flat contradictions in the evidence, either the Tuhoe or the Ngati Kahungunu claimants 'lie with the effrontery unparalleled even in a Native Land Court'.[71] Locke was aware that the surveys would take months and wanted to reach an 'out-of-court settlement of the

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[67] Ibid., pp. 127-8.
[68] Ibid., p. 128.
[69] Ibid., p. 129.
[70] Napier NLC MB 4, p. 86, cited in O'Malley, p. 129.
[71] Rogan to McLean, 6 November 1875, McLean Papers (private correspondence), MS-Copy-Micro-0535-086, folder 543, cited in O'Malley, p. 130.

question before the hearing finished'.[72] On November 11 a proclamation was gazetted bringing into force section 42 of the Immigration and Public Works Act Amendment Act 1871 in this area, allowing the Government to negotiate the purchase of these blocks before legal title was issued by the Court and preventing private parties from dealing with the land for up to two years.[73]

At this time also, the Solicitor-General gave his opinion that the Court investigating these blocks had more than the normal powers granted to them, that the Court was to function under the East Coast Act 1868, 'under which those deemed to have held native title could still be deprived of the lands if found to have been engaged in rebellion against the Crown'.[74] O'Malley argues that this was useful for the Crown who, 'having negotiated a purchase of the lands from a tribe considered 'loyal', had a vested interest in ensuring that a tribe clearly identified as 'rebels' (and who had stated their opposition to the purchase in no uncertain terms) should be locked in a fierce and potentially lengthy Court battle for the lands with those with whom the purchase had been negotiated'.[75] The interest of the Government would seem to me to have been better served by a short and quick judgement by the Court that, as rebels, they were not entitled to their lands.

With the Land Court investigation proceeding along these lines, it seemed to be clear that if Tuhoe and Ngati Ruapani continued with their claims before the Court, they risked losing all rights to the land as well as any financial satisfaction. Locke and Hamlin met with them following the adjournment for the survey. O'Malley states that the Government 'clearly still hoped to persuade Tuhoe-Ruapani to withdraw their claims in return for a nominal payment and a few reserves'.[76] It can be seen from Locke's telegram to McLean on 8 November that Tuhoe-Ruapani had been excluded from the purchase Hamlin had arranged two weeks before the Court sitting, and also that loyal Maori with no customary claims to these blocks had been excluded from the purchase arrangements as well.[77]

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[72] O'Malley, p. 130.
[73] Ibid., p. 130.
[74] Ibid., p. 131.
[75] Ibid., p. 132.
[76] Ibid., p. 132.
[77] Ibid., p. 133.

On 12 November 1875 a letter was sent to Judge Rogan from Kereru Te Pukenui and Hori Wharerangi stating that the 'Urewera' tribe relinquished all its interests in these four blocks and Hetaraka Te Wakaunua and Wi Hautaruke went in person to the Native Land Court to withdraw their claims. On the same day a deed of sale was signed by 60 members of Tuhoe and Ngati Ruapani, transferring their titles in the blocks with a section of 2500 acres to be reserved for them. In return they received the sum of £1250.[78] The reason for their sudden change in direction was explained in 1917 by Eria Raukura who stated that 'the Govt. told us we would have to sell or else it would be taken from us'.[79] And as Binney states – faced with the prospect of losing all stake in the lands, accepting a small amount of money and some reserves was seen as a more palatable course of action. This was particularly the case as in doing so they 'were asserting that the lands were theirs', and their ownership and mana over the lands was acknowledged.[80]

The real issue in this case was the perception of Tuhoe and Ruapani as rebels. After their involvement in the New Zealand Wars in the 1860s, the perception of Tuhoe changed. O'Malley states: 'From being a peaceable yet (in the eyes of many settlers) 'wild' and 'savage' tribe, Tuhoe-Ruapani suddenly became categorised as 'rebels', and notorious ones at that'.[81] O'Malley argues that the Tuhoe and Ngati Kahungunu hauhaus fought mainly defensively against an aggressive government and its allies.[82]

Judge Rogan appears to have been working with Samuel Locke by suspending the hearings for purposes of getting the surveys completed, and after Locke had persuaded Tuhoe to drop their claims, Rogan 'overlooking his earlier statement that it would be "utterly impossible" for him to order the issue of memorials of the blocks prior to completion of survey (and in breach of the Native Land Act 1873)', awarded the four blocks to Ngati Kahungunu chiefs who had been party to the negotiations and purchase arranged by Locke and Hamlin.[83]

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[78] Binney, Part I, p. 316.
[79] Wairoa MB 29, p. 47, cited in Binney, Part I, p. 316.
[80] Binney, part I, p. 316.
[81] Ibid., p. 168.
[82] Ibid., p. 168.
[83] Ibid., pp. 171-2.

Tuhoe-Ruapani received £1250 and 2500 acres of reserves of a total of 180,000 acres and a purchase cost of £18,000. Loyalist Maori with no customary interests received £1500 and the Europeans who had what were invalid leases received over £8000 for their interests.[84]

Those 'loyal' chiefs of Ngati Kahungunu who had missed out as a result of not having any ancestral claim to these blocks were awarded £1500 in return for them relinquishing all their rights and interests in the four blocks, and in satisfaction for the services rendered to the Crown. None of those who received this payment were owners.[85]

In August 1877 the four blocks were 'declared waste lands of the Crown, "free from all Native claims"'.[86] A week later Te Waru and the Tamatea hapu were given £300 in satisfaction of their rights in these blocks.[87]

Expectation of payment had led to many debts being chalked up and many Ngati Kahungunu found that after the purchase money had been distributed they could not pay their debts. As a result they were keen to sell their lands between Wairoa and Poverty Bay.[88]

Ngati Ruapani were left with little with which to engage in the cash economy and few lands to develop. The Government made much of the involvement of Tuhoe (notorious for not selling land) in the sale of these lands. McLean stated that:

> With some hesitation they submitted to allow these claims to be adjudicated upon by the Native Land Court; their claims were heard, and they were well satisfied with the result; and yielding to the persuasion of the co-claimants of other tribes, joined in the sale, and received their share of the money.

O'Malley points out that if Tuhoe and Ruapani were, as McLean described them, 'considerable owners in these blocks', it must have taken something out of the ordinary to induce them to withdraw their claims before the Court had adjudicated on them. He argues that several circumstances gave them to believe they would lose their lands in the Court process and that the £1250 and reserves offered by the Government seemed worth

[84] Ibid., p. 172.
[85] O'Malley, p. 137
[86] Ibid., p. 138.
[87] Ibid., p. 137

taking. The circumstances which may have given rise to this belief included the fact that the government had already negotiated to purchase the land from Ngati Kahungunu, and Tuhoe's awareness of their rebel status and the ability (and duty) of the Court to exclude rebels from the title of their traditional lands. [89]

Although there was no shortage of complaints about the process and requests for the interests of certain individuals to be looked into, the fact that within a few days of the Land Court sitting all native title was extinguished by the Crown's purchase and the cession meant that there was no chance of a rehearing.[90]

2.3: Conclusion

The Waikaremoana cession blocks, because of their unique history, do not directly raise the same kinds of issues as the other Native Land Court blocks covered by this report. What they do raise is the significant role the Native Land Court played in the confiscation of huge amounts of land in the Waikaremoana area. The East Coast legislation compromised the intended role of the Native Land Court, turning it into a means to distinguish between 'loyal' and 'rebel' interests, excluding 'rebels' from their land. Tuhoe were persuaded by Locke, a government official, to step out of the Land Court process with the sure offer of 2,500 acres in reserves. Faced with the very real possibility that they would come out of the Land Court with no lands and no acknowledgement of their mana over these lands, Tuhoe chose to take the Government's offer. Despite arguably not having engaged in what we would now term as rebellion, Tuhoe were labelled as rebels and suffered unfairly because of it.

It was not only their reputation as rebels that influenced the outcome of the Waikaremoana blocks. Many Ngati Kahungunu had also fought against the Government but had escaped the unilateral tag of rebel. The view of Tuhoe people as troublesome and politically and militarily difficult were also important factors. Tuhoe were known for their views regarding the maintenance of tribal authority and keeping tribal lands intact. They were viewed as non-sellers and the Government was more likely to authorise the

[88] Ibid., p. 138.
[89] Ibid., pp. 139-40.
[90] Ibid., pp. 146-7

award of title in the Waikaremoana district to those iwi more likely to sell or lease the land to the Government.

The Waikaremoana cession blocks are also notable for the essentially small role played by the Native Land Court in their eventual awards of title. In this instance a great deal of pressure was brought to bear on Tuhoe outside the Courtroom. Threats and badgering were tactics employed by agents like Locke to persuade Tuhoe, who were acknowledged in official correspondence as being principal owners in this area, to opt out of the Land Court process. The Government was overt in organising a group of owners to be ratified by Judge Rogan, and they were owners with whom the Government believed they could arrange the sale of lands. Tuhoe did not come under this description.

Tuhoe's first experience of the Native Land Court was a strange and anomalous sort of hearing. The next time Tuhoe would come before the Native Land Court was three years later in Waimana at the northern end of the Urewera rohe, where they both initiated the investigation of title and were awarded total ownership. It is to this and two other contemporaneous hearings that we now turn.

Chapter Three: Waimana, Waiohau and Heruiwi 1-3

Although these land blocks are very closely situated in time, they are physically situated in different areas of the Urewera district.[91] Waimana and Waiohau were heard before the Native Land Court within a month of each other and by the same Land Court Judge, making for some useful comparisons. The Heruiwi blocks 1-3 were not claimed by Tuhoe but are important to discuss since they are situated close by several important areas claimed by Tuhoe and awarded largely to other hapu. This chapter will examine the three areas in chronological order, beginning with the northernmost block, Waimana, before drawing out themes and experiences common to each.

3.1: Outline of Native Land Court Hearings

3.1.1: Waimana:

The Native Land Court hearing for Waimana was held at Opotiki on 11 June 1878 under Judge Henry Halse, who also presided over the title investigation of Waiohau a month later. The Waimana block comprised 10,941 acres and was claimed by Tuhoe, represented by Tamaikoha, Netana, Rakuraku, and Tutakangahau, who argued they held exclusive possession and who had applied for the survey and title investigation. The counter claimants were Hemi Kakitu for Te Upokorehe, and Huhana Te Waihapuarangi (the wife of Wepiha Apanui, who had kin links with Tuhoe).[92]

At the end of the eight day hearing, Judge Halse gave his judgement in favour of Tuhoe, as follows:

> The claimants and counter claimants in this case are very much related and seem to have occupied portions of the Waimana Block, as shown on the plan, at different times before the introduction of Christianity to New Zealand. During the time of such occupation disputes and battles took place, which terminated in the expulsion of all the hapus, who fled from the land. The Urewera remained in possession and continued to live peacefully on the land before the year 1840 and up to the present time...the Waimana Block belongs to the descendants of

[91] See Figure 2, The 1870s – Waikaremoana, Waimana, Waiohau, and Heruiwi 1-3.
[92] Sissons, Jeffrey, 'Waimana Kaaku: A History of the Waimana Block', June 2002 (Wai 894 A24), pp. 43-44.

> Tuhoe, who are living on it, and also to Ngai Turing and Ngati Rake hapus, who are also living on the land.[93]

Tamaikoha produced a list of 12 owners (who would have acted as 'trustees'[94]) which strangely omitted Rakuraku, head of Ngai Turanga and Ngati Raka, hapu singled out in the judgement. Sissons write that it 'is almost inconceivable that Judge Halse would record and approve any list that did not include Rakuraku's name since he had clearly ruled in favour of Ngati Turanga and Ngati Raka...Moreover, Rakuraku was, according to his own evidence, living at Te Waimana at the time and so he also fulfilled any residence requirement'.[95] He goes on to say that Judge Monro, in his notes for the 1880 rehearing, noted that some names had been omitted following a quarrel, and Sissons argues that this implies that Monro saw the omission as 'the fault of Tuhoe'.[96] But as Sissons argues, the failure of the Native Land Court to step past its 'principle that it should not actively seek additional information beyond that presented in Court may have been the most pertinent reason [for] the omission'.[97] Native Land Court judges in this period are not notable for a pro-active approach to investigating matters that could be dealt with conveniently. It is Sissons' contention that by not taking into account factors outside the Courtroom and, I would say, by taking the most convenient approach, 'the Court had allowed itself to become a weapon in a local dispute'.[98]

Although the inclusion of additional names on the ownership lists did not necessitate a full rehearing, Joseph Kennedy and others of Te Upokorehe (who had, in early 1878 initiated a survey that prompted Tamaikoha to apply for his own survey, see section 3.2) appealed the first judgement as they felt that Judge Halse had not allowed their case to be heard. Sissons notes that, as in the previous case, Tuhoe's case was built around occupation in an attempt to prevent the validation of the claims of Kennedy and others of Te Upokorehe who had never lived on the land. Monro placed most of his consideration for his judgement on the length of occupation of Tuhoe. As Sissons states: 'His judgement, like that of Halse, placed greater emphasis on the fact that "Tuhoe had been

[93] Opotiki NLC MB 1, p. 63, cited in Sissons, pp. 44-5.
[94] Sissons, p. 46.
[95] Ibid., p. 45.
[96] Ibid., p. 45.
[97] Ibid., p. 45.
[98] Ibid., p. 45.

the undisputed and paramount owners, and actual occupants, for upwards of fifty years before the present time"'.[99] Monro felt that there were only two parties in the case – Tuhoe and Te Upokorehe. He decided that Te Upokorehe had not been able to prove their claim to the land independently of Tuhoe, and so his judgement was in favour of Tuhoe.[100] The new list of owners comprised 41 names of Tuhoe, 10 of Ngai Turanga, 8 of Ngati Raka, and 7 of Te Upokorehe. Sissons points out that included in Tamaikoha's list of names for Tuhoe are several prominent Tuhoe chiefs who were not resident in Waimana at this time – including Te Ahikaiata, Tutakangahau, Numia Kereru, Te Purewa, and Te Whenuanui. He included them because they had helped him to defend Waimana, and therefore to defend the mana of Tuhoe.[101] Sissons claims that 'the notion that mana is a kind of fellowship, something that one shares in, was central to [Tamaikoha's] view of Tuhoe rangatiratanga'.[102]

Waimana was eventually partitioned in 1885, following purchasing activities by Swindley. There were three major settlements; a large settlement named Tuharua, the old settlement of Te Koingo, and the large kainga of Te Manuka, and a small settlement at Te Rahui. These settlements were all in the upper part of the Valley in which resided the total Tuhoe population of Waimana, of 139 in 1881. The lower part of the valley, about 4000-5000 acres, was leased to Swindley who was running about 300 cattle. Shortly after the 1880 hearing some of those on the list began to sell to Swindley, and by 1885 just over 30 people had sold their interests to him leaving about 28 who had not. By the time the partition had been formally undertaken and the legal transfer of shares had been done, the interests were already paid for.[103]

The partition was originally applied for in August 1880, and had its first hearing in December 1881, where it was promptly adjourned. Rakuraku had sent in the application, which Sissons describes as 'an attempt to stop Swindley dealing with Tuhoe owners before their relative shares had been determined'.[104] There was little support for the

[99] Ibid., p. 47.
[100] Ibid., p. 47.
[101] Ibid., p. 49.
[102] Ibid., p. 50.
[103] Ibid., p. 51.
[104] Ibid., p. 52.

subdivision and a 'lack of clarity as to who was requesting it'.[105] The second time it came up for hearing about a year later in August 1882, neither Rakuraku nor Te Whiu attended and Huhana Te Waihapuarangi was the only applicant who presented her application in court. The Judge decided that there were clearly not a majority of owners desiring subdivision and so dismissed the case. Sissons explains Rakuraku and Te Whiu's non-attendance by arguing that they had supported the partition application 'not because they wanted the land to be subdivided, but in order to stop the share purchasing of Swindley. They failed...because they could not gain the required support from other Tuhoe owners, many of whom had sold, or were intending to sell, their interests.'[106] Thus there was no need to attend the hearings.

Tamaikoha himself was one of the chiefs who had agreed to sell his interests to Swindley; others included Numia Kereru, Hemi Kakitu, Netana Rangiihu, Te Purewa, Te Ahikaiata, and Te Whenuanui.[107] Sissons argues that the reason for this lay in the need to develop what land they could. 'Swindley's rent would certainly not have provided sufficient income to support economic development in the upper half of the valley or elsewhere', and the money that they received as full payment for the land amounted to forty pounds to each seller. This money would have 'allowed substantial investment in machinery and stock'.[108]

The second application for subdivision was sent in by Tamaikoha after Swindley had completed his purchase of shares. The application was opposed by Rakuraku and Te Whiu, but since Tamaikoha had the support of the majority of the owners, 49 out of 66, there was little they could do. Tamaikoha explained that all shares were to be equal, with each person entitled to 158 acres 3 roods 31 perches. The portion assigned to the non-sellers was to be east of the Waimana River, amounting to 3134 acres, and there was to be a reserve in the western portion of 600 acres.[109] This was changed apparently at the request of Swindley, who did not like the proposed division North to South along the line of the River, and it was eventually divided east to west. Jemima Shera was not present at

[105] Ibid., p. 52.
[106] Ibid., p. 52.
[107] Ibid., p. 53.
[108] Ibid., p. 53.
[109] Ibid., p. 55.

court but sent in a representative to act for her, who asked for a portion equal to four shares (this comprised her own share and three that she had purchased). There were some people who were unhappy with the equal shares, but Tamaikoha insisted on this. When the Judge asked for assistance on deciding the relative weighting of shares for the non-sellers, asking 'which party of claimants is entitled to the largest shares?', Tamaikoha responded 'I will not answer that question. I am filled with love for both parties'.[110]

The ultimate division of the land left Waimana 1A (the block sold to Swindley) totalling 4804 acres, a 600 acre reserve which became Waimana 1B, awarded to 34 Tuhoe who had sold 1A, and the non-sellers were awarded 1C comprising 3179 acres, awarded to 20 Tuhoe non-sellers, and 1D of 1272 acres awarded to 8 Ngai Turanga non-sellers represented by Rakuraku. Waimana 1E, 636 acres) was awarded to Mrs Shera and the three Te Upokorehe persons whose shares she had purchased.[111]

Table 3.1.1: Waimana Subdivisions

Block Subdivision	**Owner**	**Area**
Waimana 1A	Swindley	4804
Waimana 1B	Tuhoe who sold 1A	600
Waimana 1C	Tuhoe non-sellers	3179
Waimana 1D	Ngai Turanga	1272
Waimana 1E	Jemima Shera	636
	Total	**10091**

3.1.2: Waiohau:

The Native Land Court hearing for Waiohau was held the month after that of Waimana, beginning on 24 July 1878 and the judgement delivered on 30 July. The hearing was held at Matata, described by Bernadette Arapere as being 'on the coast some distance from Waiohau and the rest of Te Urewera'.[112] Judge Henry Halse presided over this

[110] Ibid., p. 55.
[111] Ibid., pp. 55-6.
[112] Arapere, Bernadette, 'A History of the Waiohau Blocks', June 2002, Wai 894 ROD A26, p. 27.

hearing as well as that of Waimana, and the Assessor for this hearing was Mita Kaiwhakara.

By 1872 Ngati Manawa, Ngati Whare, and Patuheuheu had returned to their lands from Te Putere, where they had been sent after surrendering to the Government. According to Armstrong: 'the need to obtain some return from the land, or failing that employment on road or other public works, became absolutely imperative, as there is, not surprisingly, ample evidence of widespread distress at this time'.[113] Also at this time, there was a widespread distrust of the Native Land Court system and many Maori in this area expressed desires to have their own runanga to determine issues of land title. This desire for autonomy spread into other areas of land management. Ngati Whare and Patuheuheu encouraged leasing of their lands 'but on their own terms'.[114]

Waiohau came before the Court on 24 July 1878 under Judge Halse (who also presided over Waimana). Wi Patene Tarahanga and Mehaka Tokopounamu, who had applied for both the survey and the Native Land Court hearing, claimed the land through ancestry from Te Hina and through constant occupation.[115] They both stated that they were Tuhoe, and lived at Waiohau,[116] as did Makarini Te Waru and Te Whaiti.[117] Gwenda Montieth Paul refers to this as a Ngati Patuheuheu claim, and the main claimants were chiefs of Patuheuheu, but I think it is worth noting that although their application lists Patuheuheu and Ngati Haka, in the Native Land Court they did not claim as Patuheuheu but as Tuhoe. In later hearings like Matahina in 1881 the same claimants asserted their rights in Court as Patuheuheu and Ngati Haka.

The Counter Claimants were Ngati Pukeko, and their claim was presented by Meihana Koata, who claimed through the ancestors Marupuku and Taiarahia.[118] Their claim was to a portion of the block at the northern end. Later in the proceedings it was alleged by

[113] Armstrong, p. 57.
[114] Ibid., p. 65.
[115] Opotiki NLC MB1 24 July 1878, p. 96.
[116] Ibid., 24 July 1878, p 96, and 29 July 1878, p. 108.
[117] Ibid., 29 July 1878, p. 110.
[118] Ibid., 24 July 1878, p. 97.

Mehaka Tokopounamu that 'Ngati Pukeko have claims to land outside the northern boundary of this block'.[119]

Reference was made in the testimonies to the Court to the return of the claimants from Putere after the war with the Government had ended. For instance, Hone Matenga, under cross-examination told Wi Patene that 'the reason I did not prevent you taking the canoe was that the government had placed you at Putere and these canoes would enable you to make a living'.[120] And Meihana Koata claimed when cross-examined by Wi Patene that 'I am not aware that the northern portion belongs to Te Hina or that you have any power over this land, or ever occupied it, or that your ancestor had houses there. You came from Waiohau and have houses there but they are of recent date. I am aware of your cultivations of the present day on this portion since your return from Putere'.[121] But Matenga also admitted that certain peach trees 'were planted in former times by you before hostilities took place'.[122] I find the references to the hostilities between the Government and the claimants significant, as it was quite clear to the Court that these were 'rebels', and the counter claimants attempted to present the claimants' occupation of the northern lands as a recent occurrence following the cessation of fighting.

The occupation of Wi Patene and Tuhoe in the Southern portion of the block, from Whakamataua Pa on the Northern side and the Tauheke Pa on the eastern boundary down to the Southern boundary, was not disputed by the counter claimants in any way. This portion was awarded to Wi Patene and his people.[123] The Northern portion (consisting of about 2200 acres) was the area contested by Ngati Pukeko. In this matter the Judge stated that there had been contradictory statements from the Ngati Pukeko claimants regarding their claims through ancestry (making their whakapapa unclear to the Court) and also in terms of dates of occupation by ancestors and themselves. It is interesting to note that Tuararangaia lies directly next to Waiohau, and at the 1891 Land Court hearing Makarini Te Waru alleged that the only reason Ngati Pukeko received land in Waiohau

[119] Ibid., 29 July 1878, p. 109.
[120] Ibid., 26 July 1878, p. 104.
[121] Ibid., 24 July 1878, p. 98.
[122] Ibid., 26 July 1878, p. 104.
[123] Ibid., 30 July 1878, p. 113

was because Wi Patene had 'got a piece cut off for you all'.[124] Erueti Tamaikoha was even more damning, saying that Ngati Pukeko had no ancestral claim to Waiohau and had only received land because of 'the stupid way that Wi Patene acted in making partitions of the land'.[125]

The evidence of the ancestral claim given by Wi Patene was likewise said by Judge Halse to be unclear but as to occupation the Judge stated: 'Wi Patene and his people appear to have had undisturbed possession ever since the introduction of Christianity into New Zealand and even to the present time'.[126]

The Judge divided the disputed northern half into two and awarded 1100 acres of the Northern Portion to Wi Patene and his co-claimants in addition to the whole southern portion. The total area awarded to Tuhoe was designated Waiohau 1 and consisted of 14464 acres. The remaining 1100 acres of the northern portion was called Waiohau 2 and was awarded to Meihana Koata and the Ngati Pukeko claimants.[127] The list of ownership for Waiohau 2 also included two prominent chiefs of Ngati Whare, Hapurona Kohi and Hamiora Potakurua.[128]

The order for Waiohau 1 included 150 names. Wi Patene Tarahanga, Mehaka Tokopounamu, Makarini Te Waru, and Te Whaiti Paora were appointed trustees to receive rent.[129] According to Gwenda Monteith Paul the majority of those listed on the ownership lists were Patuheuheu but there were a number of Ngati Manawa names.[130] Binney points out a number of prominent Tuhoe leaders from other areas such as Netana Rangiihu and Tutakangahau, as well as Kereru Pukenui. The Ngati Manawa chiefs who were listed include Harehare Atarea and Pani Te Hura.[131] This inclusion of Ngati Manawa does not appear to have been undertaken with the sanction of Tuhoe, as there was an immediate protest at grouping of people they viewed as their 'opponents' in the

[124] Whakatane NLC MB4, p. 131.
[125] Ibid., p. 138.
[126] Ibid., 30 July 1878, pp. 112-113.
[127] Opotiki NLC MB1, 30 July 1878, p. 113.
[128] Binney, Part II, p. 47.
[129] Ibid., 30 July 1878, pp. 114-115.
[130] Paul, Gwenda Monteith, 'Te Houhi and Waiohau 1B', 1995 (Wai 46 H4), p. 3.
[131] Binney, Part II, p. 49.

ownership of their lands. They were further angered because these people had accepted money for Waiohau from the surveyors without the consent or approval of Tuhoe.

On 14 August 1878 Wi Patene wrote to Chief Judge Fenton objecting to the award of title of Waiohau 2 to Ngati Pukeko. Applications for a rehearing were submitted on 1 September 1878 from Te Makarini Te Waru and Mehaka and others and on 13 November from Wi Patene. Judge Halse recommended that there were no grounds for a rehearing, and shortly afterwards the Under Secretary for the Native Dept wrote to Judge Fenton telling him that the rehearing had already been refused. Throughout 1879 and into 1880 applications for a rehearing continued to be submitted. In 1880 and 1881 a sense of urgency pervaded the requests for a rehearing as Harry Burt, an interpreter who sometimes lived among the people in Waiohau, was buying shares in Waiohau 1.[132]

This purchasing of shares led to an application for a subdivision of Waiohau 1 in April 1885 by Harry Burt calling himself Hare Rauparaha.[133] The hearing was adjourned on two occasions and was not held until the following year. Applications for the division of Waiohau 1 continued to be submitted through the first half of 1886.[134]

In April 1885 a large meeting was called at Ohinemutu, where those who had not sold their interests and some who believed they had been conned out of theirs 'sought to prevent the proposed subdivision and repudiate their sales.'[135] Burt argued that he had spent £1200 in the process of buying his shares – this amount included funds expended on travel and legal costs. At this meeting a group of 12 men referred to as the 'Urewera Committee' decided to offer Burt 1200 acres to satisfy his claim. Binney argues that it is likely that this committee had been set up at the initiative of Burt, and it included in addition to Ruatahuna and Ruatoki Tuhoe leaders two Maori mediators from Te Arawa, one of whom was a friend of Burt's, and the Land Purchase Officer Henry Mitchell, 'who expressly represented Burt'.[136] The offer of 1200 acres was rejected by Burt who claimed that the sum of £1200 would only be met by 7000 acres.[137]

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[132] Paul, p. 4.
[133] Binney, Part II, p. 51.
[134] Paul, p. 5.
[135] Binney, Part II, p. 51.
[136] Binney, Part II, pp. 51-2.
[137] Ibid., p. 52.

A second meeting was held in January 1886 at Te Houhi and the owners asked Burt for a period of six weeks to raise the money with which they would refund him. Binney believes that they hoped to borrow the money from Troutbeck who was leasing Horomanga from them and had earlier purchased Kuhawaea. She further argues that it appears to have been in the aftermath of this meeting that Ngati Haka and Patuheuheu placed their lands into the mana and safekeeping of Te Kooti.[138]

The offer of repayment was not to Burt's liking and in February 1886, under his pseudonym of Hare Rauparaha, he reapplied for the subdivision of the block. The hearing was adjourned on Burt's request after the eruption of Mt Tarawera on 10 June 1886.[139]

The hearing reconvened on 4 September 1886, but was adjourned due to the non-appearance of Patuheuheu. Notices had apparently been directed to Ngati Manawa and Patuheuheu at Galatea, on direction of the Judge, informing them that court would sit on 4 September to hear the subdivision.[140] Binney argues that it is 'possible that they boycotted the hearing, refusing to recognise the Land Court on Te Kooti's advice. But the Ngati Haka/Patuheuheu leaders argued that they never received notification of the hearing, and Wilson was inclined to accept their argument in his inquiry in 1889'.[141] Certainly given that the two notices sent by Judge Clarke were addressed simply to Ngati Manawa and Patuheuheu it is not surprising that they did not receive them.[142]

The subdivision case was finally heard on 11 September 1886, before Judge H.T. Clarke. Peraniko Ahuriri of Ngati Manawa produced a plan of the Waiohau 1 block showing the requested subdivisions. He stated: 'the Northern division of 7464 acres is to be granted in the names of those who have not alienated their interests; also including the sellers of the Southern portion but for interests of lesser value. In the Order for the Southern portion to be called Waiohau No.1B two names only are to be inserted'.[143] Those two

[138] Ibid., p. 52.
[139] Ibid., p. 53.
[140] Paul, p. 6.
[141] Binney, Part II, p. 53.
[142] Ibid., p. 53.
[143] Cited in Paul, p. 7.

names were Peraniko Ahuriri and Hira Te Mumuhu of Ngati Manawa.[144] Binney states that of the four owners who were present in Court three were Ngati Manawa shareholders whom had been bribed by Harry Burt. Burt presented to the Court a list of 54 people he claimed had sold him their interests in the land, and argued that subdivision was necessary to cut these out. Although the list of sellers numbered 54 individuals, the title to Waiohau 1B was requested in the names of the two men listed above. The Court was told that this decision 'had been voluntarily agreed to by the principal people of Ngati Manawa who were present in the Court. They were the owners.'[145] As no objections were raised (there being no Patuheuheu present), the Court ratified this arrangement. On the same day the 7000 acre block of Waiohau 1B was sold to John Soutter via the agency of Harry Burt for £950.

Applications for a rehearing at the Native Land Court were unsuccessful, for reasons explored later in this chapter. Since their applications for justice at the Native Land Court had failed, the Patuheuheu owners turned to petitioning the Government. The first petition in 1887, from Agnes Preece, failed. The Resident Magistrate instructed to look into it, H.W. Brabant, found on evidence from Burt that he and Preece had been in competition to buy shares in the land and so he dismissed the petition as being 'self-interested'.[146]

The second petition was delivered by Mehaka Tokopounamu in a personal delegation to Wellington. The petition bore the signatures of 87 Tuhoe members including prominent leaders of the wider Tuhoe iwi such as Kereru Te Pukenui, and Te Makarini Tamarau as well as Wi Patene and others from Te Houhi. The Petition was presented to the Native Affairs Committee in August 1889. Mehaka spoke to the Committee and told them of their attempts to come to a mutual compromise with Burt, offering him 1100 acres and £40 in 1885, and their subsequent shock at finding out their homes had been sold.[147]

Given the 'great injustice' that had occurred, the Native Affairs Committee recommended an inquiry, which was eventually set up under JA Wilson.[148] This seems to indicate that

[144] Paul, p. 7.
[145] Binney, Part II, pp. 53-4.
[146] Ibid., p. 55.
[147] Ibid., p. 56.
[148] Ibid., p. 57.

the Crown was attempting to resolve a situation that was blatantly unfair. The inquiry, which began on 21 October 1889, heard evidence from many witnesses. Binney notes that the 'evidence, as recorded, is confused, circular and poorly handled by the judge, in terms of obtaining clarification of information and the sequence of the event that the various witnesses described'.[149] Not so the judgement. Wilson made a strong decision in favour of the owners. He believed that the amount of land taken in this division was too much and was unfair to those who had not sold their interests. Significantly for this report Binney states that

> [Wilson] also noted the vindictiveness which became apparent in Burt's actions, as he used every means to circumvent the Urewera chiefs' efforts to find a resolution. Wilson suggested this vindictiveness was directed at Patuheuheu's association with Te Kooti, and the fact that they placed their lands under his mana to try to protect them. Aporo Te Tipitipi [one of the Te Arawa mediators] himself commented, when giving his evidence, that it was the harshness in Burt's dealings with the Urewera, the 'exacting attitude' that Burt had adopted – which Aporo attributed to the fact that the Urewera were 'Te Kootiites' – which prevented a settlement being reached'.[150]

Whether or not this prejudice against the 'Te Kootiite' Patuheuheu was shared by Judge Clarke is a question it is not easy to answer. The censure of Burt's actions expressed by Wilson indicate a measure of Government will to protect Maori from unscrupulous settlers, but sadly this will did not continue with great vigour.

Despite the decision that the transfers had been illegal and could therefore be overturned, the land was left in a state of uncertainty for many years. The Government, in the form of the Under-Secretary of the Native Department, informed Mehaka Tokopounamu that Patuheuheu were 'advised to apply for rectification, and failing that to take action in the Supreme Court. Most crucially, it told them that the Native Minister desired to give them "all the assistance in his power to obtain their rights. It is however necessary that any further action in the matter should be taken by themselves."'[151]

However, once Patuheuheu engaged the services of H. Howarth, who had acted for them in the presentation of the petition to the Native Affairs Committee, the Government

[149] Ibid., p. 57.
[150] Ibid., p. 59.
[151] Ibid., p. 61.

declined to become involved. Binney argues that this was partly due to the disfavour he was held in by Government because of his post as solicitor to Hirini Taiwhanga the 'autonomist Maori member of parliament'. At this time a caveat to prevent any transfer of title had been entered on the portion of land held by Margaret Burt, Harry Burt's widow, but no similar caveat was entered on to the portion she had sold to Henry Piper in October 1889. Patuheuheu could not afford to take the case to the Supreme Court without the assistance of the Government. Howarth advised them that if they remained on the land that that 'would be legally sufficient' to maintain ownership. This may not have been the best advice but as Binney argues, the concept of a Supreme Court hearing was 'alien' to them and they regarded themselves as the owners of the land, affirmed by the inquiry which had found the transfer arranged by Burt to have been illegal and fraudulent.[152] In September 1890 Patuheuheu were served with a notice for trespass by Burt and Piper. Although Resident Magistrate Bush dismissed the charges brought by Burt, since there was no caveat laid on Piper's title 'he was legally obliged to uphold it'.[153]

At this juncture Patuheuheu made an appeal to the Crown Prosecutor to take their case to the Supreme Court. The Government began to distance itself even more, stating that the time for asking for assistance had passed and they would not help Patuheuheu with funds for a Supreme Court hearing. Binney argues that 'the government's concern became primarily that Piper might be able to make a large financial claim on the Land Assurance Fund...if his title were to be overturned'. This is despite a judicial inquiry finding that there had been 'a clear case of fraud'.[154] On the same day that Mehaka's request for assistance from the Crown Prosecutor was rejected as 'too late' by the Native Minister, the Native Department requested that the caveat on Margaret Burt's title be lifted. In 1891 both Burt and Piper held certificates of title that were protected under law 'from any fraudulent procedure that had occurred in the creation of the original title'.[155] In 1907 the people of Te Houhi were evicted from their land.

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[152] Ibid. pp. 63-5.
[153] Ibid., p. 66.
[154] Ibid., p. 66.
[155] Ibid., p. 67.

This was an appalling end to what was not a bad beginning. Following an award of the block to Ngati Haka and Patuheuheu hapu, a few Ngati Manawa names were put in the lists of owners. Subsequent protests indicate that Tuhoe did not do this through aroha and it is unclear why these names were there. It is also clear from the protest that these people were not just Patuheuheu with Ngati Manawa connections, but people who the Patuheuheu owners felt had no rights to this block. Harry Burt's purchasing activities led to an application for a subdivision to cut out his land. Patuheuheu tried their hardest to come to a compromise with Burt as to the amount of land to transfer to him in the face of his exorbitant demands for 7000 acres, just under one half of the total block. Not only did he reject these compromises, but the subdivision hearing was a travesty of due process. Without representation from the non-sellers, or indeed apart from seven people including Ngati Manawa representatives bribed by Burt, the Court awarded 7000 acres to two Ngati Manawa men who promptly sold it to Soutter via Burt, thus ensuring Burt's title remained safe afterwards. This injustice was compounded by the fact that the 7000 acre section included the township of Te Houhi. The petitions protesting the injustice were dismissed on the grounds that, according to the Native Land Court, there had been full representation of non-seller interests. The Government initially supported the claims of Patuheuheu, with the 1889 judicial inquiry deciding in their favour and recommending that they take the case to the Supreme Court. After this, the Government became increasingly distant and at times obstructive towards Patuheuheu receiving their rightful land. The caveat that had been placed on Margaret Burt's title was eventually lifted and in 1907 the owners of Waiohau were evicted from their homes in Te Houhi. Patuheuheu and Ngati Haka were failed by the actions and non-actions of the Native Land Court and the Government.

3.1.3: Heruiwi 1-3

During the 1860s wars Heruiwi was almost a frontline between the government forces and the Urewera 'rebels' who used a track across the block on several occasions. When Patuheuheu asked Ngati Manawa if they would assist Kereopa and let him cross their land, the chief Peraniko Tahawai refused to do so. Tulloch notes that this refusal may have stemmed from the Government's mid 1860s threat to confiscate land from those

tribes who supported Kereopa and Pai Marire.[156] The wars with the Government had a physical impact on those living at Heruiwi. Tulloch describes how people of Ngati Hineuru had been forcibly removed by the Government and had not felt free to return as they had been 'under pressure from the Government who considered them Hauhau and thus of suspect loyalty'. Ngati Manawa had also lived elsewhere during the fighting, but had been able to return to Heruiwi from about 1872 as they were considered loyalists.[157]

Upon Ngati Manawa's return to Heruiwi they began leasing to the Crown land that became Heruiwi blocks 1-3. Tulloch argues that the leasing of Heruiwi 'had strategic implications for Ngati Manawa'. She states that:

> Tuhoe had in the past considered themselves Ngati Manawa's overlords. Leasing land to the Crown allowed Ngati Manawa to capitalize on the relationship it had developed with the government during the military period. It also offered the tribe a valuable opportunity to assert claims to land independently of Tuhoe.[158]

This was especially valuable given Tuhoe's rebel status in the eyes of the Crown. Heruiwi blocks 1, 2, and 3 were leased by the Crown for 30 years in 1874-5. The title investigation of Heruiwi 1-3 took place in 1878, and the blocks were awarded to 55 people of Ngati Manawa and Ngati Apa[159]

Ngati Manawa offered Henry Mitchell and Charles Davis a lease on Heruiwi at what the land purchase officers called 'absurdly high terms'. Further negotiation reduced the terms asked for and the Land Purchase agents made a deposit of £100 on the lease of Heruiwi in March 1874, without specifying how much land was involved. A year later in February 1875, 47 Maori lessors signed a deed of lease for 30 years for 35000 acres of the Heruiwi block. At the head of the list was Peraniko Parakiri. A deposit of £50 was made the next day.[160] The deed of lease included a clause prohibiting any re-leasing, selling, or mortgaging of the land by the lessors without the consent of the Governor.

[156] Tulloch, 'Heruiwi Blocks 1-4', September 2000, p. 15
[157] Ibid, p. 18
[158] Ibid, pp. 18-19
[159] Ibid, p. 20
[160] Ibid, p. 23

The deed also contained no references to when payments would be made and Tulloch notes the failure of the Crown to pay their rent.[161]

Although the lease covered 35,000 acres, a survey conducted in 1876 (prompted by Ngati Manawa) found the area of the block to be 25,161 acres.[162] The survey party consisted of two Pakeha, one of whom was Gilbert Mair, and several Maori including Harehare Atarea (a Ngati Manawa chief), Peraniko, and Rawiri.

In August 1877, Ngati Manawa applied for a title investigation by the Native Land Court. The names on the application were Harehare, Manuera Te Tuhi, Heta Tapuke, Ruihi Peraniko, Peraniko Parakiri, Ngawaka and others at Fort Galatea. A year later in June 1878, Mitchell and Young, agents for the Crown, applied to have the Crown's interests in Heruiwi determined by the Court.[163] The block was finally heard by the Native Land Court on 22 July 1878.

Peraniko Te Hura claimed the 25161 acres of Heruiwi for Ngati Manawa and Ngati Apa on the grounds of occupation and ancestry. He claimed that 'the eastern boundary of the block had been cultivated from the time of the claimants' ancestors to the present. He added that no other tribes had ever had control over the land'.[164] The list of counter-claimants given in the minute book does not record the hapu and iwi of those people who objected to Ngati Manawa's exclusive claim, but Tulloch notes that one of these counter-claimants, Pehi Te Hira, was listed as Ngati Hineuru in the hearings for Heruiwi 4 in 1890.[165]

After an adjournment, the Court reconvened two days later and was told by Te Hira Takurua that the ownership of the block had been settled by the claimants and the counter-claimants, and Peraniko Te Hura stated his acceptance that those who objected to the claim of Ngati Manawa also had valid claims to the land, via ancestry and occupation. Following his statement the counter-claimants withdrew their claims and at least one was

[161] Ibid, p. 24 and regarding rents – pp 28-30
[162] Ibid, p. 24
[163] Ibid, p. 27
[164] Ibid, p. 27
[165] Ibid, p. 27

included in the list of owners made out by the Native Land Court. No other detail or information was recorded in the minutes regarding ownership and usage of the land.[166]

Following the court hearing, the land purchase officials went into action obtaining signatures for the lease of Heruiwi. Gilbert Mair recorded that he had helped Henry Mitchell obtain 40 signatures from Ngati Manawa regarding the deeds at Heruiwi. Tulloch notes that it is not clear whether the signatures were for the existing lease or another deed of sale.[167] The Crown reneged on the agreed rentals for Heruiwi blocks 1-3, and this led to the eventual partition of Heruiwi 1 as leasing arrangements transmuted into sale negotiations.[168] The Native Minister was informed in March 1881 that the owners of Heruiwi 1 were desirous of selling their interests now that the land had gone through the Court. Gill recommended that the Crown buy the land as long as the price did not exceed £3000. When the purchase had been approved, Gill told Resident Magistrate Brabant that with the purchase 'the lease is cancelled and that the payments made on account of the lease will not form any part of the purchase money'.[169]

3.2: Issues

These areas of land have rather different histories, but they share certain issues as well. Principal of those is the role of leasing and the attitude of Tuhoe people to the sale of land. Leases were one of the primary triggers of Land Court proceedings, and often the group who had negotiated a lease or a sale were the ones who were awarded the ownership of the land. Tuhoe, as noted non-sellers in general found themselves disadvantaged in a system that encouraged and honoured leasing arrangements.

3.2.1: Leases

In 1872, Te Whitu Tekau outlined their objections to the survey and lease of lands in the Urewera. They made a clear correlation between these actions and the eventual total loss of the land. The 'conflict' between the interests of a hapu versus those of the iwi represented by Te Whitu Tekau can be seen in the negotiations into which Tamaikoha

[166] Ibid, pp. 27-8
[167] Ibid, p. 28
[168] Ibid, pp. 28-9.
[169] Gill to Brabant, 19 March 1881, MA-MLP 1 1897/193, cited in Tulloch, 'Heruiwi', p. 30

and Frederick Swindley entered with Te Whitu Tekau in 1874 to get approval to a proposed lease of Waimana to Swindley. The economy of Waimana had suffered greatly through the wars and when the land north of Waimana was confiscated in 1866, the Waimana people lost land, resources, and access to other forms of resources. As Sissons states:

> ...the economic and political reality for most of those who returned was very grim indeed. Less than a decade before, the people of Te Waimana had been successfully trading through Ohiwa and debating new forms of local governance. Had the confiscation and the army not been imposed upon them they would have been more significant players in a developing regional economy based on mixed farming. Now, instead, they had to make a new beginning, constructing roads through their confiscated lands in order to raise sufficient capital to purchase stock and seeds.[170]

The less than positive economic outlook for Waimana was the likely reason that Tamaikoha was prepared to lease land at Waimana to Swindley. Tamaikoha was involved in cattle farming in about 1872,[171] and Swindley, who was living in Waimana by 1873, brought cattle to Waimana in early 1874. According to Sissons, 'It is likely that in the 1873-74 period Tamaikoha and Swindley entered into a mutually beneficial arrangement that gave Swindley access to land and Tamaikoha's people access to breeding stock.'[172]

That Tamaikoha respected the principles of Te Whitu Tekau is shown through his persistent efforts to obtain their approval to the lease rather than maintaining an informal lease between his own hapu and Swindley. In March 1874 Tamaikoha took Swindley and William Kelly of the Whakatane Cattle Company to a hui of Te Whitu Tekau to try to convince the Tuhoe council formally to lease Swindley part of the Waimana Valley. Te Whitu Tekau would not approve the lease, either then or a month later when Tamaikoha tried again.[173]

The Government at this time wished to facilitate the opening up of the Urewera and part of this involved encouraging Tuhoe to change their stance on the leasing of land, and

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[170] Sissons, p. 26.
[171] Ibid., p. 26.
[172] Ibid., p. 32.
[173] Ibid., pp. 33-4.

supporting the settler who wished to lease. According to Sissons, the Government was very interested in the proposed lease of land at Waimana to a settler. Brabant, the Resident Magistrate, was sent to report on the first meeting between Swindley, Tamaikoha and Te Whitu Tekau in Ruatahuna, and the Land Purchase Officer, J Wilson, was working with Kelly under instructions from Donald McLean. Wilson had arranged with Kelly that he would be allowed to lease Maori owned land on the proviso that if the Government required the land for settlement at any time in the future then they could do so.[174] The actions of the Government in supporting the proposed lease worked to undermine the centralisation of Tuhoe authority in favour of local hapu independence and short term needs.

Following the failure of the negotiations with Te Whitu Tekau, Kelly and Swindley resorted to paying advance money for the desired lease. Brabant reported that Swindley

> ...paid a sum of money on account to Wipiha, Rakuraku and Hira Te Popo and others which they took against my advice. However, when they found that the inland natives would not take any part of the money they returned it to Capt. Swindley.[175]

Sissons notes that the money had in fact been retrieved by Tamaikoha who then gave it back to Swindley. Tamaikoha did so because, as he stated later, 'they had no right to deal with this land as it was mine, they admitted it and gave up their money'.[176] Sissons contends that Swindley was seeking to 'exploit the tensions between Rakuraku and Tamaikoha' in order to force consent to a lease.[177] In October 1874 a meeting of Te Whitu Tekau decided to approve the lease to Swindley – on the proviso that the land would neither be surveyed nor taken to the Native Land Court – and received money for it, which they then paid to Tamaikoha as the 'local representative'.[178] This proviso was an important indicator of the desire of Te Whitu Tekau to avoid the usual consequence of leasing land, which was the loss of the land via the Native Land Court. Binney states:

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[174] Ibid., p. 34.
[175] Brabant to McLean, 14 August 1874, Judge Monro notes, p. 78, see Sissons, p. 35.
[176] Judge Monro notes, p. 78, cited in Sissons, p. 35.
[177] Sissons, p. 35.
[178] Ibid., pp. 36-7.

> They did not wish the lease to become the lever for some individuals (under Swindley's persuasion) to take their collectively owned land to the Court. The lease was not to be a lien towards sale.[179]

The lease of the land gradually did lead to pressures to have the land surveyed. Leasing and surveying seem to have held a role akin to the assertion of mana over the land. If Swindley did indeed manipulate the political situation amongst Tuhoe to force Tamaikoha to assert his control and his mana by entering into a leasing arrangement then he was capitalising on what I believe was an already present conceptual link of the applications for survey and title investigations with control over the land and ultimate legal recognition from the Court.

The Crown pursued an active policy of leasing and buying land in this district in the early 1870s. The Native Land Court was excluded from this area from 1873 until the suspension was lifted in 1877. Tulloch notes that the suspension of the Native Land Acts in this area gave many private purchasers the mistaken impression that private negotiations were now illegal, thus providing the Crown with a monopoly on land dealings.[180] David Williams notes in relation to this suspension that the Crown carefully manipulated 'when and where the Land Court would sit in order to suit the Crown's paramount purpose to acquire all the land in the district'.[181] He further argues that

> [The Crown invoked] proclamation powers to suspend the Native Land Court sittings in the district whilst at the same time instructing its land purchase officers to vigorously seek out any individuals who might be prepared to cooperate with sales of 'their' interests. ...The suspension remained in force until such time as the Government judged that its efforts to break tribal unity were bearing fruit, that a sufficient number of individuals had been enticed into sale agreements and that the time was right to unleash the Land Court once again to do its individualising and alienation-promoting work.[182]

In March 1878 Heruiwi was included in a number of certain lands which were declared to be under negotiation with the Government. In Heruiwi, as in other lands in this district at this time, leasing was used as a means to secure a final purchase.[183] Negotiations for

[179] Binney, Part I, p. 326.
[180] Tulloch, 'Heruiwi', p. 21
[181] Williams, pp. 41-2.
[182] Ibid., p. 42.
[183] Tulloch, 'Heruiwi', pp 22-3.

the lease of Heruiwi began in 1873 and were conducted by the Land Agents Mitchell and Davis.

In 1873 Gilbert Mair, who had fought alongside Ngati Manawa people in the 1860s, leased a significant portion of Kaingaroa lands, including land at Galatea and Ahikereru. Mair expanded his lease to finally encompass a large area between the Rangitaiki River and the hills. Armstrong notes that this resulted in arguments between Ngati Manawa and Tuhoe.[184] Other lands leased at this time included a section at Galatea which was leased to Hutton Troutbeck, who named it Galatea Station. Tuhoe thus faced pressure on this side of their rohe from other iwi claiming ownership of contested lands in the Native Land Court and the possibility of these lands being alienated to those who were leasing them – both things Tuhoe held out against.

Leasing was often used to slowly acquire interests in a land block, the money for lease being frequently seen as advance payments for the freehold of the land. After 1878, in order to make leases and sales valid under New Zealand Law, the land had to be taken before the Native Land Court. David Armstrong notes that the reasons for selling land were most often related to the poverty of the people who were selling, and the Native Land Court process was so expensive that they were plunged into debt in efforts to avoid the Court.[185] Prior to land at Waiohau going through the Land Court, it had been leased to a Mr Fraser, and then to a Mr Chamberlin, by Mehaka Tokopounamu and Wi Patene Tarahanga as representatives of Ngati Haka and Patuheuheu.[186]

3.2.2: Surveys

The survey of Waimana sprang mainly from a lease of 8000 acres of the 10,941 acre block to Swindley in the early 1870s. As Sissons notes, this amounted to nearly four fifths of the Waimana valley, leaving only 2000 acres for Tamaikoha and Rakuraku's people and their kainga.[187]

[184] Armstrong, p. 67.
[185] Ibid., p. 77
[186] Binney, Part II, p. 46.
[187] Sissons, p. 37.

Pressures for the survey of Waimana came from Te Upokorehe and the well connected family of Joseph Kennedy (who lived in Gisborne) and the Balneavis family.[188] As Sissons states: 'Joseph Kennedy's application for a survey forced Tamaikoha, Rakuraku and Wepiha Apanui to make a further separate application. Applications were therefore made on behalf of Te Upokorehe and Tuhoe.'[189] The survey was completed in July 1877, and the resulting block that went before the Native Land Court was Waimana as surveyed for Tuhoe as opposed to Waimana surveyed for Kennedy, which differed significantly in the boundaries.[190] This alone shows the importance of having control over the survey. The land that was investigated by the Land Court could be controlled to some degree by directing the survey. If a group did not have control over the survey it was possible that some land they wanted included would be excluded and vice versa.

Events in Waiohau also demonstrate this conceptual link of mana over the land and control of the survey. Agreement to the survey of Waiohau by Ngati Pukeko was seen by some participants in the process as evidence of possessing rights over the land. Ngati Pukeko believed that by agreeing to the survey of Waiohau in 1878 they would be acknowledged as claimants by Wi Patene and the Patuheuheu claimants to Waiohau. This view was contested by Wi Patene and others of his hapu who stated that Ngati Pukeko had nothing to do with the survey, so that it made no difference if they had consented or not. Makarini Te Waru claimed that 'Ngati Pukeko came to Waiohau to join Wi Patene in the survey but he sent them back crying they told me so at Poroporo'.[191] Judge Henry Halse agreed with Ngati Pukeko, stating in his judgement awarding them 1100 acres of Waiohau that the fact that Ngati Pukeko had received £10 for their consent to the block being surveyed and deposits for the lease of the land 'indicates that their "mana" over this portion of the Block was recognised.'[192] As Bernadette Arapere notes, it is not clear why 'the court should have attached such weight to an interest that was not of a customary nature'.[193]

[188] Ibid., p. 42, Binney Part One, p. 345.
[189] Sissons, p. 42.
[190] Ibid., p. 43.
[191] Opotiki NLC MB1 29 July 1878, p. 111.
[192] Ibid., 30 July 1878, p. 113.
[193] Arapere, p. 35.

Ngati Pukeko had initially opposed and obstructed the survey of Waiohau until, as they put it, they gave permission for it to proceed. Te Tihi Hamuera of Ngai Te Moke (not a claimant) stated under cross examination by Wi Patene: 'Ngati Pukeko left this land and went to another place to live and the reason they did not turn you off was because they thought you would admit them as claimants, and they are vexed because they received no intimation of the leasing of the land'.[194] Penetito Hawea stated: 'I went with Meihana to Maketu to stay the survey of the northern portion of the land. The surveyor agreed not to survey that portion, he gave us some money when we got £10 we agreed to allow the survey to go on. We sent a letter to Wi Patene to tell him that we agreed to the survey going on'.[195] This use of what amounted to a bribe by the surveyor to ensure that his work would proceed unimpeded was rather unscrupulous. The bribe did not seem necessary when Ngati Pukeko approached Wi Patene and asked to be included in the survey. Wi Patene apparently responded "'What I do is the same as if you had joined with me"'.[196] In the Land Court hearing, Wi Patene, in answer to cross-examination by Penetito, stated:

> Ngati Pukeko came to Waiohau when the survey was commencing and we had a conversation about it. I have before said no one came to object to the survey. Edgecombe gave me a letter from Meihana and yourself consenting to the survey my reply was that you had nothing to do with it. You and Werahiko's name appear in the lease. Your name was not inserted because you were an owner but because you were so persistent. I put your name into the document because I was told by my Pakeha that it was not a Lease but simply a document having no effect'.[197]

Ngati Pukeko were shut out of the survey by Patuheuheu, who did not feel that Ngati Pukeko had any rights over Waiohau and therefore no rights to be involved in the control of the survey. Ngati Pukeko were put off with a bribe by the surveyor and a pithy reassurance that they were included in the lease by Wi Patene, and ceased their opposition to the survey in the mistaken belief that any interests they claimed in Waiohau would be acknowledged by Wi Patene.

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[194] Opotiki NLC MB1 24 July 1878, p. 101
[195] Ibid., 24 July 1878, p. 99.
[196] Ibid., 26 July 1878, p. 103. Emphasis in original.
[197] Ibid., 29 July 1878, p. 108.

3.2.3: Native Land Court Procedural Failings

The Waiohau hearings demonstrate the failure of the Native Land Court proceedings to ensure the full and honest investigation of land title. The consequences of the missed subdivision hearing in 1886 were severe for the people of Waiohau. The Court clearly had no interest in ensuring the presence at Court of the non-sellers or indeed even of a majority of the owners or those who Burt claimed to have sold their shares to him. As commented on at the time in the *Auckland Star*, sending a letter addressed solely to Ngati Manawa and Patuheuheu and hoping it got to the appropriate people was a bit like sending a letter to Auckland addressed to the Aucklanders.[198] As in Kuhawaea (discussed in the following chapter) this was a case where the injustice and questionable legitimacy of the Native Land Court hearing was acknowledged at the time, but little was or could be done to rectify it. In Kuhawaea this was because the land was sold to a settler and thus could not be returned. In Waiohau a similar state existed. The tragedy of the situation in Waiohau was that even though the original sale was acknowledged to be illegal, because Burt had foreseen this and effectively laundered the sale through another person before the title came to him, his title was then protected by contemporary laws regarding the purchase of illegal property and the protection o the innocent second purchase. The fact that he had done this solely to take advantage of the loophole was acknowledged, but it seems that protection of the purchaser was upheld as more important than the protection of the many owners of Waiohau who had not wanted to sell.

The Crown also failed the people of Waiohau in a more direct way, through their often reluctant assistance and eventual abdication of authority and interest in the case. I believe that one of the reasons for the Government's abandonment of the Waiohau people was the view of Tuhoe and their hapu as troublesome, exemplified in their choice of lawyer, the same man who acted for the MP Hirini Taiwhanga. Taiwhanga was a thorn in the side of the Government because of his political stance on Maori autonomy. Tuhoe were warned that if they continued to use this lawyer they would jeopardise the goodwill of the Government who would withdraw their offer of assistance and leave Tuhoe to their own devices, which is exactly what happened. This is a definite failure of the Crown to protect the interests of Maori in the Native Land Court.

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[198] *Auckland Star*, 10 June 1905, p. 6, cited in Binney, Part II, p. 53.

The Waiohau partition hearing also demonstrates a tendency of the Native Land Court to award title to land to the most convenient party. For instance, Harry Burt had arranged a sale and the people he had bribed to appear as the owners were willing to sell. In this instance it was probably seen as far too time consuming and complicated to go through the efforts of ensuring attendance of other parties, especially since they had not been in attendance at several hearings that had therefore led to postponement after postponement. Instead of asking why this was and seeking to rectify it, Judge Clarke decided that this meant they were uninterested. Tuhoe were penalised for not appearing at a Court hearing they had not been aware was taking place.

Waiohau also highlights a failing in the Land Court procedure that is common in this period and this district. The application for a rehearing was sent to the Judge who made the first decision for his comments on whether or not he felt that there was good cause for an appeal. In Waiohau, the applications to have the 1878 hearing revisited were denied. Wi Patene claimed that the area of the block awarded to Ngati Pukeko contained dwellings and cultivations of Patuheuheu, that Ngati Pukeko should not have been awarded land in Waiohau, and he also inferred bias on the part of the Court, with a Native Land Court assessor, Mita Kaiwhakara, having allegedly established a relationship with Ngati Pukeko during the hearing.[199] Judge Halse was asked for his opinion and according to Arapere he noted that 'the case had already been carefully considered by the court and that he could see no reason for recommending a rehearing'.[200] Arapere further notes that several more applications for a rehearing were submitted by Tuhoe between the end of the hearing in July 1878 and July 1880, all of which were rejected by the Native Land Court. Judge Halse and Native Department officials 'simply reiterated the fact of the original title investigation'.[201]

The 1886 partition hearing of Waiohau was also contested, and as had happened eight years earlier, the applications for a rehearing were denied. The outcome of the 1886 partition hearing for Waiohau, heard by Judge Clarke, was that just under half of the block was awarded to two representatives of those who had allegedly sold their interests

[199] Arapere, p. 36.
[200] Ibid., p. 37.
[201] Ibid., p. 37.

to Burt. All that Clarke required as evidence of this was a list of sellers presented by Harry Burt containing 54 names, and his assurance that the title of the 7000 acre Waiohau 1B section should be awarded to two men of Ngati Manawa; Peraniko Ahuriri and Hira Te Mumuhu. Burt claimed that Ngati Manawa, named by him as the owners of Waiohau, had agreed to this. No objections were raised in Court as there were no Patuheuheu people present, and thus Judge Clarke ratified the arrangement.

Protests from the Patuheuheu owners who had not agreed to these arrangements were sent it immediately after the Court's decision was known. One petition came from the younger brother of Wi Patene, Ngahooro Tarahanga, and other owners told how they had not known there was a hearing 'and that they objected strongly that Burt had orchestrated the division, which had taken all their houses and cultivations at Te Houhi'.[202] One of the applications for a rehearing told how the owners had not had any part in the hearing – either in applying for it or even being aware it was taking place. They claimed that many shares had been obtained fraudulently and that the block itself contained their homes at Te Houhi.[203]

Judge Clarke, when applied to for his opinion, would not support a rehearing. As supporting an application for the decision to be appealed would mean that he acknowledged he had not carried out the appropriate Court mechanisms, it is not surprising that he did not. Clarke told the Chief Judge that at the September 11 hearing there had been 'a representative number of the tribe' present, and that these included both the sellers and those who were not selling. As Binney remarks, 'this statement was demonstrably proven to be false in the 1889 inquiry'.[204] There were only seven people at the hearing, including Burt himself, and no-one was there to represent the non-sellers.[205] This demonstrates a fundamental problem with the Court procedure for appeals. Canvassing the opinion of the Judge whose decision is being appealed against does not seem to be the best way to ensure that the best interests of the claimants are taken into account. It is certainly valid to request a response to the appeal, but it is not valid to use this response as a pivotal part in the decision on whether or not a request for a rehearing

[202] Binney, Part II, p. 54.
[203] Ibid., p. 55.
[204] Ibid., p. 55.

is granted. That is was seen as pivotal is shown not only in Waiohau, where the request for a rehearing was denied, but in Tuararangaia (where Ngati Awa's request for a rehearing was dismissed on the basis of the original Judge's comments on the application) and in Kuhawaea. It seems highly unlikely that any Judge would admit to having made a serious and possibly illegal mistake worthy of being appealed.

3.3: Conclusion

Tuhoe fared significantly better in the 1878 Land Court hearings than they had in 1875, although the ability of the Court to uphold and protect the rights of Maori landowners was still restricted by the personal attitudes of judges and the imposition of survey liens. After their initial experiences in Waimana and Waiohau in 1878, and having seen the outcome of neighbouring Heruiwi blocks 1-3, Tuhoe faced different obstacles in the early 1880s when they were placed in the position of counter-claimants.

[205] Ibid, p. 55.

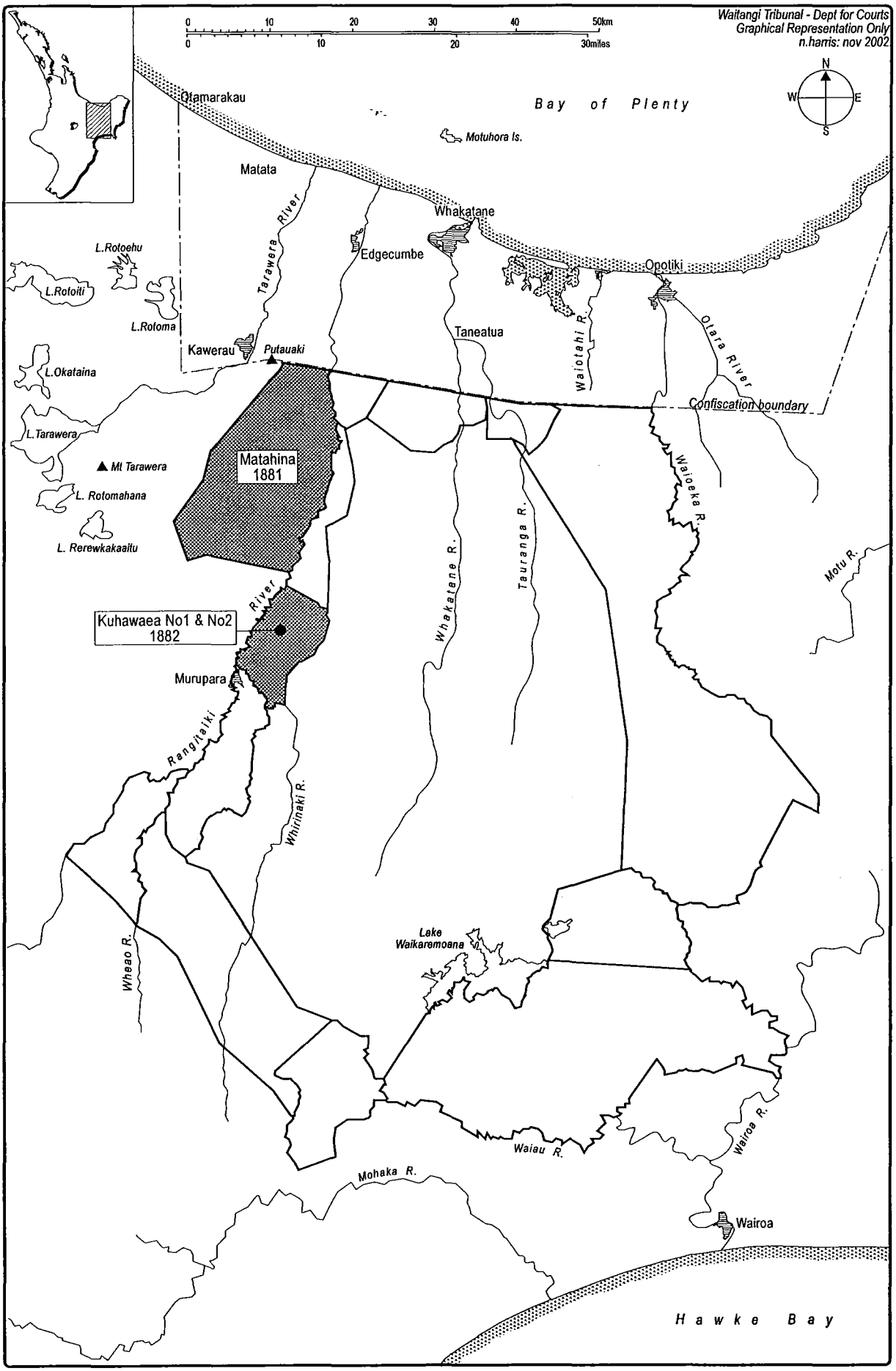

Figure 4 : The early 1880s - Matahina and Kuhawaea

Chapter Four: The early 1880s - Matahina and Kuhawaea

Matahina and Kuhawaea are both located in the northwest part of the Urewera district. The most significant shared experience or factor in these two blocks is the role that leasing played in bringing the land to the Native Land Court and then influencing the Judge's decision. Although the blocks were heard at Land Court hearings a year apart and with two different judges, the initial leasing negotiations in both areas were undertaken by the same Land Purchase Officers, Henry Mitchell and Charles Davis. A brief outline of the Native Land Court hearings for these blocks will be followed by a discussion of the issues raised by the leases and different attitudes of Ngati Manawa, Patuheuheu and other Tuhoe hapu towards leases and sales of land. This latter point is very significant given that in Matahina Tuhoe were forced into the Native Land Court as counter-claimants and in Kuhawaea they were not notified of the hearing until after it had happened. Ngati Manawa's main motivations for having the land titles investigated were the leases and sales they had arranged in this district.[206]

4.1 Outline of Native Land Court Hearings

4.1.1: Matahina

This block was heard at two different Native Land Court hearings, first in 1881 and then at a rehearing in 1884. At the first hearing the entire block was awarded to Ngati Awa, who claimed exclusive rights to the entire block, but at the rehearing very small sections were awarded to various other hapu, including Ngati Haka and Patuheuheu of Tuhoe. The counter-claimant hapu agreed with each other in Court on the varying boundaries of their claims, which were substantially larger than they were each awarded. In 1929, these small blocks awarded to Tuhoe hapu were largely eaten up by outstanding survey liens.

The Nga Maihi hapu of Ngati Awa submitted the application for the survey and the hearing of Matahina, and included Ngati Pukeko as claimants with them. The principal

[206] See Figure 4: The Early 1880s – Matahina and Kuhawaea

counter-claimants were Patuheuheu and Ngati Haka, Ngati Hamua and Ngati Rangitihi. All three groups claimed that they had occupied portions of the Matahina block since the time of their ancestors. Like Ngati Awa, they endeavoured to prove this occupation by detailing plantations, dwellings, place-names and stories associated with their hapu and the land.[207] Ngati Awa responded by saying that the contesting iwi had 'combined to rob us of our land'.[208] Philip Cleaver notes the 'uncertainty as to whether Tuhoe were appropriately represented at the initial title investigation and rehearing'[209] He suggests that because of both the strong opposition of Te Whitu Tekau to involvement in the Native Land Court, and also the inconvenience and expense of Native Land Court sittings, some Tuhoe may not have attended the Matahina hearing in 1881.[210] On the first day of hearings Ngati Manawa withdrew their claim, as did Te Urewera hapu (represented by Makarini Te Waru). The reason given was that the representatives had established that they held 'no interest in the block as shown on the plan'.[211] Ngati Mura withdrew their claim on the third day as they had come to an agreement with Ngati Awa.[212]

Mehaka Tokopounamu of Patuheuheu told the court that he had received money for his land prior to the court hearings (presumably from Mitchell and Davis).[213] He asserted, as did Wi Patene, that the land north of his claimed portion belonged to Ngati Hamua, and the land to the west of it belonged to Ngati Rangitihi. Mikaere Heretaunga, who presented the claim for Ngati Rangitihi, stated that the eastern border of the portion of the land they claimed was the border between Matahina proper and Pokohu proper – thus placing their land more in the neighbouring Pokohu block.[214] Cleaver states that 'it appears from Heretaunga's evidence that, during the course of the survey of the Matahina block, the boundaries of the portions subject to counter-claim were also defined'.[215] Heretaunga claimed that Rangitukehu had been present when the Rangitihi portion was

[207] Cleaver, Philip, 'Matahina Block', December 1999, p. 15
[208] Hone Matenga, Whakatane Native Land Court MB 1 16 September 1881, p. 142, cited in Cleaver, p. 15
[209] Cleaver, p. 11
[210] Ibid., p. 11
[211] Whakatane NLC MB 1, 11 October 1881, p. 267, cited in Cleaver, p. 25
[212] Cleaver, p. 25
[213] Ibid. p. 26
[214] Ibid., p. 28
[215] Ibid., p. 30

being defined and agreed to it. It is unclear whether Heretaunga believed that the boundaries of the other counter-claimants were also defined at this time, or just those of Ngati Rangitihi. The occupation of Matahina by each counter-claimant group was corroborated by the testimonies of other counter-claimants.

Te Whaiti Paora presented the case for Ngati Hamua. They claimed a portion of land running from the Waikowhewhe River along the eastern boundary of the Matahina block up to the north and bounded on the west by the Te Teko-Galatea Road. Te Whaiti told the Court that his people's occupation had been interrupted when the government removed them from their land and placed them at Te Putere, following their support of Te Kooti and the Government war against him. Since then they had not returned to Otipa, but lived at Kaitangata.[216] When cross-examined by Penetito, Te Whaiti denied that his section of Ngati Hamua had ever been defeated or displaced by Ngati Awa, stating that it was the Warahoe whom Ngati Awa had 'devoured'.[217]

Ngati Hinewai claimed a portion of land in the west of Matahina, bordering on the land claimed by Ngati Haka and Patuheuheu. Their claim rested on ancestry, and Te Morihi stated that his ancestors had had many lands so sometimes lived on Matahina and sometimes lived elsewhere.[218]

Hamiora Tumutara of Ngati Awa told the Court that none of the counter-claimants possessed any plantations or residences in the Matahina block. However, Ngati Awa were said to possess numerous plantations, houses, and three saw pits. According to him, the reason there were no plantations of Ngati Awa's by the Waikowhewhe, Pahekeheke, or Pokairoa streams was because the land was very poor in those areas. He likewise asserted that Ngati Awa had sheep over the whole of Matahina. Under cross-examination he subsequently acknowledged that Mehaka Tokopounamu had residences at Waikowhewhe, Pokairoa, and Te Raepohatu, however he said that they were very recent residences. According to Hamiora, Rangitukehu had gone to Patuheuheu to tell them that they had no business on the land, and that the only reason they had not pushed them off it before this was that they were leaving it to the Native Land Court to determine the

[216] Ibid., p. 32
[217] Ibid., p. 33
[218] Ibid., p. 34

title.[219] Hamiora responded to cross-examination by Te Whaiti Paora by saying that as far as he was concerned the Ngati Hamua who lived on a portion of the Matahina block were doing so under Ngati Awa's mana; Nga Maihi were the owners of the land on which Hamua lived.[220] Rangitukehu himself further emphasised this point. He stated that he had not invited Warahoe and Hamua back to the land; they had come and asked him if they were allowed to do so.[221] Rangitukehu argued that Patuheuheu had no valid claim to land in Matahina because being of the Urewera tribe they had their possessions at 'Maungapohatu and Ruatahuna'.[222] Ngati Awa had a vested interest in perpetuating the idea that Tuhoe's proper place was in the central Urewera, not in the outlying lands like Matahina.

Judge Brookfield did not deliver his judgement immediately, he held off until he had heard the claims for the Pokohu and Putauaki blocks – both situated very near to Matahina and Pokohu including some of the same claimants. The judgement he delivered on 11 October found in favour of Ngati Awa. Specifically Judge Brookfield said:

> Ngati Awa have proved their title of themselves and Nga Maihi to the land shown the plan and as claimed by them, that Ngati Hamua and Ngati Haka have failed to show any title to the portions claimed by them as hapus, but that those members of those hapus who have become incorporated with Ngati Awa have an interest in that portion of the block which lies between Otipa on the north and Raepohatu on the south the Galatea road on the west and Rangitaiki river on the East, that Ngati Tangitihi and Ngati Hinewai have failed in supporting their claims.[223]

He did not give any detailed reference to the evidence in support of his judgement, but considered that it was clear that Ngati Hamua and Patuheuheu had both been driven away from the land many years ago. He noted that they had 'no doubt...originally occupied' the land they claimed, but that they had 'never since retaken it or become repossessed of

[219] Ibid., pp 38-9
[220] Ibid., p. 40
[221] Ibid., p. 43
[222] Ibid., p. 44
[223] Whakatane NLC MB 1, 11 October 1881, p. 269, cited in Cleaver, p. 45

it in any way except that they have been permitted of late years to have a few cultivations on the banks of the Rangitaiki River'.[224]

There were several objections to this judgement, resulting in calls for a rehearing. Mehaka Tokopounamu and others of Patuheuheu lodged an appeal on 13 October 1881. In February 1882 the Chief Judge decided that the title was not to be reheard. Shortly afterwards, arrangements began to be made to cut out land in satisfaction of moneys already advanced to Ngati Awa for Matahina. On July 1882, Ihaka and 19 others of Ngati Awa wrote to the Native Minister stating that they wanted to return the money that had been advanced as the government's interest in Matahina.[225] A month later, Rangitukehu and others wrote to the Native Minister, again asking to return the money paid for interests in Putauaki, Pokohu, and Matahina to the Government. The Government replied that they could not accept any refunds. In September, Gill met with Ngati Awa to discuss this, among other situations, and stated that they were reconsidering the request for a rehearing and until the question of that had been resolved they could not decide any other matters regarding the land such as any refunds of government interests.[226] Several months later, in February 1883, Rangitukehu and Timi Waata Rimini wrote to Gill asking why there was the delay in settling Matahina as the Chief Judge had dismissed the application for a rehearing 'long ago'.[227]

Cleaver notes that by September 1882, it had become clear that there had been a 'procedural error on the part of the Court assessor'.[228] The Under Secretary of the Native Department, T W Lewis, noted that 'it appears pretty clear that injustice has been done to some natives shut out of the block when previously before the court'. He advised Gill that the Premier wanted the Crown's application to have its interests cut out of the Matahina block to be adjourned until this matter was cleared up.[229]

Ngati Awa protested that there had been nothing to justify a rehearing in the actions of the assessor. Apparently the assessor had not seen some of the landmarks delineating the

[224] Whakatane NLC MB 1, 11 October 1881, p. 268, cited in Cleaver, p. 45
[225] Cleaver, p. 47
[226] Ibid., p. 48
[227] Rimini and Rangitukehu to Gill, February 1883, MA-MLP 1 1883/153, found in MA-MLP 1 1888/50, cited in Cleaver, p. 48
[228] Cleaver, p. 49

land of Ngati Haka and that was seen as a possible reason for their exclusion from the ownership of Matahina. Ngati Awa stated that the assessor had come with them to see land marks of the Pokohu block, not Matahina, and that the assessor had not needed to examine the landmarks of Ngati Haka as 'the Court gave a clear judgement in respect of Matahina, and the claims of Ngatihaka were disallowed because of the superior claim of Ngatiawa through conquest because of which there was no necessity for the Assessor going to examine the land-marks'[230] Cleaver notes that it appears to be accurate that the assessor visited only the Pokohu block and not the Matahina block.[231]

Gardiner and Cleaver both suggest that during this period, an arrangement had been reached between Patuheuheu and Ngati Awa regarding Patuheuheu's unsuccessful claim in 1881.[232] Wi Patene and three others of Patuheuheu wrote to the Native Minister on 2 August 1883 stating that they now did not require a rehearing of the title for Matahina as their wish 'has been complied with regarding Waikowhewhe the portion of that block which they considered had been wrongly awarded by the Native Land Court'.[233] Gill stated that he still thought that a rehearing should take place, even though Patuheuheu had withdrawn their request for this, because of the actions of the assessor.[234] Pokohu was to be reheard as well, as Matahina had originally been part of Pokohu and it was seen that any judgement in Matahina would have an influence on the judgement for Pokohu.[235]

The rehearing was presided over by Judges Puckey and Gilbert Mair, who had fought alongside Ngati Manawa in recent conflicts. It should be noted that the size of the block as stated in Court was different from that presented in the first hearing – an area north of the Ngatamawahine Stream, included in the original plan, had been sold as part of Kaingaroa 1 to the Government, as mentioned in the original hearing. The remaining area of the Matahina block was 78,860 acres. There do not appear to have been any particular complaints about this, and in the initial hearing of Matahina, Penetito Hawera,

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[229] Lewis to Gill, 20 September 1882, MA-MLP 1 1888/50, cited in Cleaver, p. 49
[230] Rimini and Rangitukehu to Gill, February 1883, MA-MLP 1 1883/153, found in MA-MLP 1 1888/50, cited in Cleaver, p. 49
[231] Cleaver, p. 50
[232] Cleaver, p. 50, Gardiner, p. 10
[233] Patene and others to Bryce, 2 August 1883, MA-MLP 1 1883/212, cited in Cleaver, p. 50 and Jeremy Gardiner, 'The Matahina Block and the Kaingaroa Forest', November 1995, (Wai 46 L11) Attachment 9
[234] Cleaver, p. 50
[235] Ibid., p. 50

who conducted the case for Ngati Awa, informed the court that a section of land along the southern boundary had been sold to the Government by Ngati Manawa. Cleaver notes that Hawera 'did not indicate that he considered this transaction to be unjust, or that he hoped to have the land returned to Ngati Awa if their claim to the Matahina block was proved.'[236]

There were six counter-claimants to the claim presented by Ngati Awa. Mehaka Tokopounamu represented Ngati Haka, Ngati Manawa, and a section of Ngati Hamua. Makarini Te Waru represented Ngati Rakei, Houkotuku represented a different section of Ngati Hamua, Ngati Rangitihi was represented by Anaha Te Rahui, and finally there were two individual claims, one presented by Hakaraia and the other by Ema Wi Hapi (represented by Wi Hapi).[237] The claims of Ngati Rakei, Ngati Manawa, and that presented by Wi Hapi were new claims, and Ngati Hinewai did not present a counter claim – although Cleaver notes they may have been included under the Ngati Rangitihi claim.

Aperaniko of Patuheuheu told the court that the boundary between Ngati Rangitihi and Patuheuheu had been 'mutually agreed upon'.[238] This was supported by testimony by Te Wharerau of Ngati Rangitihi.[239] Te Wharerau also stated that a portion of the land should have been included in the Kaingaroa block to the south, but had not been because Wi Patene had received advance payment for it from Davis and Mitchell.[240] Although the general Ngati Awa line was that Ngati Haka and Patuheuheu had only occupied Matahina in recent times following their return to the area from Putere in the 1870s, some Ngati Awa witnesses did acknowledge that Patuheuheu had been resident in the southern part of the block. Mehaka Tokopounamu cross-examined Hire Weteri of Ngati Awa, who stated: 'We do not claim any residence on the south part of this Block, the soil is very poor and if your crops have succeeded there, it has only been owing to your industry'.[241]

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[236] Ibid., p. 23
[237] Ibid., p. 52
[238] Ibid., p. 54
[239] Ibid., p. 57
[240] Ibid., p. 55
[241] Whakatane NLC MB2, 13 February 1884, p. 262.

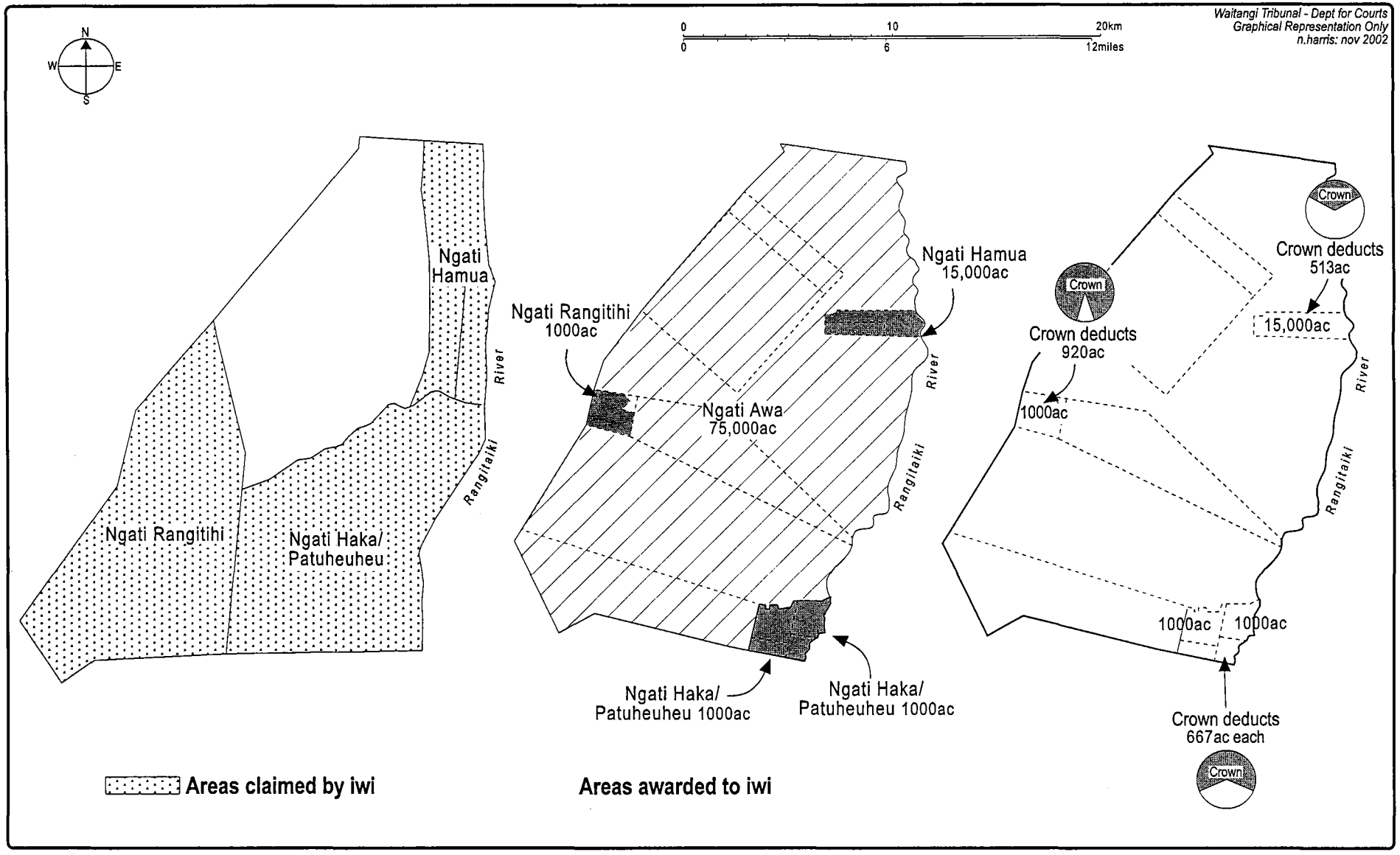
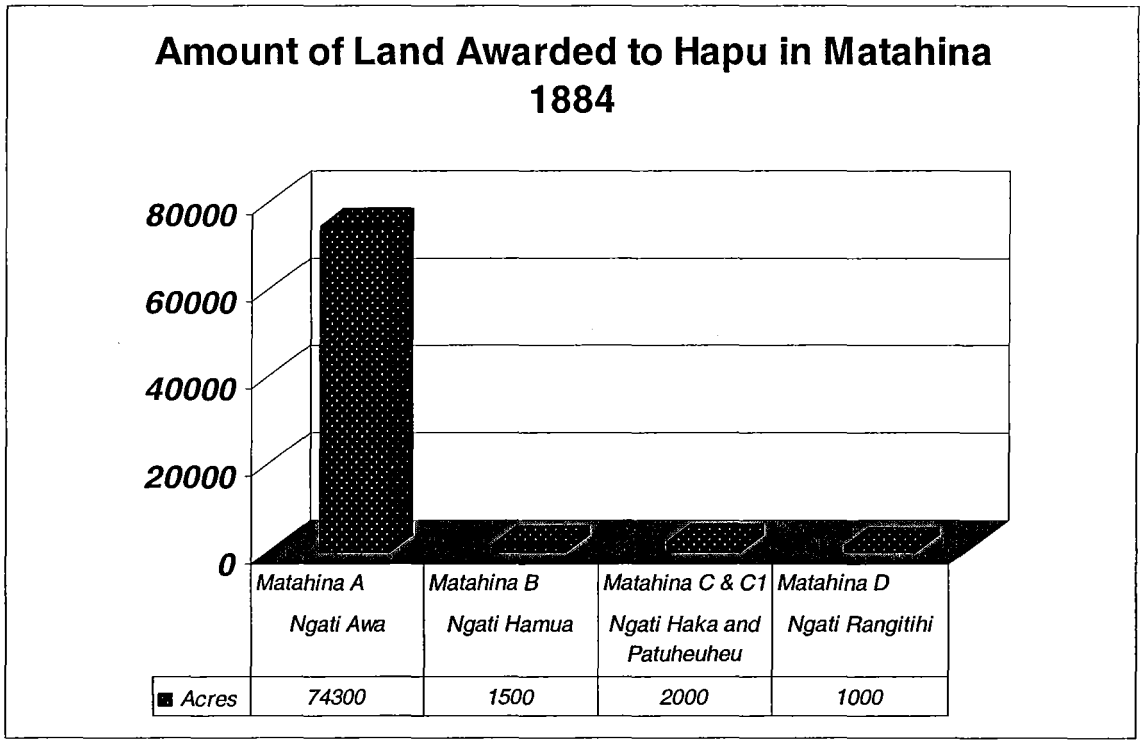


Figure 5 : Matahina

The Court decided that Ngati Awa had presented evidence 'which was unshaken in Cross examination', but conceded that the evidence given by the counter-claimants as to occupation did seem valid.[242] Consequently the vast majority of the block was awarded to Ngati Awa, with small sections awarded to the counter-claimant hapu. The amount awarded to each group is shown in Table 4.1.1a

Table 4.1.1a: Areas Awarded to Hapu in Matahina Rehearing 1884.



Cleaver remarks that the award of small sections to the counter claimants 'appears to have been a concession acknowledging that the evidence was conflicting, and that it was impossible to confidently establish a definitive account of the block's history.'[243] The court believed that the claims of Ngati Haka, Patuheuheu, and Ngati Rangitihi were to some extent based on occupation but they were uncertain as to whether this occupation was based on ancestral rights.[244]

Although Ngati Haka and Patuheuheu had finally had their rights acknowledged, it should be noted that the sections awarded were substantially smaller than those they had

[242] Whakatane NLC MB2, 19 February 1884, p. 266, cited in Cleaver, p. 61
[243] Cleaver, p. 61

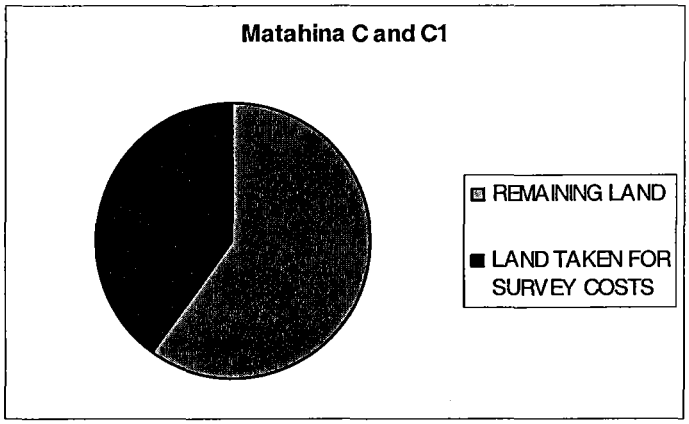
claimed and had affirmed by the other counter claimants.[245] In 1929, Patuheuheu lost most of the small amount of land they were awarded to the Government in satisfaction of survey costs.

Table 4.1.1b: Land Taken from Matahina C and Matahina C1 in Satisfaction of Survey Costs

Block	Original Acreage	Land taken for Survey Costs	Land Remaining
Matahina C	1000	667	333
Matahina C1	1000	667	333
Total:	2000	1334	666

This is also shown graphically in the following pie chart:

Chart 4.1.1b: Land Taken for Survey Costs in Matahina C and C1



In 1937 the remaining land in these blocks were placed into the Ruatoki Development Scheme at the owners' request. Cleaver notes that it does not appear that the lands were ever developed while in this scheme and they were released in 1959. In 1972 the blocks were amalgamated in order to form Matahina E which was vested in the Tuhoe Waikaremoana Trust Board. Ten years later Matahina E was exchanged with an adjacent area of land in a deal with the Bay of Plenty Electric Power Board, creating Matahina F.

[244] Ibid., p. 61
[245] See Figure 5 Matahina

This block was also vested with the Trust Board, and in 1987 it was leased for an 85-year term to Matahina F Forest Limited.[246]

4.1.2: Kuhawaea No.1 and No. 2

Kuhawaea is a block in the Rangitaiki River Valley and sits adjacent to Heruiwi and Whirinaki (see chapter five). Unfortunately Tuhoe never had the chance to present their claim to the land in the Native Land Court. Although it was acknowledged many years later that their application for a rehearing should have been accepted, by then the land had been sold and they had no possible redress.

Kuhawaea came before Judge O'Brien of the Native Land Court on 26 September 1882. The 22,309 acre block was claimed by Ngati Manawa, and the Counter Claimants who appeared were from Ngati Apa, Ngati Rangitihi and Ngati Hape. Tuhoe were not at the Native Land Court hearing, and they later sent in an application for a rehearing stating that they had not been notified about the hearing. The Kahiti notice they had been sent had related to land in which they were not interested and did not refer to Kuhawaea.[247] Patuheuheu did not put in a claim in the original hearing because they had been assured by Ngati Manawa that they would be included on the ownership lists under Ngati Manawa.[248] Although several individuals had their names entered in the lists, Patuheuheu was not acknowledged or mentioned in the hearings.

Judge O'Brien dismissed the claims of Ngati Hape and awarded Kuhawaea to Ngati Manawa and Ngati Apa, or to be exact to those who could whakapapa from the following ancestors: 'Kauae, Hui, Tokowaru, Pikari, Koro, Mahunga, Te Au and Wairuhirangi.'[249] As Bright notes, the Native Land Court hearing had really focused on the rights or otherwise of Ngati Hape to the land, as Ngati Manawa and Ngati Apa had admitted each other's claims.[250]

Kuhawaea was partitioned into two blocks, and Kuhawaea No. 1, the larger block in the north consisting of 21749 acres, was awarded to 92 owners, and the smaller southern No.

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[246] Ibid., p. 137.
[247] Bright, p. 51
[248] Ibid., p. 59
[249] Whakatane NLC MB 2, 28 September 1882, p. 35.
[250] Bright, p. 50

2 block of 560 acres, was awarded to 33 people.[251] The ownership lists were presented by Ngati Manawa and Ngati Apa on 19 October 1882, and received no objections.[252] There had been two requests for adjournments as the lists were not ready, one on 29 September and one on 2 October.[253] It may be possible that the delay was a result of discussions regarding the insertion of names of Patuheuheu members. Included in the list of owners for Kuhawaea 1 were Wi Patene and Mehaka Tokopounamu of Patuheuheu, as well as Te Whaiti Paora, Peraniko Te Hura, and Rewi Rangiamio.[254] The partitioning allowed for a large area to become available for sale while retaining some land for occupation.[255]

Te Karaka Wakaunua and others designated as Te Urewera hapu requested a rehearing for Kuhawaea on 7 November 1882. The wording of the request was for a 'rehearing for our land, Kuhawaea, which has been awarded to the Ngati Manawa by the Court'.[256] Referring to Kuhawaea as 'permanent land of ours', Wakaunua said that Tuhoe had not received the Kahiti advertising the hearing of this block.[257] The official response by W. Puckey was that one of the applicants, Makarini Te Waru, had been at the Court sitting (or at least in Whakatane at the time), as had other members of Tuhoe, but they had not objected to the claim and had not presented their own claim.[258] He further stated that Kuhawaea had gone before the court in October and given that the notice was published in August, they had had plenty of time to attend and present a counter claim.[259] Judge O'Brien agreed with this argument and the application for rehearing was dismissed.[260]

Another application for a rehearing was submitted by Huta Tangihia and others on 21 November 1882. Their application was essentially a restatement of the claim that they had presented at the hearing. Judge O'Brien stated that Tangihia's evidence had been inconsistent, and the applicants had not proved that the judgement was 'manifestly

[251] Whakatane NLC MB 2, 20 October 1882, pp. 148-50.
[252] Ibid., 19 October 1882, p. 144.
[253] Ibid., 20 October 1882, pp. 148-50
[254] Ibid., p. 36, and p. 37.
[255] Bright, p. 51
[256] cited in Bright, p. 51
[257] Bright, p. 51
[258] Ibid., p. 51
[259] Ibid., pp. 51-2
[260] Ibid., p. 52

wrong', which was required before a rehearing could be granted.[261] This application was also dismissed and the judgement for Kuhawaea stood. Kuhawaea 1 was eventually sold to Troutbeck in September 1884, after his lease of 15 years. Binney argues that the sale 'was orchestrated by one tribal group, Ngati Manawa. By selling, these people shut out other Urewera claimants from this block. By selling, they also severed it from the Rohe Potae'.[262] After some expressions of concern that Kuhawaea 2 had not been made inalienable and should be, it remained in Maori hands for 'many years', before finally being sold to Troutbeck in the early 20th Century.[263] Tuhoe did not relinquish what they saw as their rights as owners of Kuhawaea. They presented evidence concerning these rights in the Whirinaki hearings in 1890 and included Kuhawaea in the boundaries of their land in 1889.

Kuhawaea 2 was partitioned in 1915 to provide a small section for non-sellers and three years later the 522 acres of Kuhawaea 2B was sold to the Troutbecks. In 1923 the remainder of Kuhawaea was sold when the Troutbecks purchased the 70 acres of Kuhawaea 2A. In 1932 the Crown acquired all of Kuhawaea, now called the Galatea Estate. After Crown purchase, the rights of Ngati Manawa to 'move across Kuhawaea to get to food resources....were restricted'.[264]

4.2: Issues

There are several issues that are apparent from an examination of Tuhoe's experience in these two blocks. This section will discuss these in turn, starting with the procedural failings of the Native Land Court, followed by the role of Land Purchase agents in the title investigation of these blocks, and finally the impact of surveys and their related costs on the people of these areas.

4.2.1: Procedural Failings of the Native Land Court

A major issue arising from Tuhoe's experience in Kuhawaea is the lack of safeguards in the Native Land Court process that would ensure that those with any possible interests in

[261] Ibid., p. 52
[262] Binney, Urewera Overview Part II, p.35.
[263] Bright, pp. 53-4
[264] Ibid., p. 72

a section of land would be kept informed about any hearings taking place. The rehearing process is also shown to be lacking as despite having strong grounds for an appeal, Tuhoe were denied a chance to have their interests in Kuhawaea determined in Court. The dissatisfaction Tuhoe felt regarding the unfairness of these Court proceedings made itself heard in continued protests and calls for justice. It is significant that the people awarded ownership of Kuhawaea, Ngati Manawa, had fought on the side of the Government in recent conflicts, and had been involved in leasing land in this area to Gilbert Mair and Hutton Troutbeck, and had also participated in arrangements undertaken by Wilson on behalf of the Government. It may have been very convenient for the Native Land Court to claim that the appearance of Makarini Te Waru at the hearing constituted awareness by other Tuhoe of the claim. As Nicola Bright has commented:

> The 1870s and 1880s witnessed some competition between hapu of the Rangitaiki Valley to offer leases to settlers and to Crown land purchase agents. The political divide between Ngati Manawa and Tuhoe over the opening up of the land also played an important part in the history of this case.[265]

In Kuhawaea, Tuhoe applied for a rehearing directly after the case had been heard on the grounds that they had not received notification of the hearing and that they believed they had rights there that should be heard. The judge who heard Kuhawaea at the 1882 hearing, Judge O'Brien, when asked for his opinion on whether there were grounds for the case being heard again, agreed with W. Puckey that Tuhoe had had plenty of time from the notification in the gazette in August and the October hearing to place a counter claim. The other objection to the application for a rehearing was that Makarini Te Waru and other members of Tuhoe had been in Whakatane at that time and probably at the Court hearing and they had raised no objection. This argument does not really take into account the different hapu rights and interests in land. As Nicola Bright states:

> Tuhoe did not acknowledge the mana of the Court, especially within Te Urewera, and this may have been a reason why Te Makarini Te Waru did not address the Court in Whakatane. However, some Tuhoe must have felt compelled to defend their interests in Kuhawaea and acknowledged the Court's jurisdiction by asking for a rehearing. It is possible that those Tuhoe interested in Kuhawaea were not able to attend the hearing, in which case those who did attend naturally would

[265] Ibid., p. 4

> not have put up a case. There was no investigation of their claim, and therefore no opportunity to determine whether Tuhoe did have a case.[266]

This is a significant issue. The implication of Bright's argument is that Tuhoe's isolationist stance may have cost them in relation to the Native Land Court, especially given the attitude of Government officials that it was effectively up to Tuhoe to find out about and organise a counter claim to a hearing.

In 1898 the Native Affairs Committee acknowledged the injustice of refusing to allow Tuhoe a rehearing to have their claims in this land heard. Tuhoe had continued to protest the 1882 judgement and the decision not to hold a rehearing, and Wi Patene and 45 others of Patuheuheu submitted a petition to the Native Affairs Committee in 1897; it was not heard until 1898. The petition asked for compensation for the illegal dismissal of their application for rehearing. The claimants stated that Patuheuheu had not made a separate claim to Kuhawaea at the Native Land Court hearing because of an agreement they had come to with Ngati Manawa, that Ngati Manawa would include the whole of Patuheuheu on the ownership lists. In the event, only two members of Patuheuheu made it on to the lists – Mehaka Tokopounamu, and Wi Patene. The chief judge of the Native Land Court, G.B. Davy, stated in an opinion presented to the Native Affairs Committee, that the application had indeed been illegally dismissed by C.J. Macdonald. It was illegal in that the Native Land Court had failed to inquire into the matter, but no remedy could be offered as the land had already been sold. Davy noted: 'it does not follow that the applicants had a good case, but at all events they were entitled to an inquiry before the application was dismissed.'[267] The petition was referred to the Government by the Native Affairs Committee to find out if the complaint was valid, and it was in turn passed on to the Urewera Commission to deal with.[268] The petition was subsequently heard by the Urewera Commission in March 1899.

The commission heard evidence from all parties, and Mehaka Tokopounamu (who was one of the commissioners) spoke for Patuheuheu. Unfortunately, Bright notes that a search of 'the Maori Affairs, Maori Land Purchase Department, and Justice Department

[266] Ibid., p. 52
[267] cited in Bright, p. 59
[268] Bright, p. 59

correspondence indexes, register, and files and the Wellington National Archives, and of files at the Alexander Turnbull library' has failed to turn up the Commission's final report on the petition.[269] However, as she further notes, it is improbable that a decision in favour of Patuheuheu would have had practical implications in ownership rights, as the land had already been sold to Troutbeck fifteen years earlier. Regarding the matter of whether Patuheuheu ever received the compensation that they asked for, Bright states that she has found 'no suggestion that compensation was granted'.[270]

Binney argues that Ngati Haka and Patuheuheu, Tuhoe, and Ngati Whare, 'those who were known to be opposed to the sale of the block had been effectively excluded.'[271] The arrangements Ngati Manawa had made with Troutbeck and the Government prior to the land going to the Native Land Court certainly appear to have had an influence on the decision of the Native Land Court both that Ngati Manawa were the correct owners and also to disallow a rehearing for the claims of Tuhoe 'rebels' and non-sellers to be heard. If they had had a fair hearing, they still might have not been awarded ownership, but they never had a chance even to state their claim to the land. The Court bureaucracy failed to ensure that all those who should have been notified had in fact been notified. This was a mistake that in these times of inconsistent communication systems was perhaps not uncommon. What was unjust was the refusal to rectify this mistake by allowing a rehearing so that Tuhoe's claims to Kuhawaea could be investigated properly.

4.2.2: Land Purchase Officers' Activities and Impact

The Land Purchase Officers for this area, Henry Mitchell and Charles Davis had been accused in several blocks of recognizing claims to land of people who had no rights. The people of Te Arawa sent a petition to the Native Affairs Select committee in 1874, stating that Crown agents 'in their eagerness to acquire lands...are negotiating with and paying money to men of inferior rank, despite the protests and remonstrances of the principal chiefs'.[272] Cleaver states that Davis was sacked in 1878 for misappropriation of

[269] Ibid., p. 60
[270] Ibid., p. 72.
[271] Binney, Part II, p. 43
[272] Report of the Select Committee on Native Affairs, 25 August 1874, *AJHR*, 1874, I-3, p.2, cited in D Williams, p. 49.

Government monies, and Mitchell was dismissed in 1880 in restructuring processes.[273] According to Alan Ward, in 1875 Davis 'recorded his satisfaction at reducing a 100 acre reserve to 5 acres to prevent the Maori owners from privately letting an important mineral springs area'. Despite Davis' 'scholarly interest in Maori and periodic concern for them', he believed that the acquiring of land by the Crown was to be greatly desired and was prepared to do this at the expense of Maori interests. As Ward states, Davis was a 'contradictory figure ...frequently supportive of Maori interests but also using them to advance his own'.[274]

Land Purchase Officers frequently used leasing as a means to secure rights to the land, with advancement of cash for land both leased and under negotiation; these two were no exception. David Williams cites correspondence from Mitchell and Davis which was read in Parliament and is worth quoting here for the light it sheds on their attitudes to their work.

> It has been our practice from the first to ignore the *mana*, because it professes to be perfectly distinct from the ownership of the soil, and moreover the assumed *mana* by these dominant tribes is repudiated by the genuine owners of the soil. It does seem strange indeed that in these times, when Maori rule is almost annihilated by European usages, that any chiefs or tribes in the Arawa country should be found to assert their *mana* and to base their pretensions on it.[275]

It was their practice to pay 'deposits to sections of the recognised owners thereby binding the Tribes and shutting out private speculators'.[276] In 1873, Mitchell and Davis entered into negotiations with Rangitukehu for the Pokohu block (later to be Matahina – after 1881 Pokohu was the name given to the block of land directly to the west of Matahina block). Rangitukehu later reduced his offer as one Lieutenant Bluett was offering to rent a portion of the block at higher rates than the Government. On 1 December, Davis and Mitchell contacted Wi Patene of Ngati Haka and made an advance of £50 for the Pokohu

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[273] Cleaver, p. 18

[274] Alan Ward, 'Davis, Charles Oliver Bond 1817/1818? - 1887'. *Dictionary of New Zealand Biography Volume One (1769-1869),* 1990, Wellington.

[275] Davis and Mitchell to Native Under-Secretary, 24 April 1876, *AJHR*, 1876, G-5, p. 3, italics in original, cited in Williams, pp. 49-50.

[276] Davis and Mitchell to Native Minister, 30 October 1874, MA-MLP 1/1882/107, cited in Williams, p. 13.

block, and then went to Te Putere to collect other Ngati Haka signatures.[277] Rose states: 'They noted that since Tukehu [Rangitukehu] had dealt with Lieutenant Bluett they had decided to ignore his claim and deal with other hapu for portions of the block that they claimed. Davis and Mitchell had now decided that "Wi Patene and party with Ngati Hoko [Haka] are acknowledged to be the real owners of the block".'[278] Mitchell and Davis also advanced £50 to a hapu called Ngati Uruhina, who Cleaver notes may be associated with Tuhoe.[279] Bluett relinquished his claims in December 1873 (after intervention by Donald McLean), leaving Maori no other option but to lease to the Government. This was a tactic used in Kuhawaea as well, when private negotiations by Gilbert Mair interfered with Government negotiations.

In December 1876 Mitchell held meetings with Ngati Rangitihi about their land in the Pokohu block (among other blocks), which they wished to have surveyed and then leased. Rangitukehu protested about these meetings and denied that Ngati Rangitihi had any claim over Matahina land. Previously, in May of that year, a hui had been held at Te Umuhika, attended by about 300 people from different iwi, to discuss the ownership of the Pokohu block. Cleaver records that at this hui, Mitchell and Davis 'appointed a jury of 10 chiefs and assessors to consider the evidence that was presented. It was judged by this jury that the money paid by Mitchell and Davis had in fact been given to parties who had a legitimate claim to the land'.[280] Rose goes into greater detail, drawing on the report that Mitchell and Davis filed with the Government. Ownership was not the only issue discussed at this meeting – this committee of chiefs also discussed the issues of roads and surveys as well as leases and mills. Mitchell and Davis had stated that the hui at Te Umuhika was held to settle 'the long pending dispute regarding the ownership of certain lands in the Pokohu Block, at Rangitaiki, leased to us previously'.[281] Three hundred people gathered to discuss and settle this dispute, from Ngati Awa, Ngati Pukeko, Te Patuwai, Te Urewera and Te Arawa. Notably though, Mitchell and Davis were the ones who selected ten of the chiefs and assessors present to act as a jury, under and with what

[277] K Rose, 'The Bait and the Hook: Crown Purchasing in Taupo and the Central Bay of Plenty in the 1870s', CFRT overview report, July 1997, p. 60, and Cleaver, p. 20.
[278] Rose, p. 60
[279] Cleaver, p. 20
[280] Ibid., p. 20
[281] *AJHR* 1876, cited in Rose p. 156.

authority it is not clear. Apparently the land purchase officers did not take part in the discussion, and forbore from offering their opinion until the jury's decision had been announced.[282]

According to Mitchell and Davis, 'the views held by the jury of ten coincided precisely with those held by ourselves' and we found that the opinions held by ourselves and the jurymen on the disputed pointes [sic] were indorsed [sic] by the large audience generally'.[283] They made the point that this mode of investigation had received the approval of the iwi in the Bay of Plenty, 'the leading chiefs having expressed their entire confidence in the course adopted by us in this respect'. Following as it did a type of runanga protocol it is not surprising that Maori approved of a Maori committee deciding on land matters. Wi Patene stated in his evidence at the Native Land Court hearing in 1881 that the land in question had been adjudicated on by a Commissioner's Court at Te Umuhika, and that his right to the land had been admitted by Penetito before this Court.[284]

Payments for the land continued throughout 1879, following an announcement in April 1878 that the Government had entered into negotiations for the block. Ngati Awa signed a deed of purchase on 16 October 1879 and a deposit of £150 was paid. A reserve was to be created in the forest for the tribe.

In April 1881, Resident Magistrate Brabant noted that Rangitukehu had offered to sell 20,000 acres of what was still then known as the Pokohu block, as payment for survey costs and advances. He also noted that one third of the land was forest and the other was fern and scrub, and some of the land to be very good and suitable for agriculture. A note was made by Gill of the Survey Department that £782 had been spent on the Pokohu block lease, and he recommended that either the money be returned or land to the equivalent value be taken in lieu. He also recommended that, after they had either the land or the money, the lease should be cancelled.[285] In August 1881, a month before the land went to hearing, Gilbert Mair told Brabant that the upcoming court hearing would be

[282] Rose, p. 156
[283] cited in Rose, p. 156
[284] cited in Cleaver, p. 26
[285] Cleaver, p. 21

a good opportunity to complete many outstanding transactions, and noted that in the case of Pokohu, 'the natives are willing to make over to Govt a large portion of the block adjoining Kaingaroa No 1 in payment of advances and survey charges provided a further payment is made them.'[286] That the Land Purchase Officers believed that there would be no question of the owners being other than the people they had given money to is revealed in a telegraph from Gill to Brabant on 22 August 1881. In this he requested that Gilbert Mair be instructed to take from the owners validated by the court, land equivalent in value to the amount of money already advanced.[287]

Originally, leasing negotiations were to have been begun in Kuhawaea by Davis and Mitchell, but in December 1873, they were instructed to leave this area to the attentions of J.A. Wilson (who was the Native Land Court judge for Waipaoa in 1889).[288] In this area there were three possible groups of owners who made their own arrangements over leasing with both private and government agents.[289] Gilbert Mair, who had been at Galatea in the wars, began leasing part of Kuhawaea in 1873. He was negotiating with Ngati Manawa at Kaingaroa, but there were numerous objections to the lease by Te Whitu Tekau. Donald McLean wrote to Mair in November 1873, saying:

> I am given to understand that you are stocking land leased from Natives, in defiance of opposition offered by Urewera to your doing so, and I must have an immediate explanation of such conduct, likely from what I hear, to create serious difficulties.[290]

Mair replied that he had been invited by Ngati Manawa to undertake this lease, and while he did not believe that Tuhoe had any claim to Kuhawaea he had been careful in his dealings with Ngati Manawa so as not to create a grievance between the iwi. He had in fact first begun negotiations for the land back in 1866, and in 1873 he concluded the arrangements and put cattle on the land. A total sum of £150 worth of money and goods had been advanced to Ngati Manawa by Mair and his brother between 1866 and 1873.[291] After Mair had agreed to pay £200 per annum for four years for an area of roughly 27,000 acres in Kuhawaea, and after he had purchased cattle, he discovered that a settler

[286] cited in Cleaver, p. 22
[287] Cleaver, p. 22
[288] Bright, p. 35
[289] Ibid., p. 36
[290] cited in Bright, p. 36

named Hutton Troutbeck had also leased the same land from some other Ngati Manawa at a much higher rate of £300 for the first year and £400 per year for the following six years. Bright notes that Troutbeck had probably been leasing this land in the north of Kuhawaea from as early as 1869 and he may have been accepted so easily by Ngati Manawa as he had married into the iwi.[292] Bright notes that:

> Te Whitu Tekau opposed Mair's lease of Kuhawaea, and their opposition raised the question of whether Tuhoe believed that they exercised ownership rights in the area by virtue of their earlier relationship with Ngati Manawa when Tuhoe returned Ngati Manawa to Tututarata and the Rangitaiki Valley, and gave them wives.[293]

The matter was further complicated by John Alexander Wilson, who complained that Mair was obtaining the lease through unfair exploitation of his official position, and that this was interfering with the actions of government agents. Mair replied that he had been unaware that the government required the land, and he not only offered to drop the lease, but to assist Davis and Mitchell. His cattle had gone from the land by February 1874.[294] From the tone of Wilson's complaints, it does not appear that the Government stepped in to prevent Mair from leasing land at Kuhawaea out of any concern at Tuhoe's objection to him, but rather because Mair's personal history in the area gave him a favourable position over the Government agents also trying to obtain the land.

After Mair relinquished the lease, Wilson began negotiations for Kuhawaea in December 1873. He received a letter from Poia Te Otatu and others in January 1874 offering to sell the government their land at Kuhawaea. Te Otatu and those he signed for, notably Te Tuhi Manuera, Heta Tapuke, Pani Harehare and others, described themselves as the 'principal people having an interest' in this land. They gave the boundaries as commencing at 'Te Raepohatu thence in the Rangitaiki River to Whirinaki to Weriweri to Te Tawa a Tionga. From there it turns to Whirinaki, ascends Tawhiuau to the source of the Horomanga and meets again at Te Raepohatu'.[295] They stated the price would be

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[291] Bright, pp. 36-7
[292] Ibid., p. 37
[293] Ibid., p. 37
[294] Ibid., p. 37
[295] Poia Te Otatu and Others to John Wilson, 5 January 1874, MA-MLP 1881/200, in Supporting Papers for Research Narratives of the Urewera, Vol XIII, p. 4464, cited in Bright, p. 38

£50.[296] Wilson accepted this offer and made payments totalling £90 in cash to Te Tuhi Manuere, Pani Harehare, and Hapimana Rawiri from January to May 1874.

Wilson argued that Tuhoe had no right to contest the purchases he was making at Kuhawaea, demonstrated through their inability to remove the cattle in the area, but also referred to Kuhawaea as being within the rohe potae.[297] Bright argues:

> Assuming that he [Wilson] meant the rohe potae o Tuhoe, Wilson's earlier statements, (that Tuhoe held no interest at Kuhawaea at all), seem questionable. Ngati Manawa had been known as "loyalists" since the wars, and parts of Ngati Manawa were clearly willing to sell their land. This may therefore have affected Wilson's decision to deal solely with them, rather than including Tuhoe hapu in his negotiations.[298]

Bright contends that 'Tuhoe opinion seems to have been divided where the outlying lands of this district [the rohe potae] were concerned'.[299] The leasing of lands including Kuhawaea was discussed at a hui in 1874 at Ruatahuna. Ngawaka of Patuheuheu had leased lands to Troutbeck and asserted that he would not brook interference by Te Whitu Tekau, and Wi Patene, also of Patuheuheu, said he had taken money from Davis and Mitchell for land in Rangitaiki and if Te Whitu Tekau wished to have the lease given up to them that would depend on how strong they were, if they could 'take' it.[300] Patuheuheu seem to have been expressing much more independence than they had previously, and Bright suggests that this may have been because of the attitude of Mair and Wilson towards Tuhoe's possible rights in Kuhawaea. It is possible that there was a greater advantage for Patuheuheu to join with Ngati Manawa rather than Tuhoe in regards to leasing issues.[301] As Bright argues:

> The Ngati Manawa acceptance of the Government's authority, and the willingness of some of Ngati Manawa to lease or sell land, divided them further from Tuhoe in a political sense. Tuhoe rejected most forms of Government authority and remained staunchly opposed to selling or leasing within Te Urewera for decades. This was more than

[296] Ibid, p. 4464.
[297] Bright, pp. 38-9
[298] Ibid., p. 39
[299] Ibid., p. 39.
[300] Ibid., p. 39
[301] Ibid., pp. 39-40

> likely a factor in Mair and Wilson's inclination to deal only with Ngati Manawa and their close relatives.[302]

The negotiations entered into by Wilson were not completed, and the survey of Kuhawaea did not take place until 1882.

4.2.3: Surveys

The first application for a survey of Kuhawaea submitted in March 1878 by Pukenui, Harehare, Ngawaka and Te Whaiti. In September 1878 Gilbert Mair told H.T. Clarke that the settler Troutbeck wanted Kuhawaea to be surveyed so that he could have legitimate rights to the land. According to an application sent in by several members of Ngati Manawa, Troutbeck had even offered to pay for the survey. In October 1878, Wi Patene of Patuheuheu sent a survey application from the Ngati Koro hapu of Ngati Manawa. All these applications were rejected.[303]

Bright states that the applications were rejected as 'Ngati Manawa were divided over the issue of surveying, and the Native Minister refused all of the early applications to survey Kuhawaea because of this division'.[304] Harehare Atarea wrote to Clarke in November 1878 to inform him of his and others' objections to having Kuhawaea surveyed:

> Pani and Te Mauparaoa have told us that they agreed to the survey of Okuhawaea [Kuhawaea] now, friend we object entirely to that land being surveyed, we intend to leave it four [for] our children this is the firm intention of all interested.[305]

This statement appears to be a departure from his apparent participation in the March 1878 survey application.

Kuhawaea had been described by Mair as 'almost the only good piece of land in that part of the Country'[306], so it is not surprising that Maori wished to retain this land. In December 1878, the District Officer noted the New Zealand Gazette notice of Government negotiation for the sale that had appeared in September of that year, and

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[302] Ibid., p. 71
[303] Ibid., pp. 41-2
[304] Ibid., p. 41
[305] cited in Bright, p. 42
[306] cited in Bright, p. 41

stated that he could not 'recommend survey of this block – The tribe are against it and Government are in negotiation for the same block'.[307]

Requests for the land to be surveyed continued to be submitted, and in April 1880, Aperaniko Te Hura made a request for the survey to be made so that it could be heard at an upcoming Native Land Court hearing. Bryce refused to grant this request as the land had been declared as being under purchase negotiations.[308] Bright remarks that Bryce 'likely wanted to avoid antagonizing the vendors, and possibly losing the land, by sending in surveyors without the permission of all involved'.[309] Considering the continuing opposition to the survey this was probably wise. It may well also have provided the land purchase agent with more time to settle the deal. A year later, Harehare and others sent a letter to the new Native Minister, W. Rolleston, and said that they withheld their consent to the survey because the 'Creator does not make land a second time for one hereafter'.[310] It seems that the writers of this letter were aware of the correlation between a survey and the Native Land Court process and the subsequent loss of land through sales and survey liens. In order to protect and preserve their land, they wished to keep the survey from being carried out.

Following this letter from Harehare, a letter dated 26 April 1881 was sent to the Native Minister from A.W. Bromfield, a solicitor, on behalf of the owners of the block, or as Bright says 'at least those [owners] that Wilson had made payments to'[311] asking the Government to withdraw from negotiations to purchase Kuhawaea upon a refund of the money it had expended plus 8% interest. The reason given in the letter was that there had been no further payments made, no survey carried out, and no progress in completing the purchase, and the owners wished to deal with the land themselves. This deal was accepted and the government stepped out of negotiations for Kuhawaea in December 1882 upon receipt of £103.5.5.[312] This refund money was given to Gilbert Mair during the Court proceedings on 11 October 1882[313] – after the judgement but before the lists of

[307] Note on Application for Survey dated 27 December 1878, Supporting Papers Vol. XIII, pp. 4432-3.
[308] Ibid., p. 42-3
[309] Ibid., p. 43
[310] cited in Bright, p. 43
[311] Bright, p. 43
[312] Ibid., p. 43
[313] Binney, Part II, p. 42.

names had been drawn up. Binney notes that the money was probably gained from an advance payment by Troutbeck and 'could only be paid back to him by selling land'.[314]

On 11 April 1882 the chief surveyor, S. Percy Smith recommended that Kuhawaea be surveyed. He stated that the 'natives appear to be very anxious to get the land through the Court in 2 or more blocks'. Taking into account that Troutbeck and others were negotiating for the lease and purchase of the land, he thought there would be no disturbance if the land was surveyed.[315] Bryce agreed and the land was subsequently surveyed and passed through the Native Land Court.[316] Bryce did state, however, that 'it should be done in a way to afford no countenance to persons who have [been] unlawfully negotiating the proclamation notwithstanding'.[317] The government abandoned the survey lien in 1882, and immediately afterwards the land went to the Native Land Court.[318] Binney argues that the Government knew that by abandoning the survey lien and allowing the leasing of the land by Troutbeck they were allowing 'the process to favour one group of claimants, that is those who wished to sell'.[319]

4.3: Conclusion

Tuhoe in the Matahina and Kuhawaea areas experienced similar pressures from other hapu who had arranged leases with land purchase officers and private individuals. In Kuhawaea a lack of notification that a land title investigation was going ahead meant that Tuhoe lost any chance to present their claim. They should have been notified and should certainly have been allowed a rehearing, as was acknowledged by the Government in later years. The lack of any real safeguards to prevent such an occurrence is a reflection of the Native Land Court process as a whole. In Matahina, little attention was given to the statements of the counter-claimant hapu who supported each other's claims. Ngati Haka and Patuheuheu, Ngati Rangitihi, and Ngati Hamua all made statements in their testimony and under cross-examination that affirmed their respective claims as to

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[314] Binney, Part II, p. 42.
[315] Percy Smith to Surveyor General, 11 April 1882, MA-MLP 1881/200, in Supporting Papers Vol. XIII, p. 4415
[316] Bright, pp. 43-4
[317] Surveyor General Note dated 26 April 1882, MA-MLP 1881/200, in Supporting Papers Vol. XIII, p. 4416.
[318] Ibid., p. 19.
[319] Binney, Part II, p. 42.

boundaries and occupation. This corroborative evidence was dismissed in the first Matahina hearing and accepted in a severely reduced state in the 1884 rehearing. The question for both of these blocks really is how effective is a Court that doesn't notify or hear some possibly significant claimants in one block and does not take into account corroborative evidence of occupation in another? Considering that in both Matahina and Kuhawaea the bulk of the land was awarded to people amendable to leasing and sale of the land, the Court certainly appears to be effective as an instrument of alienation.

The Native Land Court in the late 1880s assisted the opening up of the Urewera even further with two block hearings incorporating the whole eastern border of the Urewera rohe; Tahora 2 and Waipaoa are the subject of the next chapter.

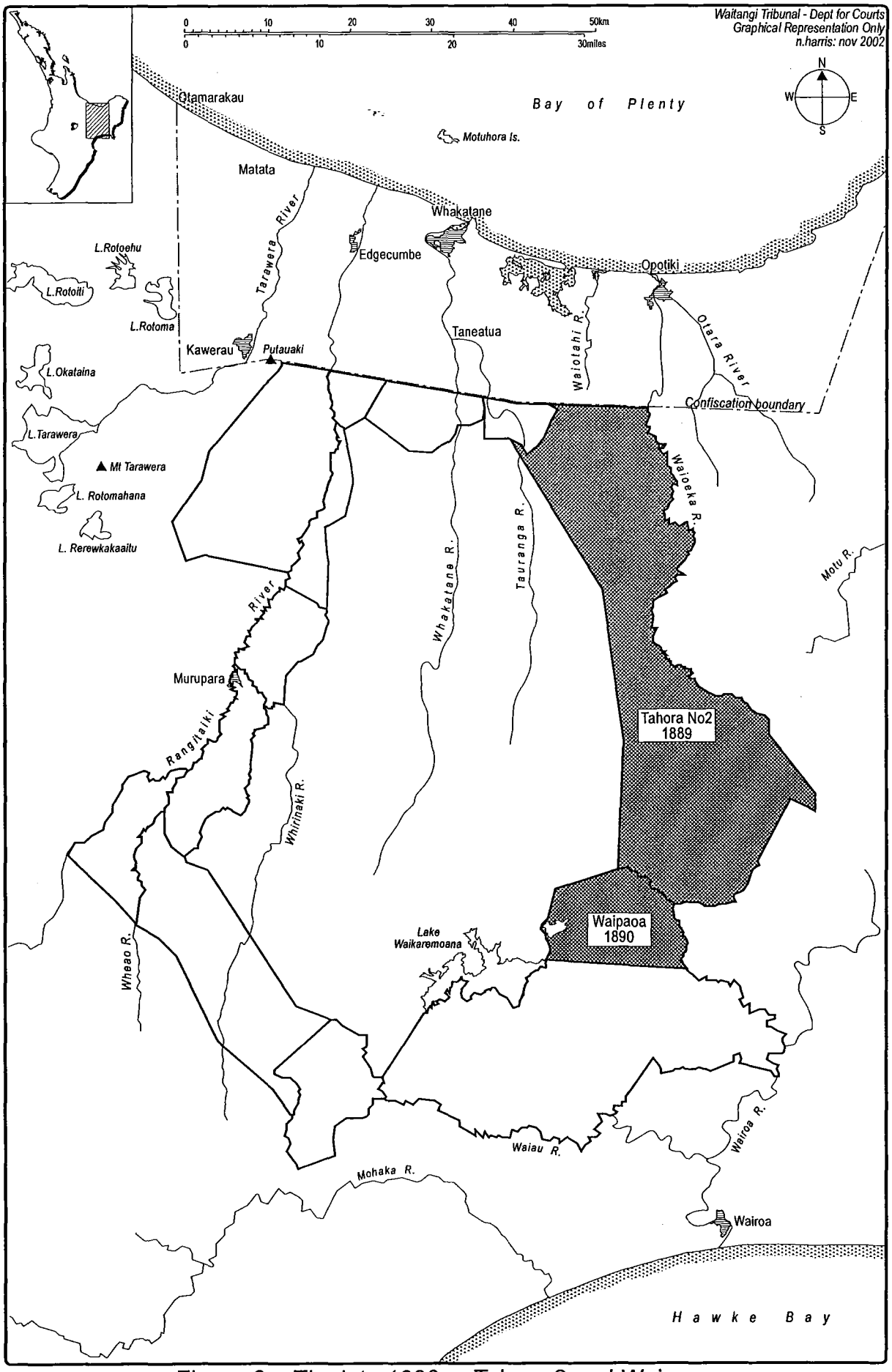

Figure 6 : The late 1880s - Tahora 2 and Waipaoa

Chapter Five: The late 1880s – Tahora 2 and Waipaoa

Tahora and Waipaoa are situated directly next to each other and together they span the whole eastern side of the Urewera district. Both blocks shared a history of conflict between Ngati Kahungunu and Tuhoe, and both experienced the failure of the Government to ensure that surveys of Maori land were carried out in an equitable manner. The survey of Tahora No. 2 is a particularly important issue as it was illegally carried out in direct conflict with the wishes of all iwi associated in that area, and was then sanctioned by the Government. Over 100,000 acres were lost to compensate for the survey; half of the block sold to the Crown in satisfaction of fees associated with a survey the people of Tahora had no desire to have performed. Survey costs are an issue in Waipaoa as well; the Crown negotiated payment of the survey in land before they even went into the Native Land Court, and this land was surveyed out before the rest of the block was established by survey.

Tahora and Waipaoa were also victims of the Crown's desire to open up the Urewera. Tahora had been included in the pou rahui which marked the boundaries laid down by Te Whitu Tekau in 1872 and was intended to be kept out of the Court. The Crown appears to have seized the chance offered by the unauthorised survey and application for investigation to gain an entry into the Urewera. Given the large expanse of Tahora, the Government ended up with significant interests on the border of the Urewera. Government self-interest and bureaucracy failed to protect the interests of Maori in the Urewera district. Due process was left by the wayside and the judgement in Waipaoa emphasised yet again the entrenched belief that Tuhoe's rohe was properly situated in the inner part of the Urewera, and did not extend out into the borderlands.[320] This chapter will begin by outlining the Native Land Court hearings for these two blocks. It will then discuss in greater depth the issues arising from the survey of each block. These issues relate not only to the cost of the surveys but to the lack of protection on behalf of the Crown and the way in which people with no rights to an area of land could, by virtue of the Native Land Court procedures, force others into appearing as counter-claimants to try and protect their land.

[320] See Figure 6: The Late 1880s – Tahora 2 and Waipaoa.

5.1: Outline of Native Land Court Hearings

5.1.1: Tahora 2:

Tahora 2 was a large block of 213, 350 acres, and was heard by Judge O'Brien at a Native Land Court hearing in Opotiki from February to early April 1889. The Assessor was Nikorema Poutotara. In December 1888 a preliminary hearing had been held at which the validity of the survey of Tahora and the resulting Land Court hearing was intensely debated. Despite not wishing to be involved in the Native Land Court process, Tuhoe and Ngati Kahungunu hapu had to attend lengthy Court hearings to protect their lands from being awarded to people with no interests.

The hearings opened under Judge O'Brien in December 1888 with a request from Haiti Tamihana for an adjournment so that the interested parties could discuss arrangements related to the block.

> In furtherance of suggestions the other day notice had been sent to all the principal chiefs re: a discussion about Tahora No. 2, and they were all assembled at Wiremu Kingi's house discussing the matter and, I am sent to ask that the Court adjourns until 2 oC [sic] pm so as to allow us all this morning to discuss and arrange matters. When we will come into Court this afternoon and lay before the Court our suggestions re: Tahora No. 2 Block.

This being consented to by the claimant, Paora Pakihi, the Court was adjourned.[321] Later that day Raniera appeared on behalf of the hapu connected with Ngati Kahungunu and other hapu who had been in this meeting, and asked that 'Tahora No. 1, No. 2 and No. 8 be withdrawn from this Court; for these reasons. 1st A great portion of Boundaries Specified in Gazette runs through a great part of our country, we ask this matter be taken into consideration, and so as to enable for the whole people including Whakatohea to more fully discuss Block and so that we may arrive at an ancestral arrangement.' He went on to say that it was most inconvenient for the people to attend the Court in large numbers. He and those he represented wished to have the hearing adjourned. A major reason for this was the survey, which he stated he and his people had decided not to recognise. He claimed that the survey had been made by 'comparatively a few people'.

[321] Opotiki NLC MB 3, 11 December 1888, p. 437.

He stated that this was the 'general view of the meeting today and the Whakatohea and Urewera agree to this'.[322]

Paora Pakihi agreed to these proposals. He said that 'the names of the claimants interested in this Block do not appear in the Gazette and I wish to point out they appear here as applicants for a Court and took no part in the Survey'. He pointed out that 'A great number of interested parties were not consenting parties to the Survey being made'. He referred to problems with the Oamaru case and implied that going ahead with the hearing for Tahora now would result in the same sorts of problems. He also noted that the same surveyor who had surveyed Oamaru had surveyed Tahora Block 'without our consent...we didn't know anything about the survey'.[323] He asked the Court not to recognise the Survey, as 'it is so made that those who have claimed would have included within the Survey all the land they might be entitled to claim but as it is at present removed no-one part has been left out and it will perhaps have to be surveyed again; at a cost which we are not able to bear.' He pointed out on the map the land he considered to be the land of Whakatohea and Te Urewera, which was land included in the upper portion of the surveyed block.[324] Rakuraku spoke to the issue of the survey as well, stating that he quite agreed that 'each party should have and to do what they like with their lands, and this survey has been made without our consent and by whose authority we do not know'[325] Paora agreed with Raniera that the block should be withdrawn from the Native Land Court to 'give the opportunity of adjusting the boundaries between the Tribes'.

Hemi Kakitu of Urewera also asked that the case be withdrawn. He stated:

> I was the man who overtook the survey party and compelled them to return. We claim the right to have the survey done in our own way, and not in a stealthy manner. I concur in proposition made as to our going into our tribal and ancestral claims ourselves and analysing them.
>
> Many of the names appearing in claims were put in surreptitiously – I didn't write signature in claims – nor did I authorise anybody to sign my name to applications.[326]

[322] Ibid., 11 December 1888, p. 439-40
[323] Ibid., 11 December 1888, pp. 440-1
[324] Ibid., 11 December 1888, p. 441
[325] Ibid., 11 December 1888, p. 442
[326] Ibid., 11 December 1888, p. 442

Tauha Nikora of Ngati Patu, the man responsible for the contentious and illegal survey, agreed that the lands should be discussed and dealt with by the various hapu but argued that this discussion should take place in the Land Court, and the case should not be withdrawn.

The hearing of the title finally began properly in Opotiki on 19 February 1889. The claimant, Hautakuru, asked that the case be heard, since it had been gazetted. He further stated that, although he had assented to the adjournment of the day before, he believed that the 'parties to the discussion were not bona fide claimants to this Block and I was of opinion it was scarcely right that the claims of owners should be discussed by outsiders'.[327] He made it clear he would not assent to any further adjournments.

Hautakuru stated that he belonged to Ngati Patu, a hapu of Whakatohea, and claimed the whole of the block through ancestry from Tarawa, and also by the conquest of his ancestors Ruamoko and Tahu. Hautakuru claimed that his ancestors had a pa in the area of Te Wera, although he could not point out the exact location. He stated that 'we the Whakatohea are unaccustomed to Land Courts' and so he did not feel 'competent' to point out other landmarks on the plan. He also claimed through constant occupation 'down to my grandfather's time'. He made the point that, although he was claiming specifically for Ngati Patu, he was also claiming for Whakatohea 'as a body'.[328]

Netana, who was most likely Netana Rangiihu of Ngati Koura, appeared on behalf of the Urewera. He claimed through Pukenui o Rahoto Kahawa. The section he claimed was the 'Waimana part following the Ridge shown upon the plan (the Ridge is called Kairakau) it then turns up North, along the boundary to the confiscation line and thence along the Boundary line to the starting point.' He stated that several of his people were away at Ohiwa and, if the court would allow, he would give the details of the claim when they returned. This appears to have been granted.[329] The absence of significant leaders or men who held knowledge of the land was one of the disadvantages of having a Court hearing distant from people's kainga.

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[327] Opotiki NLC MB 4, 19 February 1889, p. 303
[328] Ibid., 19 February 1889, pp. 303-305.
[329] Ibid., 19 February 1889, p. 305.

Tamaikoha appeared on behalf of the Urewera as well. He stated that he was a 'counter claimant for that portion marked A and spoken to by Netana. I was going to appear as Counter claimant for other parts, but we have arranged matters with Hira te Popo and Wi Pere'.[330] This arrangement amongst themselves as to hapu and iwi divisions was a recurring theme of these hearings. Ngaiti presented a counter-claim on behalf of the several hapu of Ngati Kahungunu resident in Wairoa. The minutes record that 'After some discussion, Ngaiti withdrew his counter claim, going in with Wi Peri as against the Claimant of Block Hautakuru, they afterwards arranging among themselves hapu divisions.'[331] These arrangements do not, however, appear to have been unanimous. Hetaraka Te Wakaunua placed a claim on behalf of the Ngati Tamakaimoana hapu of Tuhoe.[332] Wi Peri of Ngati Kahungunu spoke and said that the claim presented by Hetaraka appeared to be counter to the arrangements they had made with Tuhoe: 'It appears that the arrangements made outside seemed to be falling through, as this man was setting up a separate claim for Te Urewera [hapu], and if they were not willing that he undertake their case under his case they he supposed would set up a separate case'.[333]

Tamaikoha told the Court that a section of the land he was claiming he wanted allotted to Ngai Turanga, another portion for the section of Te Urewera represented by him, and the rest of the portion they were claiming to be divided up between Whakatane and Upokorehe. He stated that the land they were claiming was a part of Waimana and that he and his people had occupied it since the time of Haeora. In response to a question from Hautakuru he said 'The land was part of Waimana, but this portion was included in your Survey which you had no right to do'.[334]

Judge O'Brien decided against the claimants, stating that they had not proved their case and that the opposite of what they said was supported by counter-claimants. O'Brien also noted that the claim purported to be on behalf of Ngati Patu but was denied by leading Ngati Patu men, who had in fact joined with Tamaikoha. Whakatohea was decided to have no rights either through ancestry or through conquest.

[330] Ibid., 19 February 1889, p. 305.
[331] Ibid., 19 February 1889, p. 309.
[332] Ibid., 19 February 1889, p. 309.
[333] Ibid., 19 February 1889, p. 310.
[334] Ibid., 20 February 1889, p. 317.

The other major decision of the Court regarded the portion of the block called Papuni and claimed by Kahungunu under Wi Peri and by Tamakaimoana under Hetaraka Wakaunua. Regarding this issue, the Court stated that in their opinion the ancestor for this part was in fact Hinganga 'and that the rights of his descendants [Kahungunu] have not been destroyed or taken away as alleged by Hetaraka'.[335] The Court decided that the fights described by Hetaraka were in fact murders and that this was supported by evidence of Tamaikoha. Wi Tipuna, who had links to both Urewera and Kahungunu, was claimed by Hetaraka to have left the land after the fights and the Court considered that this indicated his support for the Urewera. The Court stated that Wi Tupuna 'repudiated any right on his Uriwera [sic] side, as his joining N' Kahungunu and bringing a war party to avenge the murders prove'.[336]

In a very significant statement, the Court then said: 'As to the remainder of this Block, there being no dispute between the other counter claimants our awards will be as agreed on by them'.[337] This indicates that the Court was happy to accept the decisions of the different hapu that they had come to in their meetings 'outside' the court, thus in a way allowing them to determine the rights to their land in their own way. Part of this may also be accounted for as the Court's acceptance of a convenient solution. The portion claimed by Tamaikoha was divided up as he had requested, with one portion allocated to the descendants of Tuhoe 'as shall be found entitled by [Tamaikoha] and the people'; another portion was allocated to Ngai Turanga descendants of Haeora, and the remainder of that section claimed by Tamaikoha was awarded to the Upokorehe and Whakatane descendants of Haeora.[338]

Section B of the plan was awarded to Ngati Ira descendants of Kotikoti, Manutahi and Kaiwhanaunga. Section G of the block was awarded to Ngati Maihi and Ngaitamaroki descendants of Tamaroki and Taneatua as represented by Netana. Section C was awarded to Ngati Whanauakai, Ngati Rua, Ngati Maru and Ngati Hine, descendants of Te

[335] Opotiki NLC MB 5, 4 April 1889, p. 302.
[336] Ibid., 4 April 1889, p. 302.
[337] Ibid., 4 April 1889, p. 303.
[338] See Figure 7, Tahora No. 2 Block

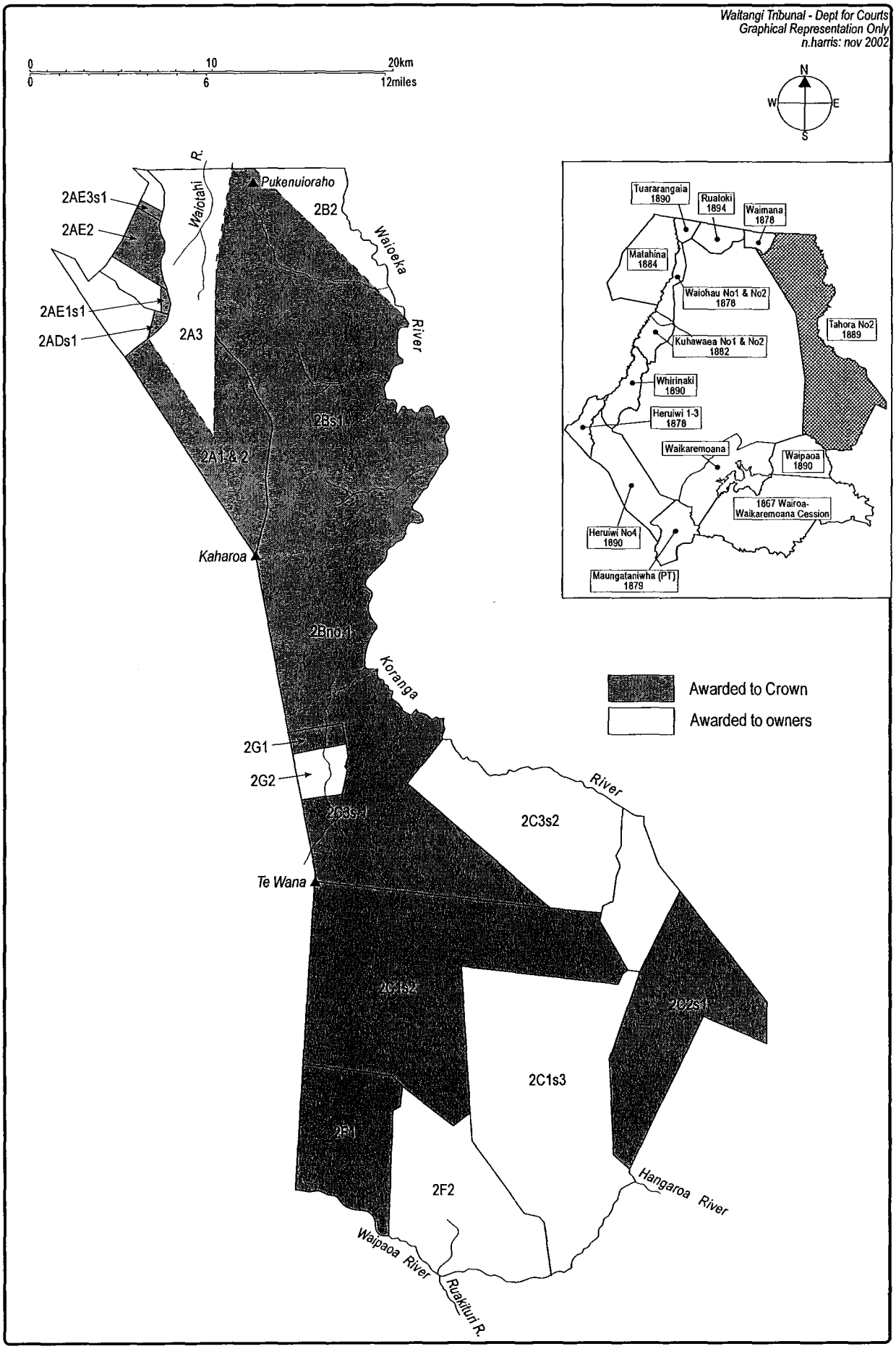

Figure 7 : Tahora No.2 block

Haaki and Whareana, and the remaining portion of the block (F) was awarded to the descendants of Hinganga.[339]

On the 10th April 1889 Tamaikoha asked that there be further divisions in the block Ae for the purpose of paying the survey charges and other costs. Tamaikoha had anticipated having to pay a survey lien in land, and although he contested the imposition of this he also requested that a portion of 2AE be given to his sole ownership for this exact purpose. But, as Binney says, 'what he could never have anticipated was the scale of the lien that would be imposed'.[340] All lands in Tahora were made inalienable except by lease for 21 years, except for the section Tamaikoha had requested be cut out to pay for the survey costs – Tahora AE No.2.[341]

The total block area was 213,350, of which Tuhoe hapu were awarded title to the 31,708 acres that they had claimed.

Table 5.1.1: Subdivided Land Blocks Awarded to Hapu in Tahora 2[342]

Hapu/Iwi	Name of Block	Estimated Area	Number of Owners
Te Upokorehe Te Whakatane	Tahora No. 2A	24,668	307
Ngati Turanga, descendents of Haeora	Tahora No. 2Ad	3,456	235
Tamaikoha, descendents of Tuhoe	Tahora No. 2AE No. 1	1,216	21
Tamaikoha, descendents of Tuhoe	Tahora No. 2AE No. 2	1,792	1 (Tamaikoha)
Tamaikoha, descendents of Tuhoe	Tahora No. 2AE No. 3	576	14
Ngati Ira	Tahora No. 2B	46,904	79
Ngati Ira	Tahora No. 2B1	13,902	13
Ngati Maru Ngati Rua	Tahora No. 2C1	49,578	268
Te Whanau a Kai	Tahora No. 2C2	12,856	95
Te Whanau a Kai Ngati Hine	Tahora No. 2C3	33,990	385
Ngati Hinganga	Tahora No. 2F	22,556	164
Nga Maihi Ngai Tamaroki	Tahora No. 2G	1,856	107
	Total:	**213,350**	**1689**

[339] Opotiki NLC MB 5., 4 April 1889, pp. 303-306.
[340] Binney, Part II, p. 94.
[341] Opotiki NLC MB 5, 11 April 1889, p. 339.
[342] Table adapted from table in Boston and Oliver, 'Tahora', p. 80.

Alma Baker claimed survey costs of £1887.7.11. There were many speakers in protest at this in the Court. Tamaikoha gave his opinion that the cost of the survey should fall on those who initiated it against the wishes of the owners.[343] Baker in return tried to dismiss the opposition by referring to the known opposition to surveys in general by Tuhoe, and explained it by calling them followers of Te Kooti. Wi Pere denounced as most unjust the idea that 'because Rakuraku is a Te Kootiite that that should be used as a reason for surveying his Land against his wish'[344]

Given the major dissatisfaction with the illegal survey of Tahora No. 2, it is unsurprising that there was a long hearing of the debate over survey costs. Wi Pere objected to the manner in which the survey had been undertaken and also to it having been carried out by Mr Baker. He mentioned that he had requested a survey years earlier but had withdrawn his application 'in deference to the wish of Urewera who wished land remaining unsurveyed'.[345]

Judge O'Brien decided in favour of granting the lien to Baker on the grounds that it was outside his job to decide on the authorisation of the survey.[346] He said that 'if a Surveyed plan is produced the law requires us to proceed with case and give decision...Another thing we must award Surveyor costs of Survey on such Survey, and plan being duly approved.'[347] Binney argues that the Act only made provision for the Court to be able to make such an order for survey costs and 'it did not require it to do so'.[348] The Government had already declared that it would not be liable for the costs of the survey, and Binney argues that O'Brien acted according to that direction.[349]

Peter Boston and Steven Oliver state that O'Brien had, as early as December 1888, already discussed with the Chief Judge (Seth Smith) the implications of the unauthorised and unrequested survey and his authority to order survey charges. Smith's advice was that O'Brien could charge the survey costs to the successful owners, under section 82 of the Native Land Court Act 1882. He further questioned, however, whether such an action

[343] Binney, Part II, p. 96.
[344] Opotiki NLC MB 6, 12 April 1889, p. 8, cited in Binney, Part II, p. 97, and Boston and Oliver, p. 82.
[345] Opotiki NLC MB 5, 12 April 1889, p. 341.
[346] See Boston and Oliver, pp. 82-4.
[347] Opotiki NLC MB 6, 12 April 1889, p. 9-10, cited in Binney, Part II, p. 97.
[348] Binney, Part II, p. 97.

would be possible given the fact that the owners had opposed the survey and had never agreed to pay for it.[350]

After his decision there were many more protests with the owners declaring that they would not pay a penny. Wi Pere cabled the Native Department to tell them that they would not pay Baker. As it was, the rehearing of the survey liens did not go to Court until October 1891. By the time the rehearing finally went to Court an arrangement had been reached between WL Rees (the lawyer for Wi Pere) and Charles Alma Baker to reduce the survey lien, which was now standing at £2000 due to accumulated interest, to £1600 as Baker had agreed to cover £200 of the original sum himself.[351] Boston and Oliver note that the owners wanted their liability to be taken in land, and a block combining sections of 2B1 and 2C3 was suggested for this purpose.[352] The lien was accordingly reduced to a total of £1600, and Binney notes that this sum was charged against the whole of the block by the Court.[353]

The people of Tahora, all from Tuhoe and Ngati Kahungunu hapu, lost their lands through the actions of several unscrupulous persons and then through the self-interest and machinations of the Government. A total of 131,694 acres was conveyed to the Government in 1896, from a block whose owners had never wanted it surveyed or investigated, let alone alienated.

5.1.2: Waipaoa:

The application for the land to be surveyed was initially submitted in October 1882 and an application was submitted for a Native Land Court hearing in November 1882. However, the land did not go before the Native Land Court until March 1889 after further applications for investigation. The hearings were held at Wairoa under Judge Wilson. Cathy Marr notes that although 'the Waipaoa claims were adjourned [on 8 March] until the conclusion of the Tahora No 2 hearing at Opotiki to allow those attending that hearing and interested in Waipaoa to be present', the Waipaoa hearings began again on

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[349] Binney, Part II, pp. 97-8.
[350] Boston and Oliver, 'Tahora', p. 81
[351] Boston and Oliver, p. 120.
[352] Ibid., p. 120.
[353] Binney, p. 99.

26 March 1889 and ran until 15 April; this was a very similar timeframe to the Tahora hearings.[354] It is very possible, as suggested by Marr, that Tuhoe chiefs may have been involved in Tahora while Waipaoa was in session and would not have been able to attend.[355]

Cathy Marr has covered the Waipaoa hearings in detail, and Emma Stevens has also written a report on Ngati Ruapani interests in Waipaoa.[356] This section will canvass the Land Court hearing briefly and then go on to discuss issues arising from the survey and negotiated lease of the land.

Hapimana Tunupaura of Ngati Kahungunu initiated the survey and hearing. He claimed through ancestry from Hinganga and Marr suggests that this was 'an attempt to keep out all those they regarded as "outsiders" who might claim conquest'.[357] Throughout the hearings, Judge Wilson seems to have adopted this outlook and encouraged those who could also claim under Hinganga to join in Hapimana's claim.[358]

Wi Hautaruke lodged a counter-claim on behalf of Tuhoe. He claimed through ancestry and conquest, and mainly by gift of the ancestor Pukehore. He claimed part of Waikareiti as well, through the ancestor Ruapani. Wi Hautaruke claimed through three ancestors: Ruapani, Pukehore, and Tuhoe. According to Hautaruke, Pukehore and his descendants had occupied Waikaremoana continuously, and not only did Tuhoe have cultivations in this area but they also had some burial sites in the block. He denied any validity to the Ngati Kahungunu claim to the Huiarau Ranges. Hautaruke stated that he had lived at Waikaremoana from the time that Tuhoe conquered the upper Wairoa Ngati Kahungunu until after the East Coast wars and peace with the Pakeha.[359]

There were two additional and separate Ngati Kahungunu hapu claims, one presented by Wiremu Nuhaka who claimed land in the northeast of the block under the ancestor Hinganga. The other counter claim was presented by Ropitini Te Rito who claimed an

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[354] C Marr, p. 278 (draft)
[355] Marr, p. 279.
[356] See Cathy Marr, 'Crown Impacts on Customary Interests in Land in the Waikaremoana Region in the Nineteenth and early Twentieth Century', Draft, July 2002', and Emma Stevens, 'Report on the History of the Waipaoa Block 1882-1913', May 1996, Wai 36 A8.
[357] Marr, p. 280, and pp. 284-5.
[358] See Marr,
[359] Stevens, pp. 17-18

interest through the ancestor Ruapani and claimed on behalf of the Ngati Kahungunu hapu Kahu. He admitted that he did not have any knowledge of the western section of Waipaoa, occupied by Ngati Ruapani, and had never been to Waikareiti.[360]

In answer to questioning from Wi Hautaruke, Hapimana stated that Ngati Ruapani occupied the western part of Waipaoa, but that Tuhoe did not. He accepted Hautaruke's rights through his Ngati Ruapani connections, but not those of Tuhoe.[361] Hapi Tukahara gave evidence on behalf of Ngati Hika and Ngati Ruapani, and said that he had conducted the survey of the land on behalf of Ngati Ruapani, whom he said owned part of the block. The survey line went from Aniwaniwa to Pukepuke and according to Tukahara, Ngati Hika and Ngati Ruapani lived on land inside and outside of that survey line.[362]

The Court's judgement was in favour of the Ngati Kahungunu and Ruapani claims presented by Hapimana Tunupaura. The Tuhoe claim was dismissed by Judge Wilson, who stated, without giving a reason, that 'the claim made on behalf of Tuhoe natives is unreasonable',[363] and the two independent Kahungunu hapu claims of Wiremu Nuhaka and Ropitini Te Rito were also dismissed.

Judge Wilson offered the successful claimants, those represented by Hapimana, a choice between having a boundary laid down between Ngati Ruapani and Ngati Hika on one half of the land, and the hapu of Ngati Wahanga, Ngati Poroara, Ngati Hinganga, Ngati Mihi and Ngati Hinetu on the other side, or whether they wanted the Court to allocate land for each hapu on the block. This latter option was eventually selected by the owners, and Hapimana Tunupaura took on the task of pointing out the portions each hapu would be awarded.[364] Wilson created ten partitions of the block – Ngati Kahungunu hapu were awarded Blocks 3-10, Ngati Ruapani were allocated shares in Blocks 9 and 10, and Blocks 1 and 2 were awarded to the government in satisfaction of the survey costs.[365] The use of these latter two blocks to satisfy the costs of the survey is discussed later in this chapter. According to Marr, in his judgement, Wilson informed Hapimana, who had

[360] Ibid., p. 17
[361] Ibid., p. 19
[362] Ibid., p. 20
[363] Wairoa MLC MB 3b pp. 162-3, cited in Marr, p. 297.
[364] Stevens, pp. 23-4, also see Marr, pp. 298-9.
[365] Stevens, pp. 2-3

told him that he and his people agreed to the setting aside of two blocks with a total area of 2000 acres as payment and who had suggested boundaries for those blocks, that 'it was a matter for the Court to decide'.[366] The Court decided that the allocation of Government land as shown in the plan was unfairly shouldered by the owners of the eastern part of the block and so 2911 acres were awarded on the east and the same number on the west, thus spreading the burden of the survey lien over Ngati Ruapani as well as Ngati Kahungunu.[367]

5.2: Issues Arising

Both of these blocks demonstrate the great difficulties relating to surveys and survey costs. In Waipaoa the Government made an arrangement with people who had yet to be named as owners for the survey to be paid in land. This payment land was then surveyed before the boundaries of the total block had been determined. In Tahora, Binney states that 'what was acknowledged to be an illegal, private survey was transformed into a government-enforced survey lien placed over Tuhoe lands'. She quotes Tamaikoha's statement at the end of Court proceedings enforcing the lien that it was an 'act of oppression' which he likened to a 'confiscation'.[368] The difference between the two blocks is that the people of Tahora 2 had not wanted the survey or the title investigation but were forced to accept both. There are several procedural failings of the Native Land Court evident in these blocks, and as they tend to relate to the surveys I have simply divided this issues section into a discussion of each block's experience of surveying.

5.2.1: Tahora 2 and Survey

In Tahora the unauthorised and unfair nature of the survey was acknowledged by the Crown. The survey department had received a letter from Hetaraka Te Wakaunua and Numia Kereru protesting about the survey being done illegally and asking them to have it stopped. The Native Minister, E Mitchelson, decided that 'Mr Baker [the surveyor in question] had no right to undertake the survey without first obtaining permission to do so

[366] Marr, p. 298.
[367] Marr, p. 298.
[368] Opotiki NLC MB 6, p. 16, cited in Binney, Part II, p. 69.

and as He was warned by the Survey Department. He did the work at his own risk and must now take the consequences'.[369]

Several applications over the years for lands variously named Te Houpapa and Te Wera had been submitted, all taking in areas of what became Tahora. There had also been many objections to these surveys expressed. The original application for Te Houpapa in 1879 from Wi Pere and other chiefs of Te Aitanga a Mahaki, stated boundaries that stretched right to Maungapohatu, and Urewera chiefs immediately protested. Advance money from the Government had already been paid to Wi Pere in September 1879. Despite a deputation of four Tuhoe chiefs, including Hetaraka Te Wakaunua, from Maungapohatu to Gisborne to protest about the proposed survey, and the assurance they were given that the Government would not survey the land without their consent, in December 1881 this land was gazetted as being under negotiations for purchase by the Government.[370] Faced with the strong disapproval of the survey from Tuhoe and the probability of having the survey obstructed, Wi Pere attempted to cancel his application in early 1882, but Gill refused. The Government, however, made no moves to carry out the survey.

A year later, in 1883, another group of Te Aitanga a Mahaki applied again to have Te Houpapa and Te Wera surveyed. Immediately a petition protesting that these people had no right to request a survey was sent from Wairoa to the Native Minister. The Government again postponed the survey. Binney says this postponement was 'partly because of its awareness that obstruction was likely and partly because of its lack of resources for such a huge task.'[371]

In 1885, Tauha Nikora of Whakatohea applied for a survey of Oamaru (a block bordering Tahora). This was approved and Alma Baker was sent to carry out the survey. When the survey of Oamaru was completed, it appears that survey activities were 'extended, without governmental or tribal or hapu permission, by Baker into the Urewera'.[372] Tauha Nikora and Te Hautakuru of Ngati Patu requested that Baker survey the lands west of

[369] Note signed EM (Mitchelson), MA-MLP 1/1900/101, cited in Binney, Part II, p. 69.
[370] Binney, Part II, p. 72.
[371] Binney, Part II, p. 75.
[372] Binney, Part II, p. 77.

Oamaru, and as he was already in the area Baker took the opportunity to extend his survey into the Urewera. An application from Nikora and Te Hautakuru was sent to Premier Ballance, but according to Binney it is clear that 'this request was organised by Baker'.[373] After surveying, Baker sent in a 'retrospective' application for authorisation of the survey. Mitchelson declared that as Baker had made the survey without permission he now had to accept the financial consequences.[374] Percy Smith wrote to the Surveyor General and explained that Baker 'says he was lead to believe that Govt. would approve of the survey being completed, by one of the officers of the Land Purchase Dept. in Wellington, if it could be done without any Native difficulty, on account of the Govt. advances on Te Wera. He now wants to deposit a plan of the Block, I decline to receive it as the Survey has not been legally made.'[375]

The Government informed Baker that authority might be given if he got the consent of the iwi interested in the land, and if the survey was gone over again and completed. But before this happened, the Tahora No. 2 Block was gazetted for a Native Land Court hearing at Opotiki, the claimants being Tauha Nikora and Te Hautakuru. There was a 'storm of protest' from the owners of the block. J. A. Wilson was the Native Land Court judge before whom the case came on 8 August 1888. He cabled the Native Department to query the lack of an authorised survey. He stated that:

> The natives here say that under these names an immense country has been secretly surveyed by a Mr. Baker at the instance of a young Opotiki native name Tauwha Nikora and I fear of his friends....this is Uriwera [sic] country to a great extent & Uriwera natives here are excited at alleged interference with the lands they claim. At the urgent request of the Uriwera I have settled this matter so far as this session at Opotiki is concerned by dismissing these cases for want of a plan.[376]

Upon receiving Lewis' reply that an application for the survey of Tahora had been received from Nikora and others on 7 August, Wilson cabled back that he had been given to understand that the survey was in fact complete. If this was so then 'Baker had committed a breach of the Native Land Court Act of 1886, section 80', and he

[373] Binney, Part II, pp. 78-9.
[374] Binney, Part II, pp. 78-9.
[375] Smith to Surveyor-General, 22 February 1888, MA-MLP 1/1900/101, cited in Binney, part II, pp. 79-80
[376] Wilson to Lewis, telegram, 8 August 1888, ND 1888/1548, MA-MLP 1/1900/101, cited in Binney, Part II, p. 81

recommended censuring Baker for the upset he had caused.[377] This did not happen and Binney argues that 'it is clear that the Native Department officials, most particularly Lewis, were working to find a way around the problems created for them by Baker's unauthorised survey. They wanted to start the process of land acquisition, which they had been anticipating since the original cash advances in 1879.'[378]

The application that had been received on 7 August from Nikora and others included a sketch plan of Tahora 2, and three days after submitting the application for survey they resubmitted an application for hearing. Ngati Ira also lodged an application that purported to be related to an application from Wiremu Kiingi of Ngai Tai, who was chairman of the Maori District Committee at Opotiki. But in the Land Court hearings it was stated that this committee had never given permission for a survey of Tahora, that the application from Ngati Patu had come to the committee but had not been passed as Tuhoe and Upokorehe hapu protested.

Smith reported that he had received a letter from Whakatohea and Urewera asking that the map be 'authorised' in early August.[379] Tamaikoha later stated that he had requested to 'see' the map, not authorise it.[380] This is supported by the fact that at the same time Smith had also received a telegram from Rakuraku and Rangiihu stating clearly that 'the Urewera don't wish the map to be sent', and that he had also received information that the East Coast people opposed the 7 August application.[381]

Despite this telegram and the clear signals that the survey map was not to be authorised, on 20 August 1888 the plan was entered into the Authorised Survey's Record Book in the Survey Department, and sent to Smith for approval. Binney argues that the 'Native Department's notes make it clear that its officials wanted to get access to the land', and on 27 August Lewis advised the government that the best course of action was for Smith

[377] Binney, Part II, p. 81.
[378] Binney, Part II, p. 82.
[379] Undated Memo, forwarded 18 August 1888, NLPD 1888/203, MA-MLP 1/1900/101, cited in Binney, Part II, p. 83
[380] Binney, Part II, p. 85.
[381] Undated Memo, forwarded 18 August 1888, NLPD 1888/203, MA-MLP 1/1900/101, cited in Binney, Part II, p. 83.

to authorise the survey. This Smith did, and with formal authorisation, Baker was sent to survey Tahora No. 2 again, but no new survey was carried out.[382]

Te Upokorehe sent a petition to the Native Minister on 28 January 1889. They claimed that Tamaikoha had asked Baker if he could see the map and upon Baker telling him he would have to apply to the Surveyor General he was persuaded by Baker to sign an 'application' to see the map. The petition implied that Baker had used Tamaikoha's signature to lodge an application for hearing and in the gazette Tamaikoha and Netana Rangiihu's names appear as the claimants.[383] Hemi Kakitu's name was also in the gazette notice and Kakitu stated clearly that his name had been forged. Binney states: 'Given their clearly stated positions in 1889 and the extent of co-operation that existed between the senior leaders of all the tribes who collectively opposed this hearing, I consider that both Hemi Kakitu and Tamaikoha were speaking the truth. The application lodged under their names was fraudulent'.[384] The Upokorehe petition stated their belief that 'the Government must be at the bottom of the whole thing'.[385]

Petitions from all hapu affected by the proposed hearing continued to roll in after the gazette notice. There seems to have been a pulling together of the affected iwi as seen in the petition sent by several major Ngati Kahungunu chiefs of Wairoa, including Hapimana Tunupaura, in November 1899. This application is notable for its inclusion of 26 signatures of Tuhoe people from Waikaremoana. Binney notes that some of these such as Wi Hautaruke 'had been major Urewera spokesmen against Ngati Kahungunu in the struggle over the southern Waikaremoana lands'. The petition asked for the hearing to be cancelled as it involved their lands that they did not want to take to the Court.[386]

The Government also noted that the Maori applicants were to be held liable for the cost of the survey; 'government to be in no way held responsible'.[387] Even though Baker did not fulfil Mitchelson's requirements that the survey would only be authorised if Baker obtained the consent of Maori and that he went over the lines again, the map was

[382] Binney, Part II, pp. 83-4.
[383] Binney, Part II, pp. 84.
[384] Binney, Part II, p. 85.
[385] Petition, 28 January 1889, NLPD 1889/57, MA-MLP 1/1900/101, cited in Binney, p. 85.
[386] Binney, Part II, p. 86.

authorised by Smith on 26 November 1889, three days before the already scheduled Native Land Court Hearing.[388]

The survey was continually denounced throughout the Land Court proceedings from all chiefs whose lands had been included in this claim. During an adjournment for those involved to come to agreements on how they wished to proceed, Rakuraku and 110 people of Tuhoe and Urewera hapu signed and sent in a petition to Mitchelson requesting that the 'fraud' and 'robbery' that the survey had set out to achieve be stopped and the survey not authorised. One of those who signed was Te Whenuanui 'the supreme chiefly leader of Tuhoe', and there were many other notable chiefs such as Tamaikoha, Paora Kiingi, Hemi Kakitu, Netana Rangiihu, and Hetaraka Te Wakaunua. As Binney points out: 'The evidence of universal opposition from senior tribal leaders to this hearing was overwhelming, if the minister chose to listen.'[389]

The unanimity is interesting not only in light of historical events at Wairoa, but as Binney notes, in the light of the arrest of Te Kooti at Waiotahe, near Opotiki, in the middle of the hearing:

> every single person giving evidence was involved in these dramatic events: some opposed Te Kooti, while many supported him. But they were, almost without exception, concerted in their effort to uphold their rights to the land which had been dragged into Court against their pleas.[390]

The issue of having to appear at a Native Land Court hearing regardless of whether or not you approved of the process or wanted the title to the land in question investigated and Europeanised is a major one, and one struggled with by Maori in this area as well as in other parts of New Zealand. As expressed by Pihana Tiwai of Ngati Patu: 'the different hapus should exercise their right to deal with their land as to surveys to[sic] : and not be bound by a survey made by Tauha and others'.[391] Unfortunately people of Ngati Kahungunu, Whakatohea and Tuhoe were indeed bound by an illegal survey, just as

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[387] Document of Approval, Tahora No. 2, 4 September 1888, NLPD 1888/208, MA-MLP 1/1900/101, cited in Binney, Part II, p. 86.
[388] Binney, Part II, p. 86.
[389] Binney, Part II, p. 88.
[390] Binney, Part II, p. 89.
[391] Opotiki NLC MB 3, 11 December 1888, pp. 443-4

others in blocks like Waimana and Matahina were bound by the decisions of others to take the land to the Native Land Court.

The survey lien was also imposed whether or not a claimant group had requested the survey or not. Following Judge O'Brien's decision that a lien of £1600 was to be upheld, the people who had been awarded ownership of Tahora found themselves having to raise an enormous sum to pay for it. There were only two portions in this block that had not been made inalienable in 1889 – these were 2AE2, which Tamaikoha had held aside to sell to raise money to pay the survey costs, and 2B1, which had been awarded to 13 owners including Tamaikoha and Netana Rangiihu. Rees proposed that one single area be cut out of the total block to be sold to pay the lien and this area was to comprise 2B1 and 2AE2.[392]

Rees then approached the Government to take over the lien by taking this central portion as payment to 'satisfy' the survey lien and he also suggested that the owners might be willing to sell other areas around it. The Native Minister, Cadman, accepted this offer but made it 'clear that the Crown would not take up the £1600 lien until indisputable title to the portion offered had been conferred upon it'.[393]

Following a decision in 1893 by the Land Court that it could not cut out this central portion to satisfy the lien, the government began buying up undivided shares in the block, but 'holding back twopence an acre from the payments it made to the sellers' in order to build up a fund to pay the lien. Since the lien was accumulating interest at a rate of 5 percent the accumulated debt by 1896 had again reached about £2000. Also by 1896 it was estimated that the government had bought up 100,000 acres throughout the block. Binney notes that the Crown 'purchased cheaply'[394] and bought the land at its own valuation of 2/6 per acre.[395] In April 1896 the Land Court sat to cut out the Government interests in the block. Rees argued that there were no internal boundaries surveyed so there was effectively no title to these internal blocks. It was clear these blocks should be surveyed and the Court declared that the owners would have to pay for these as well.[396]

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[392] Binney, Part II, pp. 99-100.
[393] Binney, Part II, p. 100.
[394] Binney, Part II, p. 106.
[395] Binney, Part II, p. 105.
[396] Binney, Part II, p. 102.

Tuhoe and Ngati Kahungunu had no means of paying what became exorbitant and double charged survey costs, even though Tamaikoha had attempted to provide for these with a specific section of land. The Government stepped in to assist and ended up buying up interests in nearly half the total acreage of the block in a manner calculated to benefit themselves rather than assist the owners.

Binney calls the proceedings in 1896 'certainly manipulative and possibly corrupt'. The survey costs were charged twice by Gill, the Native Land Purchase Dept officer in Gisborne. He claimed the original £1887.7.11, and Baker's lawyers claimed the £1600 plus interest of £353.6.8. The Crown asserted that it had acquired 124,403 acres, over half the total size of the block. It also claimed 1000 acres in satisfaction of 'old advances' it had made to Wi Pere in 1879 for Te Houpapa. It also required that land be taken from the blocks of those who had not wanted to sell to the government in satisfaction of their liability for the survey – a total of 6,291 acres. [397] It seems strange that, when the point of transferring the survey lien to the Government was that they would buy portions of the land to obtain the money to pay the lien, and when this had been suggested so that sections would remain intact, that the Government still believed that those blocks that were not sold should still pay 'their share'. Binney argues that 'it is hard not to believe that the Crown moved fast to cut out its purchases in anticipation of the [Urewera District Native Reserve Act], which set aside the Urewera as a self-governing district' and which passed in October 1896.[398]

Regarding the total purchase of 2B1 and 2AE2, Binney argues that the government 'took the two portions', as Tamaikoha's portion was described as being 'awarded' and then amended to 'sold' to the Crown, and that although he had been paid he had not signed the deed.[399]

The huge land loss in Tahora No. 2 came about because of the illegal survey carried out by Baker. Despite vociferous objections to this survey by all the chiefs of the hapu involved, and despite the fact that the two men who applied for the survey were found to

[397] Binney, Part II, p. 103.
[398] Binney, Part II, p. 106.
[399] Binney, Part II, p. 105.

have no rights at all to this land, the Court decided that the owners were still liable for the survey. Binney is scathing of the Crown actions, stating that:

> instead of mediating responsibly in a situation that had arisen entirely from the unauthorised survey, the Crown seized the opportunity proffered by Wi Pere's lawyers to take over the lien. It used this situation to acquire as much land as possible, as cheaply as possible, in direct contradiction of the owners' known wishes. It used the fact of the survey lien, which it authorised – retrospectively – to force through these purchases...It acted on the pretext that the government was taking over the lien. Instead it purchased cheaply, and it overcharged both the sellers and the non-sellers for the lien. The government indubitably violated its responsibilities by these procedures. To all intents and purposes, it confiscated the bulk of Tuhoe's land within Tahora.[400]

5.2.2: Waipaoa and Survey

The loss of land resulting from the survey of Waipaoa was not as extensive as that experienced in Tahora. However, as in many other cases, people who had not requested the survey were still obliged to pay for it in land. In this case, an agreement was reached between the Ngati Kahungunu applicants and the surveyor to pay for the survey in land. The initial terms of the survey, as indicated by J McKerrow, the Surveyor General, were that an agreement should be negotiated by the Chief Surveyor of Napier, Horace Baker, with Ngati Kahungunu 'as to the price per acre that the land should be charged at'.[401] As Ngati Ruapani had not been involved in the survey application, it appears that there was an assumption on the part of the survey officials that it was Ngati Kahungunu who held the land and so therefore all dealings should be with them. This plan to establish prior to survey the amount that the land would raise if land were to be taken in satisfaction of survey costs was transmuted later that month into an agreement between the Ngati Kahungunu chiefs Reverend Tamihana Huata and Hapimana Tunupaura and the Napier Resident Magistrate, in front of George Preece, to pay for the survey in a specific block of land which was designated the Matakuhia block.[402] Attached to this agreement was a note from Baker stating that any delay in the survey caused by obstruction by Maori

[400] Binney, Part II, pp. 106-7.
[401] Stevens, p. 10
[402] Ibid., p. 10

would be paid for in land as well.[403] Some debate was raised after the signing of the agreement as to the amount it had been stated would be charged to the land. The agreement outlined that for every two shillings of the cost of the survey one acre in land would be taken. Tamihana Huata wrote to Baker asking him to increase this to three shillings, which is what they had thought would be the case. This request was denied and the agreement for two shillings and acre stood.[404] Emma Stevens notes that:

> The officials who had been involved in allocating the Matakuhia Block for this purpose later conceded that the block had not existed officially and that it had only been cut off to recoup the government for the survey lien. Following the disapproval expressed by Judge Wilson at the Native Land Court investigation in 1889 the Chief Surveyor at Napier was advised to make the Matakuhia Block 'disappear from the maps'.[405]

Stevens notes a significant point raised in the discussion between Preece and Tamihana Huata over the survey. In a letter from Preece to Baker, Preece states that Tamihana wanted Waipaoa and Waikareiti to be one block, and if necessary the court could partition them. Stevens argues that this 'draws attention to Huata's acknowledgement that Waikareiti was a separate block and thus a separate tribal rohe. This view of Waikareiti was reiterated in the evidence given by both Ngati Ruapani and Ngati Kahungunu and the Native Land Court hearing of Waipaoa in 1889.'[406]

Tamihana Huata also expressed concern over the amount for the government being surveyed before the survey of the whole block was completed. Henry Ellison, the surveyor, complained that Tamihana had prevented him from surveying the section to be taken in lieu of payment of the survey, and requested a reimbursement of £60 in consequent expenses. Tamihana informed Preece that he had simply asked that Ellison wait until the survey of the whole block had been done as 'he did not think it was possible for Ellison to know the area to be taken before completing the block'.[407] This is a very valid point, and shows how the government saw it as a foregone conclusion that they would take a portion of land.

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[403] Ibid., p. 12.
[404] Ibid., pp. 11-12.
[405] Ibid., p. 11
[406] Ibid., pp. 13-14
[407] Ibid., p. 13.

The survey lien on the land was recorded as being £573.3.1 in 1886. The lien could not be registered against the land until it had gone through the Native Land Court, and the application for a Land Court hearing had been withdrawn in November 1884, for no clear reason.[408] Following the hearing in December 1888, a certificate was issued by the Survey Dept confirming that the owners of the block, both Ngati Kahungunu and Ngati Ruapani, owed this sum to the Surveyor General. Stevens notes that 'the Chief Surveyor [E.M. Williams] noted on the certificate that it had been agreed that the costs would be paid in land and accordingly a block called Matakuhia containing 5,822 acres had been marked off as shown on the certified plan of Waipaoa'.[409]

In the Land Court hearing, Hapimana gave a different account of the agreement to pay for the survey in land. He claimed that he had wanted to pay in money, and that he did not sign the agreement. When he was shown a copy of the agreement with his signature on it, he accepted that he did remember signing it but declined to say anything more.[410] Stevens says, 'While the circumstances surrounding the signing of the agreement are not very clear, what does emerge clearly from the court minutes is that Ngati Ruapani were not involved in the negotiations and did not consent to the survey lien being paid for in tribal land in the 1882 agreement'.[411]

Evidence relating to the government claim was presented by I.I. Dennan on 10 April. The Government claim to land at Matakuhia was accepted by the Court, largely on the grounds of the agreement signed by Hapimana and Tamihana which the Court decided had been 'endorsed or confirmed' by the rest of the tribe 'in that they have pointed out the boundaries and have unanimously had their case tried in this Court upon the plan of that survey'.[412] This is an unreasonable logic – once the survey had been made and a Land Court hearing applied for, unless they accepted the survey they were unlikely to be awarded title to their lands. The Court further stated that since two tribes had been allocated the land (Ngati Kahungunu and Ngati Ruapani) both should pay the cost of the survey. Thus, equal measures of 2911 acres were taken from Waipaoa 1 and Waipaoa 2.

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[408] Ibid., p. 14
[409] Ibid., pp. 14-15
[410] Ibid., pp. 19-20
[411] Ibid., p. 20
[412] Wairoa Minute Book 3B, p. 163, cited in Stevens, p. 22

Waipaoa 2 was the block taken in satisfaction of Ngati Ruapani's share of the survey cost. In the original plan presented to the Court 'at an undisclosed date',[413] the boundary line of this block extended into Lake Waikareiti. In the plan drawn up by Dennan at the end of the Native Land Court hearing, the border extended only to the shore of the Lake. After some discussion between the Native Land Purchase Department and the Survey Department, it was decided that the map deposited with the Court, showing the boundary in Lake Waikareiti, should be accepted.[414]

In 1890 Hapimana Tunupaura applied for a rehearing of Waipaoa 1 and 2 (the blocks awarded to the government), as he wanted more names added to the lists for those, as well as 100 acres to be reserved for a burial site and for a kainga. Hapimana also questioned the fairness of 5822 acres being taken out of the total 39,302 in satisfaction of the survey costs, claiming that the blocks were much too large and the price per acre too low. He felt that the land should have been valued at 5 shillings an acre rather than the 2 shillings it had been because 'the soil is very good and is near the farms'.[415] The Native Minster was advised to reply to Hapimana that 'the award of land to the Crown cannot be reopened'.[416]

By 1896 there had been many offers to sell interests in the other subdivisions in Waipaoa, and the Government decided to begin purchasing these. It was noted in 1899 that Wi Pere had come to the Wairoa to try and prevent these sales. The Under Secretary noted that the Waipaoa block was 'the key to the Urewera Country and to the opening up of which the Surveyor General attaches a great importance'.[417]

Ngati Ruapani had not participated in the arrangements for the survey and had not been consulted about the hearings either, and yet they were still deemed liable for half of the survey costs. Given that they also received a much smaller amount of land than did Ngati Kahungunu, it does not seem that this was a very equitable split. It should also be

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[413] Stevens, p. 24
[414] Ibid., pp. 24-5
[415] March 1890, Hapimana Tunupaura to Michelson, MA-MLP 1, 1910/129 Vol. 1, in Supporting Papers Vol. XVIII, pp. 6234-6238.
[416] 18 April 1890, Lewis to Native Minister, MA-MLP 1, 1910/129 Vol.1, in Supporting Papers Vol. XVIII, p. 6233.
[417] Note from Under-Secretary, 21 August 1899, MA-MLP 1, 1910/129 Vol.1, in Supporting Papers, Vol. XVIII, p. 6225.

questioned whether Tuhoe had as fair a hearing as they could have given the prior arrangements entered into by Ngati Kahungunu for the survey, which seems to in many cases predispose the judge to see the people who apply for the survey or the hearing as those with the rights. All others are left in a position of justifying their rights. This is especially so here where there was another agreement to pay for the survey in land signed by certain members of Ngati Kahungunu.

5.3: Conclusions

Maori in Waipaoa and Tahora 2 both experienced the failure of the Government to ensure that surveys were carried out in an equitable manner. The situation in Tahora was compounded by the initial illegitimacy of the survey and of the Court investigation itself. It is a supreme example of how once the Land Court process had begun it did not stop, and those who did not want to have the title to their land determined by the Native Land Court were helpless to prevent it from being so determined even when the investigation had been applied for under false pretences by people who did not have a right to it. In Waipaoa, the unfairness of the survey costs being decided in land beforehand is amply shown. Also apparent in both block investigations are the problems caused by having two adjacent blocks heard at the same time but in different locations, and having those hearings continuing for lengthy periods of time. In comparison, the next chapter looks at three blocks that were heard almost concurrently by the same judge in the same sitting, as well as one later block investigation which was the last Native Land Court hearing to be held in the Urewera.

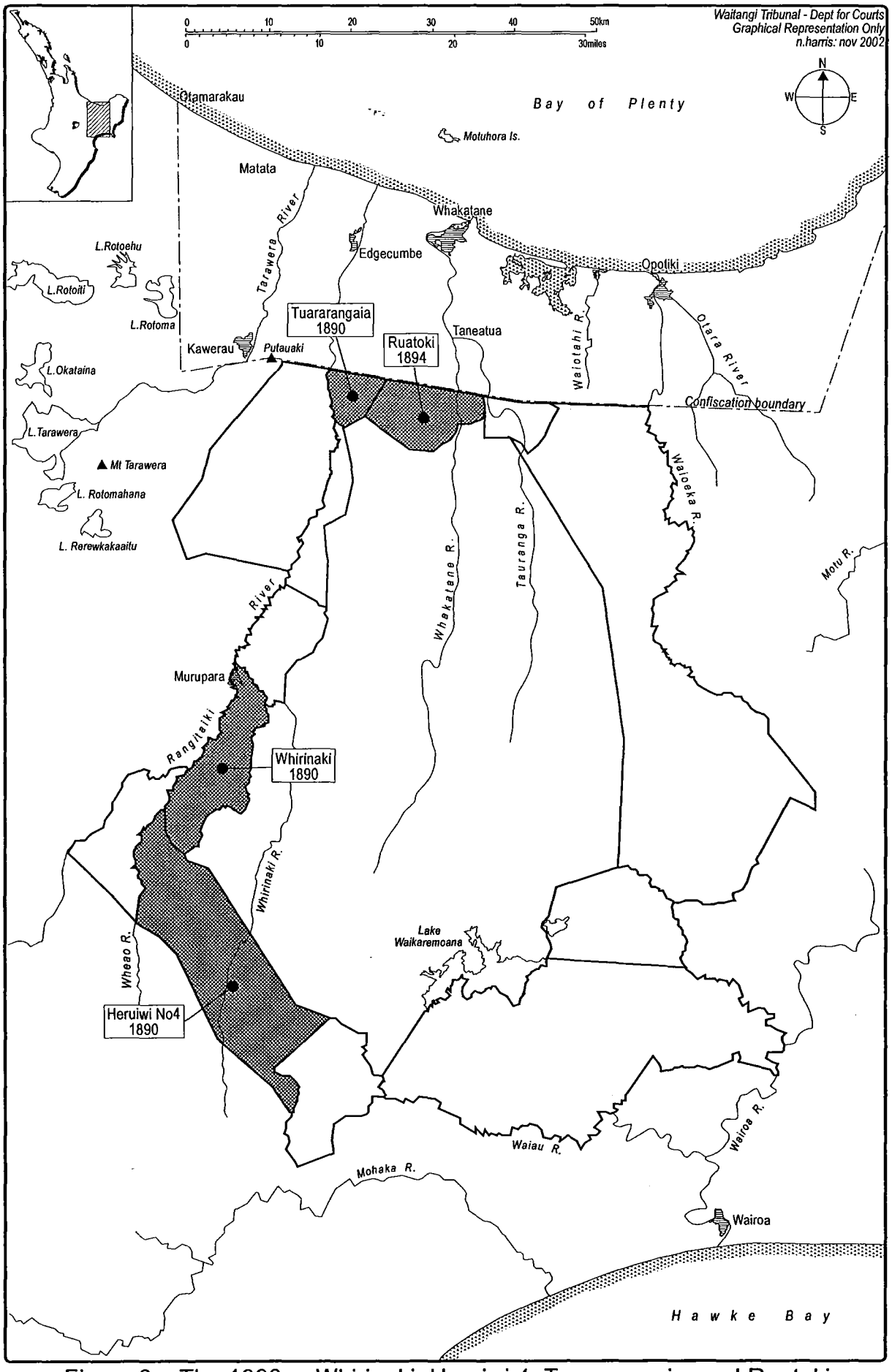

Figure 8 : The 1890s - Whirinaki, Heruiwi 4, Tuararangaia, and Ruatoki

Chapter Six: The 1890s – Whirinaki, Heruiwi, Tuararangaia, and Ruatoki

The experience of Tuhoe in three of these blocks, Whirinaki, Heruiwi, and Tuararangaia, is inextricably linked as they were heard at roughly the same time and by the same judge – Judge Walter Edward Gudgeon. These three blocks are also notable for the active part that appears to have been played by the assessor, Reha Aperahama, who placed several questions to witnesses during the hearing. This seems to have been a fairly uncommon occurrence. Strictly speaking Ruatoki does not fit with these other three blocks, and is slightly anomalous with other Native Land Court blocks in this study in that it was the sole block to be also included in title investigations under the Urewera District Native Reserve Act 1896. However, the first hearing for Ruatoki was held not long after those of the other three in this chapter. Ruatoki is located directly next to Tuararangaia and these two blocks shared some of the same claimants and the same issues. [418]

6.1: Outline of Native Land Court Hearings

6.1.1: Whirinaki:

This 31,500 acre block came before Judge Gudgeon at the Native Land Court in Whakatane on 14 October 1890, the assessor was Reha Aperahama. Rawiri Parakiri and others of Ngati Manawa were the claimants. Parakiri Hapimana claimed for Ngati Apa. The counter claimants included Ngati Manawa, Ngati Rangitihi, and Tuhoe.

Harehare Atarea claimed the whole block for Ngati Manawa and denied that Ngati Apa had exclusive rights to the whole of the block. Wharetini Te Waka claimed a 10 acre section on the Taurangakawae on the Rangitaiki River for Ngati Manawa and Ngati Rangitihi. He said that the part he claimed was not lived in by the ancestors but that he lived on it now. Harehare Atarea denied the claim of Wharetini and refused to amalgamate the two Ngati Manawa claims.

[418] See Figure 8, The 1890s – Whirinaki, Heruiwi 4, Tuararangaia, and Ruatoki.

Tutakangahau claimed a portion of this block for the Tamakaingaroa hapu of Tuhoe. He claimed through the same ancestor as did Ngati Apa, and stated that Tuhoe held special claims over Okahu and Oputana and also about Tamakaimoana. Tutakangahau informed the Court that although he knew the land he could not recognise it on the plan.[419] His three way claim was based firstly on his ancestry through Apa, but he stated also that his ancestors' pa on the land and his own assistance to Ngati Apa gave him a claim to the Whirinaki Block.

Regarding the claim of Waretini Te Waea for Ngati Matarai to a portion in the north of the block, Judge Gudgeon determined that there were no special claims of conquest. In fact, he thought that Ngati Matarai as a tribe did not exist; there was only one daughter of the Matarai in question and she married a descendant of Tangiharuru and produced the Ngati Hape tribe. Gudgeon stated that any evidence of occupation related to that of Ngati Manawa and 'whatever claims Waretini Te Waea and those claiming with him may have will be through the N' Manawa tribe'.[420] He finally stated that 'the applicant has given very meagre evidence, and has altogether failed to substantiate his case, which is therefore dismissed'.[421]

Gudgeon's decision on Tuhoe's claim to Whirinaki is notable for its similarity to his decisions in the two other blocks in this report for which he was the presiding judge. He stated that the conquest given by Tuhoe as the basis to their claim over Whirinaki was a conquest over Ngati Manawa, a conquest they had undertaken in several battles at the request of Ngati Apa. They further claimed that the Whirinaki block was deserted after these battles and that Tuhoe moved in and later decided to bring Ngati Manawa back to the land – an action reminiscent of Rangitukehu's relocating of Ngati Hamua and Warahoe.[422] This was a position contested by Ngati Manawa who claimed that they had never been driven from their lands. Gudgeon noted that Ngati Manawa's assertion was supported by Ngati Apa, 'who, while admitting that the men of N' Manawa were

[419] Whakatane NLC MB 2, 16 October 1890, p. 371
[420] Whakatane NLC MB 3, 16 November 1890, p. 100
[421] Ibid., 16 November 1890, p. 101
[422] Ibid., 16 November 1890, pp, 101-102.

conquered, specifically deny that the land was ever conquered'.[423] Gudgeon went on to say:

> No satisfactory occupation of this land by the Uriwera [sic] or Tuhoe people has been proved. In the cases mentioned by Tutakangahau in which ancestors of his tribe have [resided] on the block, it has been shown that those men occupied either by right of N' Apa and N' Manawa wives, or lived on the land by special permission of these tribes.
>
> The Court is of opinion that Tuhoe have no mana over the Whirinaki lands by virtue of conquest or occupation, whatever mana they have is over the men, not the land; That moreover even though they had at one time conquered the land, the fact of bringing back the original owners (as they allege they did) and putting them in exclusive possession of the land would in itself have extinguished the Tuhoe claim. The claim is therefore dismissed.[424]

In the Tuararangaia hearing in 1891, Gudgeon awarded land to Ngati Hamua and Warahoe on the grounds that Ngati Awa's act in bringing them back and placing them on the land they had been driven from effectively revoked Ngati Awa's own rights to the land. Whirinaki was a consistent judgement in that regard. 'Both on the question of ancestry and of occupation the evidence was most conflicting, N' Apa and N Manawa contending on all evidence points'. There is evidence that the judge in these cases used information from testimonies in other blocks he had heard to bolster the testimonies given in specific cases here. For instance, Gudgeon noted that Ngati Manawa 'maintain that Apa and his descendants have no claim over the lands east of Rangitaiki and in this contention they are supported by the evidence of independent witnesses in both hearings of Kaingaroa No. 1 on more than one occasion, while admitting the right of Apa to Kaingaroa west of Rangitaiki said the lands of Tangiharuru are east of that river.'[425] Gudgeon concluded that descendents of both Apa and Tangiharuru had in the past co-existed in Whirinaki.

Gudgeon further used knowledge obtained from other cases in his statement that the claimants 'at present call themselves N' Apa, but...during the investigations of

[423] Ibid., 16 November 1890, p. 101
[424] Ibid., 16 November 1890, pp, 101-102.
[425] Ibid., 16 November 1890, p. 102

Kaingaroa and Heruiwi blocks called themselves N' Manawa and claimed jointly as the descendants of Apa and Tangiharuru'.[426]

It was Gudgeon's belief that Apa and his people left, and that Ngati Apa remained on the block by virtue of their intermarriage with the descendants of Tangiharuru. He went on to say:

> It is however by virtue of occupation that Hapimana Parakiri & his friends have the strongest claim. On this essential ground they have shown not only an intimate knowledge with every feature of the block, but they have proved continuous occupation, sometimes conjointly with N' Manawa, and sometimes independently of that tribe. For these reasons the Court is of opinion that the N' Apa have the largest interest in the Whirinaki block, but they are not the exclusive owners.
>
> The judgement is, the Court awards this block to N' Manawa and N' Apa in the following proportions: -
>
> To Harehare Atarea and those of N' Manawa who claim under him 2/5th of the block and
>
> To Hapimana Parakiri and those of N' Manawa and N' Apa claiming under him 3/5th of the block.[427]

Following a request for a rehearing, the Assistant Surveyor was sent to establish the location of certain landmarks and cultivations.

> [This was] done at request of Ngatimanawa or "Tangiharuru" section of owners, but stopped by the section claiming as Ngatiapa – but who ultimately agreed to co-operate in the location survey – upon the recommendation of the late Chief Judge Seth Smith Esq to whom the matter was referred (& who deemed the work necessary to elucidate the grounds upon which a Rehearing is applied for by one set of owners, and deprecated by another).[428]

The Assistant Surveyor only visited those sites on the map that were disputed by the two parties as either not existing or being in the wrong place. Areas that they visited were settlements at which both hapu lived but which were called a different name by each group.

Gudgeon's decision that Ngati Apa were really Ngati Manawa claiming under a different name is described further in a letter he wrote in May 1891 responding to calls for a

[426] Ibid., 16 November 1890, p. 104.
[427] Ibid., 16 November 1890, pp. 104-105
[428] Report by Assistant Surveyor, 4 February 1893, in Supporting Papers Vol. XVIII, p. 6359

rehearing. This letter outlines Gudgeon's belief that the people of Ngati Apa were in fact Ngati Manawa 'and had only lived on this land as such, in fact that they had raised the name of Ngatiapa for the sole purpose of enabling them to set up a claim independent to that of Harehare The real chief of the Tribe'. He went on to say that 'of course' Ngati Apa were unhappy that they had not been awarded exclusive rights to Whirinaki, and no doubt aimed to be more successful in a second attempt. He stated that 'It is of course possible that either party may be entitled to a few acres more or less than they have received but in such cases when it is evidence that the Claimants belong to one and the same Tribe there must always be a difficulty in apportioning the interests.'[429] A rehearing was held on 15 June 1893 to determine the inclusion of people in the ownership lists and the proportionate ownership between Ngati Manawa and Ngati Apa. The amount of land awarded did not change from the 1890 order.

Tuhoe's claims to this part of the Urewera district were dismissed on the same grounds on which Gudgeon dismissed Ngati Awa's claims to Tuararangaia. Gudgeon argued that their conquest was not followed up by occupation, and that by returning the people to the land they did not maintain mana over the area, but in fact gave up their rights. Given that he was consistent in his application of this approach, I believe that even if he was inaccurate about the nature of Tuhoe's rights in this block he did not consciously act in a manner prejudicial to Tuhoe because of their situation as non-sellers or 'rebels'. It appears that he accepted Ngati Manawa's rights to this area in a way because of the applications and arrangements regarding other blocks surrounding it.

6.1.2: Tuararangaia

The confiscation line delineated the northern border of the 8656 acre block of Tuararangaia. Ngati Awa, Pukeko and Tuhoe had all had lands confiscated around the Rangitaiki area. This land loss 'encouraged all of the hapu in question to compete for control of any land that remained out of Pakeha hands.'[430] Te Whaiti Paora, described as being of Ngati Hamua, Warahoe, and Patuheuheu initiated the survey of the land in 1885.[431] Following initial opposition to the survey by people of Tuhoe and others of

[429] Letter from Judge W Gudgeon, 19 May 1891, Supporting Papers Vol. XVIII, pp. 6353-4.
[430] Clayworth, p. 38
[431] Ibid., p. 48

Warahoe, the survey was completed and Tuararangaia went before the Native Land Court in 1891.

The Native Land Court hearing was held at Whakatane in November 1891 and presided over by Judge Gudgeon. The claimants were Ngati Hamua and Warahoe and the Tuhoe hapu Ngai Tama. The counter-claimants were Ngati Awa, including some Warahoe living with them, another Ngati Awa claim solely from the Ngai Taipoti hapu, and a claim for exclusive rights to the block from Ngati Pukeko. On the second day of the hearing, Tiaki Rawiri of Ngati Awa declared that 'All Warahoe have joined in my case',[432] but this is likely to have been an exaggeration seeing as people of Warahoe had joined in a claim with people of Ngati Hamua.

Tuhoe claimed rights to the eastern part of the block through the ancestor Te Teko, the same ancestor through whom Hamua and Warahoe were claiming, and also on the grounds of occupation. Tamaikoha and Makarini Te Waru gave evidence of places of residence and places where birds were caught.[433] Tuhoe acknowledged the rights of Hamua and Warahoe to the western part of the block but stated that these two hapu were under Tuhoe mana, and their rights to the land derived from Tuhoe.

Tuhoe denied the claims of Ngati Awa and Ngati Pukeko to rights over the land. These claimed rights arose largely from the battles these two iwi had had with Hamua and Warahoe in the 1820s or 1830s, in which the latter tribes were driven off their land.[434] According to Ngati Awa testimony, Rangitukehu of Ngati Awa allowed Hamua and Warahoe to return to their land after peace was made. Judge Gudgeon noted that according to Ngati Awa this was in 1860 but the other claimants stated that it was at the time of the introduction of Christianity.[435] There was debate in Court as to whether the return of the land negated Ngati Awa's mana over the land or whether Hamua and Warahoe then resided on the land under Ngati Awa's mana.[436] Pihopa Tamawhati of

[432] Whakatane NLC MB 3, 29 November 1890, p. 231.
[433] Whakatane NLC MB 4, 12 and 13 December 1890, pp. 129-135.
[434] Ibid., 20 January 1891, p. 148.
[435] Whakatane NLC MB 4, 20 January 1891, p. 149.
[436] Clayworth, pp. 24-5

Hamua, Warahoe, and Tuhoe, stated that he denied 'the conquest by Ngati Awa as a claim to this land for it was given back'.[437]

Ngati Awa claimed exclusive rights and mana over this block. They stressed that as Hamua and Warahoe only had rights to this land under Ngati Awa, those members of the hapu claiming with Tuhoe in fact had no rights at all as it was Ngati Awa and not Tuhoe who held the mana over the land.[438] Ngati Awa also denied the rights of Ngati Pukeko outside the wider Ngati Awa claim. They acknowledged that Ngati Pukeko had occupied portions of the land, but claimed that it had been done 'under sufferance' of Ngati Awa.[439]

Ngati Pukeko in turn denied that Ngati Awa had conquered the land, and claimed through occupation. Werahiko stated that they had lived there for seven generations, since the time of Marupuku. But as Judge Gudgeon noted, Werahiko was the only one of the Ngati Pukeko to present evidence of occupation and 'of his own knowledge he can only show that he and Te Tawera lived thereon for a few years, and that during that period the main body of the tribe lived at Pupuaruhe'.[440]

Judge Gudgeon decided that Ngai Taipoto hapu of Ngati Awa had no claims, stating that this was one of the few things agreed upon by the various other parties to the investigation. He said that the evidence given by Penetito was 'conflicting and unreliable' and dismissed his claim. [441] Gudgeon further determined that Ngati Awa possessed no rights over Tuararangaia. He agreed that they had placed Hamua and Warahoe back on the land, but he believed that by doing so they had revoked their own rights.

The judgement raises some highly significant issues as far as this report is concerned. This hearing took place nearly 10 years after Matahina had first gone through the court. Judge Gudgeon stated in reference to the conquest of Hamua and Warahoe by Ngati Awa and Ngati Pukeko:

> It is by no means clear to this Court that the Tuararangaia block was ever occupied by any of the counter-claimants though their lands on

[437] Whakatane NLC MB 4, 11 December 1890, p. 122.
[438] Ibid., 20 January 1891, p. 147.
[439] Ibid., 20 January 1891, p. 148.
[440] Ibid., 20 January 1891, p. 150.
[441] Whakatane NLC MB 3, 20 November 1890, p. 148.

> the Eastern bank, known as Matahina, were occupied, the only question, so far as the N' Awa are concerned is was the land returned to Hamua and Warahoe. On this point the Court is of opinion that the land on *both banks* of the river was returned.[442]

Gudgeon referred to evidence given by Hiri Wetere that he objected to Hamua because they had set themselves up against Ngati Awa's claim both in this block and in Matahina. Wetere further went on to say that he objected to the claim of Hamua because 'they went away in 1865 to fight against the Pakeha and have now no residences on the block'.[443] In an important statement Gudgeon said:

> The N' Awa are apparently under the impression that because the N' Hamua joined Tuhoe in the rebellion of 1865 that therefore they have a right to resume possession, in fact, confiscate, the land. The Court cannot admit such a right. It accepts the evidence of Hiri Wetere that the N' Awa surrendered the land to the Hamua when they returned, and it is evident to the Court that had these people not left their land on the second occasion their title would not have been questioned. The fact of having left it does not however renew the title of N' Awa.[444]

This suggests that Judge Gudgeon did not regard an old rebellion against the Government as a deciding factor in title to customary lands not liable for confiscation.

Regarding the rights of Ngati Pukeko, Judge Gudgeon stated that although it was the Court's opinion that they had at no time permanently occupied this block, they 'did exercise certain rights of ownership over the land, such as building canoes', and that these factors were a consideration in his judgement to award them a small amount of land.[445] In the Court's opinion:

> The evidence given by all the parties to the suit is unsatisfactory and it is evident to the Court that for the last 50 years the land has practically been unoccupied: at most only one or two persons residing on it. The balance of the evidence is in favour of the Hamua, Warahoe and Ngati Tama being the rightful owners, but at the same time the Court is unable to say that the N' Pukeko have no claim.[446]

Ngati Pukeko received title to a 1000 acre block, Warahoe and Hamua were awarded 4156 acres and Tuhoe (Ngai Tama) were awarded 3500 acres.

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[442] Whakatane NLC MB 4, 20 January 1891, p. 149, emphasis added.
[443] Ibid., 20 January 1891, p. 149
[444] Ibid., 20 January 1891, p. 149
[445] Ibid., 20 January 1891, p. 151.
[446] Ibid., 20 January 1891, pp. 151-2.

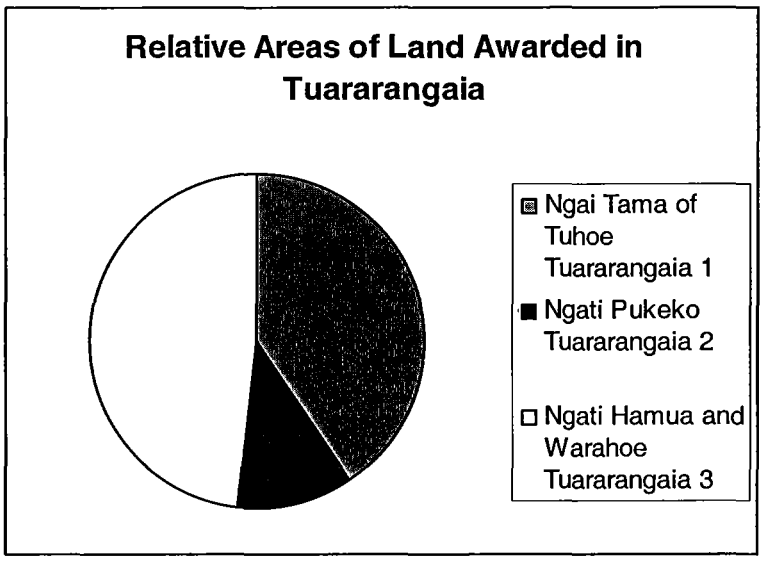
Table 6.1.2: Land Awarded in Tuararangaia

Hapu	Block Name	Area	Number of Owners
Ngai Tama of Tuhoe	Tuararangaia 1	3500	715
Ngati Pukeko	Tuararangaia 2	1000	406
Ngati Hamua and Warahoe	Tuararangaia 3	4156	297

Ngati Awa submitted two applications for a rehearing regarding this block. In 1893 they were both dismissed.

This seems to have been an area of overlapping use rights. Ngati Pukeko's evidence of occupation was not seen as strong by the Judge, but neither was that presented by the claimants. Tuhoe argued that they held mana over Warahoe and Hamua. Makarini Te Waru stated to the Court that 'Tuhoe proper do not come into the block, but the Tuhoe mana is over the block'.[447] Tamaikoha stated that 'the mana of this land and the [un?]surveyed portion is with Tuhoe. Over all unconfiscated land. ... Tuhoe alone have the mana to all lands S. E of this block.'[448]

Chart 6.1.2: Showing Relative Areas of Land Awarded in Tuararangaia



[447] Ibid., 12 December 1890, p. 134.
[448] Ibid., 13 December 1891, p. 140.

Tuhoe had to participate in the Native Land Court process over Tuararangaia to maintain their claims and their rights to the land, despite their opposition to the survey and the Native Land Court.

Judge Gudgeon wrote a letter to the Chief Judge on 20 March 1891 remarking on a communication from Te Hurinui and others of Ngati Awa in relation to Tuararangaia. He stated that it contained

> Nothing upon which I can report except only the impudent allegations of partiality on my part concerning which I can have nothing to say and vague assertions as to matters which by inadvertence they failed to bring before the Court at Whakatane...
>
> The claim by Ngatiawa was not at any time regarded by the Court as a serious attempt to assert a right the court took much the same view of it as did the witness Te Hurinui Apanui who giving evidence at the prima facie hearing truthfully characterized his claim as a [tiri?] huke (try on).[449]
>
> ...Over the eastern side...they [Ngati Awa] failed to show any occupation except perhaps that of a transient nature while fugitives from Ngapuhi.
>
> Over the western division their occupation is not only denied by the Tuhoe, Hamua, Ngaitaipoti & Ngatipukeko witnesses, but their own leading witness Hiri Weteri, a chief of Rank while strongly asserting a conquest admits that when the Warahoe & Ngatihamua Tribes were invited to return to their lands by Rangitukehu the whole of Ngatiawa and Ngatipukeko moved off the block to give effect to the decision of their chief and did not again return to these lands.

It is interesting in light of the question posed by this report regarding the prejudicial or otherwise treatment of Tuhoe, that Judge Gudgeon should have been accused by Ngati Awa of partiality to Tuhoe. It seems that he was very firm on his views that once people had been returned to the land then any rights previously held by those who returned them and left had gone. That this was a consistent approach is shown by his judgements in Heruiwi and Whirinaki. Gudgeon was also firm in not judging Tuhoe by the fact that they had been labelled as 'rebels'. This is significant in light of the way they had been treated in Waikaremoana only sixteen years earlier. However, it is also interesting to note that he states that the whole of 'Ngatipukeko' moved off Tuararangaia with Ngati

[449] Gudgeon to Chief Judge, 20 March 1891, in Supporting Papers Vol. XVIII, p. 6355.

Awa, in which case one wonders on what grounds he awarded Ngati Pukeko 1000 acres when he believed that Ngati Awa were not entitled to any land in this block.

6.1.3: Heruiwi 4

People of Ngati Manawa, including the chief Harehare Atarea, applied to have Heruiwi 4 subdivided on 15 May 1882; five months after the Crown had obtained Heruiwi 1. At this point, Heruiwi 4 had not been surveyed or passed through the Native Land Court and the application for subdivision was dismissed pending a survey. This survey was ordered on 23 May 1882, and although Tulloch notes that it is unclear when the survey took place, it had been conducted by April 1885, when the Assistant Surveyor-General noted that a survey charge of £343.17.8 was owed on the block.[450]

The survey was carried out under the guidance of Harehare Atarea, and when the land was heard before the Native Land Court in 1890 he used this to emphasise his rights to the land, stating that it was his mana, ancestry and occupation that had given him the right and the ability to carry out the survey.[451] He further stated that the survey had not been disturbed by other parties or counter-claimants. In the 1890 hearing, Peraniko Ngarimu of Ngati Hineuru explained that he had not opposed the survey as at that time he was unaware that Harehare was intending to claim Heruiwi 4 solely through the ancestor Tangiharuru. Such a claim would have denied the rights of other hapu. Paraki Wereta of Tuhoe stated that this survey was the first time that any other occupants of Heruiwi had come 'to disturb us'. He himself had not seen the survey but testified that 'some of Marakoko accompanied the survey party. They went of their own accord, & were not disputed by us. Te Wharehina was one. We heard of his taking part in the survey after it was completed'.[452] Tulloch notes that Heruiwi appears to have been surveyed 'in anticipation of it coming before the court with a group of other Ngati Manawa blocks in the early to mid-1880s'.[453]

There was a substantial delay between the survey of Heruiwi 4 in the early 1880s and its final hearing at the Court in 1890. Ngati Manawa chiefs wrote to Chief Judge

[450] Tulloch, 'Heruiwi', pp. 46-7
[451] see Tulloch, 'Heruiwi', p. 47
[452] cited in Tulloch, 'Heruiwi', p. 47
[453] Tulloch, 'Heruiwi', p. 47

MacDonald in 1887 to ask for an explanation about the delay. The year before, Ngati Manawa had left Karamuramu to relocate to Heruiwi after the Tarawera eruption destroyed most of their land. Tulloch argues that the poverty Ngati Manawa were no doubt experiencing may have lent some urgency to these proceedings.[454] The 1887 letter also dealt with the appointment of Wiremu Kingi as assessor, an appointment the Ngati Manawa writers were unhappy with due to his close relationship with Ngati Manawa and other owners of the land. They asked for Hori Riwhi of Nga Puhi to be approved as assessor as he was not related to them.[455]

Heruiwi 4 finally came before the Native Land Court on 3 November 1890. The Whakatane sitting was presided over by Judge Gudgeon, and the assessor was Reha Aperehama (not Wiremu Kingi).[456] Ngati Manawa's claim to an exclusive right to the 75000 acres of Heruiwi 4 was challenged by Ngati Hineuru and Ngati Marakoko (Tuhoe).

Harehare Atarea claimed Heruiwi 4 for Ngati Manawa and Ngati Whare under the ancestor Tangiharuru.[457] Another Ngati Manawa claim was presented by Hapimana Parakiri, who spoke for Ngati Hineuru and claimed Heruiwi as Ngati Manawa and as Hineuru. His claim through the Ngati Manawa ancestors Tangiharuru and Tuwhare were admitted by Harehare, but Harehare did not accept Hapimana's claim that his rights to the northern portion of Heruiwi derived from Hineuru, a descendant of Apa.[458] Following some discussion, Hapimana withdrew his separate claim to the whole of the block, instead going under the umbrella of Harehare's claim. He stated, however, that he would set up another claim just to the northern portion through Hineuru.[459]

Paraki Wereta spoke for Tuhoe, claiming the southern part of Heruiwi through occupation and conquest, and through the ancestors Marakoko and Tauheke. He noted that this claim via Tauheke was not through the Tangiharuru side but through the Ngati

[454] Ibid., pp. 48-9
[455] cited in Tulloch, 'Heruiwi', p. 49
[456] Tulloch, 'Heruiwi', p. 50
[457] Ibid., p. 50
[458] Ibid., p. 51
[459] Whakatane NLC MB 3, 4 November 1890, p. 97.

Kahungunu side.[460] Two individual claimants, Tutakangahau and Netana Rangiihu, also appeared at the hearing. Both men claimed small portions, Tutakangahau for himself and Rangiihu for his wife, and both claimed through Tuwhare. The Judge stated that as Harehare had accepted claims through this ancestor, the two men should 'submit their claims at the end of the hearing if they, or those they represented, were omitted from any list of names submitted to the court by Harehare'.[461] Although Tutakangahau had his ancestor admitted straight away, when Netana spoke, claiming for his wife, Harehare replied that 'I know of no occupation by Tuhoi [sic] of this block. Their place is Ruatahuna. I don't recognise this man's wife'.[462] Netana stated that 'I heard Tangiharuru was set up and I thought I wd [sic] claim on behalf of my wife. Her claim is through Tuwhare'.[463]

According to Peraniko Ngarimu, a Ngati Hineuru witness, there had been no boundary between Ngati Manawa and Ngati Hineuru in the time of Hineuru, and that most Ngati Manawa occupations were of fairly recent date. He explained that they did not mind Harehare and others living on Heruiwi as they were of Ngati Hineuru as well as Ngati Manawa.[464]

As with many other hapu in this area at this time, Ngati Hineuru had left their land during the war with Te Kooti. Some Ngati Hineuru went to the Chathams with Te Kooti, and others remained on the block 'growing food for the government'. Ngati Manawa, a loyalist iwi, went to Galatea when peace was made, and moved back in 1872 (according to Peraniko). Ngati Hineuru, having fought against the Government, had been ordered to live at Tarawera following their surrender and were afraid to move back to the block.[465] The reason given by Peraniko for Ngati Hineuru's compliance with the survey was that they thought that Heruiwi 4, like Heruiwi 1, was to be claimed under both Apa and Tangiharuru, which would have included Ngati Hineuru in the claim.

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[460] Tulloch, 'Heruiwi', p. 52
[461] Ibid., p. 51
[462] Whakatane NLC MB 3, 4 November 1890, p. 99.
[463] Ibid., 4 November 1890, p. 99.
[464] cited in Tulloch, 'Heruiwi', p. 52
[465] cited in Tulloch, 'Heruiwi', p. 52

Ngati Manawa's case was conducted by Mehaka Tokopounamu of Tuhoe. He called as a witness Harehare Atarea, who began by identifying and describing the land claimed by Ngati Hineuru, refuting their claim and in the process staking his own.[466] Harehare denied the link between the land and the ancestor Apa that had been allowed in the 1878 hearing for Heruiwi 1-3, dismissing his inclusion of that ancestor at that hearing as an act of 'affection' rather than of strict connection. In doing so he disagreed with his brother Peraniko Te Hura's 1878 testimony. He disagreed with Peraniko again when he said that although Ngati Hineuru had lived on Heruiwi 4 they only did so under the mana of his grandfather. The buried dead of Ngati Hineuru were only on Heruiwi, according to Harehare, because of a special request by their chief Te Whare and Tarawera was the land where they belonged.[467]

There was a delay of six days between the hearing of Ngati Manawa's evidence and that of Tuhoe, as the result of a death and the need for a funeral. The Tuhoe case was conducted by Numia, whom Tulloch supposes to be Numia Kereru.[468] There is no Numia Kereru named in the lists of owners, but Kereru Te Pukenui is.[469] The Tuhoe claim was based on ancestry through Marakoko, a descendant of Tangiharuru, and through Tauheke, whom was initially described as a descendant of Kahungunu. According to Elsdon Best, Ngati Marakoko was a hapu of Ngati Manawa.[470] Later in the hearing it was suggested that Tauheke's rights came through his mother, who may have been Tuhoe, rather than through Kahungunu. Paraki Wereta stated that the eastern part of the portion under claim belonged to Tauheke and thus Tuhoe, and Marakoko had the western section. Ngati Marakoko, although descended from Tangiharuru, were labelled Tuhoe by Paraki, 'but not all of them'.[471]

According to Paraki, there had been no disputes with other descendants of Tangiharuru and there had been no attempts to dispossess his people 'up to the present'.[472] Although he himself had been living off the block for some years, Te Peeti currently lived there.

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[466] cited in Tulloch, 'Heruiwi', p. 53
[467] Tulloch, 'Heruiwi', p. 54
[468] Ibid., p. 54
[469] Whakatane NLC MB 3, 26 November 1890, p. 213
[470] Bright, p. 9.
[471] cited in Tulloch, 'Heruiwi', p. 55
[472] cited in Tulloch, 'Heruiwi', p. 55

Paraki 'described the locations of key physical characteristics, food sources and residence sites on the land. At times while being cross-examined, Paraki declared that he had been mistaken or confused about some aspects of his testimony.'[473] It appears that in some instances, witnesses who were not entirely sure about the land they were addressing were only on the stand because the person with the information had been unable to attend the hearing. This naturally disadvantaged the hapu or iwi claim.

Evidence was also given by Pukenui, whom Tulloch supposes to be Kereru Te Pukenui. Although he possessed no personal interests in the land, he declared that Tauheke's rights derived from Potiki and not from Ngati Kahungunu. Pukenui disagreed with some parts of Paraki's testimony relating to boundaries and whakapapa, and denied that Tauheke's right came through his mother. He stated that 'Paraki and those he represented had used Marakoko's name "to name themselves as a hapu or tribe" but that "Paraki was wrong in saying they were a tribe"'.[474]

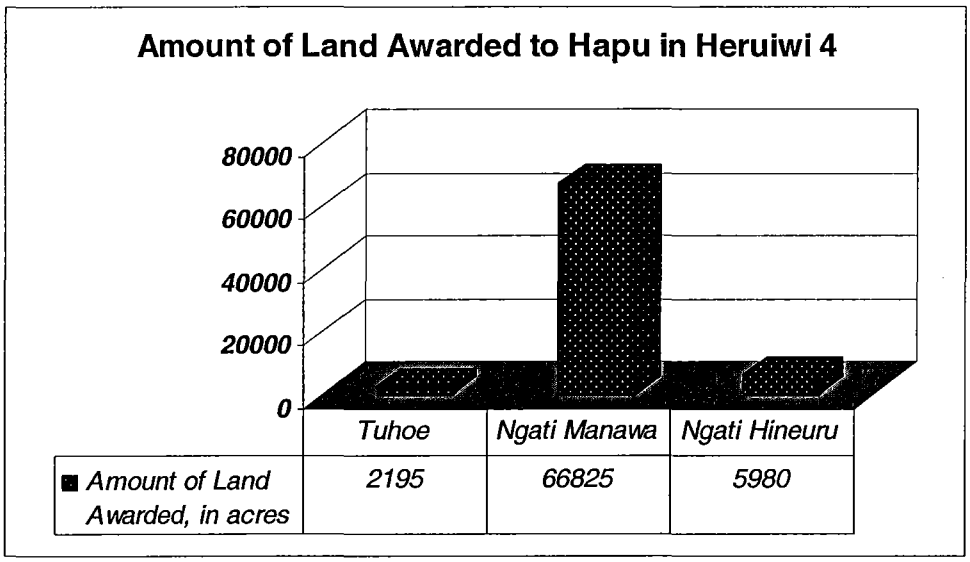
Following Tuhoe's evidence, Ngati Manawa presented a rebuttal. Rewi Rangiamo described the land claimed by Ngati Marakoko and challenged the assertion of Tuhoe that Ngati Marakoko had no rights to the block and that it had never been divided between Marakoko and Tauheke but that it belonged entirely to Tangiharuru. He contested the boundaries given by the Tuhoe witnesses and declared the 'true ancestral' boundary to be the Southeast one between Ngati Kahungunu and the descendants of Tangiharuru. He supported this assertion by describing how Toha of Ngati Kahungunu had observed this boundary when he made the survey of the Maungataniwha block which bordered Heruiwi on the Southeast.[475]

On 24 November 1890, Judge Gudgeon awarded land in Heruiwi mainly on the basis of the evidence of occupation, as he had done in both Whirinaki and Tuararangaia. He acknowledged the significance of ancestral rights, but dismissed the importance of conquest in this block.[476] The land was awarded in the following way – Ngati Hineuru received part of the portion they had claimed in the Northwest. These 5980 acres became

[473] Tulloch, 'Heruiwi', p. 55
[474] cited in Tulloch, 'Heruiwi', p. 56
[475] cited in Tulloch, 'Heruiwi', p. 56
[476] Tulloch, 'Heruiwi', p. 57

Heruiwi 4A. Tuhoe received 2195 acres of the land they had claimed in the south east, not on the basis of the claim through Marakoko, but on Pukenui's evidence and as the descendants of Tauheke and Potiki. The remainder was divided into seven blocks and awarded to those represented by Harehare of Ngati Manawa. Tulloch points out that Heruiwi 4E was 'ultimately awarded to 13 titleholders through their Ngati Kahungunu links, rather than through their Ngati Manawa or Ngati Hineuru affiliations'.[477]

Chart 6.1.3: Amount of Land Awarded to Hapu in Heruiwi 4



In his decision, Gudgeon outlined his conclusions about the varying degrees of rights to the land. Although he was not entirely satisfied with the evidence given by Ngati Hineuru as to their ancestral connections and history of occupation, he awarded them land on the basis that 'their opponents' had admitted that Ngati Hineuru had been living 'undisturbed' on Heruiwi,[478] and that they had built a large house on the block. Also, the evidence given by Peraniko at the 1878 hearing where he acknowledged Ngati Hineuru's rights through Rangihuritini and the burial of Kiripakeke on the land played a big part in the judge's decision, indicating to him that Heruiwi had in fact belonged to Hineuru and her husband Kiripakeke rather than her husband Raukauwhakapu.[479]

[477] Ibid., p. 56
[478] Whakatane NLC MB 3, 24 November 1890, p. 191.
[479] cited in Tulloch, 'Heruiwi', p. 57

Judge Gudgeon felt that the evidence given by Tuhoe and Ngati Manawa regarding Tuhoe's claim was 'most unsatisfactory, possibly for the reason that neither parties really know anything of the locality. This is clearly the case as far as Paraki is concerned.'[480] He went on to detail the instances where Paraki had described the locality of villages and then later contradicted himself and said they lay elsewhere, and where he could not give details of the boundary he said he had laid down between his lands and those of Ngati Manawa.[481] He did not feel that Rewi Rangiamo had any particularly detailed knowledge of the block either, but accepted his assertion that his ancestors had a kainga inside that part of the block. Gudgeon stated that the Court was of opinion that 'there is nothing to show that any portion of this block has belonged to the N' Marakoko, and therefore the Court dismisses their claim, but as regards the claims of the descendants of Tauheke the Court is of opinion from the evidence given by Te Pukenui that they have a claim within the boundaries given by that chief'.[482] It is interesting to note that in the middle of discussing the merits of the boundaries given by Paraki and Pukenui, Gudgeon recorded the evidence of Rewi Rangiamo of Ngati Manawa that 'he knows but little of this part of the block' but that his ancestors had a small kainga in this area, an assertion which Gudgeon said was probably true.[483]

There was some dispute about certain names on the lists of owners put forward by Ngati Manawa. In the event, some names of Ngati Kahungunu were entered into the ownership list for Heruiwi 4E, after some more court appearances where additional evidence was given.[484] There were claims by 30 Ngati Hineuru individuals that they should be included in the ownership lists for Heruiwi 4F, but after much debate Judge Gudgeon excluded most of them, and admitted some with links to Ngati Hape who had been living on the land. Tulloch notes: 'In this case, as in his other Heruiwi judgements, Judge Gudgeon appears to have placed the greatest weight on evidence of occupation when considering who to award the land to.'[485]

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[480] Whakatane NLC MB 3, 24 November 1890, p. 192, cited in Tulloch, p. 57
[481] Ibid., 24 November 1890, p. 192-3.
[482] Ibid., 24 November 1890, p. 193.
[483] Ibid., 24 November 1890, p. 192
[484] Tulloch, 'Heruiwi', p. 61
[485] Ibid., p. 62

Restrictions were placed on four of the new blocks of Heruiwi 4, at the request of the owners. The blocks restricted were 4A, 4B, 4C, and 4F. 4C was the area awarded to Tuhoe, and was heavily forested. The four blocks 'were the more accessible occupied and cultivated blocks'.[486]

There were several applications for a rehearing between 1890 and 1893 by Ngati Kahungunu (regarding interests in 4D and 4E), and Ngati Manawa (who wanted the boundaries of 4E and 4A & B reheard).[487] These were eventually dismissed.[488]

Tulloch concludes that this block was 'an area of converging and intertwined hapu and iwi interests'.[489] Many individuals involved had multiple iwi connections (such as Mehaka who is often seen as Tuhoe). She goes on to say:

> The title investigation of Heruiwi 4 offered the interested parties an opportunity to clarify, or redefine, iwi borders. The turbulent history of the area, particularly regarding the relationships between Ngati Hineuru and Ngati Manawa in the north of the block, had resulted in changed patterns of occupation of the land. The Native Land Court provided a forum for interested parties to re-claim or renegotiate their traditional rights over the land. However, it needs to be asked whether the Native Land Court provided the best forum for Maori to resolve differences over boundaries. As indicated by the applications for rehearing of various subdivisions, the process and judgments [sic] of the court did not satisfy all parties.[490]

Tulloch argues that Ngati Manawa, who had lost many lands and for whom Heruiwi was one of their last large land blocks, may have taken the block to the Native Land Court to secure their interests in this area and to satisfy financial needs. She states: 'given the location of Heruiwi 4 (on the edge of Ngati Hineuru, Ngati Kahungunu and Tuhoe lands) Ngati Manawa may have felt some pressure to stake a firm claim to this area through the mechanism of the Native Land Court'.[491]

[486] Ibid., p. 62
[487] Ibid., p. 62
[488] Ibid., pp. 63-6.
[489] Ibid., p. 66
[490] Ibid., p. 67
[491] Ibid., p. 67

6.1.4: Ruatoki

Ruatoki is an area immediately below the confiscation line of 1866, alongside Tuararangaia and Waimana, and as a result was heavily occupied by various hapu of Tuhoe. It was heard at two Native Land Court hearings and after being wrongly included in the Urewera District Native Reserve in 1896, was heard by two Urewera Commissions as well. Through all of these investigations into ownership, the mana of Tuhoe hapu over this block was upheld, and the claims of Ngati Awa and Ngati Pukeko were dismissed.

Stephen Oliver makes the point that the confiscations forced many Tuhoe who had lost their lands to relocate to Ruatoki, being the 'last arable land Tuhoe had'. The number of people in Ruatoki after the confiscation made the claims later made on Ruatoki in the Native Land Court much more complex.[492] According to Best, Ruatoki was abandoned during the war with the Government, save for a few Tuhoe who remained behind to send information to Ruatahuna.[493] Ruatoki and Waimana became pacified districts under government control after 1870. They became a place for refugees, and in 1871 almost all the Ruatahuna Tuhoe were gathered at Ruatoki.[494] To end the occupation of Tuhoe land by government troops, Tuhoe leaders handed over Kereopa to the government in November 1871; they were then allowed to return to their homes.[495]

In December 1873, William Kelly began negotiations with Tuhoe at Ruatoki to purchase land there and at Waimana. The government had no objection to his doing so as long as he obtained land for pastoral purposes and they received all the land suitable for agricultural settlement.[496] He did not succeed in his negotiations for Ruatoki. J A Wilson, a Land Purchase Officer, began negotiations for Ruatoki land in 1874-5. He wanted to lease 30,000 acres on a 35-year term, and advanced £50 to Tuhoe for this block. There was opposition to the lease from some chiefs, and £30 of the money was subsequently returned to him. Oliver states that: 'Generally Tamaikoha and the other Tuhoe leaders at Waimana, Hemi Kakitu, Te Whiu and Rakuraku, were more amenable to European encroachment than the the [sic] Tuhoe leaders at Ruatoki, Te Makarini, Te

[492] Steven Oliver, 'Ruatoki Block Report', July 2002 (Wai 894 A6), p. 27
[493] cited in Oliver, p. 29
[494] Oliver, pp. 29-30
[495] Ibid., pp. 30-1
[496] Ibid., p. 31

Ahoaho, Te Ahikaiata and Kereru'.[497] The leading chiefs at Ruatoki in the 1870s included Hemi Kakitu and Paora Kiingi, as well as those mentioned above.[498]

The situation at Ruatoki was complicated further in the 1880s by Te Kooti's 1883/4 call for Tuhoe to be one people and one land. Oliver states that this was 'interpreted as a directive to his followers to gather at Ruatoki and live there...a Tuhoe migration to Ruatoki took place'. Two leading chiefs of Tuhoe, Makarini Tamarau and Te Whenuanui moved there at this time.[499]

Various Tuhoe chiefs – Numia Kereru, Netana Te Rangiihu and Tamaikoha and Tumeke Paora Kiingi – applied for a survey of Ruatoki in March 1891. Oliver notes that the Tuhoe chiefs put in the application in an effort to 'forestall' other applications made by Ngati Awa, Ngati Pukeko and Ngati Tai chiefs.[500] As in other areas of the Urewera, Tuhoe were responding to non-Tuhoe applicants who were taking land Tuhoe regarded as theirs to the Native Land Court. Oliver states that 'by making their own applications the Tuhoe chiefs would be able to hire their own surveyors and control events'.[501]

As noted previously, the danger of the Native Land Court was that even if a hapu or iwi was opposed to the Native Land Court process, they had to attend the hearings if another hapu had put in a claim to what they considered their land, or they would lose it. As Oliver notes, 'this accelerated the Government's acquisition of Maori land'.[502]

On 30 April 1894, the Ruatoki block of 21, 450 acres went before the Native Land Court, with Judge Scannell presiding. Ruatoki was claimed by Ngati Rongo, who claimed they had exclusive ownership rights.[503] The counter-claimants were from Ngati Awa and Ngati Pukeko as well as from other Tuhoe hapu.[504] Ngati Pukeko claimed the part of Ruatoki lying west of the Whakatane River. Ngati Rongo claimed Ruatoki in three parts. One part they claimed through ancestry, a second part was claimed by conquest over

[497] Ibid., p. 33
[498] Ibid., p. 33
[499] Ibid., p. 34
[500] Ibid., p. 37
[501] Ibid., p. 38
[502] Ibid., p. 41
[503] Ibid., p. 44
[504] Ibid., p. 45

Ngati Raka, and a third was claimed by conquest of other descendants of Tuhoe-Potiki and Tanemoeahi, the other Tuhoe hapu.[505]

A hapu described as the Urewera hapu of Tuhoe alleged that Ngati Rongo's claim came from the Tuhoe general claim to the land, and thus they did not possess exclusive rights. There were two sides to the investigation and contestation of the claims on Ruatoki. Ngati Rongo's claim that they held exclusive rights was contested by other Tuhoe, and all Tuhoe, including Ngati Rongo, contested the claims of Ngati Awa and Ngati Pukeko.[506] During the hearing there was much debate over the exclusivity of Ngati Rongo's claim, as well as over the residence or otherwise of various other Tuhoe hapu in Ruatoki.[507] Despite Numia Kereru asking chiefs of other hapu to make their claim under the Ngati Rongo one, as they too were descended from Rongokarae, his claim of exclusive rights was repeatedly refuted by other Tuhoe hapu. Eventually it failed for 'lack of evidence'.[508]

Evidence was given at the Native Land Court hearing as to who lived where on Ruatoki, but Oliver notes that 'evidence of hapu occupation at Ruatoki is incomplete and debatable and gives little indication of how long hapu had occupied the locality...Tuhoe hapu were intermingled in their occupation of Ruatoki and it was stated by Te Kaha Akuhata that there were no boundaries between the Tuhoe hapu, although there had been boundaries in ancestral times'.[509]

Judge Scannell dismissed the Ngati Awa and Pukeko claims on the grounds that the Native Land Court had decided that ownership was to be determined by who was occupying the land at the signing of the Treaty in 1840, and the Ngati Awa and Ngati Pukeko claimants had said that Tuhoe had returned to Ruatoki after they were invited to do so in the 1830s by Ngati Pukeko.[510] Judge Scannell's decisions for the Tuhoe hapu were varied. He dismissed the claims of Tamaikoha that certain lands belonging to the

[505] Ibid., pp 44-5
[506] Ibid., p. 45
[507] See Oliver, pp. 45-8.
[508] Oliver, p. 46
[509] Ibid., p. 47
[510] Ibid., p. 47

Urewera were wrongly included in the survey of Ruatoki.[511] He accepted the claims of both Tuhoe and Ngati Rongo that the other did not possess exclusive rights to the lands. He also stated his opinion that Ngati Rongo 'though in [the] Course of Time becoming closely allied to the Urewera by intermarriage and by a community of interest as the common enemy of the Coastal Tribes, originally held separate interests and have retained those interests separately to the present day.'[512] The Judge also inclined to the belief that although certain descendants of Tuhoe had proven that they were the 'rightful owners', he thought it was clear that 'the whole of the Tuhoe tribe, indeed the bulk of that tribe, have no claims whatever by occupation'. He further stated that it was hard to say which hapu had and which had no rights, but as the evidence of occupation was difficult to piece together he thought that only those hapu 'who have lived in the neighbourhood of this block', and not the inland hapu, were entitled to ownership rights.[513]

Scannell awarded the western part of the block to Ngati Koura and other descendants of Tuhoe who could prove their occupation, and the remainder of the block was awarded to Ngati Rongo and the Te Mahurehure hapu who were seen as being part of Ngati Rongo.[514] He noted that Te Mahurehure were 'really a portion of the Ngati Rongo hapu', but they had claimed on their descent from Tuhoe and it was on that basis that he awarded them land.[515]

The decision regarding the Tuhoe hapu recognised several hapu as having ownership rights over the same area. Oliver calls it a 'compromise'. He states that the hapu named in evidence as living in Ruatoki but not recognised as owners by the Native Land Court (Hamua, Ngati Mura, Ngati Korokaiwhenua, Ngati Muriwai, Ngati Turanga and Te Aitanga-a-Tanemoeahi) did not subsequently appeal for their inclusion in Ruatoki. Oliver surmises that it was likely that some of the claimants from these hapu were included in the ownership lists of the successful hapu, as Tuhoe often belonged to more than one.[516]

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[511] Judge Scannell's Minute Book 43, September 25 1894, p. 168.
[512] Ibid., September 25 1894, p. 168.
[513] Ibid., September 25 1894, p. 169.
[514] Oliver, p. 48
[515] Judge Scannell's Minute Book 43, September 25 1894, p. 170.
[516] Oliver, p. 48

The partition hearing on 4 December 1894 established Ruatoki 1 (8735 acres) awarded to 322 Ngati Rongo and Te Mahurehure, Ruatoki 2 (5910 acres) awarded to 380 Ngati Koura and other Tuhoe, and Ruatoki 3 (6800 acres) awarded to 408 Ngati Rongo, Te Mahurehure, and other Tuhoe, and a school site of 5 acres.[517]

The three blocks were declared inalienable by the Native Land Court, as it did not believe that the owners had sufficient other lands for their support, and an additional 14 names were added to the ownership lists. These were names of those who did not have rights of their own but to whom the owners had granted shares. These included Netana Rangiihu and Erueti Tamaikoha.[518] The site set aside for a school was used when the Ruatoki Native School opened in June 1896.[519]

The final court hearings to determine the ownership lists and relative interests were interrupted when Hemi Kopu of Ngati Koura told the court that Ngati Rongo had attempted to drive Ngati Koura off land at Owhakatoro to prevent them from proving their occupation and thus gaining inclusion in the ownership lists.[520]

Two appeals were submitted against Judge Scannell's 1894 decision. One was from Ngati Rongo, who maintained that they held exclusive rights, and the other was from Mehaka Tokopounamu and Erueti Tamaikoha, who claimed that other sections of Tuhoe than those awarded had rights to Ruatoki.[521] Judges Johnson and Eger presided over the rehearing in April 1897, and stated that although they would allow claims from the original 1894 hearing that were part of the general Tuhoe claim to be heard with the appeals, they would not allow new claims to be introduced. As a result, four of the lists of names presented by Mehaka were rejected.[522]

The Ngati Rongo claim for exclusive ownership was rejected by the judges, who determined that Ngati Rongo had not expelled all the descendents of non-Rongo Tuhoe from Owhakatoro, and further that this area was used by many Tuhoe hapu for hunting and fishing. The judges further stated that Ngati Rongo had acknowledged the claims of

[517] cited in Oliver, p. 49
[518] Oliver, p. 49
[519] Ibid., p. 51
[520] Ibid., p. 48
[521] Ibid., p. 52
[522] Ibid., pp. 52-3

Ngati Tawhaki at the 1895 hearing and had thus undermined their own claim of exclusive ownership. However, the appellate court also determined that Ngati Rongo were the chief owners of Ruatoki.[523]

The names added to the ownership were mainly entered into Ruatoki 2 and 3. In Ruatoki 2, the Court recognised that Mehaka's claim (which had been rejected in 1894 as not being strong enough) covered an area of land that they thought had not been used for any permanent occupation by any hapu, and thus those on his list had as much right as others according to their whakapapa. As a result, they awarded 2 shares in the block to 60 of the names on Mehaka Tokopounamu's list and to 27 of those on Erueti Tamaikoha's list.[524]

The Court added 46 names given by Mehaka Tokopounamu to Ruatoki 3. The people on this list were descended from Tokopounamu, and 'were admitted to ownership of Ruatoki No.3 on the grounds that descendants of Ruru and Te Kurapa had been admitted to Ownership in this part of the Ruatoki block in 1894 without protest and the descendants of these three ancestors usually resided together'.[525]

The Appellate Court's decision on Ruatoki 1 granted that Ngati Koura had ownership rights to the area. Ngati Koura witnesses gave evidence of occupation in the 1830s and named 10 pa. Although these pa were on the hills outside the Ruatoki block, the Court accepted that they would have had cultivations inside the block. The court rejected Ngati Rongo's claim that Ngati Koura had only moved there recently as 'it thought that occupation in the Ruatoki area had been intermittent generally due to the wars.'[526]

The Appellate Court reserved its decision until it had heard from Te Kaha Akuhata, who Oliver says the Court regarded as 'impartial'.[527] He described the influx of Tuhoe after Te Kooti had made his call for one people and one land, and also stated that those Tuhoe returning to reoccupy Ruatoki after the wars of the 1860s included other hapu than just Ngati Rongo and Te Mahurehure.

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[523] Ibid., p. 53
[524] Ibid., p. 53
[525] Ibid., p. 53
[526] Ibid., p. 54
[527] Ibid., p. 54

In the judges' opinion, because the Urewera was so isolated, 'more right to ownership should derive from occupation since 1840 than was usually the case'.[528] As a result, 27 names from Hemi Kopu's list and 61 names from that of Te Makarini were added to the ownership of Ruatoki 1. Numia Kereru indicated that there would be appeals against the decision to include Ngati Koura in the ownership of Ruatoki 1, and he and 59 others consequently petitioned the Government on this matter. Mehaka Tokopounamu also petitioned the government, asking for an inquiry as some people had been left off the ownership lists.[529] There were now 414 owners for Ruatoki 1, 466 in Ruatoki 2, and 453 in Ruatoki 3.

Ruatoki is a little more problematic than some of these other blocks as it was included in the Urewera District Native Reserve in 1896, which was supposed to exclude those blocks that had been investigated by the Native Land Court, even though Ruatoki had already been heard before the Court.[530] The confiscation line was the reserve's northern boundary, and this naturally incorporated Ruatoki, which unlike Waimana and Tuararangaia had not been heard years previously to the writing of the bill. Despite this, the Appellate Court had gone ahead with the hearing of appeals in April 1897. But following this, Ruatoki was later heard by the Urewera Commission.

It was still uncertain whether the Ruatoki blocks were to be included when the Commission had its first hearings in February 1899. Although the commission sat at Ruatoki and received claims and hapu boundaries from Tuhoe, some of these boundaries were disputed by other hapu, and the objections were recorded but not investigated. A year later in February 1900, SP Smith, one of the commissioners, wrote to the Native Minister to tell him that Tuhoe wanted the block reheard, but 'there were doubts whether the commissioners had the power to touch it', because of the earlier Native Land Court hearing in 1894.[531]

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[528] Ibid., p. 54
[529] Ibid., p. 54
[530] See Appendix Four, The Urewera District Native Reserve, for more information on the establishment of the Reserve and the Urewera District Native Reserve Commission, which was established to investigate the ownership of land within the reserve.
[531] Ibid., p. 56

The Commission's main inquiry into Ruatoki took place in April 1902, after the October 1900 Amendment Act which granted the Commissioners the same authority regarding Ruatoki as they had for any other block, and laid down that all orders by the Native Land Court regarding Ruatoki were now void.[532] This was a decision reached without consultation of at least one of the Commission members interested in Ruatoki. Numia Kereru wrote to Carroll in July 1901 asking the following questions:

> What will be done with regard to the survey charges?
>
> What will be done with regard to the costs connected to the cases?
>
> What will be done with regard to the money spent for the maintenance of the Maori conducting those cases?
>
> What will be done with respect to the money paid as deposits in connection with applications for re-hearings?
>
> What will be done with respect to money paid for services of clerks?
>
> Will these moneys be refunded to the Maoris?[533]

These questions do not appear to have been answered.

The Commission for Ruatoki was restricted as most of the Tuhoe members were excluded due to their interests in the land. The members were G Mair, W.J. Butler, and Hurae Puketapu. The commissioners followed the Appellate Court by allowing only claims from people admitted to ownership by the Native Land Court or those who had appealed against its decision (regardless of whether they had been admitted or dismissed by the Appellate Court).[534] Considering that the Native Land Court decision had been declared void this seems a little strange. If there was no valid order from the Native Land Court procedure then surely the Commission should have been open to hear claims from all interested parties regardless of whether or not they had been involved in previous Land Court hearings.

There were 49 appeals against the decision of the Commission, amongst 172 other appeals against the other Urewera block ownership determined by the Commission in 1902. In 1906, three commissioners were appointed to look into these appeals. Ruatoki was heard in February 1907 by two of these commissioners, David Barclay and Paratene

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[532] Ibid., p. 57
[533] Numia Kereru to Carroll, 24 July 1901, J1 1898/1011, NA, cited in Miles, p. 295.
[534] Oliver, p. 57

Ngata. The commissioners noted that they could find no records from the previous commission to show how they came to their decision on the ownership of Ruatoki.[535] Oliver notes that:

> The orders of the previous commission were widely different from the orders of the Native Land Court and the Native Appellate Court and no judgement could be found giving the reasons for the commission varying of the earlier orders. The Appellate Court had added names to the ownership list determined by the Native Land Court and the Urewera Commission had struck out some names and added new ones without giving reasons for doing so. Barclay and Ngata considered the Appellate Court award to be the correct one and would have recommended reverting to this award except for the appeals.[536]

As in the Native Land Court adjudications, Barclay and Ngata rejected Ngati Rongo's claim to exclusive ownership of Ruatoki, stating that several hapu were occupying Ruatoki at the end of the 1860s hostilities and that this was a 're-establishment of a former occupation' which dated from the time of the introduction of Christianity.[537]

The change to the lists of owners was an increase in the number of owners for each block, including some of Ngati Koura.[538] The lists determined by the Barclay Ngata Commission became the final orders for Ruatoki.

Ruatoki had a complex history complicated further by conflicting jurisdictions of the Native Land Court and the Urewera Commission. After all the different determinations of title, the basic divisions of the land remained the same. Ngati Rongo was seen to have strong rights but not to the exclusion of other Tuhoe hapu. Ngati Koura benefited from rehearings that increased the number of their hapu on the ownership lists, and other Tuhoe hapu had their rights over parts of the block upheld through successive hearings.

6.2: Issues Arising

There are several important issues that come out of an analysis of these four blocks. They are especially useful to look at because of the consistency resulting from having the same Judge involved in the earlier three blocks. The pressures on these blocks differed

[535] Ibid., p. 61
[536] Ibid., p. 61
[537] Ibid., p. 61
[538] Ibid., p. 61

according to location, with Tuararangaia and Ruatoki having to contend with confiscation areas and Heruiwi 4 and Whirinaki being claimed by non-Tuhoe hapu, putting Tuhoe in the weaker position of counter-claimant.

6.2.1: Surveys

As with nearly every block covered by this report, events around and caused by the survey of the land had a major impact on Tuhoe. There are several issues involved in any examination of surveys, one of which is the role played by the actual application for the survey to proceed. In some instances this was a pre-emptive measure to prevent other hapu from taking Tuhoe land to the Native Land Court. For instance, according to Stephen Oliver, the application for the 1891 survey of Ruatoki was submitted for precisely this reason. The importance of taking control of the survey is the issue of control over land.

Although I found no explicit statements from claimants at the time that they were placing counter applications specifically to retain control over the survey proceedings and thence their land, there are some statements that indicate the conceptual link between mana over the land and control of the survey and Court procedures. In the Land Court hearing for Heruiwi 4 in 1890, Harehare Atarea of Ngati Manawa stated that the survey had been carried out under his guidance, a fact he used to emphasise his rights to the land. He stated that it was his mana, ancestry and occupation of the land that had given him the right and the ability to carry out the survey, which according to him was not disturbed by other parties or counter-claimants.[539] Harehare was the instigator of the survey over Heruiwi, but in Whirinaki the survey was initiated by Ngati Apa, and Harehare obstructed the survey at first partly because he had 'wished the survey to include all his lands west of Whirinaki "as by so doing the whole of Tangiharuru's land would be included."'[540] Harehare was keen to maintain control over the lands that he believed fell into the rohe of Ngati Manawa. Control over the survey was significant for the Native Land Court process. It had been seen in surrounding blocks such as Waiohau in 1878 (see earlier in this report) that some Court officials viewed participation in the survey or a

[539] Whakatane NLC MB 3, 4 November 1890, p. 97, cited in Tulloch, 'Heruiwi', p. 47.
[540] Tulloch, Whirinaki, p. 28, cites Whakatane NLC MB 3 20-23 October

lease as indicating acknowledgement by others in the area that a claimant possessed rights over the land. Those in Heruiwi and Whirinaki especially would have been aware of this, but tensions over control of the pre-hearing procedures are also apparent in Ruatoki and Tuararangaia.

In Ruatoki the problems surrounding the 1893 survey originated not only with the tensions between Tuhoe and Ngati Awa (whose proposed survey of Ruatoki spurred Tuhoe to request their own be carried out), but between the Tuhoe hapu Ngati Rongo and other Tuhoe peoples. There were significant tensions at Ruatoki as Numia Kereru 'sought to make Ngati Rongo the pre-eminent hapu of the area. This led to opposition to the decision of the Ngati Rongo chiefs to apply for a survey by the majority of Tuhoe'.[541] The survey was opposed by Te Makarini Tamarau of Ngati Koura, a Ruatoki hapu, because it went against the principles of Te Whitu Tekau.[542] At a large meeting held to discuss the survey in February 1892, Ngati Koura claimed that the land belonged to them and asserted their opposition to the survey proposed by Ngati Rongo. Two chiefs named on the original survey application joined people from Ngati Koura in opposing the survey, and Oliver surmises that their change of opinion showed that they were 'following the opinion of the Tuhoe tribe and seeking to maintain a consensus within the tribe'.[543] In support of this, he cites a letter signed by 79 members of Tuhoe, saying that they had not agreed to the survey, and that those chiefs who had applied for the survey would abide by the tribe's decision.[544] Not all members of Tuhoe abided by the decision not to survey. The surveyor set out for Ruatoki on 29 March 1892, and when Tamaikoha wrote to Cadman asking that the survey party be recalled, Numia wrote to Cadman authorising it to proceed. Eventually the surveyors were turned back at the confiscation line, having had their instruments taken from them.[545]

Following intervention from Te Kooti and James Carroll, MP for Eastern Maori, Tuhoe chiefs agreed to allow the survey to continue, but the disparity in opinion over the survey manifested itself in further obstructions. Te Makarini Waru led a group who took away

[541] Oliver, p. 38
[542] Ibid., p. 38
[543] Ibid., p. 38
[544] Ibid., p. 38
[545] Ibid., p. 38

and destroyed the surveyor's instruments in May 1892. Cadman warned Makarini that his actions might compel the government to send in police.[546] Another attempt to continue the survey resulted in armed police and a contingent of the Auckland Permanent Artillery being sent to Ruatoki. A confrontation had occurred between Tuhoe protestors and the surveyor, Creagh, who refused to comply with the protestors' request that he hold off the survey until Te Kooti's arrival, and consequently he had his instruments confiscated by women of the tribe. The armed police arrested four Tuhoe chiefs, Te Makarini, Paora Kiingi, Ahikaiata, and Puketi, and 12 women were also arrested.[547] They were convicted and sentenced to a month in gaol.[548] Regardless of Numia's assurance to Cadman that he supported the survey, it was clear that a majority of Tuhoe did not. What Oliver calls a 'huge meeting' decided to continue to try and prevent the survey from proceeding.[549] At Creagh's next attempt to begin the survey, he was stopped by about a hundred Tuhoe and had his theodolite tripod taken from him. Later that night two trig stations were destroyed.[550]

Eventually, after further intervention from Te Kooti, Tamaikoha and Rakuraku withdrew their total opposition to the survey and presented a compromise. They suggested that the survey be restricted to a small block of land on the western side of the Whakatane River. Oliver notes that 'the division of Ruatoki was probably an attempt to separate the block into a part for Ngati Rongo, which could be surveyed as their chiefs had applied for the survey, and a part for the other Ruatoki hapu, which would not be surveyed'.[551] This compromise would have allowed each party to retain control over those lands to which they believed they had rights, and allowed a smaller section of the land to go through the Native Land Court procedures, while keeping another part of the land out. The government rejected this compromise, most likely because of the fact that less land would have been made accessible through the award of a European title.

Continuing the theme of threats and coercion, Magistrate George Wilkinson had been instructed by Cadman to insist that all opposition to the survey cease. He was also

[546] Ibid., p. 39
[547] Ibid., p. 39
[548] Ibid., p. 40
[549] Ibid., p. 40
[550] Ibid., p. 40

instructed to threaten Tuhoe if they continued to obstruct and oppose the survey. He was to tell them that if their opposition continued, the 'confiscation line would be moved further into Tuhoe territory', and the chiefs were threatened with a loss of the pensions paid to them by the Government.[552] Even with these threats, the survey was only allowed to proceed uninterrupted once Te Kooti had met with Tuhoe, and written to Ngati Rongo and expressed his support for the survey. The survey was finally started on 13 April 1893.[553] Opposition to the surveys continued on principle. T. M. Humphreys, the defence lawyer for the Tuhoe who had been arrested at the East Cape, wrote to the New Zealand Herald in March 1893, shortly before the survey began. He pointed out that Tuhoe expected the survey to cost around £500, which was money they did not have. They were aware that some of their land would be taken in payment, and as it was the only fertile valley land they had, they did not want to lose it. He further stated that many Tuhoe felt that Ngati Rongo, the hapu who had put in the application for the survey, had little or no claim to the land and 'the names of some chiefs had been added to the survey application without authority'.[554] Oliver notes Humphreys' closing remarks, that 'the government's support for the private survey of a private surveyor, at the point of the bayonet, was inexplicable'.[555] However, this support is not so inexplicable taking into account the pressures on the Government to ensure the clear progress of surveys of land that could, once surveyed, be taken to the Native Land Court, and then, with its new European title, be leased or purchased for the use of settlers and agricultural endeavours. The Government had used threats to ensure the continuation of surveys in other areas of the Tuhoe rohe. In Waipaoa it had been made clear to Maori that any delays to the survey caused by obstruction or opposition would be paid for in land. The intention was to open up the Urewera and once initial consent to a survey had been given the Government were very reluctant to allow the land to go undisturbed.

In Tuararangaia, the survey was initiated in 1885 by Te Whaiti Paora, who belonged to various hapu linked to Tuhoe as well as historically to Ngati Awa.[556] The surveyor,

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[551] Ibid., p. 40
[552] Ibid., p. 40
[553] Ibid., p. 40
[554] Ibid., p. 41
[555] Ibid., p. 41
[556] Clayworth, p. 48

Charles Baker, was conducted over the land by Mehaka Tokopounamu, here described as belonging to Patuheuheu, and Te Whaiti Paora, two of the men who had been involved in the Matahina and Waiohau hearings.[557] It is clear that not all hapu in the area were aware a survey had been initiated until 'some young men out hunting pigs discovered the survey party and reported it to leaders of Ngati Awa and Warahoe'.[558] Peter Clayworth concludes that, as many leaders appeared not to know of the survey, 'Te Whaiti Paora can not have been representing all Warahoe in his application... [and] was clearly not keeping Warahoe as a group informed of his activities.'[559] Members of Warahoe blocked the survey at first by confiscating instruments and escorting the survey party across the borders, and then acted to restrict the scope of the survey, as was done in other areas discussed in this report. They restricted the survey by conducting the surveyors around the land that they wanted included in the block to come before the Court, and steering them away from land they did not want investigated by the Court.[560] In this manner they acted to assert some control over what they saw as their lands, in a situation where they had little control; the land could be taken to the Native Land Court with or without their participation. Tuhoe also objected to the survey and endeavoured to control its direction. Penetito asserted in the 1891 Native Land Court hearing that 'Tuhoe opposed Whaiti's eastern line and made him take it in further to the block than he was doing'.[561] Tamaikoha and Makarini Te Waru both referred in the hearing to Tuhoe's objections to all surveys on principle, [562] but it seemed that Penetito had a more pragmatic approach. As Clayworth argues:

> It appears that Penetito opposed the survey as long as he had no control over it. Once he was acting as a guide, with some influence over where the survey party went and what it recorded, his opposition to it vanished. By guiding the survey party, he could observe its activities and present an alternative option to any information given to the surveyors by Te Whaiti Paora and Mehaka Tokopounamu.[563]

[557] Ibid., p. 48
[558] Ibid., p. 48
[559] Ibid., p. 48
[560] Ibid., p. 49
[561] Whakatane NLC MB 3, 4 December 1890, p. 262, cited in Clayworth p. 49
[562] see Clayworth, p. 49.
[563] Clayworth, p. 84.

The impact of the surveys of these blocks spread much further than the issue of control over land before it entered the Native Land Court. The land lost to pay for these surveys is a recurring theme in this report, and is especially pertinent to those blocks in which Tuhoe or other hapu challenged and fought the carrying out of the survey. Ruatoki, with its strange history of being taken out of the jurisdiction of the Native Land Court after it had already passed through the Court and had orders issued, is perhaps unsurprisingly a bit of an anomaly. After all the difficulties with the survey and the delays faced by the surveyor, it would be expected that the costs of the survey would be heavy indeed. However, the survey liens for Ruatoki were cancelled in 1896 with the introduction of the Urewera District Native Reserves Act 1896 and the placing of Ruatoki under the jurisdiction of the Urewera Commission.

The people of Tuararangaia were not as fortunate and just over 10 percent of the total block was taken in survey liens just from the Tuhoe section – which amounted to about 25% of the section awarded to Tuhoe. At the 1898 Land Court hearing to hear the application for survey charges, the survey department claimed extra costs to cover the 39 days of delays they had experienced in Tuararangaia. As a result an additional £105 6s was added to the original survey costs, bringing it to a total of £260 7s 3d which was split between all three Tuararangaia blocks with no attempt made to determine who had actually caused the delays in the survey for which they were unilaterally charged. Unsurprisingly, objections to this decision were lodged by the owners of all three Tuararangaia sections.[564]

Judge Wilson presided over this survey lien hearing in 1898, and his decision is worth noting for its apparent bias in favour of the Ngati Pukeko owners of Tuararangaia No.2. The Tuhoe owners of Tuararangaia No. 1 argued that 'the surveyor had come on to the eastern part of the block before the traditional owners had consented to have the land surveyed', and thus their obstruction of the survey was 'justified'.[565] Wilson disagreed, and the charge for the delay to the survey stood. He also disagreed with the owners of Tuararangaia 3b, who argued that they had not been involved in delaying the survey in any manner. Wilson stated that since Rini Manuera (one of the landholders) resided next

[564] Ibid., p. 85.
[565] Ibid., pp. 85-6.

to Tuararangaia at the time of the survey he and his people 'shared the responsibility for the obstruction that had occurred'.[566] However, when the Ngati Pukeko owners of Tuararangaia No. 2 argued that they had not applied for the survey and had not even been aware it was taking place and thus they could not be held liable for any costs accruing from delays, he agreed with them. Maintaining that Tuhoe were the ones who had caused the delays (although as Clayworth notes, Wilson did not provide any evidence for his statement), Wilson added extra costs onto Tuararangaia No. 1 and No. 3 to cover the delay costs Ngati Pukeko had been spared.[567] Clayworth suggests that the survey of the Ruatoki block in 1893 and the obstructions and delays experienced there, may have influenced Wilson in his 1898 decision to make Tuhoe pay for the costs incurred through delays. Clayworth states that the involvement of the armed police in settling the Ruatoki survey dispute 'may well have influenced Wilson to believe that Tuhoe were obstructionists and troublemakers who should be made to take responsibility for delays to the Tuararangaia survey'.[568]

The Chief Surveyor did not claim the amount declared owing on each block for survey liens until 1907. A Mr Ballantine appeared on behalf of the Chief Surveyor of Auckland at a Native Land Court hearing in Whakatane on 27 September of that year. He claimed that he had contacted the owners of the Tuararangaia blocks to request payment of the outstanding survey liens and after several days had not had confirmation from them that they would pay the charges. Ballantine requested that the Court order a partition of the Tuararangaia blocks to render satisfaction of the survey lien in land.[569] Ballantine was not asked for and did not provide any evidence about 'any steps [he] may have taken to make contact with the 716 owners of Tuararangaia No. 1, the 406 owners of Tuararangaia no. 2, and the 167 owners of Tuararangaia No. 3b'.[570] Clayworth makes the point that more than 'several days' would be necessary to contact these large numbers of people spread out over a wide area.[571] The amount of land decided upon as satisfaction of the costs used a valuation of five shillings per acre. Clayworth reports that it is not clear why

[566] Ibid., p. 86.
[567] Ibid., p. 86.
[568] Ibid., p. 92.
[569] Ibid., p. 87.
[570] Ibid., p. 92.
[571] Ibid., pp. 92-3.

five shillings was decided upon, and he could find no reference 'in the Whakatane minute books, or elsewhere, to any on-site valuation of the Tuararangaia block prior to 1914'.[572] He concludes that the figure of five shillings was an 'arbitrary' one, 'arrived at by guesswork', and not based on any official valuation.[573] As well as the original survey costs, and the extra costs determined for the delays to the survey, Judge Mair in the 1907 hearing added several additional sums for interest, and also the costs of the surveys required to partition the Crown's interest out of the three blocks. The final result was that the Tuhoe owners of Tuararangaia No. 1 lost 881 acres of a total 3500 to cover the costs of a survey they had opposed; the Ngati Pukeko owners of Tuararangaia No. 2 lost 207 acres of 1000 in total to pay for a survey of which they claimed they had not even been aware; and the owners of Tuararangaia 3b lost 536 acres out of 1990.[574] Clayworth notes that the 881 acres was an inaccurate figure, and based on a valuation of 5 shillings per acre the correct amount of land to be taken for the survey costs was 851 acres.[575] He further notes that even though the surveys to partition out the Crown's interests do not appear to have been carried out, the owners still paid in land for them.[576]

Table 6.2: Land Taken From Tuararangaia Blocks in Satisfaction of Survey Liens

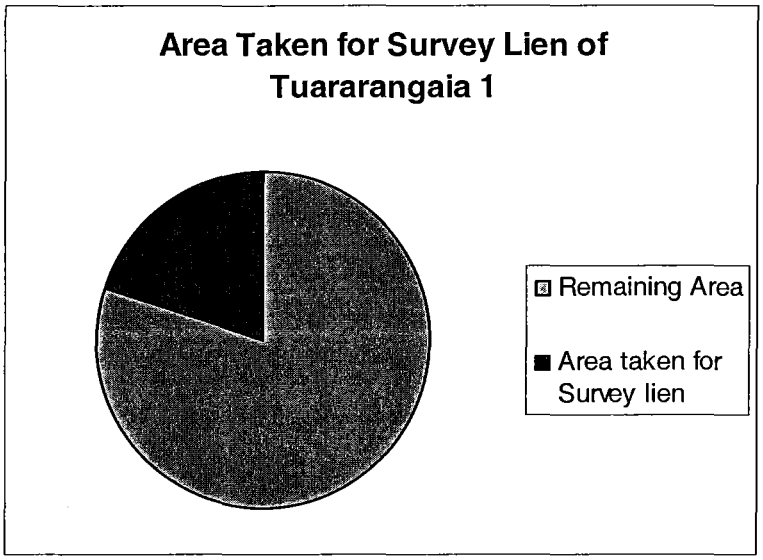
Hapu	Block	Original Area	Area taken for Survey lien	Remaining Area
Tuhoe (Ngai Tama)	Tuararangaia 1	3500	881	2619
Ngati Pukeko	Tuararangaia 2	1000	207	793
Hamua and Warahoe	Tuararangaia 3b	1990	536	1454
	Total:	**6490**	**1624**	**4866**

A great unfairness with survey liens is that land could be lost to pay for a survey of which the owners had been unaware, or to which they had been opposed. Those declared the legal owners of the land were the ones liable for the costs of the survey. Opposition to surveys, while in one respect seen as necessary to retain control over land, eventually increased the cost of the survey through delays and therefore increased the cost to the

[572] Ibid., p. 87.
[573] Ibid., p. 88.
[574] Ibid., p. 89. See Clayworth's table on p. 88 for a detailed breakdown of the various survey costs.
[575] Ibid., p. 89.
[576] Ibid., p. 93.

landowners. This in itself was unfair as those who had supported the survey were penalised for the actions of those who opposed it.

Chart 6.2: Showing Relative Area Taken for Survey Lien of Tuararangaia 1



The survey costs for Whirinaki were also high, and these were increased by the involvement of the Government once the surveyor had gone bankrupt. In July 1893, the Court had ordered liens of £399.10.6 and £266.7 to be charged against Whirinaki No. 1 and No. 2 respectively, in favour of the surveyor Henry Mitchell. In December that same year, the Court was contacted by the trustees of the estate of Hutton Troutbeck (a lessee in Kuhawaea). Troutbeck had advanced a large amount of money to Mitchell for the survey of particular lands, and the trustees of his estate objected that if Mitchell was awarded any money for the survey he should be made to transfer it to Troutbeck's estate in satisfaction of the outstanding sum.[577] Mitchell later filed for bankruptcy in 1894, the survey debts not having been paid by Maori or by him to his debtors, and it was noted by the Court that the outstanding liens should be paid to the official assignee in bankruptcy.[578] This official assignee, John Lawson, petitioned the Crown to take over the liens. He claimed that the Maori owners wanted to settle the debt by granting land to the private people holding the survey liens (himself at this point) but that legislative

[577] Cotterill & Humphries, Solicitors, to SW Von Sturmer, Native Land Court, 28 December 1893, Waiariki MLC Closed Correspondence File 259, in Supporting Papers Vol. XVIII, pp. 6345-6346.
[578] 27 February 1895, Brown re Mitchell survey lien, Closed File 258, Whirinaki Corr – 1911, in Supporting Papers Vol. XVIII, p. 6344.

restrictions prevented this.[579] The Crown began purchasing shares in Whirinaki from the early 1890s and by 1895 it had purchased enough to apply for its interest to be partitioned out. The Crown also arranged to take over and pay the survey liens in 1895 out of the land they had purchased.[580] The Crown was eventually awarded, out of the 31,500 acre parent block, two blocks in Whirinaki 1 totalling 11,349 acres and two blocks in Whirinaki 2 totalling 10150. The non-sellers were left with just 33 percent of the original block in four sections: Whirinaki 1s.2 of 330 acres, Whirinaki 1s.4 of 7,221 acres, Whirinaki 2s.1 of 400 acres and Whirinaki 2s.3 of 2,050 acres.[581]

6.2.2: Pressures from Other Iwi and Government Policy

The Government was determined to open up the Urewera. That this was not unknown can be seen in Harehare Atarea's remark at an 1894 meeting with the Premier at Galatea that:

> through the co-operation of the Ngatimanawa and Ngatiwhare, this country is now opened up ... All the surveys in this country were effected by the Ngatimanawa in obedience to the behest of the Government against all opposition; and every survey we have carried through successfully. All this land you see here was handed over unconditionally to the Government. We always acted under the instructions of the Government.[582]

Tulloch remarks that it was unclear whether Ngati Apa in Whirinaki had acted specifically to open up the Whirinaki lands for the Government on the instigation of Crown agents. I would argue, however, that whether or not even Ngati Manawa really did act in such a specific manner, it was sufficiently obvious that the Government had a clear policy of expansion into the Urewera for Ngati Manawa generally, or Harehare Atarea in particular, to attempt to use their co-operation in this goal as a way to maintain a positive relationship with the Crown.

6.2.3: Costs of Attending Hearings

Three of the cases in this chapter were heard at the Native Land Court in Whakatane. This was despite a request from Ngati Manawa representatives that they be allowed to

[579] See Tulloch, Whirinaki, pp. 37-8.
[580] Rotorua NLC MB 34, 4 December 1895, pp. 28-42.
[581] See Tulloch, Whirinaki, pp. 38-9, and p. 41.

have lands at Whirinaki, Heruiwi, Tuararangaia, and others, heard at Te Teko near Galatea. On 3 October 1885, Harehare Atarea wrote to Chief Judge Macdonald on behalf of Ngati Manawa, stating that it was the fourth time they had written to request that Whirinaki and other lands be heard, and that they be heard at Galatea or Te Teko so that there would be minimum disruption to the iwi and hapu interested in the land.[583] A note on the letter directed that a reply be made saying that the 'matter will be considered when a Court is ordered for the neighbourhood'.[584]

Long Land Court hearings away from home centres had an adverse effect. As Fiona Small and Philip Cleaver state in relation to the Native land Court and Rongowhakaata:

> The manner in which the Court heard cases ensured that Maori were often present [at Court sittings] for an unnecessarily long period of time. Notification was not given of the precise days and times that cases would be heard, and therefore Maori would usually arrive at the beginning of a sitting and then wait for the case or cases in which they were interested to be called.[585]

Cases of people being 'reduced to begging for food'[586] at Court sittings in Gisborne may well have occurred in the Urewera as well. In 1884, Resident Magistrate Booth detailed the impact of long Land Court sittings on Gisborne Maori that he had observed. He stated clearly that the Court sittings were 'indirectly the cause of immense loss in time and money to the Native applicants attending them'.[587] His further comments, although not directly commenting on the situation in the Urewera, are worth quoting at length as they are in great likelihood applicable to the situation faced by Tuhoe.

> at this last sitting of the Land Court here many applicants came from distances ranging up to a hundred miles, and as the claims of these applicants would be affected by original claims, by subdivisional and succession claims, they were obliged to remain over nearly the whole sitting...Besides this loss of time and absence from their cultivations, there is the necessary cost for food, pasturing for horses, &c. ...Many

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[582] AJHR, 1895, G-1, p. 65, cited in Tulloch, Whirinaki, p. 34.
[583] Letter from Harehare Atarea and Others to Chief Judge Macdonald, 3 October 1885, NLC 83/3846, in Supporting Papers Vol. XVIII, pp. 6373-5
[584] Note on letter from Harehare Atarea and Others to Chief Judge Macdonald, 3 October 1885, NLC 83/3846, in Supporting Papers Vol. XVIII, p. 6373.
[585] Small and Cleaver, p. 94.
[586] W. H. Oliver and J Thomson, *Challenge and Response: A Study of the Development of the East Coast Region*, Gisborne: East Coast Development Research Association, 1971, p. 175, cited in Small and Cleaver, p. 94.
[587] *AJHR*, 1884 Session II, G1, p. 17, cited in Small and Cleaver, p. 95.

> men, having been here for months, have been obliged to sell the land to which they had got a title, to pay expenses.[588]

Booth also noted one of the great tragedies of the Land Court process, that despite the great costs and risk of land loss to pay those costs that attendance at the Land Court resulted in, claimants faced even greater losses through non-attendance. As Booth put it, 'in the present state of things claimants must attend at ruinous cost, or run the risk of being left out in the cold'.[589]

W.H Oliver and J Thomson argue in their 1971 publication that, in the period between 1870 and 1890, 'Land Court sittings were the chief cause of the major dissipation of Maori resources'.[590] It is unsurprising that Maori at Galatea wished for a Court to be held closer to home, but the ultimate decision of the Crown was to have the Court sit at Whakatane. The previous year, Alfred Preece had recommended this would be fine for Maori claimants because they could travel by waka from Te Teko to Whakatane.[591] Clearly this was not acceptable to Maori claimants or they would not have requested otherwise. The wishes of Maori as to where and when they would like to have their land officially awarded to them were seemingly unimportant to Crown officials.

6.2.4: The Role of the Assessor – Reha Aperahama

In contrast to other Native Land Court hearings covered by this report, the assessor in Whirinaki, Heruiwi and Tuararangaia seems to have taken an active role in the Court hearing. I have uncovered no information about Reha Aperahama's background, not even his iwi affiliation. All I have found is the responses to his cross-examination of witnesses in these three blocks. As in all cross-examination material, the answers show clearly the questions and also fairly clearly the intent behind the question. Aperahama asked frequent questions relating to boundaries and surveys, particularly in Tuararangaia where he asked several people about the giving of land to Ngati Hamua and Warahoe by Rangitukehu.[592] It was in response to a question from Aperahama that Makarini Te Waru

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[588] *AJHR*, 1884 Session II, G1, p. 17, cited in Small and Cleaver, p. 95.
[589] *AJHR*, 1884 Session II, G1, p. 17, cited in Small and Cleaver, p. 95.
[590] Oliver and Thomson, p. 175, cited in Small and Cleaver, p. 94.
[591] Letter from Alfred Preece to E Hammond, April 1884, NLC 84/1362, in Supporting Papers Vol. XVIII, p. 6386
[592] See Whakatane NLC MB 4, 3 December 1890, p. 254, also Whakatane NLC MB 3, 12 December 1890 pp. 128-129.

said 'Tuhoe proper don't come into the block, tho' the Tuhoe mana is over the block'.[593] In Whirinaki and Heruiwi 4 he asked questions relating to knowledge of the land and boundaries.[594] However, it is entirely uncertain to what extent he had a determining role in the decision as to ownership. There are no records that I have seen that show any discussion between the judge and the assessor. This, of course, does not mean that no such discussion took place, but it means that once again we are left with a hint of this important position and little substance.

6.3: Conclusions

These four blocks are useful to compare with one another. Although Tuararangaia fits with Heruiwi 4 and Whirinaki in practical respects such as location and presiding judge and assessor, it is much more closely aligned with Ruatoki in that both blocks were awarded largely (or fully in the case of Ruatoki) to Tuhoe hapu. Heruiwi 4 and Whirinaki faced similar pressures from other hapu, notably Ngati Manawa. The leasing of lands in these two blocks were possibly very influential over the Land Court determination of title.

Ruatoki, like the Waikaremoana cession blocks, is a bit of an anomaly. It was the only Native Land Court block to also be heard and adjudicated on by the Urewera District Native Reserve Commission. Unlike the Waikaremoana cession blocks, however, Ruatoki remained in the hands of Tuhoe hapu. We now turn to the conclusion where several themes will be discussed and summarised.

[593] Whakatane NLC MB 3, 12 December 1890, p. 134.
[594] See for instance Whakatane NLC MB 3, 16 October 1890, p. 369, and 11 November 1890, p. 128.

Chapter Seven: Conclusion

The people of Tuhoe in the latter part of the nineteenth century experienced the Native Land Court investigation and eventual loss of their lands surrounding the inner heart of their rohe. Tuhoe were frequently politically opposed to the institution of the Native Land Court on both pragmatic and philosophical grounds. They were aware that lands that went before the Court were usually alienated not long afterwards, and they resented the encroachment of the Crown into the organisation and governance of their lands. This conclusion falls into three main sections: firstly, the issue of why Tuhoe went to the Native Land Court given their antipathy to the institution and their isolationist political stance; secondly, issues arising from what did happen when Tuhoe went to the Court and the impact it had on them; and finally the issue of whether or not Tuhoe's actions in fighting against the Government in the 1860s and 1870s prejudiced the Court against them, or whether other biases came into play.

7.1: Reasons for Engagement with the Native Land Court

7.1.1: Leasing

It is frequently the case in this report that a Land Court hearing was precipitated by leasing activities on the block in question. The economic situation of Tuhoe hapu in these borderlands was often poor, a result of conflict and increased population pressures following the 1866 confiscations in the Bay of Plenty and the relocation of displaced peoples. In a climate of poverty and recovery from war, leasing land was seen as one way to increase capital, eventually allowing the development of land. To enable owners to formalise a lease, however, the land had to have a title certified by the Native Land Court. Waimana, Waiohau, Kuhawaea, Matahina, Heruiwi, and Waipaoa – in all these blocks, the initial push for survey and hearing come from the plan to lease or sell the land. Often pressure was brought to bear by the leaseholder on the prospective owners. In Waimana, the push from Swindley and the Government interest in the proposed lease lent a certain impetus to the survey and investigation of the land.

7.1.2: Protection of Claims

Tuhoe were also forced into the Native Land Court to defend what they saw as their land from the claims of other iwi. The consequences of non-attendance were dire indeed. When Tuhoe missed the hearing of Kuhawaea in 1882 they were divested of their chance to have their claims to the land heard and judged. They informed the Court that they had been unaware a hearing was taking place, but their request for a rehearing was unfairly dismissed. Given the location of Kuhawaea, it is likely that some hapu of Tuhoe possessed some rights to the land, rights they lost when they did not receive notification of the Land Court hearing. Ignorance of the 1888 partition hearing of Waiohau 1 resulted in the loss of half the land of Waiohau Maori, including their homes at Te Houhi. Faced with the option of attending a Land Court and perhaps getting title to the land, or not attending and definitely losing all claims to the land, it is not surprising that in those blocks where Tuhoe were present as counter-claimants, they overcame political dislike of the Land Court to protect their interests. One of the tragedies of Tahora No. 2 is that it was initiated by someone with no right to it, and in order to protect their lands, people from Tuhoe, Whakatohea and Ngati Kahungunu were forced to attend the Land Court even though they had had no desire to have the title investigated.

7.2: Impact of the Native Land Court on Tuhoe Hapu

7.2.1: Surveys and Their Cost

One of the side effects of the Native Land Court process was the survey of the land. Surveys in the Urewera district resulted in losses of land to pay survey liens, and assisted in the opening up of the Urewera. The role of surveys in the Urewera and in Tuhoe's experience of the Native Land Court process is a significant one. There are several issues involved in any examination of surveys. These include the perceived link between applying for the survey and holding or maintaining mana over the land; objections to and obstructions of a survey from surrounding iwi or hapu; illegal and questionable surveys and the role of the Court process in protecting Maori from these; and finally the loss of lands resulting from survey costs and liens.

The Native Land Court does seem to have held a general bias in favour of those claimants who applied for the land to be heard and for the survey of the land to be carried out. This

may be partly because often the application for title investigation was spurred by an existing lease or negotiated sale of the land in question. But it can also be argued that it was partly because of, or related to, the belief that the people with the mana over the land would be the ones, firstly, to want to get the land surveyed and, secondly, to have the ability to do so. There are indications in the Land Court records that some Court officials held this conceptual link, for instance in Waipaoa and in Waiohau.

Whether or not this was a belief held universally by Court officials, it seem to have been a widespread perception amongst Maori claimants in this area that to have control of the survey gave greater legitimacy to their claim. This can be seen in several of the hearings covered by this report and is one explanation for the counter-applications submitted by Tuhoe in response to an application from other groups. The issue was one of control; control of the survey and control of the land. If the survey is carried out under one claimant group's direction, they have the ability to influence what land comes before the Court, and which important areas are included or left out.

There are two facets to the opposition to surveys. One is a political view held by Te Whitu Tekau and shared by many Tuhoe. Te Whitu Tekau were responsible for ensuring that the Government did not encroach on Tuhoe authority or land via the selling or leasing of lands, building of roads through the Urewera district, and the Native Land Court procedures. They also took upon themselves responsibility for preventing applications for survey or title investigations by individuals. One of the provisos for allowing the lease of Waimana to take place was that the land would not be surveyed.

The second facet of opposition to surveys was a practical one from those on the ground, the people living in an area who were not informed that a survey was being undertaken, or who were politically or personally opposed to a survey of their land. This happened in many of the blocks dealt with in this report, notably in Ruatoki where the Government interfered, and when threats of sending in armed police and cutting off chiefly retainers did not work, they used force to allow the survey to continue. The people of Tuhoe who opposed surveys of their lands would use peaceful forms of protest in which they confiscated the surveyor's instruments or turned up in numbers to deny access to the land. In other areas, such as Waiohau, the people who opposed the survey were bought

off by a cash payment, but also by the promise that they would be included in the survey. In other words, they were promised a measure of control. Many times in the Land Court testimonies it becomes clear that claimants may have initially opposed a survey until they received acknowledgement from the ones carrying it out that they too could have a role in guiding the surveyor around the land.

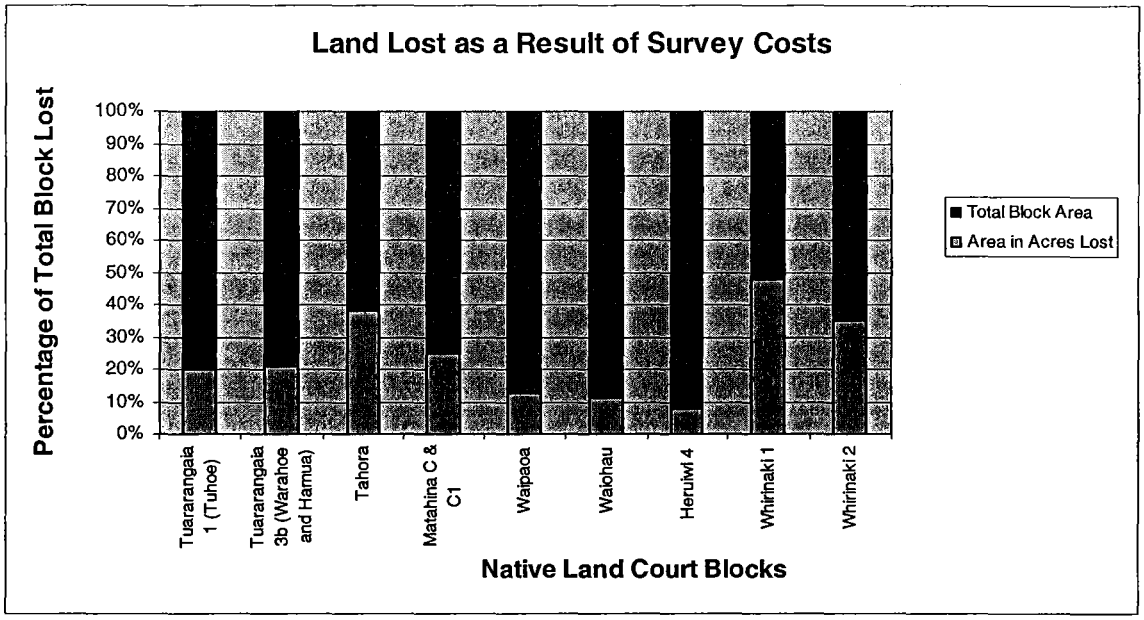
The illegal survey of Tahora No. 2 and the subsequent loss of thousands of acres in satisfaction of survey costs is one of the more dramatic examples of how survey liens acted to divest Maori of substantial parts of their lands. Regardless of whether or not a claimant had applied for the survey or even desired the investigation of the land, all persons designated as owners were liable to pay the costs of having the land surveyed. Of course, a block could not be heard before the Native Land Court unless it had been surveyed, and if the Judge awarded land to several groups in several subdivisions, the cost of having those subdivided blocks cut out was also charged to the owners' account.

Often land was taken to the Native Land Court in an effort to get a viable title on which to raise finance through leasing. Since this land was only being investigated in order to raise money, it is clear that one of the only ways to pay for a survey was through the land itself. This practice was endorsed by legislation enabling liens to be placed on the land in the same manner as a mortgage. Generally land was either sold to pay a survey lien or the Government would take a certain number of acres in satisfaction of the lien. In the latter situation, the owners were also often liable for the cost of the survey to cut out the area to be taken by the Crown – a manifestly unfair situation. In the case of Waipaoa, an agreement was entered into before the ownership of the land had been determined in the Native Land Court. The surveyor decided to survey the section of land that would be owed to the Government before he had even established the full acreage of the block by a peripheral survey. In both Tahora and in Whirinaki, the Government agreed to take over a survey lien by purchasing enough shares in the land to cover the cost of the survey. In both blocks the Crown ended up with vastly larger areas than were necessary to cover the lien. In this way the survey lien was a very convenient tool for the Government to get a foothold in lands they might not otherwise have been offered. As they had been appealed to for assistance by Maori unable to cover expensive and, especially in the case of

Tahora, unfair survey charges, it seems a gross misuse of their authority to take the opportunity to divest Maori of more land.

The following chart demonstrates, for those blocks where clear information is available, the amount of land lost in satisfaction of survey costs from the total land awarded. These costs include the purchasing of shares by government officials in other blocks. The reader is directed to note that the figures for Waiohau and for Heruiwi 4 are only estimates, since the complications of selling and partitions have made the figures unclear, and that Ruatoki, Kuhawaea, and Waimana are not present because the liens were cancelled or taken up by the Government.

Chart 7.2: Area of Land in Acres Lost as a Result of Survey Costs



The *Pouakani Report* issued by the Waitangi Tribunal contains the following summary of findings regarding surveys.

> We accept the need for survey to identify boundaries for title purposes. We question why Maori were required to pay so substantially for the whole cost of surveys... The Crown also charged interest on unpaid survey liens, even when the Crown was sole purchaser and it had been agreed that survey costs would be paid in land.
>
> By imposing requirements for survey and associated costs, fees for investigation of title in the Native Land Court, and other costs such as food and accommodation while attending lengthy court sittings, many

> Maori were forced into debt. That there had to be a fair system of establishing ownership when a sale was contemplated is accepted. The legislation under which the Native Land Court operated went much further than that and required that all Maori land be passed through the court with all the attendant costs of that process. When the debts were called in, Maori paid in land.[595]

7.2.2: Procedural Failings

The examination of the Native Land Court hearings for this area shows that there are significant issues relating to the equity of Court procedures. These issues were sometimes unique to a particular block or a particular judge, but others were universally experienced.

7.2.2.1: Inconsistency of Court Process

The initial factor that should perhaps be stressed is the inconsistency of the Court in terms of attitude to particular issues. The personality and background of any judge will have an impact on his or her judgement. In the Native Land Court in Urewera, there were certain key factors that should be taken into account. For instance, one of the judges hearing the 1884 Appeal of the Matahina case was Gilbert Mair, who had an established relationship with Ngati Manawa and had fought against Tuhoe in recent conflicts. Judge Gudgeon had a particular belief about rights to the land being revoked once one iwi returned to the land those they had driven off. This belief was applied consistently over the three blocks in this report with which he was involved, but is in contrast to that of Brookfield who accepted Ngati Awa's claims to retain mana over those they had returned to the land in Matahina. Gudgeon also took into account factors and information he had obtained outside the hearing, either from another land block hearing over which he had presided or from his own observations. He frequently, for instance, mentioned testimony given in other blocks adjacent to the one he was hearing. In contrast, Judge Halse, in the Waimana hearing, ratified a list of owners that excluded Rakuraku. He was no doubt aware that Rakuraku was an important chief and head of two of the hapu he had included as owners in his decision. It is likely that Halse took the most convenient option of ratifying the list he had been given without undertaking any further action. It has also been suggested by Sissons that some judges worked to a

[595] Waitangi Tribunal, *Pouakani Report*, (Wai 33), Wellington, Brooker and Friend, 1993, pp. 307-8, cited

principle of taking into account only what was presented before them in Court. David Williams states that Chief Judge Fenton insisted that the 'sole means of ascertaining title' was through the evidence presented before the Court.[596]

One of the most significant examples of the inconsistency of the Native Land Court is the role played by the Court in the Waikaremoana cession blocks. In this instance, and under specific legislation, the Court was seen primarily as an instrument whereby negotiations reached outside the Land Court hearing would be ratified, and those seen as rebels actively discriminated against in the hearings. The East Coast confiscation legislation compromised the role of the Land Court by allowing non-Maori to bring claims to be heard, and by making it very blatantly a means of divesting Maori of their land, rather than acknowledging their ownership and awarding certificates of title. Because of this, the experience of Tuhoe in these four confiscation blocks is anomalous in many ways from their experience in the rest of their Native Land Court blocks.

Further inconsistency in the Native Land Court process is seen in the role of the Native Assessor. Some assessors apparently took an active role, such as Reha Apereahama in Whirinaki, Heruiwi and Particularly in Tuararangaia. In other cases, the role of the assessor seems to have been negligible. It was, however, an important position, and was acknowledged as having influence by those claimants for Heruiwi who wrote in to request that they be granted a different assessor because they were unhappy with the relationship the current assessor held with other claimants. This is not an isolated issue. In the Waiohau case, Wi Patene attempted to appeal the decision to award ownership of 1100 acres to Ngati Pukeko by claiming a bias on the part of the Court in favour of Ngati Pukeko and citing as an example the close friendship the assessor at this hearing had developed with Ngati Pukeko claimants. The assessor was involved in some areas in the initial examination of the land to establish that the claimants could point out those areas of significance referred to in their claim. This was a very important role given that many claimants at the Native Land Court attempted to discredit other claimants' testimonies by demonstrating that they did not know enough about the area they were claiming to really be living there. There is, however, very little documentary evidence to show that the

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by David Williams, p. 193.
[596] Williams, p. 159.

assessors were ever highly involved or that this was seen as anything more than a formality.

7.2.2.2: Costs of Attending Hearings

Native Land Court hearings were held at places convenient for the Judges and not for the Maori claimants. Some hearings lasted for about a week (such as Waimana and Waiohau), but Tahora and Waipaoa both lasted for about two months, and were held at the same time. Lengthy hearings and hearings held at places far distant from peoples' kainga were very disruptive. Not only were matters at home neglected, but travel and accommodation had to be taken into account, and simply feeding the numbers of people who attended hearings was a difficult task. Requests from Ngati Manawa people in the 1880s to have their claims heard at a more local and convenient place were dismissed by Court officials. When the costs of attending hearings are added to the costs incurred from surveys, the Native Land Court proceedings become quite expensive.

Table 7.2a: Estimated Native Land Court Hearing Costs for Tuhoe Hapu or Individuals

Block	Year of Hearing	Length of Hearing	Actual Time Spent in Court	Hearing Costs	Memorial Costs	Total
Waimana	1878	9 Days	9 Days	£5.00	£1.00	£6.00
Waiohau	1878	7 Days	3 Days	£3.00	£1.00	£4.00
Heruiwi 1-3	1878	2 Days	2 Days	£2.00	£1.00	£3.00
Matahina	1881	17 Days	13 Days	£13.00	£1.00	£14.00
Matahina	1884	20 Days	11 Days	£11.00	£1.00	£12.00
Tahora 2	1889	3 Months	11 Days	£11.00	£1.00	£12.00
Whirinaki	1890	24 Days	4 Days	£2.00	£0.00	£2.00
Tuararangaia	1890	23 Days	15 Days	£15.00	£1.00	£16.00
Heruiwi 4	1890	20 Days	11 Days	£8.00	£1.00	£9.00
Ruatoki	1894	5 Months	11 Days	£11.00	£1.00	£12.00

As Fiona Small and Philip Cleaver state, 'The financial burden on the Court system unquestionably increased Maori levels of debt... [and] debt was often satisfied through the sale of land'.[597] The above table is necessarily an estimate, since some cases are clearer than others. At the hearing for Waimana, for instance, Judge Halse recorded the fees payable for court costs on the order for the title whereas those cases heard by

[597] Small and Cleaver, p. 94.

Gudgeon have daily entries of 20 shillings (£1) as fees to be paid, while still others yet have no fees recorded at all.

Costs were not only counted in cash; the distance of some hearings seems to have prevented some important witnesses from being able to make certain hearings. There were many requests at the beginning of the Tahora hearings for a postponement of evidence as a witness had yet to arrive. In Whirinaki, Gudgeon noted that Paraki seemed to know very little about the area. It is possible that more competent or older witnesses simply could not attend.

Table 7.2b: Location of Native Land Court Hearings in Urewera

Block	Date of Hearing	Location of Hearing	Judge
Waimana	11 June 1878	Opotiki	H. Halse
Waiohau	24 July 1878	Matata	H. Halse
Heruiwi 1-3	22 July 1878	Matata	J A Wilson
Matahina	6 September 1881	Whakatane	Brookfield
Matahina Appeal	31 January 1884	Whakatane	E.W. Puckey, G. Mair
Kuhawaea	26 September 1882	Whakatane	L. O'Brien, E.W. Puckey
Tahora No. 2	11 December 1888	Opotiki	L. O'Brien
Waipaoa	26 March 1889	Wairoa	J.A. Wilson
Whirinaki	14 October 1890	Whakatane	W.E Gudgeon
Tuararangaia	28 November 1890	Whakatane	W.E Gudgeon
Heruiwi 4	3 November 1890	Whakatane	W.E Gudgeon
Ruatoki	30 April 1894	Whakatane	D. Scannell
Ruatoki Appeal	5 April 1897	Whakatane	H.F Edger, H.D. Johnson

7.2.2.3: Lack of Protective Mechanisms

It seems clear, given the number of occasions when Tuhoe and other iwi had cause for complaint regarding the procedures of the Native Land Court, that there were not sufficient safeguards set up to protect their interests. The events that occurred in the Waiohau subdivision hearing when Judge Clarke created a subdivision of half a block for a buyer when only four of the 149 owners were present, and when there was no representation of non-sellers' interests, is a case in point. Through inaction on the part of the Native Land Court, Patuheuheu owners of Waiohau were divested of half their land, including their homes at Te Houhi. They had not been inactive in trying to prevent this

from occurring, as the number of meetings held to negotiate with Harry Burt proves. With the failure of the Court to maintain a semblance of due process, however, by ensuring that those said to be sellers were adequately represented and those who were not selling were represented at all, their efforts at negotiation were wasted. Equally as bad is the refusal to allow Patuheuheu and Ngati Haka a rehearing of Kuhawaea when they had been uninformed of the date of the hearing.

The appeals process is another area of the Native Land Court system that seems not to have had enough safeguards for Maori attempting to use it. The cases in this report strongly suggest that the initial process used to evaluate applications to see whether a rehearing was required was not necessarily in the best interests of Maori claimants. In several blocks, the Judge who had made the first orders was asked for his opinion as to whether a rehearing was warranted. It would have been an unusual judge who agreed that his decision in a case was flawed and should be revisited. In Tuararangaia, Gudgeon was not only asked whether a rehearing for the claims of Ngati Awa was warranted, he also appears to have been asked to respond to certain allegations by Ngati Awa that he had demonstrated bias towards the Tuhoe claimants. Obtaining a response to criticisms is important and can indicate whether or not the claims are valid, but the case of Kuhawaea, and indeed Waiohau, indicate very strongly that a rehearing should have taken place and did not. Inquiries into these last two blocks at the time found that the Native Land Court's refusal of a rehearing was both illegal and unfair. In Matahina and Ruatoki there were less serious impacts but just as important issues. It seems as if the problems with the appeal process stemmed from both a desire for convenience and also from inherent difficulties with the manner in which the decision is made.

As with many institutions, bureaucracy affected the way in which certain duties of the Judge were carried out. Tahora is a perfect example of how the bureaucracy of the Land Court failed to protect the interests of Maori and assisted in divesting them of their land on the basis of an illegal document. The survey of Tahora was acknowledged by Judge O'Brien to have been carried out in a most surreptitious and underhand manner, but because it had been authorised by the Government, albeit in a backdated fashion, he decided he had no option but to order the owners to pay for it.

7.3: Prejudice and the Native Land Court Experience

The third part of Tuhoe's experience in the Native Land Court is one that is central to the Wai 36 Statement of Claim, namely whether Tuhoe's actions in fighting against the Government meant that they received prejudiced treatment by the Native Land Court. It is clear that in the Waikaremoana cession blocks this is exactly what happened. The whole purpose of the Land Court hearings in that area at that time was to grant land to loyalist iwi and to determine what part of the 'ceded' area belonged to 'rebel' iwi, in this case Tuhoe. Although they were acknowledged in official correspondence as principal owners in the area, Tuhoe were persuaded to withdraw from the Native Land Court proceedings and accept a paltry 2500 acres in reserves. They were faced with an alternative of receiving no land and no acknowledgement of their mana over this area. The bias against Tuhoe goes further than a desire to punish them for taking up arms against the Government. Tuhoe's isolationist and anti-selling reputation were also factors in the Crown's reluctance to return land to them. It was clearly in the interests of the Government to exclude Tuhoe from ownership of blocks the Government wished to acquire, as they were opposed to selling land.

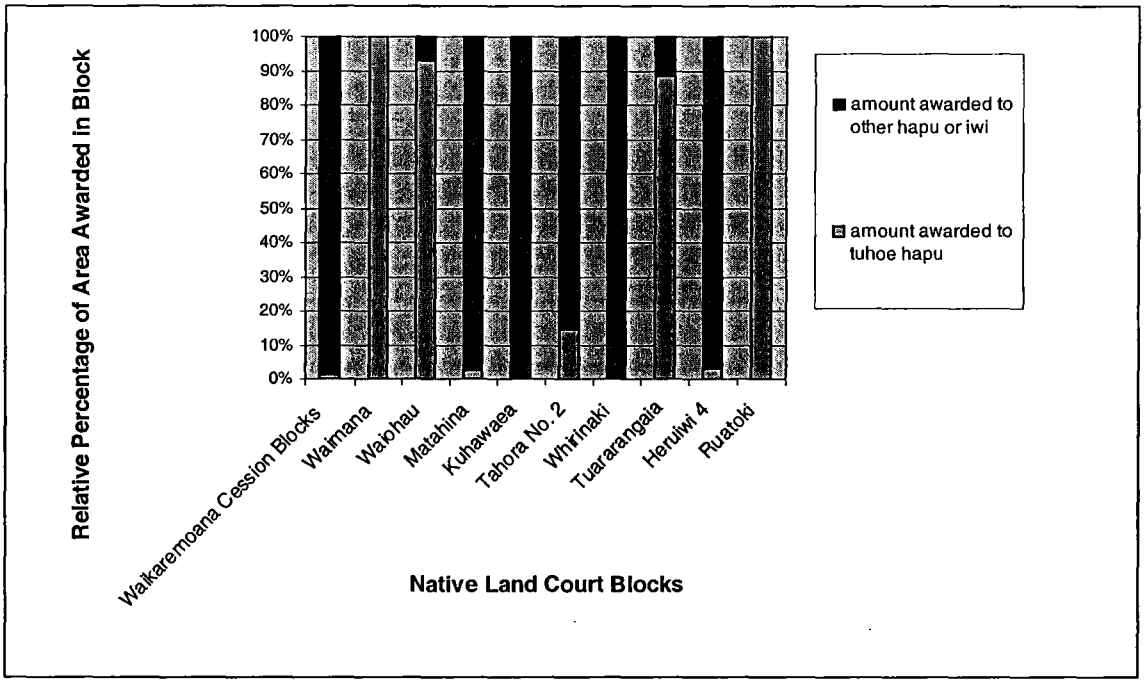
Tuhoe do not seem to have been actively prejudiced in regards to the perception of them as 'rebels' in any blocks other than the Waikaremoana cession blocks. Although at several points attempts were made by rival iwi or, in the case of Tahora the surveyor, to stress the past 'rebel' actions of Tuhoe hapu, the Judges seem to have been fairly consistent in refuting this as a valid argument for the possession of land. Gudgeon stated clearly that the assumption of Ngati Awa that Hamua and Tuhoe's actions in fighting the Government allowed Ngati Awa to resume old rights over the land was untenable. Situations such as the one in Waiohau where Harry Burt's alleged antipathy to Patuheuheu because of their support to Te Kooti may have been shared by Judge H.T. Clarke are much harder to determine.

Tuhoe faced strong obstacles arising from their reputation as non-sellers, especially in blocks where leases or sales of the land had already been arranged by other iwi. The area from Kuhawaea down was mostly awarded to Ngati Manawa, who had a good relationship with the Crown and were happy to lease and sell these lands. Harehare

Atarea's blatant acknowledgement that the Government was seeking to open up the Urewera district by the survey and purchase of these lands and that he was willing to oblige indicates the subtle nature of this bias. The Court did not set out intentionally to award land to non-Tuhoe people, but the fact that Ngati Manawa were engaged in leasing and sale arrangements with settlers and the Crown meant that they were more likely to be awarded title to those blocks. The non-selling Tuhoe had less luck in these areas. It was not only more convenient for the Government to issue title to those who it had already made arrangements with, but also the Court did tend to see possession of a lease as an indicator of ownership of the land.

Tuhoe in the northern part of the Urewera, just below the confiscation line, had their mana upheld in all their claims. It is notable that these were instances where Tuhoe hapu

Table 7.3: Relative Percentage of Land Awarded to Tuhoe and Non-Tuhoe Hapu in Native Land Court Blocks



were the claimants, not the counter-claimants. In all those instances where Tuhoe hapu had arranged the survey and applied for the hearing they were awarded land. In those instances where they were forced to respond in the weaker position of counter-claimants (excepting in Tahora where the claimant was roundly denounced as having no rights to

the land at all) Tuhoe hapu either did not receive all that they had claimed for or had their claims dismissed.Tahora was an instance where the claimants from Tuhoe and Ngati Kahungunu worked together to come to an agreement regarding ownership of various sections of this block, an agreement that was then ratified by the Crown. Considering that only one section – Te Papuni – was still contested between claimants of these different hapu, in a block that consisted of over 200,000 acres and took in what had been formerly three different putative blocks, they achieved quite a feat. This is even more significant when placed in the context of the political and historical interactions of these iwi. It is a great tragedy that in this area that was so co-operatively worked out that the Government should have acted to divest them of half of the land.

Many government officials perceived Tuhoe's position of independence and desire for tribal autonomy as difficult and anti-European. This was particularly so when it came to their desire to maintain their tribal estates by refusing to acknowledge the Native Land Court, denying surveyors access to their rohe and being unwilling to sell their land. This position was not always easy to maintain in the face of pressures from other iwi and economic difficulties. As discussed, Tuhoe were forced into engaging with the Native Land Court when other iwi and hapu took what they perceived as Tuhoe land into the arena of the Court, either as pre-emptive measures or as counter-claimants. The pressures of poverty exacerbated by the Government's campaign to find Te Kooti also worked to envelop Tuhoe in the mechanisms of the Land Court.

The Government ignored the seriousness with which Tuhoe regarded the compact with McLean and the grounds they felt this gave them for recognition of Te Whitu Tekau. Tuhoe saw Te Whitu Tekau as an expression of their rangatiratanga. Even when individual hapu were at odds with the centralised council it was still taken into account, as witnessed in Waimana where Tamaikoha went to great effort to obtain the approval of Te Whitu Tekau to the lease of the land. Tuhoe attempted to maintain autonomy over their lands and to engage with the Crown and the rest of settler society on their own terms. They wanted to be able to decide on the ownership of their lands for themselves, without becoming in danger of losing those lands through the individualised titles and survey liens of the Native Land Court. The Government responded to these expressions of rangatiratanga by taking all opportunities offered through Native Land Court

proceedings and other fora to acquire interests in the Urewera. The Government did not hide the fact that it wished to force the Urewera open, making land available for settlers and building roads to make the land more accessible. The Urewera District Native Reserve Act 1896 and the Urewera Commission contributed to the government's opening up of the Urewera. Although seen as a protection of the Urewera Rohe Potae, the necessity to establish European title to the lands in itself diminished tribal autonomy over this land. The people of the Urewera people were regarded as troublesome and their authority and mana were systematically eroded by gradual seizures of control over the lands and people.

Appendices:

Appendix One: Time Line

1875 - Waikaremoana Cession Blocks

Tuhoe are persuaded not to continue to take their case before the Native Land Court in return for a small cash payment and a tiny section of reserved land. They are referred to as being principal owners of this area in official correspondence, but their position as 'rebels' results in the effective confiscation of the area.

1878 - Waimana

June 11-June 19. Tamaikoha applies for a hearing to determine ownership so that he can officially lease land at Waimana to a settler named Swindley. Tuhoe hapu are awarded the whole block.

1878 - Waiohau

July 24-July 30. Patuheuheu apply for a survey and title hearing spurred on by a possible lease. Ngati Pukeko appear as counter-claimants and are awarded 1100 acres of the 15564 acre block on the basis that they were acknowledged in the survey and in the lease.

1878 - Heruiwi blocks 1-3

Initiated by Harehare Atarea of Ngati Manawa in response to negotiations from the Crown to buy Heruiwi; Ngati Apa were included in his claim. Disputes between counter-claimants seem to have been resolved outside the Court and the counter-claims withdrawn and those claimants entered into the claim represented by Harehare. The land was awarded to people of Ngati Manawa.

1880 - Rehearing of Waimana

Tamaikoha calls for a rehearing so that additional names can be entered into the ownership lists as there were names he had omitted in the first hearing, notably that of Rakuraku. The Kennedys from Te Upokorehe claim that they had not had their claims heard at the first hearing. The initial award does not change but more people are listed as owners.

1881 - Matahina

Ngati Awa claim the whole of the block and despite evidence from several counter-claimant groups from Ngati Rangitihi, Ngati Hamua, and Patuheuheu corroborating each others' evidence of occupation in Matahina, the entire block is awarded to Ngati Awa.

1882 - Kuhawaea

Ngati Manawa applied for a survey of Kuhawaea as they were negotiating a lease and required a firm title. Ngati Apa, and Ngati Hape presented counter-claims, but Tuhoe were not informed of the hearing and therefore did not attend. The Court awarded the land to Ngati Apa and Ngati Manawa people. Requests for a rehearing were denied.

1884 - Rehearing of Matahina

Substantially the same evidence as was presented in the 1881 hearing, but different Judge awards small sections of land to Ngati Rangitihi, Ngati Hamua, and Patuheuheu

1886 - Partition hearing for Waiohau

Instigated by Harry Burt who had purchased shares that he believed entitled him to 7000 acres. Two Ngati Manawa chiefs represented the owners and Patuheuheu did not receive notification of the hearing. There were no non-seller interests represented at all. The Judge awarded 7000 acres to the two Ngati Manawa chiefs who promptly sold it to Burt via another transaction. Patuheuheu calls for a rehearing were denied and although the case was taken to higher levels with a Native Affairs Committee Inquiry, the land was lost and Patuheuheu people eventually evicted from their homes at Te Houhi.

1888 - Preliminary hearings for Tahora No. 2

December 11- Survey and Court hearings instigated by Tauha Nikora of Ngati Patu who was found to have no right to have done so. These preliminary hearings focussed on requests from the Tuhoe and Ngati Kahungunu counter-claimants to have the land taken out of the Court process because of the illegal survey and fraudulent application for hearing. Judge O'Brien decided to continue with hearings as survey had been authorised by the Government.

1889 - Tahora No. 2

March to April 11. Protests at the illegal survey continued in the hearings proper, and much of the use rights of this very large block were decided at meetings outside the Court. Tauha Nikora was found to have no rights over Tahora. Ngati Kahungunu and Tuhoe presented the Court with their own arrangements and the Court ratified these. The contested area was a section called Te Papuni, which became Tahora 2F. Over this block, the Judge decided that Ngati Hinganga hapu of Ngati Kahungunu had proven rights and dismissed the claim by Wakaunua of Tuhoe.

1889 - Survey Liens hearing for Tahora No. 2

April 12 – 13 April. Tamaikoha had requested that a block of just over 1700 acres be set aside solely for the purpose of paying off the survey, even though they were determined to contest charges for this illegally done survey. Judge O'Brien decided that as the survey had been authorised he was bound to order that the charges be paid. He thus ordered the full sum

of £1887.7.1 to be spread out over the various subdivisions and be paid by the owners.

1889 - Waipaoa

March to April. Initiated by Hapimana of Ngati Kahungunu; counter-claims presented by Ngati Ruapani and Tuhoe. Judge Wilson dismissed Tuhoe's claims as unreasonable and awarded the land to Ngati Kahungunu and those of Ngati Ruapani who were included in their claim. Survey liens split between Ngati Ruapani and Kahungunu even though Ruapani had been unaware of the survey.

1890 - Whirinaki

October. Initiated by Ngati Apa and contested by Ngati Manawa, Tuhoe, and Ngati Rangitihi. Judge dismissed Tuhoe's claims as having mana over the people but not over the land, and awarded the block to Ngati Apa and Ngati Manawa.

1890 - Tuararangaia

November. Survey and Land Court hearing applied for by Ngati Hamua, Warahoe, and the Tuhoe hapu of Ngai Tama. Ngati Awa and Ngati Pukeko both presented counter-claims. Judge Gudgeon dismissed Ngati Awa's claim, stating that by returning Ngati Hamua and Warahoe to their land Ngati Awa revoked its ownership of said lands. Ngati Pukeko were held to have proved some occupation of Tuararangaia and were awarded 1000 acres. The remainder of the block was awarded to the claimants.

1890 - Heruiwi 4

November. Initiated by Harehare Atarea of Ngati Manawa in the interests of securing a lease. Counter-claims were presented by Ngati Hineuru and the Ngati Marakoko hapu of Tuhoe. The bulk of the land was awarded to Ngati Manawa, and portions were awarded to Ngati Hineuru, and Tuhoe. Gudgeon awarded land to Tuhoe not on the basis of the Ngati Marakoko claim but through the evidence of Te Pukenui that Tuhoe held rights through the ancestor Potiki.

1893 - Rehearing of Whirinaki

June 15. Held to determine relative interests between Ngati Manawa and Ngati Apa and for the inclusion of more people on the ownership lists. The amount of land awarded did not change from the 1890 order.

1894 - Ruatoki

Initiated by the Ngati Rongo hapu of Tuhoe. Ngati Awa and Ngati Pukeko presented counter-claims, as did other hapu of Tuhoe who contested Ngati Rongo's claim to exclusive ownership of the block. Ngati Awa and Ngati Pukeko's claims were dismissed, and the remainder of the block awarded to Tuhoe.

Appendix Two: Breakdown of Land Title Awards

Block	Total Area	Year of Hearing	Judge	Iwi/Hapu	Acres Awarded
Waikaremoana cession blocks	180,000	1875	Rogan	Tuhoe (in reserves)	2,500
Waimana	10,941	1878	Halse	Tuhoe – Ngai Turanga, Ngati Raka, Te Upokorehe	10,941
Waiohau	15,564	1878	Halse	Tuhoe under Wi Patene	14,464
				Ngati Pukeko	1,100
Waiohau 1 partition hearing	14,464	1886	Clarke	Harry Burt and Ngati Manawa sellers	7,000
				Patuheuheu	7,464
Heruiwi 1-3	25,161	1878		Ngati Manawa and Ngati Apa	25,161
Matahina	85,834	1881	Brookfield	Ngati Awa	85,834
	78,860	1884	Puckey and Mair	Ngati Awa	74,300
				Ngati Rangitihi	1,000
				Ngati Haka/Patuheuheu	2,000
				Ngati Hamua	1,500
Kuhawaea 1& 2	22,309	1882	O'Brien	Ngati Manawa (some Patuheuheu on list)	21,749
				Ngati Apa	560
Tahora No. 2	213,350	1889	O'Brien	Ngai Turanga	3,456
				Tamaikoha (for survey)	1,792
				Ngati Hinganga	22,556
				Nga Maihi and Ngai Tamaroki of Urewera	1,856
				Tuhoe under Tamaikoha	1,792
				Te Whakatane and Te Upokorehe	24,668
				Whakatohea	60,806
				Ngati Kahungunu	96,424
Waipaoa	39,302	1889	Wilson	Ngati Ruapani and Ngati Hika	
				Ngati Kahungunu	
				Crown for Survey Costs	5,822
Whirinaki	31,500	1890	Gudgeon	Ngati Manawa under Harehare Atarea	12,600
				Ngati Manawa and Ngati Apa under Parakiri	18,900
Tuararangaia	8,656	1890	Gudgeon	Ngai Tama of Tuhoe	3,500
				Hamua and Warahoe	4,156
				Ngati Pukeko	1,000
Heruiwi 4	75,000	1890	Gudgeon	Tuhoe	2,195
				Ngati Hineuru	5,980
				Ngati Manawa	66,825
Ruatoki	21,450	1894	Scannell	Ngati Rongo & Te Mahurehure	8,735
				Ngati Koura & other Tuhoe	5,910
				Ngati Rongo, Te Mahurehure & Tuhoe	6,800
				School Site	5

Appendix Three: Claimant Position In Relation to Final Awards

BLOCK	CLAIMANT GROUP	COUNTER-CLAIMS	SUCCESSFUL GROUP/S
Waimana	Tuhoe	Te Upokorehe	Tuhoe
Waiohau	Patuheuheu	Ngati Pukeko	Patuheuheu (14464a) Ngati Pukeko (1100a)
Heruiwi 1-3	Ngati Manawa	Ngati Hineuru	Ngati Manawa
Matahina 1881	Ngati Awa	Ngati Rangitihi Patuheuheu Ngati Hamua	Ngati Awa
Matahina Rehearing 1884	Ngati Awa	Ngati Rakei Ngati Hamua Ngati Rangitihi Patuheuheu and Ngati Haka	Ngati Awa (74,300a) Ngati Hamua (1,500a) Ngati Rangitihi (1000a) Ngati Haka and Patuheuheu (2000a)
Waipaoa	Ngati Kahungunu	Ngati Ruapani Tuhoe	Ngati Kahungunu and Ruapani associates
Whirinaki	Ngati Apa	Ngati Manawa Ngati Rangitihi Tuhoe	Ngati Manawa (12,600) Ngati Apa and Ngati Manawa (18,900)
Heruiwi 4	Ngati Manawa	Tuhoe Ngati Hineuru	Ngati Manawa (66,825) Ngati Hineuru (5,980) Tuhoe (2,195)
Tuararangaia	Ngai Tama of Tuhoe, and Ngati Hamua and Warahoe	Ngati Awa Ngati Pukeko	Tuhoe (3500) Ngati Pukeko (1000a) Ngati Hamua and Warahoe (4156a)
Ruatoki	Tuhoe hapu	Ngati Awa Ngati Pukeko	Tuhoe hapu

Appendix Four: The Urewera District Native Reserve

Miles argues that the attention paid by the Government to opening up the Urewera in the late 1880s and 1890s came about through renewed interests in the resources of the Urewera, such as timber and gold, but also because of the opening up of the King Country Rohe Potae in 1885-86. This left the Tuhoe rohe potae as the only 'self governing' area of Maoridom. She claims that as a result, Tuhoe readjusted their strategy to include an existence within the larger national political arena, but without sacrificing their tribal estate.[598]

Ruatoki Tuhoe met with Samuel Locke, a government representative, in April 1889. Locke's purpose was to discuss the opening up of the Urewera in order to utilise its minerals and timbers. When asked by Kereru, he said that his goal was to 'avoid difficulties between Tuhoe and the government by making a proper understanding between them'.[599] According to him, timber and gold were two possible areas that could become problems. Tuhoe's answer was that they did not want surveys as they might lead to Native Land Court determinations and squabbles, and as for the possibility of gold, while they did not care about it, they did not want people prospecting in their country.[600] They did agree to receive communications and recommendations about possible prospectors, but this was not an agreement to grant the applications, and the following year the Minister of Lands and Mines was prevented from crossing the confiscation line into the Urewera.[601]

Tuhoe held discussions with Seddon and Carroll in 1894 which served as a foretaste of the negotiations for the passing of the Urewera District Native Reserve Act 1896. Tuhoe, speaking from experience, believed that the Native Land Court was not the best way to determine title to their lands. It was their contention that a committee made up of people from their own iwi would 'be best placed to investigate land title and arrange the "difficulties" that existed among their various hapu'.[602] There was no unanimity

[598] Miles, pp. 502-3
[599] Oliver, p. 35
[600] cited in Oliver, p. 35
[601] Oliver, p. 35
[602] Miles, p. 503.

regarding the best way to interact with the Government. Chiefs such as Numia Kereru tried to follow a government line in many ways, but the majority of the tribe regarded the government and its officials with deep suspicion. But the meetings with Seddon at Ruatahuna indicated a willingness on Tuhoe's part to combine their desired self-government with their 'co-existence with, and recognition of, the sovereignty represented by the Government.'[603] Seddon himself realised that to get Tuhoe to acknowledge the sovereignty of the Crown, the government would have make 'real concessions to Tuhoe desires for local autonomy'.[604]

Premier Seddon came to Ruatoki in April 1894, four months after Ruatoki first went before the Native Land Court, and was adjourned to be heard after Matahina.[605] Numia Kereru appears to have been a spokesman for this meeting, and informed Seddon that Tuhoe had met from 1 February to 4 March and had decided on the boundaries of Tuhoe land. They had further decided that although the boundaries of the district should be surveyed, they did not want any surveys of land within the block.[606] Seddon replied to Tuhoe's declarations that they would not allow prospecting, sale or lease of Tuhoe land, or mapping, by saying that in the old days Tuhoe had held their lands only as long as they were strong enough to do so, and that with their pitiful numbers now they might not be able to do so for long. He said that the Government was the only protection they had, and that it could only settle disputes over land if the land had a proper title determined by European law.[607]

Numia gave Seddon the reasons for Tuhoe's antipathy to the Native Land Court. He pointed out that before the land went before the Court it had to be surveyed, with the survey usually being paid for in land, and then after the issue of titles from the Court some land was often sold and the owners became landless. Tuhoe felt that they could have their own committee to determine land ownership, which would not then contribute to making its owners landless.[608]

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[603] Ibid., p. 503.
[604] Ibid., p. 503.
[605] Oliver, p. 43
[606] Ibid., p. 43
[607] Ibid., p. 44
[608] Ibid., p. 44

Seddon referred to the UDNRA 1896 as recognition in a legal form of the agreement McLean had made with Tuhoe in 1871. Miles states that this meant Tuhoe had 'won important concessions of principle in the legislation.'[609] The Act allowed for local hapu and owner committees, but the binding authority to alienate lands in the Urewera would rest solely with the General committee, elected from representatives to the local committees. Miles points out, though, that the Governor in Council 'had the power to prescribe and change the duties and functions of the Urewera committees and, from Tuhoe's point of view, this must have been viewed as a serious flaw'.[610]

The Act also provided for the alienation of Tuhoe's lands at some time in the future, and allowed them to lease the surplus until they could farm their own land.[611] The title to the approximately 656,000 acres of land in the Urewera was to be determined by a Commission made up of two Pakeha officials, the Native Land Court Judge Butler and the Surveyor-General, S Percy Smith, and five members of Tuhoe: Mehaka Tokopounamu, Numia Kereru, Te Pou, Tutakangahau, and Hurae Puketapu.[612] Miles notes that these Maori members of the Commission were probably 'deemed moderates, prepared to negotiate and compromise with the Government, unlike a considerable number of their kin'.[613]

The Commission had to notify where and when it would be sitting in the same manner as the Native Land Court sittings were notified. The Chairman of the Commission had to be one of the Pakeha members, and four members constituted a quorum. 'The Commissioners' powers were never clearly defined and they were at liberty to make their own rules as to how the inquiry would proceed'.[614] Numia Kereru moved that those commissioners who had interests in the lands they were deciding title to should not be party to the decisions on those blocks, and a 1901 amendment to the 1896 Act prohibited any commissioner with personal interests in a block from adjudicating on its ownership.[615] The problem with this is that these commissioners, given their high rank,

[609] Miles, p. 503.
[610] Ibid., p. 504.
[611] Ibid., p. 504.
[612] Ibid., p. 285.
[613] Ibid., p. 287.
[614] Ibid., p. 287.
[615] Ibid., p. 287-8.

had interests in many blocks and at times there was a difficulty in reaching the quorum of four. Miles suggests that the 'lack of a Tuhoe majority at most of these sittings must have affected their influence vis-à-vis the Pakeha commissioners'. She adds that it seems clear that 'this situation undermined the essential concept of Tuhoe determining their own titles with the aid of Pakeha administrators'.[616]

The purpose of the commission was to establish title to the Urewera on the basis of hapu blocks. It became clear during the proceedings that 'the nature of Tuhoe customary tenure mean that the neat division of the area into hapu blocks was impossible to achieve', and the Commission ended up grouping different hapu into one block, a solution which gave rise to many calls for partition later on.[617] But as Percy Smith stated: 'nearly the whole area is subject to overlapping claims...and the hapus are so mixed by intermarriage that it is difficult to say to what hapu any particular individual of the tribe belongs'.[618]

The Commission was generally received well by Tuhoe who wished to see the titles determined, but there were those who opposed it. Miles refers to Tamaikoha, who was wary of putting his lands at Waimana under the authority of the commission until he was sure how the process was supposed to work. Hori Wharerangi of Waikaremoana and Ngati Ruapani iwi informed the Commission that they did not wish their lands to be dealt with by the Commission. He mentioned the poverty that the Waikaremoana people had been left in as a result of confiscations and the Native Land Court process and that they were afraid of losing more land and ending up 'landless' if the lands went through the Commission. He also reportedly said that these lands had been included in the Rohe Potae without consultation with Ngati Ruapani.[619] In response, the Commission referred to the danger of not protecting interests against competing claims and refused to accept his request, forcing Ngati Ruapani to hand in their list of Waikaremoana owners.[620] It is ironic that this was the same situation Tuhoe had repeatedly found itself in with regard to the Native Land Court. Despite their frequent desire to avoid the Land Court process, in

[616] Ibid., p. 288.
[617] Ibid., p. 288.
[618] Cited in Miles, p. 288.
[619] Ibid., p. 289.
[620] Ibid., p. 289.

order to defend their lands they were forced to attend and stake their claim. Tutakangahau himself referred to this when he said that although the Act had intended that the investigation of title should follow Maori custom, 'I am afraid that this Commission is rather inclined to adhere to the Native Land Court system of procedure'.[621]

The Commission took longer to hear the claims than was expected, and this gave rise to suggestions by Smith that the cross-examination of claimants by other claimants be ended. The other commissioners thought that this would be a good idea. Furthermore, Mehaka suggested that the smaller claims could come under the umbrella of larger claims. He also suggested that this could be done outside the commission. There were objections to this particularly from Numia, who believed that this would be opposed by those with smaller claims and in the end Numia suggested that the Pakeha commissioners should decide. Miles believes this indicated that Numia considered that a decision by the Pakeha commissioners was more likely to appear impartial.[622]

The major problem with the Urewera Commission, and one that was shared by the Native Land Court, is that they were attempting to translate traditional Maori take to the land into a European mode of exclusive ownership. With the interlinked rights of many people to one area this was often impossible to determine.[623] The Commission did acknowledge that a 'large portion of the country was used only seasonally for food gathering or other resource exploitation'.[624]

The decisions of the Urewera Commission were not always respected and there were differences between the Commissioners themselves. For instance, Numia Kereru and Mehaka Tokopounamu were counter claimants in the lands at Ruatoki which at that time were continuing to be heard in the Native Land Court and later by the Commission itself.

The Amendment Act of 1900 allowed the Commission to act as if they were the local or general committees, and for the Native Minister, with the recommendation of the Commissioners, to set aside any land for lease for 21 years, 'whenever it appears to the

[621] Cited in Miles, p. 290.
[622] Miles, p. 290.
[623] See Miles p. 291.
[624] Miles, p. 291.

advantage of the Native owners to do so'.[625] This was done, Miles argues, to get around the fact that land could not be leased or sold until the titles were determined, because the decision to alienate land rested with the general committee, whose membership was taken from the block committees which could not be set up when the titles were still undetermined.[626] The Act also, in a change from previous policy and assurances, stipulated that any moneys accruing from any leases of Urewera land would go to paying the expenses of the Commission.[627]

Miles argues that the changes in legislation 'indicated that the Government was prepared to undercut the principles upon which Tuhoe had agreed to title determination. The Government appears to have taken this step in order to appease settler pressure and in response to problems and delays with the commission.'[628]

The commission had been problematic, and there were a number of appeals from all over the Urewera requesting rehearings. A staggering 172 appeals were gazetted in November 1906. As a result, the commission as it stood was disestablished and a second one made up of Gilbert Mair, Paratene Ngata of Ngati Porou (a Land Court assessor), and D Barclay (a Native Land Court Judge), was appointed by Carroll. The Barclay Commission presented its final report at the end of May 1907.[629]

[625] Cited in Miles, p. 296.
[626] Miles, p. 296.
[627] Ibid., p. 297.
[628] Ibid., p. 297.
[629] Ibid., p. 298.

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