

A Report Commissioned by the Waitangi Tribunal

on the background to the

Tuwharetoa Ki Kawerau Raupatu Claim

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1. Introduction.

1.1 This report was commissioned by a Waitangi Tribunal direction of 20 December 1990. As required by that commission, it is an exploratory report for the Tuwharetoa Ki Kawerau raupatu claim and concerns the background history to the confiscation of Tuwharetoa Ki Kawerau land associated with the 1860s New Zealand wars. As far as practicable it does not reach definitive conclusions about or prejudge the merits of the claim and is directed to identifying issues not answers. It also identifies documents likely to be useful for the claim including those in the Waitangi Tribunal Raupatu Document Bank. The report concentrates on official documentation. The same Tribunal commission authorised a report by claimants that is expected to be more substantially detailed on the particulars of the claimants' case and on traditional evidence relevant to the claim. In covering the background to the confiscation this report is concerned mainly with the years 1860-74 followed by a brief history of subsequent attempts to seek remedies. Noel Harris drew the maps for this report.

2. The claim.

2.1 The Ngati Tuwharetoa Ki Kawerau claim was first lodged with the Waitangi Tribunal in February 1988. It concerns the confiscation of Tuwharetoa Ki Kawerau land under the New Zealand Settlements Act 1863 and associated legislation. The claim forms part of the Tribunal raupatu hearing programme that has begun with the Taranaki muru raupatu claim. The Ngati Tuwharetoa Ki Kawerau claim has been registered with the Tribunal as Wai 62.

2.2 In summary the claim alleges Crown breaches of the Treaty of Waitangi through legislation, in particular the New Zealand Settlements Act 1863 and associated Proclamations/Orders in Council. Through these Tuwharetoa Ki Kawerau land was first confiscated in 1866 and then some of the confiscated land was transferred to other tribes through Compensation Court awards notified in 1874. The claim particularly notes the New Zealand Settlements Act 1863, the Confiscated Lands Act 1867 and the Orders/Proclamations of 17 January 1866 confiscating the Bay of Plenty district including Ngati Tuwharetoa Ki Kawerau land, and 12 November 1874 notifying the Compensation Court awards.

2.3 The claim also alleges Crown breach of the Treaty of Waitangi through its actions in the confiscation of land and subsequent dealing, disposal and alienation of it contrary

to Ngati Tuwharetoa Ki Kawerau interests. According to the claim, the Crown allegation that Ngati Tuwharetoa Ki Kawerau was amongst those tribes in rebellion at the time (the basis for confiscation) is false and without foundation. The claim alleges that the confiscation of Ngati Tuwharetoa land was contrary to the guarantees in the Treaty of Waitangi; was carried out in breach of the provisions of the New Zealand Settlements Act 1863, and of the principles of fair dealing as between the Crown and Maori people; and that Ngati Tuwharetoa was not afforded a hearing or other due process of law.

2.4 The claim also alleges that subsequently the Crown has failed to act on the rightful claims of Ngati Tuwharetoa to the confiscated land and has wrongly retained the land or in some cases alienated it to other persons.

3. The claim area.

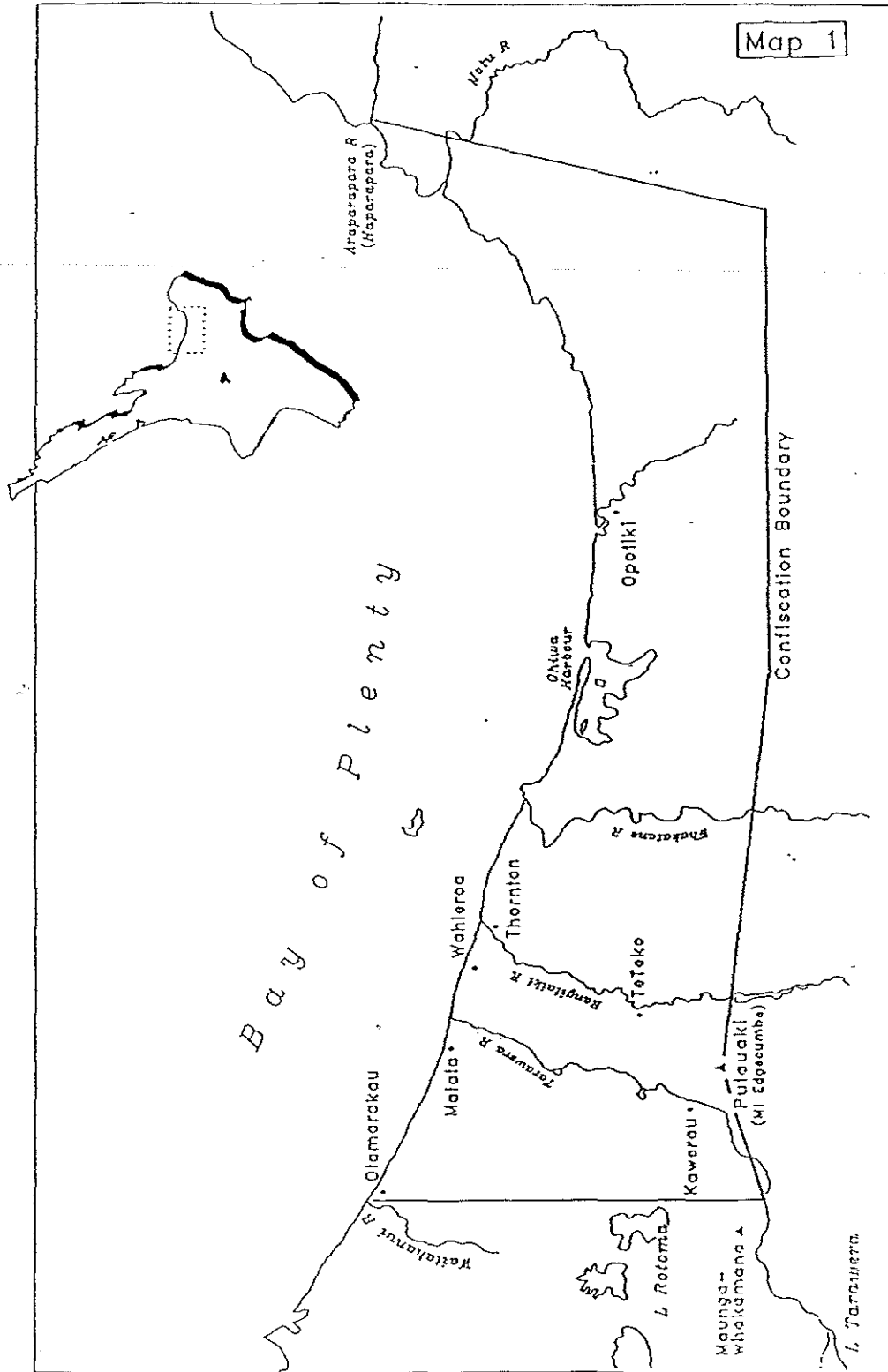
3.1 The Ngati Tuwharetoa Ki Kawerau raupatu claim concerns land in the eastern Bay of Plenty, see map number 1 opposite page 2. This area was often referred to at the time as the Opotiki district and as being part of the east coast area. It was described by confiscation proclamation as the Bay of Plenty confiscation district. This is the area referred to in this report when the term Bay of Plenty confiscation district is used.

3.2 The claim itself concerns land in the west of this district, bounded on the west and south by the confiscation boundary, to the north by the sea, and to the east by a line roughly from Mt Putauaki (Edgecumbe) in the south through present day Thornton in the north. For some of its length, this eastern boundary is marked roughly by the Rangitaiki river. See map number 2 opposite page 3, of the Ngati Tuwharetoa claim area within the Bay of Plenty district.

3.3 The Tuwharetoa claim area includes fertile coastal and river flats bounded to the south and west by hill and then more mountainous country. The area also includes forest, swamp, hot springs and lakes. To the east is part of what used to be a large swamp known as the Rangitaiki plain. The plain is dissected by three major rivers and numerous tributaries. The major rivers of importance to the Tuwharetoa claim area are the Rangitaiki to the east of the area and further west the Tarawera.

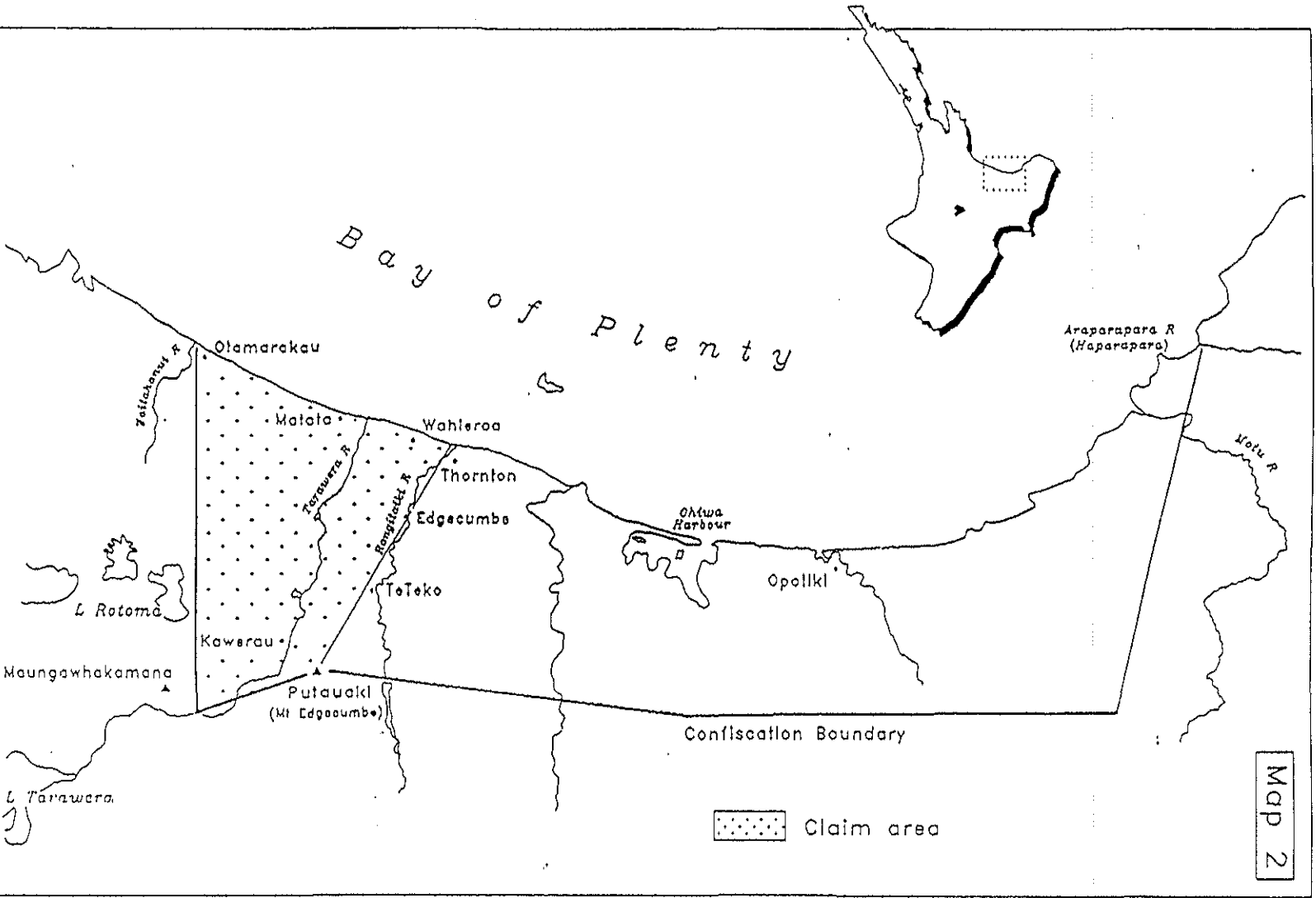
3.4 There have been substantial changes to the landscape since the 1860s when confiscation took place. Although still prone to flooding, the Rangitaiki swamp area has since been

BAY OF PLENTY CONFISCATION DISTRICT



Ref: NZ Gazette 1866, Order in Council dated 17.1.1866; amended by
Order in Council dated 1.9.1866. RDB v12, p4068, 4117-3

TUWHARETOA KI KAWERAU CLAIM AREA



Ref: Based on Tuwharetoa Ki Kawerau claim documents

drained and turned into farm and horticultural land. The courses of the rivers have also been changed significantly, largely due to straightening and drainage work. The flow of the Tarawera river was also altered by the 1886 Mount Tarawera eruption. Today the Rangitaiki enters the sea at Thornton and the Tarawera flowing from Lake Tarawera enters the sea at Matata. In the 1860s the Rangitaiki did not have a mouth of its own. One branch flowed east to Whakatane, the other west to join the Tarawera. The Rangitaiki itself flowed west to join the Tarawera and Awaitei rivers and their combined waters were called Te Awa O Te Atua which flowed along the foreshore behind the sand dunes to enter the sea west of Matata. See map number 3 opposite page 4, of the Rangitaiki area rivers before drainage. In the low lying areas there were numerous waterways and islands and many of the rivers were deeper and more navigable than is the case today after substantial drainage work.

4. Settlement in the Bay of Plenty district by 1860.

4.1 Traditionally the Bay of Plenty district was extensively settled and used by numerous iwi and hapu. The sea, inland waterways, swamps, lands and forests were sources of abundant food and other resources. The area also had a favourable climate and river communication routes from the mountain areas to the coast. People lived in coastal areas, on raised hills above the swamps and in the hill, mountain and forest country surrounding the swamp. In the 1860s the swamp area was accessible by tracks along the seaward sandhills, or by canoe along the rivers and labyrinth waterways. As well as the routes provided by the large rivers, the waterways were navigable in small canoes and wound among many islets that provided camping grounds for eel fishing and bird hunting. Before drainage the Orini river provided a deep navigable communication link between Te Awa O Te Atua and Whakatane harbour.¹

4.2 The whole district appears to have been subject to intricate iwi and hapu rights, boundaries and usages some of which at times overlapped. Europeans travelling in the area often remarked on the complicated and numerous territorial disputes in the area.² As well as asserting independent rights however the various iwi and hapu in the area were closely connected to each other and acknowledged extensive kinship networks, loyalties and obligations. Tuwharetoa Ki Kawerau for example appear to have ancestral

1. see for example Cowan, The New Zealand Wars chapt 9, and Gibbons, The Rangitaiki

2. eg report of H T Clarke RM 1861, AJHR 1862 E-9 in Raupatu Document Bank v 15 p 5632 onwards.

connections with both the Arawa (Te Arawa) and Mataatua (Ngati Awa) canoes.³

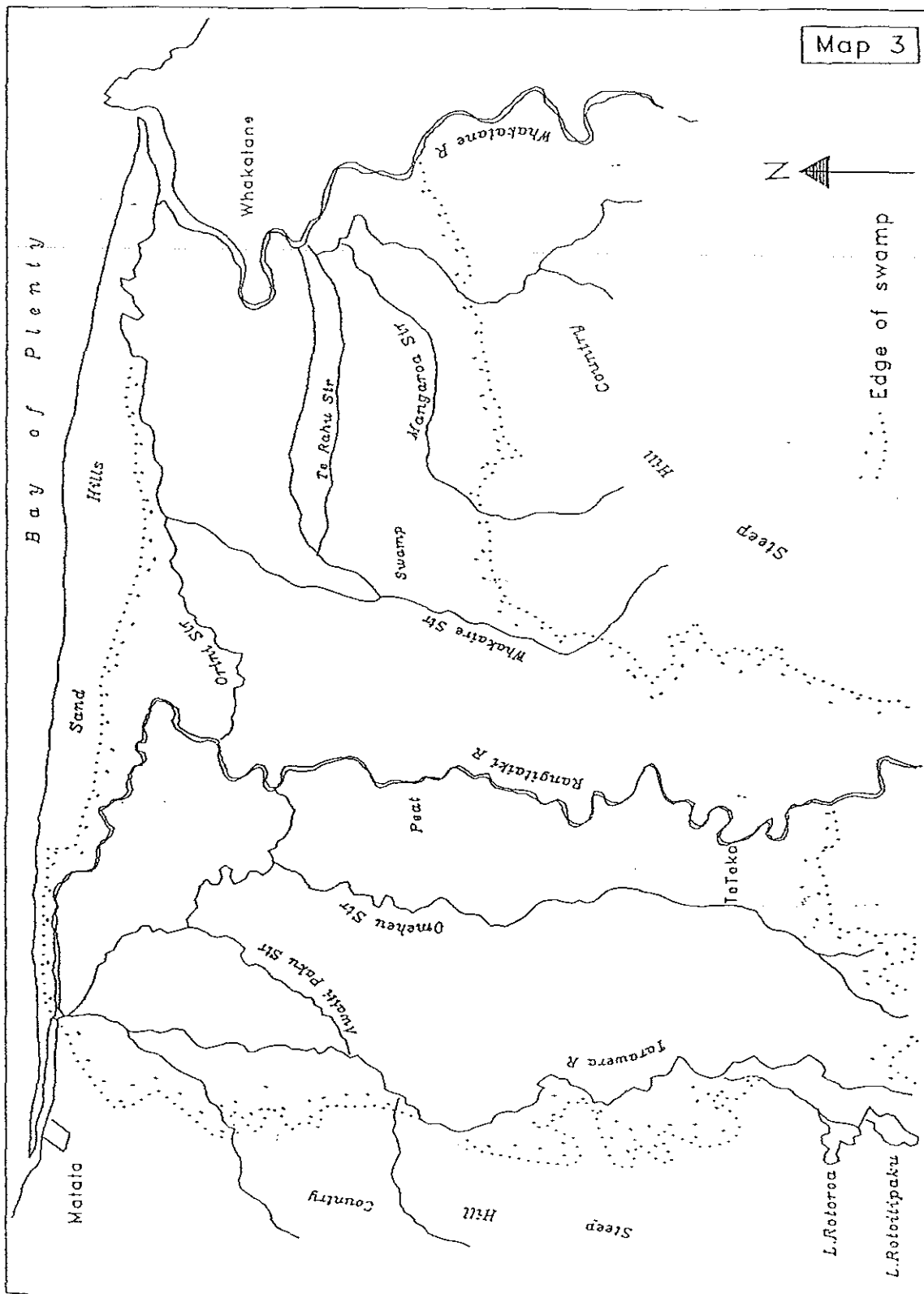
4.3 By 1860 European settlement in what was to become the Bay of Plenty confiscation district was still very limited. It seems to have been largely confined to relatively small numbers of traders, carpenters and other artisans welcomed for the skills Maori found useful to have among them. There were also various missionary groups active in the area. Later, after confiscation some Europeans claimed to have purchased land in the area but this appears to have been small scale. The area was not isolated from the influences of white settlement elsewhere however. More research is required, but there is evidence that various iwi and hapu although often responding independently, were keen to participate in new economic developments and opportunities. Parts of the district had begun producing supplies for the Auckland market in particular and the area supported mills, commercial crops and a coastal shipping trade. Iwi living inland were also able to participate in this through their communications with coastal areas. There had been some contact with government but the area was still very much under Maori control. When Government officers visited in the early 1860s they found a willingness to consider new government institutions as long as Maori could have a significant role in them and the institutions proved capable of providing an acceptable means of settling disputes and access to resources.⁴

4.4 Not all contact had been advantageous. Official reports also mention the severe impact of diseases in some areas and Maori concern about the methods of some traders and the European desire for land. Official reports reveal strong Maori desires to absorb and adapt new developments on their own terms and to retain a significant share of political power in any new systems of government. Until the 1860s this appears to have largely happened in the Bay of Plenty and economic development and white settlement had been largely absorbed into traditional structures and concerns. However by the 1860s events in other areas were causing increased concern. This appears to have been particularly centred on concern for the future role of Maori in the new economic and political structures being established and at a practical level was especially expressed in

3. evidence of Arapeta Hoani Te Rire, extract from Whakatane Minute Book vol 70 for hearing of 26-27 March 1980, in Maori Land Court Waiariki district file no 33998 - Tarawera no 1. Copy attached.

4. see for example reports on Bay of Plenty district 1861-2 AJHR 1862 E-7, E-9 in Raupatu Document Bank v 15.

THE RANGITAIKI SWAMP & RIVERS BEFORE DRAINAGE



From map supplied by Bay of Plenty County Council (from Gibbons W.H. 'The Rangitaiki')

concern about possible loss of land.⁵

5. The New Zealand wars of the 1860s.

- 5.1 The 1860s wars began in Taranaki. The immediate cause of conflict was the government's decision in 1860 to enforce the disputed sale of the Waitara block. Warfare spread throughout Taranaki and support for resistance to Government forces also came from outside the district including from the Waikato where the King movement was based. The King movement was essentially concerned with attempting to unify opposition to continued land alienation and supporting the assertion of Maori political rights.
- 5.2 In 1863 Government forces invaded the Waikato. Warfare also spread to the Bay of Plenty and the east coast and was accompanied by large scale confiscations of land. The wars often continued well after confiscations were proclaimed, and the practical implementation of confiscation often provoked fresh warfare as happened in Taranaki.
- 5.3 Recent histories have shown that while the causes of the wars need more thorough investigation, they were essentially struggles for political and economic domination.⁶ This process also involved battles for control of access to land. It seems clear that the colonial Government chose to regard the wars as battles to impose substantive 'British' sovereignty throughout New Zealand. Belich argues that land was often a measure of this as when it was alienated the district itself also often passed into colonial Government influence and control. The opposition to land selling therefore was also seen as a challenge to colonial Government authority and sovereignty.⁷ Resistance and assertions of Maori autonomy as supported by the King movement were regarded as intolerable and as rebellion by the colonial Government.
- 5.4 Maori perceptions of the wars and what they meant were complex and require more research and Maori evidence. Maori fought for and against government forces. Many at various times also sought to stay neutral or 'passive'. There was clearly a large amount of support for the concerns of the King movement. However many iwi and hapu still

5. for example reports of officials from Bay of Plenty on reaction to Grey's proposed plan of government for Native districts 1861-2, AJHR 1862 E-9 in Raupatu Document Bank v 15.

6. For example, Belich, The New Zealand Wars

7. Belich, The New Zealand Wars

appear to have chosen to act independently. This independence extended not only to iwi and hapu but on occasions within hapu. Alliances were not automatic and could change according to experience, new information or changed perceptions.

- 5.5 There have been numerous suggestions for differing Maori responses to the wars. These have included past experiences with the Crown and colonial Government including land purchase activity, traditional disputes and power struggles as well as alliances and obligations; defence of and concerns about rangitiratanga as expressed in the Treaty of Waitangi, possible advantages or setbacks in economic competition, and perceptions of the impact of new institutions and increased white settlement. Any or a combination of these could powerfully influence what action Maori chose to take.
- 5.6 The Bay of Plenty appears to have produced the same varied responses as elsewhere.⁸ There was strong support from various iwi and hapu for both the Government and the King movement as well as many areas that attempted at various times to stay passive or neutral. Even among and within closely connected hapu there seem to have been sharply different responses. Some of these can be traced to old rivalries and alliances. Even government officials reported that some of the most enthusiastic fighting was based on old rivalries as was in some cases declaration of support for government forces. The level of support or opposition could also change with changing perceptions. Some hapu who fought against Government troops in Taranaki for example, fought with them in later battles in the Bay of Plenty and the East Coast and the reverse was also true. Many iwi had strong ties outside the Bay of Plenty in Taranaki, Waikato and the East Coast and these were also influential in shaping opinion. Even among those who supported the government the support was not as unconditional and simple as the Government appeared to believe. There is some evidence of this in the frustration apparent in some official reports. Further evidence on this is required from claimants.

6. The Confiscation Scheme of the 1860s.

- 6.1 The confiscation scheme was based on the view that those Maori resisting Government forces were in rebellion and therefore their land was open to confiscation. The idea of confiscating territory from 'rebellious' Maori was not new in New Zealand and had been tried unsuccessfully earlier. In 1843 for example, after a private dispute between

8. see for example correspondence and reports and of officials on Bay of Plenty district 1860-64 in AJHRs and Raupatu Document bank vols 16-17. Also, Cowan The New Zealand Wars, Belich The New Zealand Wars, Ward 'The origins of the Anglo-Maori wars'

a Kaipara chief Tirarau and a European named Forsaith, colonial officials required a cession of land from Tirarau as punishment. The British Secretary of State for the colonies however disapproved of this.⁹

6.2 The confiscation scheme of the 1860s was developed in the context of what was defined as a war of rebellion. This scheme and its supporting legislation were based on Irish precedent and adaptations of this used elsewhere in British colonies.¹⁰ The confiscation scheme as proposed was published in 1863.¹¹ A major feature was to be the establishment of military settlements on confiscated land. The scheme was particularly concerned with Waikato land but a similar plan was also suggested for Taranaki. Governor Grey explained that the system of military settlement was based on one he adopted while in British South Africa. Territory was to be taken from tribes then in arms against the government. Grey claimed that the Waikato chiefs acting in an unprovoked manner had caused Europeans to be murdered and had planned the wholesale destruction of some of the European settlements. It was therefore necessary to take steps to ensure the permanent security of the country and to inflict punishment that would deter other tribes from similar actions. This would be achieved by locating large enough bodies of European settlers strong enough to defend themselves in positions that would give the Government the entire command of the province. The land for the European settlements would be taken from guilty tribes and this would deter other tribes who might be inclined to act in the same way.

6.3 The punishment of Waikato tribes was seen as being especially effective as the punishment of such strong tribes would be an example to all the others. The scheme would also assist in bringing the tribes under the force of British law. Grey claimed that even after confiscation and military settlement, the punished tribes would be left with hundreds of thousands of acres, ample land for all useful purposes.

7. Confiscation - disputes over implementation 1863-64.

7.1 By 1860 sovereign power in New Zealand was theoretically shared between the colonial ministers first appointed in 1856, the Governor responsible to and appointed by the

9. IA1, 1867/2523 - memo of 3.7.1867 on history of claims as a result of rebellion by Natives. See copy attached.

10. see for example, debates on Suppression of Rebellion Bill 1863, NZ Debates 1863 p 858

11. AJHR 1863 A-8, A-8a in Raupatu Document Bank v 16 p 5727 onwards.

British imperial Government and the imperial Government itself retained some direct control in certain matters. It could still disallow bills of the colonial Government and in Native affairs retained a say in matters involving imperial troops and the honour of the British crown. During the early 1860s when the colonial Government decided to engage in warfare and enacted the fundamental confiscation legislation, Maori did not have representation in the colonial parliament. The colonial ministers were keen to wrest further power from the Governor especially in Native affairs and the wars and confiscations inevitably became part of this power struggle.

- 7.2 The confiscation scheme as published in 1863 was not only supported by the colonial ministry and the Governor but also approved in principle by the imperial authorities.¹² In communicating his approval, the Secretary of State for the colonies accepted the advice that Maori resistance was rebellion. He agreed that Maori taking up arms as had been alleged, could properly be punished by the confiscation of a large part of their common property. He had no objection either to their land being used to meet the expenses of war, or for the establishment of military settlements which would soon anyway lose their distinctive nature as Natives became 'an unimportant minority of the inhabitants'.
- 7.3 Even while it approved of confiscation in principle, the imperial Government was concerned about the way confiscations were to be implemented and the possible consequences of this. In the same despatch, Newcastle also warned the colonial Government to distinguish the innocent and to 'wisely' limit the confiscations to avoid increasing resistance and prolonging war. Later, when imperial authorities received more details of the confiscation plan they were alarmed at the scale of the proposed military settlements and continued to warn of the danger of measures that might make Maori desperate or provoke further resistance. They appeared to be particularly worried that the war might be unnecessarily lengthened and require the assistance of the imperial troops for longer than was necessary.¹³
- 7.4 In early 1864 the imperial Government described the conditions for confiscation in

12. Despatch of 26.11.1863 from Newcastle to Grey published in NZ Gazette of 23.4.1864 in Raupatu Document Bank v 11 p 3897-8

13. see for example despatches from secretary of state for the colonies printed in AJHR 1864 E-2, Raupatu Document Bank v 17 and Cardwell to Grey 26.12.64 in Raupatu Document Bank v18 p 7076-7

more detail.¹⁴ It wanted the taking of land to be a 'cession' as a condition of pardon. The operation of the Settlements Act was to be limited to not more than two years. The amount of land to be taken was to be declared at once and specific pieces of land to be taken were to be declared as soon as possible. The imperial Government favoured a commission that was not removable by Ministers to determine what lands were to be taken. Commission members were to be selected on the basis that they would guarantee a fair and careful consideration of matters brought before them. The powers of the Compensation Court were also to be enlarged to enable it to deal leniently with all Native claims to compensation. The Governor was to personally agree to confiscation and was to have the power to prevent it unless he was satisfied that it was just and moderate. The imperial authorities warned that they would advise disallowance if they were not satisfied in these matters.

In addition, the imperial Government objected to warfare that seemed to involve the difficult and costly pursuit of defeated Maori.¹⁵ It cautioned against pushing into hostile territory like the Waikato with a narrow line of undefended settlements that might cause future conflict. It accepted that enough land should be taken to secure the safety of colonists but warned that more than that, and land that would require the employment of force to defend it against its former owners, would not be agreed to. Even if there were districts that Maori deserved to lose - confiscation of them should not be enforced if it required the heavy use and expense of imperial troops. The Governor's claimed refusal in Taranaki to confiscate the entire territory of friendly Natives was supported; 'Such a course would evidently be at variance with your instructions and with the plainest rules of justice...'¹⁶

- 7.5 The imperial authorities were also concerned about the legislative foundation for confiscation. The Secretary of State was alarmed when he received the wording of the New Zealand Settlements Act 1863. He felt that some of the provisions were expressed in '...sweeping terms, capable therefore of great abuse...and calculated if abused, to frustrate its own objects, and to prolong, instead of terminate war'. He felt that although punishment was necessary it should not be such as to create a permanent sense of injury and prevent the recovery of prosperity by Maoris. He reiterated that the

14. Despatch from Cardwell to Grey 26.4.1864, AJHR 1864 E-2 in Raupatu Document Bank v 17 pp 6684-7

15. Despatch from Cardwell to Grey 26.1.1865 in Raupatu Document Bank v 18 p 7077-80

16. *ibid*

implementation of confiscation must not in itself impede the establishment of permanent peace or raise concern about the honour of the Crown.¹⁷

- 7.6 The Governor and colonial Ministers strongly disagreed over how these imperial concerns should be interpreted in practice. A particularly bitter dispute was fought between ministers and the Governor in 1864 over many of the crucial details of implementation.¹⁸ The Secretary of State for the colonies required a proclamation before confiscation warning Maori of Government intentions and offering rebels a chance to submit. The Governor and Ministers disagreed over the wording of this, and over the amount of land to be ceded, how it was to be chosen and the terms of surrender to be offered. The ministers insisted on their right to take whatever land they thought was necessary and argued that the scheme for confiscation as approved by them, the Governor and the imperial Government gave first priority to the needs of military settlers. They also revealed that contracts and promises had already been made in expectation of such measures.¹⁹
- 7.7 The Governor insisted that he wanted the confiscations limited to that needed to inflict punishment for rebellion and to deter further rebellion. He also wanted land to be confiscated in accordance with the degree of guilt involved and not simply according to the needs of settlement. He saw no problem with this as he was still confident there would be enough land to meet all reasonable needs including for military settlement and to help pay the costs of war.²⁰ He also expressed concern that confiscation appeared to provide a way to circumvent the Native Lands Act 1862 that secured important rights to Maori.²¹
- 7.8 The Ministers were vague about exactly how much land they felt was required for confiscation. When they did produce a map showing the contemplated confiscation area

17. Despatch from Cardwell to Grey AJHR 1864 E-2, Raupatu Document Bank v17 p 6684-7

18. see for example AJHR 1864 E-2, E-2a, E-2c, E-3 and AJHR 1865 A-1 in Raupatu Document Bank vols 17 and 18.

19. memo by Ministers to Grey signed by Whitaker of 30.5.1864 in AJHR 1864 E-2 in Raupatu Document Bank v17 p 6608

20. for example memo from Governor to Ministers 8.9.64 AJHR 1864 E-2 Raupatu Document Bank v 17 p 6645-6

21. memo from Governor to Ministers 25.5.64 AJHR 1864 E-2 Raupatu Document Bank v 17 p 6607

in Taranaki and Waikato, it was considerably less than the final confiscation.²² They clearly regarded Native affairs as an area where their power was too limited. They complained that Grey's idea of dividing power with his advisors was to take all the power on important matters like confiscation and surrender of arms to himself and leave the Ministers to handle details like the amount of a Native policeman's salary or the cut and colour of his official coat.²³

7.9 In the end Ministers offered their resignation and the Governor issued the proclamation on 25 October 1864 without their concurrence.²⁴ The proclamation offered a pardon to any rebels who surrendered by 10 December 1864, took the oath of allegiance and ceded territory as fixed by the Governor and Lieutenant-General. Those involved in the murders of a number of persons listed in the proclamation were exempt from the pardon. The proclamation was delayed by the dispute, the Governor having originally intended to issue it on 7 October 1864. The time period allowed for surrender was still similar however.

7.10 The imperial Government was not impressed by the colonial Government disputes. Fortescue criticised the 'unsound and mischievous form which responsible Government has assumed in New Zealand' and Grey's failure to adequately deal with it.²⁵ However in spite of its many concerns the imperial Government never actually disallowed either the legislation or the implementation of confiscation. Cardwell explained this was because the imperial authorities did not want to weaken the military position of the colonial Government and because they had faith in the Governor's personal influence. He was content that 'no confiscation can take effect without the Governor's personal agreement and the Crown has confidence in his wisdom and concern for the Native race'.²⁶ In late 1864 he confirmed that the imperial authorities were happy to rely on the Governor as the proper interpreter of their instructions on confiscation and the wars.²⁷

22. see British Parliamentary papers (IUP) v 14 map opposite p 168

23. Whitaker memo of 5.11.64 AJHR E-2a in Raupatu Document Bank v 18 p 6715

24. NZ Gazette notice dated 25.10.1864 in Raupatu Document Bank v11 p 3977

25. Fortescue minute to Cardwell of 21.12.64 on Grey's despatch of 7.10.64, CO 209/183.

26. Cardwell to Grey 26.4.1864 in AJHR 1864 E-2 Raupatu Document Bank v 17 pp 6684-7

27. Despatch 26.12.64 Cardwell to Grey AJHR 1865 A-6 p10 Raupatu Document Bank v 18 p 7076-7

7.11 More research is required into how far the colonial Government attempted to meet imperial concerns, how well these succeeded and how willing ministers were to allow these concerns to shape their own priorities. A July 1863 proclamation was issued for example to warn Waikato chiefs that rebellion would mean the loss of lands guaranteed by the Treaty of Waitangi.²⁸ This type of warning was favoured by the imperial authorities. Before a messenger had time to deliver this however, Government troops had invaded the Waikato.

8. Confiscation legislation.

8.1 There is a considerable amount of legislation associated with the confiscations and their administration. More research is required regarding this legislation and the numerous associated amendments. Some amendments for example appear to have been made to meet imperial concerns while others were intended to remove legal objections and to assist with the administration of confiscated land.

8.2 The New Zealand Settlements Act passed in December 1863 provided the original legislative basis for confiscation.²⁹ It was meant to provide for the implementation of the confiscation scheme approved in 1863. The preamble confirmed the intention was to make adequate provision for the permanent protection and security of the well disposed inhabitants of both races, for the prevention of future insurrection or rebellion and for the establishment and maintenance of Her Majesty's authority and for Law and Order throughout the colony. The best means of obtaining those ends was to be the introduction of a sufficient number of settlers able to protect themselves and to preserve the peace of the country.

8.3 The Act allowed for the confiscation of land whenever the Governor in Council was satisfied that 'any Native Tribe or Section of a Tribe or any considerable number thereof' had been in rebellion since the first day of January 1863. The Governor could proclaim a district under the Act where there was any land owned by those held to be in rebellion and he could define or vary the boundaries of that district as he saw fit (section 2).

28. proclamation of 11.7.1863 in Raupatu Document Bank v11 p 3763. see also AJHR 1863 E-5 in Document Bank v 16 eg p 6022

29. New Zealand Settlements Act 1863, Raupatu Document Bank v 10 p 3294

Within that district the Governor could set apart sites for settlements for colonisation and the boundaries of these sites could be defined and varied as he saw fit (section 3). For the purposes of such settlements the Governor could reserve or take any land within such a district and have it deemed Crown land freed of all claim and interest from any person as soon as the Governor in Council declared such land required for the purposes of the Act and subject to its provisions (section 4).

The Act allowed for compensation to be granted to all persons with a claim or interest in land taken except for some defined classes described in section 5 of the Act. In general these were those who since 1 January 1863 were engaged in war against Her Majesty or her forces; or those who aided, comforted or assisted any such persons; or who counselled, advised, induced, enticed, persuaded or conspired with any other person to make war or carry arms against Her Majesty or her forces in New Zealand, or to join or assist any such persons as already described. Also excepted were those who in rebellion were principal or accessory in any outrage against person or property; or who on being required by Government by proclamation in the Government Gazette to deliver up arms in their possession who refused or neglected to comply with such a demand after a certain day to be specified in such a proclamation (section 5).

The Act also made it lawful for the Governor to call upon any Native tribes or individuals within them who had been engaged in any offences under section 5 of the Act to come in and submit to trial according to law on or before a certain named day and all who refused or neglected to come in would not be eligible for compensation (section 6).

The Act specified provisions for making claims and allowed for the creation of Compensation Courts (sections 7-14) and the compensation was to be by certificate to the Colonial Treasurer (section 15).

The Act also provided for townships and farms to be laid out for military settlers and in addition for the laying out of further townships, and suburban and rural allotments and for the sale and disposal of such land (sections 16-20).

- 8.4 The Government also passed associated legislation. This included the New Zealand Loan Act and the Suppression of Rebellion Act also passed in December 1863. These were meant to enable the Government to put down rebellion and help fund the wars and confiscation. Later an Indemnity Act was passed in 1865 and amended in 1867 and

1868 to indemnify those involved in suppressing rebellion.³⁰

- 8.5 Various other Settlements and Confiscation acts and amendments followed the 1863 Act. These included the New Zealand Settlements Amendment Act 1864, the New Zealand Settlements Amendment and Continuance Act 1865, the New Zealand Settlements Act Amendment Act 1866, the Friendly Natives Contracts Confirmation Act 1866, the East Coast Land Titles Investigation Act 1866 and the Confiscated Lands Act 1867. Additional acts relevant to particular confiscation areas were also passed, for example the Richmond Land Sales Act 1870 for the eastern Bay of Plenty.
- 8.6 The amendments, even when they were attempts to meet imperial concerns, were not always well received by the imperial authorities. The New Zealand Settlements Amendment Act 1864 for example, extended the operation of the 1863 Settlements Act until December 1865 (section 3) and also allowed the Governor in Council if he felt it expedient, to award compensation where the Court hadn't awarded any, or direct that larger compensation be made than awarded by the Court (section 2). Section 2 was apparently made to further meet Cardwell's requirements that confiscations should be just and moderate and land should be properly and fairly investigated.³¹ However Cardwell complained to Grey that it was not sufficient that the Governor and his advisors could grant extra over what the Court awarded as this was not a judicial or quasi judicial process. It was essentially political and subject to the popular feeling of the moment. However as before, he was content to rely on the Governor's ability to secure proper treatment of this and other questions.³²
- 8.7 At the same time the Government was passing various Native Land Acts establishing and providing for the operation of the Native Land Court. The Native Land Court was involved to a limited extent with confiscated land. The Native Land Acts that appear to be most relevant to confiscated land are those of 1865-67. It was possible for judges to be involved with both courts, notably Chief Judge Fenton. More research is required into the relationship between the two courts. There appear to be some linkages particularly with policy concerning land tenure and a drive to individualisation and Crown grants. A variety of other land acts also appear to have had some impact on the

30. For copies of major legislation see Raupatu Document Bank vol 10

31. Cardwell's despatch of 26.4.64, Raupatu Document Bank v 17 pp 6684-7

32. Cardwell to Grey 24.4.1865 in Raupatu Document Bank v 18 p 7084.

administration and disposal of confiscated land including the Waste Lands Acts, some Public Works Acts, the Native Reserves Acts, the Volunteers and Others Act and various amendments. Further research is required into these and their impact on confiscated land. Much of the later administration of confiscated land appears to have been allowed to become shambolic and more research is required into the results of this for Maori.

9. The implementation of confiscation 1864-65.

9.1 Attempts to implement confiscation had been delayed by disputes throughout most of 1864. By the end of 1864 although the imperial authorities were still questioning and would continue to warn about the details of confiscation, the colonial Government began to set about proclaiming confiscated districts and trying to implement confiscation. On 17 December 1864 the Governor proclaimed that the time for the pardon had ended and announced the confiscation of Waikato lands giving the boundaries of the area. He also announced that he would take land in Taranaki as he thought fit. He would have roads made anywhere he thought fit and those who resisted this would be forcibly repressed.³³

9.2 A number of orders in council followed this proclaiming certain confiscated districts under the New Zealand Settlements Act 1863. These included districts in the Waikato and Taranaki in January 1865. In April 1865 a proclamation also required specific named tribes to submit or they would be debarred from compensation for lands confiscated. Further Waikato confiscations and the Tauranga district were proclaimed in June 1865.³⁴

9.3 The colonial Ministers publicised a variety of justifications for confiscation in these years. The 1863 scheme and the Settlements Act described the confiscations as a means of punishing rebellion, defraying the cost of war and establishing military settlements to ensure permanent peace. In response to various criticisms the ministers also claimed in 1864 that confiscation was simply following the tradition of confiscating land already apparent in Maori warfare.³⁵ Fox explained further reasons to the Bishop of

33. Proclamation of 17.12.1864, Raupatu Document Bank v 11 p 3980

34. Gazette references proclaiming confiscated districts in Waikato, Taranaki, and Tauranga in Raupatu Document Bank vol 11

35. NZ Gazette of 21.5.64 in Raupatu Document Bank v 11 p 3915

Waiapu. He claimed that the confiscations were intended to permanently impress Natives with the folly and wickedness of rebellion, establish defensive frontiers, to find a location for a European population to balance Natives who occupy Native districts and to pay part of the cost of war forced by Natives on the colony. In mitigation of the need for confiscation however Fox was adamant that ministers still intended to reserve for the future use of Maori as large a portion of the confiscated land as would enable them to live in independence and comfort. This land would however be secured to them by individual titles under the Crown as this would elevate them above the communal system (or no system) of life which lay at the root of their present uncivilised state.³⁶

9.4 The advantages of confiscation in changing the Maori system of land tenure was increasingly more openly advocated. In 1865 Weld explained to the Governor that in Taranaki the confiscations and their administration would help the Government to dispose authoritatively with tribal disputes regarding land which tribes themselves were unable to settle amicably.³⁷

9.5 The Ministers also became more confident in attempting to extend their power. In August 1865 when many of the confiscations had already been proclaimed, Weld commented on the possibility of the imperial Government disallowing the New Zealand Settlements Act 1863 and its 1864 amendment. He claimed that this would be disastrous to the colony. Whatever the objections to the legislation might be it had now largely been brought into practical operation and great tracts of land were being dealt with under it. Therefore it would cause great difficulty if the Acts were disallowed now. He claimed that it was still the colonial Government's intention to confine the confiscations within limits that would cause no undue hardships on the rebels, nor wrong on those who had remained loyal. He also asserted that if the colony was to have the responsibility of its own internal government and defence then colonial Ministers would claim for themselves the right to determine what land should be confiscated and subject to what conditions. Under the altered relations between the imperial Government and the colony he claimed the fullest discretionary powers for the colonial Government.³⁸ In reply to this Cardwell still reiterated that in Native Affairs, in cases concerning the honour or interests of the Crown such as adherence to treaties

36. Fox to Bishop of Waiapu 4.7.64 in AJHR 1864 E-2 Raupatu Document Bank v 17 p 6632-3

37. Memo Weld to Governor 2.9.1865 in Raupatu Document Bank v 18 p 6919-20

38. memo by F Weld dated 11.8.1865 in Raupatu Document Bank v 18 p 6919

entered into by Her Majesty and similar, the imperial Government still retained the power to disallow acts. The imperial Government also claimed a right to reasonable control of Native policy while it depended on imperial troops and this would continue until a considerable number of these troops had left. However he again assured Grey that the imperial Government would not lightly disallow any Act.³⁹

9.6 In 1866, even after the confiscation of the Bay of Plenty district, the imperial authorities were still questioning aspects of implementation but relying on the responsibility of the Governor. In a summary of continuing concerns Cardwell finished with new worries about the 1865 Settlements Amendment Act and an act of 1865 for maintaining the Queen's peace in certain districts. He warned that disallowance of these had only not been advised because the imperial Government had accepted the colonial policy and had determined in compliance with that policy to withdraw the imperial troops from the colony and to leave the Governor to be guided by his ministers in Native as well as ordinary affairs as long as the honour of the Crown was not involved. Cardwell was reassured by information that tranquillity had been restored in the colony and that colonial measures were being established to 'bring the Native race within the pale and under the protection of British law...'⁴⁰

10. Confiscation policy by 1865.

10.1 By 1865, in spite of their disputes with the Governor and the continuing need to reassure the imperial authorities to prevent disallowance, the colonial Ministers appear to have succeeded in major policy areas regarding the implementation of confiscation. It seems clear that by then for example, the needs of military settlements were to take priority when land was to be confiscated. The wishes of the imperial Government that the innocent be distinguished and Governor Grey's insistence that confiscation match the level of 'guilt' seem to have been abandoned - if they were ever really feasible. 'Guilt' now appeared to be limited to determining that rebel iwi land was involved therefore confiscation could take place. Confiscation was also to be used to enforce Government political and legal dominance and to assist with both the acquisition of land and the large scale change in Maori land tenure to Crown grants and individualisation of ownership. To achieve this as rapidly as possible the Government had now moved to a policy of taking a whole district for settlement rather than areas

39. Cardwell to Grey 26.10.65 in Raupatu Document Bank v18 p7073

40. Cardwell to Grey 26.4.66 AJHR 1866 A-1 Raupatu Document Bank v 19 p 7430-3

within it, a significant move from the original scheme approved by the British authorities. The Government also seemed to have changed the emphasis on what it claimed would be the consequences for Maori. Now it was considered 'no kindness' to leave Maori with ample surplus land. Maori prosperity was to rely instead on the increased value of what land was left and the increase would come by holding land by Crown grant and having more intensive European settlement.

10.2 The colonial Ministers confirmed their policies in late 1865 in a publicly notified peace proclamation and in confidential instructions sent to general government officials. The peace proclamation declared that the current war that had begun at Oakura was now ended.⁴¹ All those who gave up arms against the Queen would never be prosecuted for past offences except those involved in the murders of a listed group of people. This list included the names of James Fulloon and the Reverend Volkner both of whom had been killed in the eastern Bay of Plenty. It also promised that no more land would be taken on account of the present war. Of the confiscated lands in Taranaki and Waikato the Governor would immediately restore considerable quantities to those Natives who wished to settle peacefully and accept Crown grants. Commissioners would at once mark out the boundaries of such land. An expedition was being sent to the Bay of Plenty however, to arrest the murderers of Volkner and Fulloon. If they were given up to justice the Governor would be satisfied. If not, the Governor would seize a part of the land of the tribes who 'concealed the murderers' and would use it for maintaining peace in that part of the country and to provide for the dependants of the murdered men. The Governor also called for the assistance of Native Chiefs and announced a meeting to be called to determine how Natives could be represented in the House of Assembly and help make laws. He also promised equal rights and liberties for all subjects.

10.3 The policy underlying the proclamation was explained by Weld to the Governor in a memo accompanying the proclamation.⁴² It was described in more detail in confidential instructions dated 3 September 1865 sent by Native Minister Fitzgerald to Dr Pollen, the general government agent in Auckland. Fitzgerald noted that the Government was particularly concerned with what was happening in the Waikato where Maori were gradually returning and settling down on the land. They were in a state of great poverty and required both food and seed. Their unauthorised and

41. Proclamation dated 2.9.65 in NZ Gazette of 5.9.65 - Raupatu Document Bank v 11 p4040.

42. memo Weld to Governor 2.9.65 in Raupatu Document Bank v 18 p 6919-20

irregular reoccupation of the conquered country worried the Government and was incompatible with its proposed policy of settlement. The Government wanted a rapid and final settlement of the Waikato and had therefore advised the Governor to issue a proclamation confiscating the whole territory previously brought under the operation of the New Zealand Settlements Act. This was because the conflict of claims and titles to land in the district had made a speedy and satisfactory settlement of the country impossible. Having done this the first object would be to settle all former proprietors on the land who would come in, accept Crown grants and agree to live peacefully under the law. For this purpose the Government intended to appoint Pollen a special and sole commissioner to make this settlement. Natives who had come back and quietly settled on the land should be left in peace as long as they agreed to take Crown grants and clearly understood they would be living under the Queen's laws.

The Native Minister instructed that when Pollen agreed on blocks to be returned to the Natives it was desirable that he did not give them more than was necessary for their wants. This was not only because 'to have them in possession of large tracts of country which they could not use was of no kindness', but the speedy sale and settlement of the remainder would make their own lands more valuable and would effect the settlement and occupation of the country.

Because the Government felt that the most important object in establishing permanent peace was to induce Maori to finally accept the fact that the land was confiscated and to consent to hold returned land under Crown grant, to achieve this Pollen could if necessary be more liberal with land than would otherwise be desirable. The 'one great thing' the Government wanted was to have Maori accept their position as 'final and irrecoverable' and if liberal concessions of land were necessary to bring this about then the 'main object of the confiscation will have been attained'.

Pollen was to thoroughly inform Maori of the object and intention of the Government in confiscating the whole district although this was not expected to cause further irritation as they already thought all the lands were confiscated in the first proclamation. 'They do not distinguish between bringing the land under the operation of the Act and taking it for settlement'. In any case Pollen was to inform them that the Government's object was to get rid of all difficulty and dispute about claims and titles and to settle them down on land which they would hold on Crown grants forever.

10.4 On 8 September 1865 Fitzgerald sent Pollen the peace proclamation and a circular with

further instructions. The peace proclamation was to be circulated among Maori and thoroughly explained to them. They were to be persuaded that Government policy was in their interests as much as Europeans. The Government claimed that it did not desire aggrandisement of territory so much as a final and lasting peaceful settlement of the country and Maori prosperity and wealth would be best promoted by aiding the Government in speedily completing this settlement.

The circular explained that the peace proclamation did not ask Maori to come in, give up their arms, take the oath of allegiance or other such steps. Peace was declared and the Government would cease all military operations except in Opotiki where force would be used until the murderers in that district were arrested. Therefore if Maori began acts of hostility again they would have to understand that it would be their own fault and they would not be able to complain of the consequences. Should renewed hostilities cause the loss of further territory they would only have themselves to blame.⁴³

- 10.5 Ministers had now decided that all of a proclaimed district would be confiscated not just areas within it. Proclamations to this effect were published almost immediately for Taranaki and Waikato.⁴⁴ The main objectives of Government policy were to insist on land being held by Crown grant and to bring Maori finally and irrecoverably under British law. Although it was desirable that they should not have returned to them more land than it was felt they needed, the Ministers were prepared to be liberal if by doing so they could get Maori to consent to hold land by Crown grant and live under the Queen's law. Maori were also to be convinced that in spite of confiscation the Government's policies would still be the best means to their future prosperity.

11. The Eastern Bay of Plenty - background to confiscation.

- 11.1 The September 1865 peace proclamation declared an end to the wars but in practice they appear to have been inextricably linked to events in the Bay of Plenty. The area had already been involved in the wars and they were also influential in fighting that was still to take place.

43. Confidential instructions to general government agent in Auckland 3.9.65 and attachments from AGG-A 1/1 (reference number obliterated by water damage) copy attached

44. proclamations of confiscations in Taranaki and Waikato in Sept 1865, Raupatu Document Bank v 11

In early 1864 battles were fought in the eastern Bay of Plenty when Te Arawa acted to prevent members of eastern iwi and hapu including for example, Whakatohea, Te Whanau-A-Apanui, Ngati Awa and Ngati Pukeko from moving west to support Waikato. A major battle was fought at Matata and later fighting at Maketu also spread to Te Awa-O Te Atua. In addition the Government sent an expedition to Tauranga in 1864 again with the declared intention of disrupting east coast support for the Waikato. A number of battles were fought in the Tauranga district. Government forces suffered a major defeat at Gate Pa but were more successful later at Te Ranga and in a number of smaller battles. A number of eastern Bay of Plenty iwi and hapu took part in these battles. The result does not appear to have been a decisive victory but an uneasy compromise and the beginning of negotiations over confiscations in the Tauranga district.

- 11.2 It seems that involvement in these wars is not an issue because resistance to Government forces was pardoned by the peace proclamation. However in spite of this the warfare of this time does seem to have influenced the views of both officers in the colonial forces and Maori in the area during later fighting in the eastern Bay of Plenty and so probably requires further research. Some iwi and hapu involvement is mentioned in sources such as Cowan. However the role of Tuwharetoa Ki Kawerau is not clear. Given their later activities if they did take part at all, they may well have supported the Government forces by fighting alongside Te Arawa.
- 11.3 In 1864 the followers of the Pai Marire religion began arriving in the Bay of Plenty area. Further research is required into this movement particularly its relationship to the wars.⁴⁵ It was founded in 1862 in Taranaki by Horopapera Tuwhakararo who took the name Te Ua Haumene and formed a religious movement based on pacifism and peace. The movement appeared to gain rapidly in popularity among Maori in the North Island. This has been attributed by Clark to its attempt through its teachings to provide a means of adjustment to and regulation of the processes of change and dislocation being experienced by Maori based on a new and uniquely Maori religious foundation.⁴⁶
- 11.4 In spite of its teachings the movement was overwhelmingly perceived by Europeans as

45. see for example Clark, Hauhau: The Pai Marire Search for Maori Identity

46. Ibid - preface

bloodthirsty and fanatical. It was commonly referred to as Hauhauism and was widely regarded by Europeans with a mixture of horror and contempt. This reputation was based on incidents that seemed to confirm to European eyes a 'reversion to barbarism' by its followers. In 1864 in Taranaki for example, a band of government troops on a crop destroying expedition were ambushed by followers of the movement and the bodies decapitated. The head of the captain in charge was taken and preserved. This caused outrage among Pakeha settlers and officials. Clark however has argued that the event can also be seen as retaliation for incidents where Europeans actively collected specimen Maori heads and as a customary Maori attitude to the decapitation of a dead enemy on the battlefield.

11.5 The teachings of the movement strongly supported things Maori and this extended to Maori political autonomy. The Government became alarmed at the spread of the new religion not only because of a professed outrage at the brutality associated with it but because of its potential political influence. This concern increased when the movement won the support of many leading members of the King movement including Tawhiao in 1864.⁴⁷ In the eyes of many government officials 'Hauhauism' also soon became indivisible from any kind of opposition to land selling.

11.6 During 1864 emissaries of Te Ua were sent to various parts of the North Island including the Bay of Plenty. The movement seemed to win many followers in the Tauranga area in 1864 amid uncertainty over land confiscation. The movement also sought support in other parts of the North Island including Opotiki in the Bay of Plenty. It was not always well received and there was fighting for example between pro and anti Pai Marire factions of Ngati Porou from June - October 1865.

12. The killings of Carl Volkner and James Fulloon.

12.1 The Government appeared to be provoked by two particular killings in the eastern Bay of Plenty in 1865 and both of these were attributed to followers of Pai Marire. More research is required into the background to the killings of Volkner and Fulloon and the reasons for the Government basing confiscations in the area on resistance to the military operation sent to capture those involved.

12.2 The Reverend Carl Volkner was killed at Opotiki on 2 March 1865 only a short time

47. for example, AJHR 1865 E-4 - further papers re the spread of the Hauhau superstition among the Maories, Raupatu Document Bank v 19 p 7165 onwards.

after Pai Marire followers arrived there. He had worked as a missionary in Opotiki for four years but had recently taken his wife to Auckland for safety because of warnings of danger. In spite of this he decided to return to his mission at Opotiki and was taken prisoner and killed there. Others taken prisoner with him managed or were allowed to escape.⁴⁸

- 12.3 Although the Government expressed outrage at the brutal murder of a missionary,⁴⁹ it seems apparent that Volkner was also actively providing the Government with information of political and military value in the area and his efforts in this respect were widely known. Along with some other clergymen, Volkner believed that he had a duty to inform the government of events in his locality that would be of interest to it; 'I should be wanting in my duty if I did not make known to you what happens around me relating to the present disturbed state of the Natives'.⁵⁰ Volkner may also have supported government opposition to Pai Marire through professional concern that missionaries such as himself were in danger of losing adherents to the new religion.
- 12.4 Further research is required into the level of support for Pai Marire in the area and what it meant to those who decided to follow it. It is not clear for example precisely what prompted Volkner's killing while others with him were allowed to escape or whether the killing was fully supported by followers in the area. Wiremu Tamihana Te Waharoa told Resident Magistrate Mainwaring that there was nothing in the Pai Marire teaching or prayers to instigate or encourage murder or any other crime. On the contrary it encouraged peace and goodwill. He did not think the murders could be blamed on the religion and he did not support the individuals involved.⁵¹ Other reasons that have been suggested at various times for the killing include disaffection for Volkner personally, religious and interdenominational rivalries and a general loss of trust in European missionaries - a sense of betrayal heightened by a perception that they preferred to support the Government against Maori desires for autonomy.
- 12.5 James Fulloon as well as being closely connected to the district was even more closely

48. see for example AJHR 1865 E-5 Papers re the murder of the Rev Volkner, Raupatu Document Bank v 19 p 7207 onwards

49. for example memo from Weld to Governor 6.4.65 in Raupatu Document Bank v 18 p 6905-6 and from Stafford of 8.1.66 p 7306

50. letter Volkner to Grey 16.2.64 quoted in Parham James Francis Fulloon

51. Notes of interview 28.9.65 in AJHR 1865 E-14, Raupatu Document Bank v 19 p 7264-5

linked to government. He was killed on 21 July 1865 when he visited Whakatane with the intention of raising a force to capture those suspected of involvement in Volkner's murder. James or Hemi Fulloon was born in August 1840.⁵² His English father had settled in the Whakatane area first as a trader and later as a farmer. His mother was Ngati Awa and through his maternal grandfather he had Ngati Awa and Tuhoe affiliations. His grandfather Te Mautaranui was a respected chief and Hemi was widely referred to as Mautaranui by Ngati Awa. He spent his early years in the Whakatane area and was bi-lingual. When he was seven years old he was sent to be educated with the Chapmans, missionaries at the Te Ngae mission at Rotorua. At age 12 he was hired because of his fluency in Maori as the interpreter for the New Zealand coastal survey on the Pandora. After the coastal survey finished he was taken on in the Land Purchase department as personal assistant to Donald McLean. He began work there in May 1856 aged almost 16 years. His fluency in Maori as well as his experience with surveying probably helped him gain the position. He assisted McLean with land purchases in Hawkes Bay including buying some land for himself in 1858. In late 1859 he made a trip through the Waikato and Bay of Plenty noting the potential of land for settlement.

- 12.6 By 1860 Fulloon was proving increasingly useful to Government for his fluency and contacts within Maoridom. Although only just in his twenties by the 1860s, he was according to Parham, operating 'as a liaison or political officer, trying to dissuade friendly or undecided Maoris from joining the Waikatos in their resistance. While doing so he was expected to be on the alert to detect proposed hostile moves so that the Government might be forewarned'.⁵³ With war in Taranaki in 1860 he became more active as a government agent, moving to trouble spots to sound out local feeling, monitoring events, trying to ease tensions and reporting back to Government. In 1860 for example, he visited both the Coromandel to dissuade local tribes from supporting the Waikato, and the Waikato to report on events there. In 1861-62 he visited the Bay of Plenty and in 1862 the Urewera. In many instances he accompanied government officials and acted as interpreter for them.⁵⁴ In 1863 he was in the Waikato again not just monitoring events but actively negotiating and trying to persuade various iwi and hapu of the Government's position. He also reported to the Government on the various

52. Information on Fulloon is taken largely from Parham, James Francis Fulloon; and papers printed in AJHRs eg AJHR 1865 A-1, Raupatu Document Bank v 19

53. Parham, p44

54. for example report on visit by C. Hunter Brown to the Urewera tribes June 1862, AJHR 1862 E-9 in Raupatu Document Bank v 15 p 5650 onwards.

views he encountered. This included a plan for a general rising in support of Taranaki including attacks on Auckland and Wellington. He warned he was not sure of its reliability but felt he should pass it on. This plan was later used as a major reason for the Government's 1863 pre-emptive invasion of the Waikato⁵⁵ and was accepted by the Sim Commission of Inquiry in reporting in 1928 that the Waikato confiscations were justified.⁵⁶

- 12.7 Fulloon learned of Volkner's death while accompanying Governor Grey in Taranaki. He offered to go to the Bay of Plenty and raise men to fight Whakatohea. He suggested to the Governor that a free pardon be given to the whole of Ngati Awa, Whanau-A-Apanui and Ngaitawarere for having joined the Ngati Porou previously in attacking the Arawa. In return he asked for authority to raise a force of Ngati Awa and others at Whakatane to go to Opotiki and demand the killers of Volkner. He asked for support in arms and the steamer Sandfly. He also suggested that it would be an opportunity to settle old tribal boundary disputes between Ngati Awa and Whakatohea.⁵⁷
- 12.8 Although Fulloon's plan doesn't seem to have won immediate support he was sent by Grey on two expeditions to the east coast area in an effort to find information and possibly apprehend those involved in Volkner's death. He first accompanied Captain Luce on HMS warship Esk as interpreter to take Grey's request to the people of the east coast to remain quiet and not follow the Kingites or Pai Marire. The reply was that only one crime had been committed in the area and they were not responsible for it. Fulloon took part in some small expeditions on this trip including capturing a deserter and finding information on the suspected killers. Luce praised him not only for his ability as interpreter but because of the way he had been able to explain, advise and talk to the Maoris in a 'friendly and unofficial manner'.⁵⁸

In May 1865 Fulloon visited again, this time on the warship Eclipse under Commander Freemantle. He took part in a number of expeditions to try and capture suspects. These included attempts to take suspects by surprise by dressing up in disguise but these attempts seem to have been somewhat amateur and failed as news of the warship's

55. see AJHR 1863 E-5 and AJHR 1863 A-8 in Raupatu Document Bank vol 16

56. Report of Sim Commission of Inquiry into confiscated lands and other matters 1928, AJHR 1928 G-7 in Raupatu Document Bank v 48

57. Fulloon to Grey 18.3.65, quoted in Parham.

58. AJHR 1865 A-5 in Raupatu Document Bank v 18

presence was well known. The expedition did receive some assistance from Fulloon's Ngati Awa connections.

The ship returned to Auckland empty handed and Fulloon continued to press his plan for raising a force with the Defence Minister. He was apparently stung by rumours that he had secretly warned his Ngati Awa relatives, including his cousin Wepiha who had previously accompanied some Pai Marire visitors in the district, and enabled them to escape.⁵⁹ He received a Captain's commission published in the NZ Gazette of 30 June 1865 and could now enlist a company. He asked to be allowed to visit Whakatane 'for the purpose of checking the spread and if possible, suppressing Pai Marireism'. He suggesting blocking trade with the area as Maori were badly off for clothing etc and with the cold winter season rapidly setting in, this would bring them to their senses more quickly than anything else. He also reported on the great mortality amongst Maori of the east coast. The Government later blockaded trade to the district and agreed to Fulloon's request to be allowed to visit the area.⁶⁰

12.9 Fulloon visited Whakatane in July 1865 apparently still determined to raise a force. He was warned of the danger of his visit especially with regard to the unrest following Pai Marire visits to the area but remained confident that he would be safe. At Whakatane his boat was boarded by Pai Marire supporters. According to Parham, eye witnesses reported that Fulloon so gravely insulted a Pai Marire priest that it was presumed he was drunk. Tensions appeared to have cooled down after this however and relations seemed to become more cordial. Messages were sent to followers on shore however and the boat was lured into a trap. It was boarded again and most on board including Fulloon were killed. Two men and a child on the boat were spared, the men apparently because the guns aimed at them misfired and their attackers took this as a sign to let them live. The owner of the boat, A B White, was one of them and he was able to provide an eyewitness account of what happened.⁶¹

12.10 Shortly after Fulloon's death the Government issued its peace proclamation and also

59. report in New Zealander 15.6.65 quoted in Parham

60. letters Fulloon to Atkinson 7 June and 17 July 1865, AJHR 1866 A-1, Raupatu Document Bank v 19 p 7311.

61. see Parham for example

declared martial law in the area.⁶² Although the peace proclamation promised a general pardon for those fighting against Government forces until that date, it also declared that there would be an expedition to the eastern Bay of Plenty and military force would be used to capture those involved in the murders of Volkner and Fulloon. Persons suspected of the said murders or of assisting in them would be tried by Court martial. There was also a threat of confiscation for those who 'concealed the murderers'.

13. The eastern Bay of Plenty - war and confiscation.

13.1 The Bay of Plenty district was proclaimed confiscated by an order in council dated 17 January 1866.⁶³ An accompanying schedule described the boundaries of the district. The confiscation was made under the New Zealand Settlements Act 1863 and in it the Governor in Council was declared to be satisfied that 'certain Native tribes and sections of Native tribes having lands in the district described have since the first day of January 1863 been engaged in rebellion against Her Majesty's authority'.

13.2 The Government had already sent an expedition by sea to Opotiki and it landed just four days after martial law was declared. The 500 troops were made up largely of forces from Wanganui and Taranaki including a Native contingent. The landing was resisted and after basing themselves in Opotiki these forces became involved in fighting in the area. Civil Commissioner Smith also wrote to Major Mair at Rotorua asking him to organise a force of Te Arawa to capture the suspects.

13.3 Both the Opotiki and Te Arawa forces were involved in fighting in the district. Government forces lived off the land by taking crops, goods and stock from enemy villages. In the Rangitaiki area after a seige at Te Teko pa in October 1865, a number of principal suspects and those believed to have assisted them including chief Te Hura were captured by Te Arawa forces under Mair. During November some hapu of Whakatohea and others suspected of involvement in Volkner's death surrendered to the forces based at Opotiki.⁶⁴

62. notice dated 4.9.65 in Raupatu Document Bank v 11 p 4040-41. Martial law was not lifted in the area until 26.1.67, Raupatu Document Bank v 12 p 4154

63. notice dated 17.1.66 in NZ Gazette of 18.1.66 - Raupatu Document Bank v 12 p 4068

64. Cowan, vol 2 chapter 9

13.4 The motivations of the various iwi and hapu in the area appear to have been as widely varied as in previous wars. The previous wars also seem to have had considerable influence on the way events were perceived. Although previous war activities had been generally pardoned the Government's actions in the Bay of Plenty appeared to leave little room for realistic compromise. Government officials brought in Te Arawa forces for example and noted approvingly that they were keen to continue the battles previously fought around Matata especially with Ngati Awa. This left Ngati Awa little room to reach the kind of accommodation that Fulloon had been confident was possible. This was in spite of the fact that after Volkner's murder, Ngati Awa had written to Smith the Civil Commissioner at Maketu, disassociating themselves from the killing and asking only that Arawa troops were sent by sea and not through their district.⁶⁵ The speed with which Government troops arrived after the declaration of martial law also appears to have left little room for negotiation or the development of new positions and the fact that troops lived off local resources may have also added to the impression that they were an invading force. More evidence on this is required from claimants.

13.5 The official records of events are often confusing as Government officers took a very simplistic and often muddled view of who was on what 'side', what their iwi and hapu affiliations were and what position those iwi and hapu were taking. The reported role of Tuwharetoa for example, appears to be muddled in these reports. Fighting took place in the area that includes land now under claim by Tuwharetoa Ki Kawerau. Cowan describes fighting in the Rangitaiki area for example where as well as existing fortified pa, swamps and lagoons provided shelter and natural fortresses.⁶⁶ Tuwharetoa Ki Kawerau does not appear to have been recognised as an entity in itself by Government officials. It is either assumed to be the same as the Tuwharetoa iwi based around Taupo and/or a hapu of Te Arawa. There were undoubtedly Tuwharetoa fighting with government forces. Several mentions are made for example of a Tuwharetoa detachment with the Te Arawa forces under Major Mair.⁶⁷ Military awards were also later made to the Tuwharetoa hapu of Arawa for their military services. Mair's forces were involved in the seige at Te Teko Pa in October 1865.

65. letter 6.3.65 in Raupatu Document Bank v 19 p7212

66. Cowan, vol 2 chapter 9

67. ibid

Tangirau of Tuwharetoa later claimed that he had taken the arrest warrant to Te Hura.⁶⁸ However in reporting this action to the government, Mair mentions that 35 Ngati Tuwharetoa (Taupo) under Hikarahui had come over from the enemy's pa and made terms.⁶⁹ Mair felt that it was this weakening of his force that apparently induced Te Hura to give in. It is not clear if Mair was correct about Tuwharetoa and if so, what was behind the coming over.

- 13.6 Within a few months and with considerable help from Maori forces most of the principal suspects in the deaths of Fulloon and Volkner were captured. By December 1865 the Government appeared to feel they had enough to begin holding trials. On 5 December Grey reported to Cardwell that Native forces had arrested 17 out of 23 suspected of involvement in the murder of Fulloon. As one other had been killed, only 5 then remained unaccounted for.⁷⁰ Initially the trials were begun under martial law in Opotiki. However the Government decided a civil trial was preferable and the findings of the court martial were set aside. The trials were moved to Auckland and a new hearing was held in May 1866. The evidence was apparently the same as that heard at Opotiki. Five of the prisoners were sentenced to death and executed in Mt Eden prison on 17 May 1866. Others were sentenced to imprisonment. In between the court martials in December 1865 and the trials moved to Auckland and heard in May 1866, the Bay of Plenty district was confiscated.
- 13.7 The principal suspects involved in the killings of Volkner and Fulloon had been captured and sent for trial within a few months of the Government peace proclamation. It was clear that Maori forces had played a large role in this and many felt that sufficient reparation had therefore been done, although there was some doubt that the right people had stood trial. Many Maori felt that as those held to be involved had been punished there was no justification for taking land as well. It was also felt that those who had taken no part in the murders should not be punished. These arguments were felt very strongly in the district and continued to be made through petitions and other forms of protest for many years.
- 13.8 The Government however took a different view. It appears that the killings themselves

68. letter to Fenton 19.2.69 Raupatu Document Bank v 123 p 47268-9

69. letter Mair to Smith 20.10.65 in Raupatu Document Bank v11 p 4055-6

70. Grey to Cardwell 5.12.65 and Smith's report 31.10.65 in AJHR 1866 A -1, Raupatu Document Bank v 19 p 7280-1

were not viewed as acts of rebellion but 'concealing' the murderers was. The Government did not consider that the capture, trials and punishment were sufficient to avoid confiscation. There had still been 'resistance' to the military force sent into the area. This was linked to the peace proclamation that had threatened confiscation for those who 'concealed the murderers'. This view was apparently endorsed by the Sim Commission of Inquiry report in 1928. This stated that if Maori in the area had not resisted the armed forces sent to capture the murderers there would have been no excuse for confiscating their lands.⁷¹ Although the Government took this view, it often added to the confusion itself as many Government ministers, military officers and officials even at the time often referred to the confiscations as 'punishment' for the killings or outrages.⁷²

14. The boundaries of the Bay of Plenty confiscation district.

- 14.1 The confiscation policy to be followed in the Bay of Plenty was foreshadowed in the confidential instructions to Pollen in 1865. In accordance with these the proclamation declared that all lands in the district were taken for the purposes of settlements and were required for the purposes of the Act and subject to its provisions. This meant that the whole area was immediately entirely taken for settlement rather than certain areas within it as had initially occurred in previous confiscations. The Government also had to maintain military force in the area for some years after the confiscation was proclaimed. This was in spite of imperial concerns that war should not be prolonged and territory should not be taken that would require extensive military action to enforce. Later in 1867 Colonel St John wrote to the Defence office that the pakeha settlement on confiscated land in the district would not survive without strong military operations against the rebels⁷³
- 14.2 Further research is required into how the Government decided on the boundaries of the Bay of Plenty district. There were suggestions that the district comprised land belonging to Whakatohea (for Volkner's murder) and Ngati Awa (for Fulloon's murder). A map sent to the imperial Government in 1868 shows this neat division.⁷⁴

71. Sim Commission report AJHR 1928 G-7, Raupatu Document Bank v 48 p 18543

72. see for example Stafford's speech in NZ Debates 1868 v2 p 521

73. letter from St John to the secretary of the colonial defence force in Wellington 5.6.67 in Le 1/1867/121 Raupatu Document Bank v 8 p2566-72

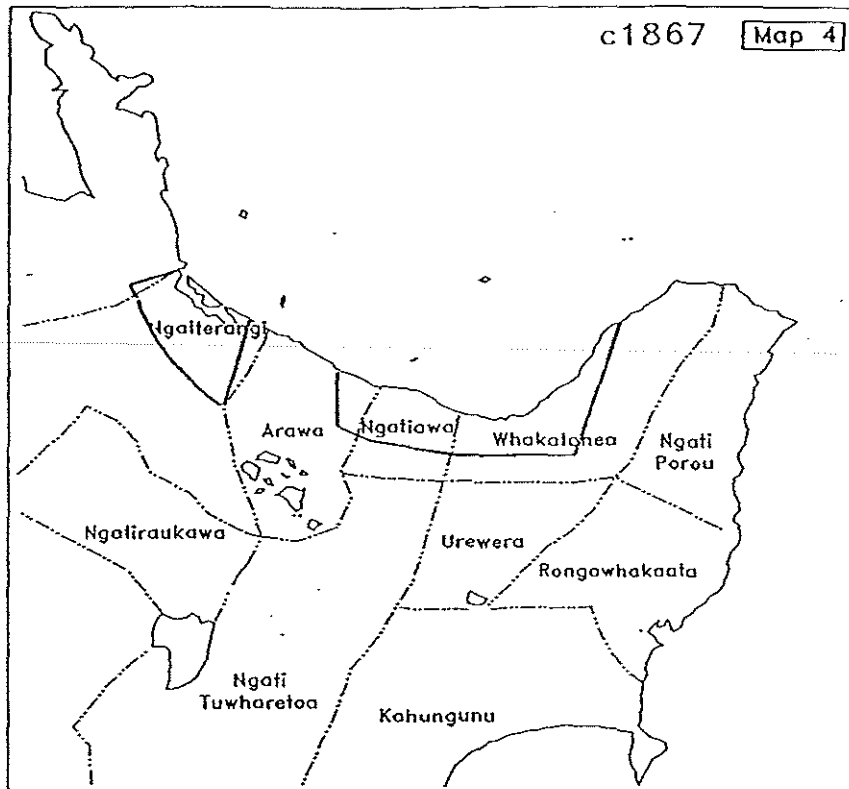
74. Map in GBPP (IUP) v 15 opposite p 126

See map number 4, opposite page 31. This map was also accompanied by a schedule of various tribes that described Ngatituwharetoa as 'friendly'. However even at the time officials had to admit that the situation was more complicated than this. Official reports of the battles for example, had also contained many references to fighting iwi such as Whanau-A-Apanui and 'Uriwera'. Another map of about 1869, published in New Zealand in 1870 shows a slightly more complicated picture that appears to include some of the other iwi considered 'guilty' of rebellion although this too was oversimplified.⁷⁵ See map number 5 opposite page 31. However this map also attempted to exclude loyal Te Arawa from the confiscation district.

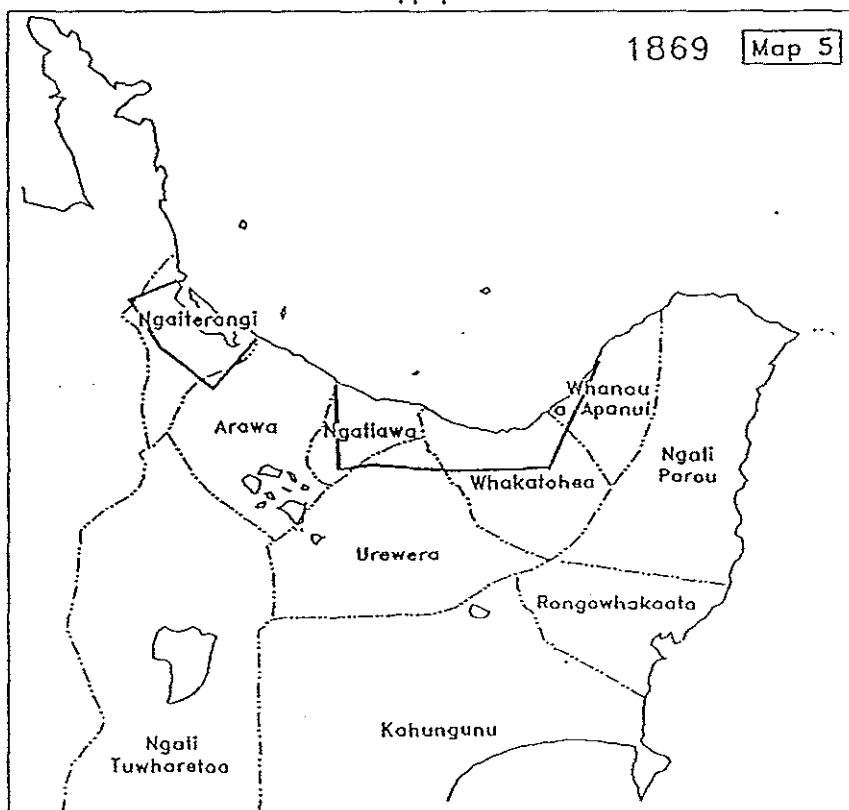
- 14.3 Most maps of the time show that the Government was convinced almost immediately that it had mistakenly included about 87,000 acres of land belonging to loyal Arawa in the west of the confiscation district. It made arrangements to 'restore' this land but instead of abandoning it and thereby removing it from the operation of the New Zealand Settlements Act, the Government insisted on returning it by Crown grant in the same way all the returns of confiscated land in the district were made. This was to cause those classed as Te Arawa considerable future problems.
- 14.4 It seems clear that the Government was aware of the very complex traditional land holding in the area and the great difficulties these were likely to pose for alienation. Enforcing holdings by Crown grant, even land mistakenly taken from allies could have seemed a way to tidy this up from a Government view.
- 14.5 Maps of the district also reveal that the Government had included the most promising land for settlement within the confiscation boundaries. The district described took in most of the relatively flat land available in the area extending to more mountain and hill country around the edges. Even the large swamp area was potentially valuable for settlement although it was unlikely to be useful immediately. The area was also the most promising for eventual communications routes within and through the district.
15. Out of Court compensation arrangements - general.
- 15.1 The 1863 Settlements Act under which the Bay of Plenty confiscation took place allowed for Compensation Courts to determine compensation for claimants with interests in the land who were found not to be barred under section 5. By 1865

75. AJHR 1870 D-23

MAPS SHOWING TAURANGA AND BAY OF PLENTY
CONFISCATION AREAS AND TRIBAL BOUNDARIES



Ref: based on GBPP IUP v15 opp p126



Ref: based on AJHR 1870 D-23

however the colonial Government had decided on a policy of surveying and making arrangements about land before the Courts began hearing. In accordance with this policy it was decided to begin surveys of the Bay of Plenty confiscated district as soon as possible.⁷⁶ The Government especially wanted to see surveys begin for military settlements and for reserves to be used for compensation. John A Wilson was authorised to act as Special Commissioner for the district. In this role he appears to have been responsible for making arrangements with Maori over which land was to be 'ceded' to the Government or awarded to Maori and for overseeing the surveys. He reported to and appears to have been responsible to the general government agent in Auckland. He began making out of court arrangements well before the first Compensation Court hearing of early 1867 and continued this work during and after Court sittings.

- 15.2 The policy of beginning surveys immediately was confirmed in a letter from Stafford to the Auckland provincial superintendent in February 1866. Stafford explained that the Government was anxious to begin surveys of the district and proposed that surveys for military settlers should begin at once taking care to survey proper reserves for friendly Natives.⁷⁷ Ministers also confirmed the Government's priorities for confiscated land. Whitaker listed military settlers first and then Natives, friendly and surrendered next, in his priorities in a memorandum stating the terms under which the House of Representatives would transfer the administration of confiscated land to Auckland province.⁷⁸
- 15.3 By May 1866 Wilson was reporting on surveys of the district. He reported for example that surveys had revealed that the original boundaries of the confiscation district had been described incorrectly and the junction of the Tauwhare and Ohiwa rivers was a 'geographical myth'.⁷⁹ This was corrected by gazette notice dated 1 September 1866.⁸⁰

76. Confidential instructions of 3.9.65 Fitzgerald to Pollen in AGG-A 1/1, copy attached

77. Stafford to Superintendent Auckland Province 24.2.1866 in Auckland Provincial Council Votes and Proceedings, session 20 1866-67 A-1 p3-4

78. Whitaker to Auckland Provincial Government 1866, Auckland Provincial Council Votes and Proceedings session 20 1866-7 A-1 p14

79. report by J A Wilson 1.5.1866, Raupatu Document Bank v 123 p 47462

80. Notice dated 1.9.66 in NZ Gazette, Raupatu Document Bank v 12 p 4117-8

15.4 It seems likely that continuing fighting in the district restricted Wilson's activities at this time. He was able to work around Opotiki where there was a garrison and around Matata where Te Arawa were given land. He reported that by November 1866 he had made surveys for military settlers and a reserve to be used for compensation in Opotiki. A surviving report also describes arrangements he made with some hapu of Ngati Awa for land near Ohiwa in December 1866.⁸¹

16. The Tuwharetoa Ki Kawerau claim area - out of Court arrangements.

16.1 It appears that Wilson was quickly convinced that some 87,000 acres in the west of the confiscation district had been mistakenly confiscated from Te Arawa allies and that this should be 'returned'. There is some evidence of arrangements about this land from 1866. Military awards seem to have been promised to Te Arawa within a short time and Tuwharetoa were included as one of their hapu. This seems to have taken place by December 1866 and the military awards seem to have been made towards the north around Matata.

16.2 In June 1866 Rolleston agreed that Te Arawa could occupy the confiscated land between 'Te Awa O Te Atua and their land'. It could be held in common until a plan for subdivision could be made and approved and it was to be inalienable without Government consent.⁸² It is not clear exactly what land in this area Rolleston was intending to describe. He could have been referring to the whole block west of the Tarawera river from the coast to the southern confiscation boundary and west as far as what was thought to be Arawa land in the far west of the district or simply the northern part of this block.

16.3 Further evidence of the military awards was recorded by Rolleston in a memo regarding a meeting he attended at this time. He met with Commissioner Clarke, chiefs and others at Matata. He notes that he was requested to inform the Government of the position of the land recently given to Te Arawa at Matata. There was also a request for a Government surveyor so that title could be individualised. He supplied a list of the tribes supporting this request including Tuwharetoa. He also mentions that the tribes wanted a tribal division first otherwise there would be disputes and fighting. They also wanted reserves for a courthouse, school and other public purposes and they required

81. IA1, 67/1321 copy attached.

82. Rolleston to Clarke 8.12.1866, Raupatu Document Bank v 123 p 47376-7

food supplies.⁸³ The note raises questions about the meeting as tribal divisions seem to have been more important than individualisation. The difference may not have been clearly understood by Maori and seems to have been a cause of problems later. It also seems clear that although government officials wanted to lump them together, there was a strong feeling of independence between many of those classed as Te Arawa.

16.4 The Government was willing to bend its policy and allow land holding in common when it was economically expedient but it is not clear that Maori understood the Government intended this to be only a temporary arrangement. As a hapu Tuwharetoa seems to have been given military awards in this northern area, the major one of 2396 acres. See map number 6 opposite page 34, based on the plan of surveys of awards of about 1869. A later schedule of purchases and leases lists these awards.⁸⁴ A copy of a schedule of Arawa lands at Te Awa O Te Atua also shows lots awarded to the Ngatituwharetoa hapu under the 3rd clause of the Confiscated Lands Act 1867 in recompense for military service rendered during 1865. This shows lot 7 of 57 acres and lot 17 of 1630 acres awarded to Tuwharetoa as well as a lot 23. The trustees are named as Te Poihipi Tukairangi, Hohepa Tamamutu and Ihakara Kahua of Taupo, aboriginal chiefs.⁸⁵

16.5 As well as the military awards, Wilson seems to have divided the area presently under claim by Tuwharetoa Ki Kawerau into three main sections. See map number 7 opposite page 35, based on a sketch map by Wrigg of about 1867. The land from the confiscation boundary in the west and to a survey line running northeast was regarded as 'given back' to Te Arawa. This was about 56,000 acres and was later made into an award. Most of this land seemed to lie behind the bush line. To the east of this survey line from the southern confiscation boundary to the Tarawera river was a block variously described as 'given back' or 'given to the Arawa for past services'. This included some land behind the western bushline but also more open areas towards the river and down to the coast. It was later divided up into smaller blocks and awarded to what Wilson described as Arawa hapu. It includes awards for members of Tuwharetoa Ki Kawerau in the southernmost portion and military awards to the north.

16.6 The Tarawera river appears to be the eastern boundary of what was regarded as 'land

83. memo Rolleston to Clarke 8.12.1866, Raupatu Document Bank v 123 p 47378-9

84. AJHR 1874 C-4 schedule of leases and purchases for Bay of Plenty district, copy attached

85. schedule in Raupatu Document Bank v 119 p46037

returned to Arawa'. This was later confirmed by a schedule of reserves made for friendly Natives and returned rebels published in 1867.⁸⁶ The land given to the Arawa tribe was described as bounded on the north by the sea from the mouth of Waitahanui to the mouth of Te Awa O Te Atua; on the east by the Te Awa O Te Atua and Tarawera rivers; on the south by a portion of the southern boundary of the confiscated block, and on the west by the western boundary of the confiscated district. Land presently under claim by Tuwharetoa to the east of the Tarawera does not appear to have been considered part of the 87,000 acres of land Wilson thought was mistakenly confiscated. Wilson appears to have made separate arrangements about this land. See map number 7 opposite page 35, based on the Wrigg sketch map.

- 16.7 On instructions Wilson visited the Bay of Plenty confiscation district again in early 1867. He left Auckland on 3 January and arrived in Opotiki on 5 January 1867. Within a few days he visited Whakatane and investigated claims there. On 14 January he travelled further west to make arrangements for the land immediately to the east of the Tarawera river. He described visiting Kokohinau Pa belonging to the loyal chief Rangitukehu in the Mount Edgecombe district. On 15 January he held a meeting for 'the Natives of that part of the country'. He was informed as he 'had expected to be' that the land there belonged to Rangitukehu who was still away fighting with Major Mair. He left the actual details of the arrangement to be settled with Rangitukehu himself but claimed that the meeting approved of him taking a portion of the land in return for the expense of the Government through the disloyalty 'of some Natives of that district'. The next day he climbed to the top of Mt Edgecombe to obtain a better view of the country. He was struck with the level land stretching from Te Teko to Taupo and decided to obtain that plain for the Government. It appeared to be a natural site for a town that 'must some day command the traffic of the interior'.⁸⁷

Wilson succeeded with this plan and was able to send in an agreement signed by Rangitukehu by March of that year.⁸⁸ The agreement in the form of a declaration signed at Opotiki stated that Rangitukehu and Wilson had agreed that the Government surveyor should go to Rangitaiki and survey some land for the sin of some people living there. It gave the boundaries of the land to be taken and these appear to be those shown on the Wrigg sketch map, see map number 7.

86. AJHR 1867 A-18 in Raupatu Document Bank v 20 p 7773-6

87. letter Wilson to Pollen 18.4.67, IA1, 67/1321

88. AD1, 67/3881 Raupatu Document Bank v 136

16.8 Wilson then went on to the Tawera country. He reported that all the members of this tribe were in rebellion but before the war they were extensive land owners. Their land was chiefly to the 'west of the Tarawera river', but now these lands were the property of the Arawas given to them by the Government for past services.⁸⁹ Again it is not clear exactly what land Wilson was referring to and if he was including the more inaccessible southern part of the block. Wilson seemed concerned about the consequences of provoking the Tawera too far. Shortly after his return to Opotiki he visited Tauranga and saw Civil Commissioner Mackay about providing land for them near their mill at Te Umuhika and later an award in that area was made to them. On the same visit he informed the Defence Minister of the state of Native affairs in the district and as a result was instructed not to press for land at Edgecombe but at the same time not to appear to allow the matter to lapse.⁹⁰

Before his return to Opotiki, Wilson also visited Matata and Whakatane apparently making investigations and arrangements in those areas as well. In the region to the north of the land arranged with Rangitukehu for example he appears to have made an arrangement with the Patutatahi for a block to be ceded to the Government. He later reported that this arrangement however would only go ahead when the tribe had 'assisted to disprove in Court some foreign claims that are made to the land'.⁹¹ See map number 7 based on Wrigg.

16.9 On returning to Opotiki from Tauranga towards the end of January Wilson found most of the troops gone and the town in a state of alarm about rebel attack. In early February a garrison arrived to protect the town but there was still considerable concern about a possible 'Uriwera' attack. As a result Wilson was instructed not to leave Opotiki for the time being.⁹² By the middle of February the danger seemed to have receded and he was able to leave again to pursue land investigations at Whakatane, Rangitaiki, Mt Edgecombe and Matata. He reported for example that on 18 February he made arrangements with some Ngatiawa hapu at Whakatane, giving them permission to retain land that had been theirs on the Orini and at Ohope. Wilson returned from this trip on 4 March to be ready for the first Compensation Court sitting beginning on 7 March at

89. IA1, 67/1321

90. Wilson - report of meeting with Defence Minister 26.1.1867 in IA1, 67/1321

91. Wilson to Pollen 15.5.67 in AD1, 67/3881 - Raupatu Document Bank v136 p 52348

92. IA1, 67/1321

Opotiki. On his return he also began informing the district surveyor of the latest land now available for military settlement.⁹³

16.10 Wilson continued to make out of Court arrangements after the Compensation Courts began sitting. This appears to have been expected of him by the Government and the Court although he had now also been appointed Crown agent for the Bay of Plenty court sittings. By June 1867 he was able to furnish a progress report on Bay of Plenty lands. This was published and included information that 87,000 acres were returned to the Arawa, 57,000 acres in the east were not going to be enforced under the Act and were technically abandoned and 96,000 acres had been given back to rebels. Wilson described the land given back to rebels as nominal 'for the Natives would not have given it up' but he was required to make the best arrangements he could and now that the surveys were advanced, 'I find that 58,000 acres were thus obtained'. In the areas given back to rebels or still unarranged about 18,000 acres were agricultural land. In addition there were 54,000 acres of swamp and 62,000 acres of mountainous country, about half of it very barren. After military settlers were provided for there would be about 75,000 acres of saleable land left to the Government. When town sites were excluded this would be worth about 31,750.⁹⁴ See map published in the Journal of the Legislative Council.⁹⁵

17. Out of Court arrangements - policy.

17.1 Preliminary research reveals some of the policies Wilson was working under in making out of court arrangements, particularly through some of the better documented arrangements. Further research is required however, particularly concerning the basis and understandings on which the arrangements may have been made and the options that were presented to those who were involved in making them.

17.2 There is some evidence of official policy in the confidential circular to Pollen. This instructed that land was to be returned by Crown grant. Maori were to be persuaded that this system would be the best way to peace and prosperity and would ensure

93. IA1, 67/1321

94. AJHR 1876 A-18 Raupatu Document Bank v 20 p7773-6 original of memo in Document Bank v 121 p 47142-3

95. Map published in Journal of Legislative Council 1873 p 60 in Raupatu Document Bank v 119 p 45842

secure tenure in future. Loss of land would not be a serious disadvantage because land left to owners would increase greatly in value with European settlement. Cooperation in speedy settlement would also help ensure future wealth and prosperity. Although the Government was also keen to see individualised tenure this was often not economically feasible at the time and many arrangements were made for hapu rather than

individuals. However later the hapu were defined as specified sets of individuals.

Sometimes these individuals were listed at the time by Wilson. In other cases the hapu were encouraged to hand in lists of individuals to the Maori Land Court for ratification. The Government does not appear to have intended to recognise hapu as entities in themselves.

- 17.3 It seems apparent that in practical terms the first responsibility of the Special Commissioner was to advance the interests of the Crown. When Wilson saw the plain stretching from Te Teko for instance he was determined to have it for the Government. It contained the better land for European settlement in the area, commanded the best transport routes, and had the best site for a town for military as well as economic command of the interior. He described it to the general government agent as a large block in a district where there was a great deal of swamp and barren hills and comparatively little available land. Half the block was sandy but capable of grass and pasture and the rest was excellent soil. It had extensive river frontages and its chief value was that it contained the only site for a township that could unite the advantages of good steam communication by the Rangitaiki river to the sea 15 miles away with land suitable for a road over level country to Taupo some 45 miles away.⁹⁶ See map number 7.

- 17.4 Wilson's success on behalf of Government interests appears to have been rewarded by his additional appointment as Crown agent to act for the Crown interest when the Compensation Court began sittings. Acting in this dual capacity he reported apologetically to the general government agent after the first Court sitting that he had been obliged to allow some good land for claimant compensation. Because he thought the Court was questioning the legality of his surveys he had felt 'compelled to invade the Government reserves' that he had arranged. Two thousand acres he had reserved for compensation at Waiawa though 'good average' land had found little favour with claimants. In the same report he mentioned other arrangements he had recently completed out of court on terms that were better for the government than if the

96. letter Wilson to Whitaker 5.3.67 in AGG-A 67/200, copy attached.

claimants had gone to Court.⁹⁷

- 17.5 It seems clear that it was Government policy to confiscate property as well as land in the Bay of Plenty district. Wilson was later to make arrangements and suggest awards for important eel weirs for example and at least one flour mill seems to have been included in his arrangements. Some arrangements for land seem to have been accompanied by other inducements, for example public buildings and facilities for Te Arawa in Matata and retained use of their mill for Tawera. The possible reasons behind other arrangements are not immediately apparent. For example it is difficult to understand why on the face of it a chief such as Rangitukehu, acknowledged to be loyal and still fighting for the Government, should be willing to lose so much good land as a result of the 'disloyalty' of some persons who were living in the area. Perhaps other promises or understandings were also made in conjunction with this.
- 17.6 Wilson was also instructed to make the best deal he could in the circumstances and at times this seems to have involved taking the line of least resistance. For example he had to report that the land 'returned' to rebels was really nominal and the land to the east of the district was abandoned. He had to be careful of those who were still powerful and he was operating in a situation of continuing warfare. From 1867 in fact, the same year that Courts sat in the area, the whole process had to be abandoned for a number of years because of warfare. He was also restricted to dealing with those people who were accessible. He reported for example that many people were away gathering food or still fighting while his arrangements were being made. The first Court sitting also had to be adjourned because witnesses were away bringing in crops or fighting.⁹⁸
- 17.7 It is difficult to determine how Wilson arrived at his decisions about who was loyal or disloyal although his word seems to have been largely accepted by the Court. Guilt seems to have been applied fairly loosely and Wilson seems to have been more concerned with individuals than with the intricacies of who belonged to what hapu. There is some evidence that Wilson sought and supported favourable witnesses in Court in return for support for his arrangements. The Court often appears to have authorised rather than investigated arrangements. Reporting on his agreement with Rangitukehu who he described as the leading chief of all the hapu in the area, Wilson stated, 'He

97. IA1, 67/1321

98. IA1, 67/1321

and I appeared in Court, the paper was read, and received the Judge's sanction.⁹⁹

- 17.8 The policy of making arrangements and surveys before the Courts sat also seems to have caused some problems. For example Wilson seems to have made what he thought would be sufficient reserves for compensation only to find that when more claims came in, some were for land he had already allotted for military settlement.¹⁰⁰

18. The Tuwharetoa Ki Kawerau response to Wilson's arrangements.

- 18.1 Wilson did not seem to have a clear idea of Tuwharetoa Ki Kawerau. This was not for want of trying on their part. In December 1866 Tuwharetoa sent a letter to Grey. In this they made clear that they had interests in the confiscated district. They were concerned about the boundaries of Tuwharetoa land. They did not want Tuwharetoa land lumped with that of Te Hura. They stated that the boundary of Te Hura's land began at Te Awa Te Atua. They listed important places on Tuwharetoa land beginning at Whariki Te Toke and including Te Umuhika, Parawai, Te Pakipaki, Te Ahinanga, Te Umupokapoka, Kawerau, Te Tarahanga, O Tamaka, Nga Tumutara, and Nga Rararua. It is not clear whether in stating these places they had already accepted that they could not change the agreement over land to the east of the river.

More claimant evidence is required concerning this. Tuwharetoa seemed clear that they wanted their remaining land at least excluded from the confiscation district.

Annotations on the letter show the Government decided to treat it as a claim to the Compensation Court. It was also recommended that it should be dealt with by someone with local knowledge. Either Clarke or Mair was to attend the Court sitting in the interests of the Natives.¹⁰¹

- 18.2 There are other sometimes barely legible notes, letters and sketch maps from members of Tuwharetoa at this time concerning their land and giving various place names. These also require further translation and explanations from claimants.¹⁰²

99. letter Wilson to Whitaker 20.3.67 in AD1, 67/3881 Raupatu Document Bank v136 p 52341 onwards

100. report re surveys made in Opotiki, November 1866 in IA1, 67/1321

101. Raupatu Document Bank v 122 pp 46957-61, 22.12.1866

102. for example letters and maps from Hohepa Rokokoro in Raupatu Document Bank v 122 pp 46962-8

- 18.3 The Government appeared to be unwilling to abandon land in this part of the confiscated district although that seems to have been what Te Arawa wanted and expected when the Government promised to 'restore' their land. This was in spite of the Government's apparent willingness to do so elsewhere in the district. On 14 January 1867 for example while Wilson was making arrangements regarding confiscated land, the Commissioner of Land Claims (old land claims under the Land Claims Settlement Act 1858) received in his office a plan from J A Wilson (presumably the Crown agent or his father) for an old land claim in the Bay of Plenty district. The Crown agreed to abandon the land described in the plan from confiscation by Gazette notice dated 13 February 1867.¹⁰³ Wilson also seems to have agreed to the abandonment of confiscation of land in the east of the district as he thought it would be difficult to enforce.
- 18.4 In May 1867, Hohepa of Tuwharetoa expressed alarm again, this time in a letter to Fenton who was now Chief Judge of the Native Land Court and Compensation Court. Although Compensation Court sittings had begun they had not reached the western part of the district. This time Tuwharetoa had information that the survey has crossed to the west of the Tarawera river below Putauaki and they wanted to know why. They were concerned that it was because of the Tawera. If so, they wanted an investigation for the district to be held at Te Awa O Te Atua or at Maketu because they did not want the innocent punished with the guilty. If the government felt the Tawera were at fault it should only punish them but they questioned why this was so when the Tawera had not joined in the murder of Hemi (Fulloon) and the others. An investigation was requested for land from the Tarawera river to the Waitahanui to determine who was at fault. Again it was decided to refer the letter to the Compensation Court and have it heard as a claim.¹⁰⁴
- 18.5 More research is required into Tuwharetoa understanding of what was happening and what their options before the Courts would be. They still seem to have felt that the confiscation boundaries and surveys should not have included them. There also seems to have been some confusion as to why the Government insisted on taking Tawera land to the east of the Tarawera river and what the punishment was for. It seems that about this time Wilson must have come to some arrangement with members of Tuwharetoa

103. Gazette notice in Raupatu Document Bank v 12

104. letter 6.5.67 to Mr Fenton Chief Judge of lands from Hohepa in Raupatu Document Bank v122 p46945

about their land, possibly as early as his arrangement in early 1867 with Rangitukehu. It is not clear what this arrangement was based on and what Tuwharetoa's understanding of it was. It is unclear for example whether it was thought that individuals making arrangements with Wilson were acting for themselves or the whole iwi.

19. The Bay of Plenty Compensation Courts.

- 19.1 The Bay of Plenty compensation courts began sitting just over a year after confiscation had been proclaimed in the district. They continued to sit at various times throughout 1867. By 1867 a number of amendments had been made to the original provisions of the 1863 New Zealand settlements Act. These included changes in the 1865 Amendment Act that allowed compensation to be paid in land or money, amended the time for making claims and required that payment in money or land be made to the persons specifically mentioned in the order or award. The Court was also deemed to have full power to decide who was entitled to compensation under section 5 of the 1863 Act. Amendments in 1866 included scrip in lieu of compensation in money; and all orders, proclamations, regulations, grants, awards etc of the Compensation Court were held to be absolutely valid and could not be called into question in any way. By October 1867 with the Confiscated Lands Act 1867, the Governor could make reserves for surrendered rebels and where land was awarded or set apart for the benefit of more than one person, the Governor could refer the subdivision of such land to the Native Land Court. Such subdivision could be made whether or not a Crown grant had been issued and if it had not, the Native Land Court could proceed as if a grant had been issued subject only to any restrictions or conditions that might be in the Governor's warrant.
- 19.2 The Compensation Courts also operated under various rules that were periodically gazetted. Rules notified in 1866 covered the early Bay of Plenty sittings. These required that public notice of a Court sitting had to be made at least two months in advance, the procedure of the Court was to be similar to a Resident Magistrate's Court for civil cases and all evidence taken in Court had to be recorded. The Court could agree to an adjournment on the application of either party for the purpose of procuring evidence until the next sitting or after that provided the period was not longer than three months. Procedures were laid down for a rehearing and the claimant was deemed to be plaintiff, the Crown defendant and either party could appear by counsel or duly authorised agent. Where land was awarded in compensation it was to be selected by the

awardee and the Crown agent. If they could not agree within 6 months then the Court would make a decision.¹⁰⁵ These rules were replaced for the later sittings of the Bay of Plenty Courts by rules gazetted on 16 September 1867. These were similar but also provided that in all cases of opposing claimants, the counter claimant to the person being heard was regarded as the defendant. More procedures were also included for rehearings and the Governor could refuse a rehearing.¹⁰⁶

- 19.3 Judges appointed to the Compensation Court who seem to have undertaken duties in the Bay of Plenty district included WG Mair and WC Lyon both appointed by Gazette notice dated 26 June 1866, and both officers in the Government's military forces.¹⁰⁷ T H Smith who was appointed a Compensation Court judge in December 1866¹⁰⁸ and J Mackay appointed in January 1865 also appear to have been involved in some sittings. Judge Fenton appears to have been considered Chief Judge of the Compensation Court as well as the Native Land Court. He was appointed to the Compensation Court as a judge in January 1865.¹⁰⁹

More research is required into the background of judges and others appointed to the Court. W G Mair for example also appears to have been a Resident Magistrate at the time and a major in the military forces. He was active in the fighting leading to the capture of the suspects in the Fulloon killing and appears to have also been active in military duties during 1867 the same year the Courts were sitting.¹¹⁰ After 1867 when the Courts had finished operating he seems to have become an active Land Purchase Officer in the Bay of Plenty district.

J A Wilson, special commissioner in the district was also appointed to the position of Crown agent at the Bay of Plenty Compensation Court in a notice dated 7 March 1867. This was also the first day of sittings but the notice was not actually published until the

105. Gazette notice dated 16.6.1866 in Raupatu Document Bank v 100 p 38186-7

106. Gazette notice 16.9.67 in Raupatu Document Bank v 12 p 4204-6

107. Gazette notice dated 26.6.1866 in Raupatu Document Bank v100 p 38202

108. Raupatu Document Bank v 12 p 4144

109. Mackay and Fenton were appointed in January 1865 Raupatu Document Bank v 12 p 3987

110. Raupatu Document Bank v 8 pp 2583-5

gazette of 12 April 1867, after the first sitting had ended.¹¹¹ The responsibility of the Crown agent was to act on behalf of the Crown's interests.

Henry T Clarke was appointed to act on behalf of Native claimants. His exact duties require more research. He was also Civil Commissioner in Tauranga and seemed to also work closely with Wilson in out of court arrangements for confiscated land.

19.4 The first Compensation Court sitting in the district was originally notified to begin on 1 October 1866. This was postponed and the first hearing actually began on 7 March 1867 and lasted until 8 April. This was publicised by notice dated 21 December 1866 although it was not published until 11 January 1867.¹¹² According to Wilson the Court was adjourned because too many witnesses were absent gathering food or still fighting alongside Government forces.¹¹³ Subsequent Court sittings were held at Maketu and Whakatane. A final sitting was held at Te Awa O Te Atua in December 1867.

20. Compensation Court policy.

20.1 The Compensation Court had to decide who was loyal or rebel as required by the 1863 Act when deciding awards. It is not clear on what basis these decisions were made although Wilson's word seems to have been given considerable weight. A further complication was that under the peace proclamation previous war activity was pardoned and the land in this district was supposed to have only been taken for concealing the murderers. This distinction does not seem to have been considered by the Court and the idea of rebel seems to have been closely linked with the previous wars.

20.2 The Bay of Plenty Compensation Court seemed to prefer awarding land to money. Wilson in his new duties as Crown agent reported to Pollen that in the first sitting out of 235 cases, 133 were disposed of for compensation in land totalling 1006 acres and no money was given in compensation.

20.3 The Court also became involved in a number of general issues concerning the Bay of

111. Raupatu Document bank v12 p4181

112. Raupatu Document Bank v 12 p 4149

113. IA1, 67/1321

Plenty confiscation. After the first hearing, Wilson reported that the judges did not seem to think that the district was legally confiscated. This was because the whole district had been taken for military settlement and the Court would have found the necessity for this untenable. In response Wilson suggested gazetting boundaries for military settlement within the district. At the same time he felt the judges were questioning the legality of his arrangements and surveys before the Court began hearings. Wilson reported that Fenton and the other judges seemed to feel that if the original owners proved their right to compensation and it was agreed it would be in land, then they were entitled to their own land back. This meant that if their land had already been awarded to a military settler then the Government might have to return it and compensate the settler. The Government could only place military settlers on loyal land if it paid compensation in money. This caused some consternation and Fenton's and the Chief Justice's opinions were asked for. The issues seemed to have been resolved however by the Compensation Court judges denying this was what they meant and claiming instead they merely needed proof the confiscation was legal - for example a copy of the confiscation proclamation. Wilson reported that later, at Maketu, Judge Mackay ruled that the Courts could not restore land to loyal claimants that had been allotted to military settlers. He awarded some claimants in that position amounts of land to be selected elsewhere by arrangement between themselves and the Crown agent.¹¹⁴

- 20.4 A number of other general questions were raised in the Court, for example whether wives of rebels were entitled to claim¹¹⁵ and whether under the new 1867 legislation it should be the Court or Government that awarded land to returned rebels.¹¹⁶ Other general issues appear to be raised by the Court process. For example the forms used to record awards also seemed to be designed to discourage other claims. The wording of the award for Tangirau and Kororina for example stated that it was 'in extinguishment of the claim of themselves and of all other persons claiming with, by, through, or under them or either of them in to or out of the land claimed as aforesaid'¹¹⁷ There is some evidence that the Courts was also generally more favourable in returning land to those individuals, generally 'half castes' or those married to europeans who it was

114. Raupatu Document bank v123 p47431 onwards, file AGG-A 67/2771 and attachments 1867

115. Raupatu Document Bank v 123 p 47468

116. for example Raupatu Document Bank v 122 pp 47124-7

117. Raupatu Document Bank v121 pp 46651-4

thought would be more likely to adopt European land holding and farm and live in a European manner.¹¹⁸

- 20.5 The rules the Bay of Plenty Court developed in hearing and determining claims also require further research. Many claims appear to have been dismissed if claimants or witnesses did not appear in person,¹¹⁹ although this appears to have been flexible in cases where the Crown agent had difficulty in obtaining witnesses or supported the claimants.
- 20.6 The Court seems to have given significant weight to the evidence of the Crown agent. Cases were dismissed where the agent claimed they had already been settled out of Court.¹²⁰ In some cases the Court also seemed content to rely on the investigations of Wilson and as with Rangitukehu simply authorised arrangements he had made. Most of the evidence was also recorded in English and is summarised in notes. It is not clear how well this reflects the evidence given by witnesses.
- 20.7 More research is also required into how the Court made judgments as to the amount of land to be awarded. It appears to have given land on a sliding scale to men, women and children and to have decided on some calculations for returning land but it is not clear on what basis these decisions were made. J A Wilson, in evidence given later on petitions to parliament, claimed that in the Matata district compensation was decided by surveying the area of claimants' lands, taking their numbers and dividing the number of individuals over the acreage. According to Wilson this gave various rates for various tribes, some getting up to 50 acres per person and others only ten.¹²¹ In the case of returned rebels, Wilson claimed there was no set scale of allotments and each case was decided on its merits.¹²² It is also not clear what arrangements were made for those unable to attend the Court due to disruptions in the area such as continued

118. for example see evidence given on petition Le 1/1873/10 of A Faulkner 'the award should be...on public policy' and evidence on petition of Wiremu Hikairo Le 1/1873/10. Raupatu Document Bank vol 1

119. for example Raupatu Document Bank v 121 p46739

120. for example see Raupatu Document Bank v 121 p 46739

121. evidence of J A Wilson on petition of Charlotte Brown, Le 1/1874/9 in Raupatu Document Bank vol 1

122. evidence of J A Wilson on petition of Tawera iwi Le 1/1874/9 Raupatu Document Bank vol 1

fighting or who were unaware that their land was being considered.

- 20.8 In general it was held that confiscation took land outside the jurisdiction of the Maori Land Court for investigating ancestral title. According to Maori Land Court officials giving evidence on later petitions, confiscated land was returned by Crown grant. In many cases these grants were issued to certain individuals 'in trust' for different hapu. Inquiries were then made afterwards by the Maori Land Court and orders were made ascertaining beneficial owners. Lists were handed in by Maori and after objections were heard and considered the lists were passed by the Court.¹²³ In 1898 the Maori Land Court jurisdiction was further explained by a judgment at a sitting at Opotiki that seemed to further limit hapu rights. An application was heard for a definition of interests in the Hiwarau block that had been returned by Crown grant to 56 members of the Upokorehe hapu. It was pointed out to the Court that there were persons listed in the award who were not members of the hapu for whom the award was made. It was argued that those individuals should therefore get smaller shares. The judgment found that because of the effect of confiscation the court did not have to have regard to ancestral title. It was felt that the award was meant to apply to all who were named fairly. It found that the term Upokorehe was a general term applying to a 'certain set of people' who had been living in the district for whom it was decided to make arrangements for land. The Court therefore made awards to all those named on the list by giving 3 shares to each adult male, 2 shares to each adult female and 1 share to each child.¹²⁴ This judgment on the jurisdiction of the Land Court was to cause problems for many hapu awards including for what Tuwharetoa understood to be their awards.
- 20.9 These general issues require further research. There were other Compensation Courts operating at about the same time and the Bay of Plenty Court was not the first Compensation Court to begin hearings. It is likely that judgments and interpretations established by other Courts would have had some influence. Further investigation is required into the operations of the Compensation Courts in general to fully understand the Bay of Plenty hearings. More research is also required into Maori perceptions of the Courts, for example it is not clear as in the case of rebels' wives if it was fully understood who could claim and on what basis the claims were being heard. The

123. evidence given by registrar of Waiariki Maori land court, Rotorua, in 1914 - in Le 1/1914/9 petition no 432/14 Raupatu Document Bank v3 pp1140-1

124. judgment of Opotiki Maori Land Court of 17.3.1898 by Judge H D Johnson from Opotiki minute book vol 16 folio 332, copy of extract in Le 1/1935/14 petition no 32/1935 in Raupatu Document Bank vol 5 pp 1590-1605

Compensation Courts seemed to be following the policy of the Maori Land Court in determining exclusive ownership to land and encouraging individual title. The Courts themselves seem to have been more concerned with individuals than with the interests of iwi or hapu and only awarded to them when forced to by circumstances.

21. The Tuwharetoa Ki Kawerau Compensation Court awards.

- 21.1 Tuwharetoa Ki Kawerau already seems to have been granted a military award by arrangement before the Bay of Plenty Compensation Court began hearings. This is recorded in a schedule of 2396 acres of land awarded to Arawa hapu for military service in 1865. The award names three trustees and also lists 42 names of 'Ngatituwharetoa Natives to whom Awa O Te Atua lands have been awarded¹²⁵ for this military service. Presumably this schedule was simply handed to the Court for its records as there does not appear to have been a hearing concerning it.
- 21.2 More research is required into the hearings regarding the Tuwharetoa claims. It seems that as with awards in general some individuals linked to Tuwharetoa received or shared in awards in various parts of the district often through their connections to other iwi.
- 21.3 As far as claims clearly linked through Tuwharetoa were concerned there appear to have been a few small awards made at Whakatane by Judge Mair. It is not clear what these awards were based on or how they were understood by claimants at the time. On 16 September 1867, Mair heard a claim by Tangirau for land at Tarawera river. The Crown agent agreed to settle this with 15 acres at Motukiwi. The award was made to Tangirau and Kororina.¹²⁵ At the same hearing Hohepa's claim for land at Te Awa O Te Atua was recorded settled by the crown agent for 15 acres at Te Ahinanga.¹²⁶ More research is required into what the claimants understanding of these claims was. Chief Judge Fenton later received a complaint from Tangirau for example that included mention of the Whakatane sitting. In this he mentioned that he had given his claim to Mr Wilson and Major Mair at that Court but it had disappeared in their hands and they had never since said anything to him about it. He does not seem to have felt

125. Raupatu Document Bank v 121 p 46651-4 claim 267

126. Raupatu Document Bank v 121 p 46555 claim 218

that any definite arrangement had been agreed to.¹²⁷

21.4 The major Tuwharetoa claims recognised by the Court were heard at Te Awa o Te Atua at the sitting beginning 3 December 1867 also held under Judge Mair.¹²⁸ On 18 December, evidence was heard on claims 236, 238, and 338 to land on the west side of the Tarawera river.¹²⁹ Evidence was heard on the claims of Tanirau (Tangirau) and company and Hohepa Rokokoro and others. Evidence was given by witnesses and included information on competing claims, important place names and Tuwharetoa settlements in the claim area, relationships with other iwi in the area and names of those who were acknowledged as having been in rebellion in the area. Names were also given of individuals with rights in the area named by claimants. Rangitukehu was acknowledged to have links to the land claimed and in his evidence supported the claims of Hohepa and Tangirau. He stated that land to the east of the river had been given up for the sins of those in rebellion and that although he had lived on the land claimed, he had no real claim in it. The claims were made through the ancestor Tuwharetoa and by occupation. Although it seems clear the Court was interested in evidence proving exclusive rights the evidence of witnesses even as recorded in English and summarised in notes seems to be concerned with rights of inclusion. Close links to those who the Court recognised as disputing the claim were also acknowledged. Arama Karaka who was listed as a 'defence witness' in the recorded evidence for example, was acknowledged to be closely related and a great chief. Arama Karaka in his own evidence disputed some of the claim and stated that he was most powerful in the area and that Te Hura had the mana of all the claims. He also acknowledged and claimed links to the ancestor Tuwharetoa.

Judgment on the claims was given on 19 December. The southernmost block in the area to the west of the Tarawera river was awarded to Hohepa Rokokoro and company, claimants. The boundaries were described and blocks of 50 acres each were awarded to 3 persons named as being in rebellion. The next block moving north was awarded to Tanirau (Tangirau) and company, claimants. Reserves of 50 acres each were also to be made for seven named as having been in rebellion. At the same time it was declared that all Tuwharetoa land on the eastern side of the Tarawera river (within the

127. letter from Tangirau to Fenton 19.2.1869 in Raupatu Document Bank v 123 pp 47262-69 letter in Maori and English translation

128. Raupatu Document Bank v121 p 46739 onwards

129. Raupatu Document bank v 121 p 46867 onwards

confiscated block) was the property of the Government by virtue of the agreement made between the Crown agent and the Tuwharetoa natives. A sketch map accompanies the decision showing the blocks awarded with boundary names.¹³⁰

- 21.5 More research is required into these hearings and especially claimant understandings of the significance of the evidence given. There had obviously been some pre-court arrangement with Wilson, apparently in conjunction with the arrangement he had made with Rangitukehu to the east of the river. Rangitukehu appears to have had close links with Tuwharetoa and appeared to support them in evidence. It seems that at this point Tuwharetoa were resigned to losing the land to the east of the Tarawera river although the judgment appears to recognise Tuwharetoa rights in it. While the Court heard individuals or 'sets' of individuals it does not seem to have provided for hapu or iwi to be heard as entities. Claimants listed individuals in evidence but it is not clear if these were intended to be exhaustive or if this was the only means they had of asserting iwi rights in the Court process. It is also not clear if claimants realised that only those they specifically named would have rights in the awards. The judgment itself simply described the main claimant in each block 'and company' although later certificates of awards listed individual names of grantees as taken down in Court evidence.
- 21.6 The blocks awarded can be seen as they were surveyed on map number 6 which is a simplified version of the original. This shows the military award of 2396 acres towards the north and in the southern part the two blocks awarded to Hohepa Rokoroko and others of 13675 acres and Tangirau and others of 6320 acres. Other awards to other iwi and hapu were made in the rest of the area.
- 21.7 The Courts appears to have shown the same ambivalence to Tuwharetoa as had other government officials. Although in their evidence the claimants clearly identified themselves and their claim as deriving from Tuwharetoa they seem to have been treated as simply groups of individual claimants. The certainty in official's minds that Tuwharetoa interests did not extend into the confiscation area may have contributed to this. Even so officials faced with the determination shown by the claimants often slipped into describing them as Tuwharetoa and their awards as Tuwharetoa awards. Officials also seemed convinced that there were individual rebels among those closely associated with Tuwharetoa even if the hapu as a whole was considered to have been 'loyal'. This may have been partly reinforced by close connections between members of

130. judgement of 19.12.67 Raupatu Document Bank v121 p 46871-3

Tuwharetoa and those such as some hapu of Ngati Awa who were definitely regarded as disloyal. Tuwharetoa however seem to have consistently regarded themselves as loyal. They also consistently claimed the area through ancestral rights and occupation.

22. The Tuwharetoa Ki Kawerau response to Court awards.

- 22.1 In February 1869 in the same letter complaining of the Whakatane hearing, Tangirau also expressed his concern to Chief Judge Fenton about the Te Awa O Te Atua hearing. He explained that at the Court at Te Awa O Te Atua he had a piece named Pakipaki investigated. He said he had not made a full statement at the hearing, he had only pointed out the boundaries of the lands. The land at Pakipaki where he was given 6,000 acres had been cut in half by the Compensation Court judges. The land to the east of the river had been taken by the Government but he consented to that. He was concerned about the land given to the Arawa. He made a strong protest reminding Fenton that he had been loyal, had committed no offence and had been the one who had taken the arrest warrant to Te Hura. He complained that those who had committed the greatest offence against the Government had not had the smallest piece of their lands at Whakatane and Rangitaiki given to Te Arawa. Yet he had committed no offence and his land had been given to them. Now he wanted it returned and if the Government would not listen he would keep the disputed land himself. However he seemed to feel that he had to negotiate and suggested an arrangement so that the Government could show goodwill to Te Arawa. He particularly wanted to keep the land in forest but would allow the land below this to go to the Government.¹³¹
- 22.2 This letter raises some questions about Tangirau's understanding of Wilson's arrangements. He seems to have been asked to give specific evidence to the Court at the hearing but did not feel he had been given the opportunity to make a full statement of all he wanted to say. It is not clear on what grounds he consented to the land east of the river going to the Government. He also seems to have considered himself much more independent of Te Arawa than Wilson assumed and he does not seem to have clearly understood Wilson's arrangements regarding returns of Te Arawa land.
- 22.3 Wilson responded to Tangirau's letter with a memo to Dr Pollen dated 14 April 1869 that revealed his understanding of the situation. Unfortunately only the first page is reproduced in the Document Bank. The second page was omitted from copies sent in at

131. letter to Fenton 19.2.1869 in Raupatu Document Bank v 123 pp 47268-9 in Maori and English translation

the time but has since been found. In the memo Wilson claims that Tangirau is the 'principal man of a small party of natives who live above Parawai...they are not a hapu, but form connecting links between several tribes, and the individuals of the party sometimes call themselves by the name of one tribe and sometimes by the name of another'. In the same way their lands were described as being situated between the lands of these tribes and were a kind of 'neutral ground, the boundaries of which have always been determined according to the strength of the tribe of the day'. Some of the members of the party were in rebellion and some remained loyal. When the block was confiscated Tangirau who is a 'worthy Native' appeared for himself and the rest of the loyal party. He had two claims one for the Tuwharetoa tribe and one for certain persons and the claims were heard together. The indefinite nature of the claims before the Court enabled him to claim for certain persons all the land he liked for all the people he thought proper to name. Wilson claimed that as Crown agent he did not call a single witness against Tangirau; in fact he admitted that the 'loyal and rebel natives were united in the business, and I could not find one...' He also claimed that he did not want to oppose a moderate claim and did not object to the 'extraordinary latitude' with which Tangirau's claims were worded although he could have under clause 5 of the 1865 Act. Wilson explained that the matter resulted in a judgment in favour of Tangirau and all the loyal persons he enumerated - 6,380 acres to 13 persons. He did not think Tangirau had valid cause for complaint.¹³²

- 22.4 By 1885 Mair, who had by then become a land purchase officer, seemed to be even more confused about Tuwharetoa and added further to official confusion with his hazy recollections. In commenting on the award to Hohepa and others he assured the Native Minister that he remembered being present at the hearing in 1867, (he was in fact the Judge at that sitting). He was sure the grantees (Hohepa and others) had been members of the Tawera tribe and the land was awarded to the 10 individual members of that tribe who had remained loyal. The bulk of the tribe were awarded lot 21 as rebels and that had never been interfered with.¹³³ Mair was of course referring to the award further north of the Hohepa and company award, see map number 6. At the time Wilson had considered all of Tawera disloyal and Tuwharetoa as separate from them.

132. partial memo Wilson to Pollen in Raupatu Document Bank v 123 p 47270. A copy of the full memo is attached to this report.

133. letter Mair to Native Minister 4.8.1885 in MA-MLP 1903/3, copy attached.

23. The implementation of Court awards 1867-74.

- 23.1 The Te Awa O Te Atua hearing finished in December 1867 and was the last court sitting for the Bay of Plenty Compensation Court. In 1867 warfare seems to have caused increasing disruption in the district and the awards process seems to have fallen into disarray. Some paperwork seems to have been carried out concerning the awards but it appears to have been very incomplete. In 1868 for example some schedules of awards appear to have been prepared including schedules 19 and 20 for Hohepa and others and Tangirau and others. These list 3 trustees in each block and list the names of loyal natives of the Ngatituwharetoa tribe to whom the blocks were awarded.¹³⁴
- 23.2 In 1869 certificates of awards were made out in Auckland but they only appear to cover some claims. A compensation award certificate was made out for example for 'Tanirau' and others in Auckland in 1869. It is dated 29 June 1869 and signed at Auckland by Judge Mair. It is made out for Tanirau and others, members of the Ngatituwharetoa tribe whose names were listed on the back of the certificate. It certifies that an agreement was made before Mair between Wilson and Tanirau and others whereby they were to receive a grant of 6380 acres described as the Rotoroa block and with boundaries given, in extinguishment of all their claims.¹³⁵ The names listed appear to be those as taken down when mentioned in evidence. These were later officially regarded as the sole owners while Tuwharetoa clearly felt they were representatives of the iwi. It is not clear if this certificate was known about by claimants. Correspondence concerning the awards such as from Tangirau also seems to have been allowed to fall into abeyance as far as any action was concerned.
- 23.3 While the process of Court awards had broken down it is not clear what the actual situation was on the land during this time. It seems that it is unlikely to have been exactly as the Court decreed. The paperwork on the awards that was carried out seems to have been done outside the district and it is not clear how much the claimants knew about it or understood the intentions regarding it. They seem to have remained under the impression that land had been awarded to iwi until the later leasing and land purchasing operations revealed that this was not so.
- 23.4 J A Wilson seems to have again been given responsibility for sorting out the situation

134. schedules in Raupatu Document Bank v 119 p 45873-4

135. Compensation Court certificate in Raupatu Document Bank v 122 p 46885

when the district seemed more settled by 1871. He reported to the Native Minister in November 1871 that as a result of the disturbed state of some parts of the district three years ago several awards still remained unselected and unsurveyed. The schedules that he had prepared at the time had since been lost but he could supply the missing data from his own private records that he had kept. There were still outstanding affairs to be settled and final surveys to be made. There were also still a large amount of Crown grants to be issued including those for allotments sold in the town of Richmond in 1868.¹³⁶

- 23.5 On instructions from the Minister, Wilson visited the Bay of Plenty district and for the next few months set about settling numerous matters regarding confiscated lands. He reported on his progress in 1872. He noted some cases he had now settled where he knew claims had been made but they had never been heard because they had gone missing from files sent to the Compensation Court judge. He had also settled some old awards where the surveyor had been killed while working on the survey of them. He noted that of most concern was the unsatisfactory state that the land question in the area had generally fallen into. The confiscated lands had been given back for economical reasons in an unsurveyed and undivided manner. Numerous complications had now arisen which would not be easily settled including in the area around Rangitaiki and Mt Edgecombe. In his opinion the difficulties had been enhanced by Ngati Awa having preferred to petition parliament than to take part in the Compensation Court process. Many schedules had been made where the crown grants had still not been prepared or issued. None of the lands set aside for returned rebels had been proclaimed or issued. As so much was uncompleted from that time he had decided to cancel many of the old schedules and start again. He did not feel this was necessary for Te Arawa awards however, where he had a separate set of schedules. There were still some 80 grants for Arawa to be made though including a number of trusts and these would be made into a new series of schedules.¹³⁷ Wilson also noted that he had stopped making arrangements over boundaries with the passing of the 1867 Confiscated Lands Act as he had assumed that Act made that the duty of the Native Land Court. He was also arranging eel weirs which he noted were a matter of concern to Maori.¹³⁸

136. letter Wilson to Native Minister 13.11.71 Raupatu Document Bank v 123 p 47517

137. for Arawa schedules including Tuwharetoa see MA1, 5/13/167 copy attached

138. Wilson letter to Native Minister 29.3.1872 Raupatu Document Bank v 123 p 47518-21

23.6 In 1873 Colonel St John summarised the history of the confiscations and awards in a published report on the Bay of Plenty confiscation district. He acknowledged that the boundaries as proclaimed had comprised a large portion of land belonging to the friendly tribe of Arawa and this was 'accordingly restored'. The 1867 Compensation courts had investigated the claims of friendly Natives and Europeans and made awards. The unsettled state of the district then prevented the completion of the arrangements regarding these awards or lands given back to surrendered rebels for a long time. In 1872 however they had been finalised. St John also noted that of the 23,000 acres given to military settlers fully 15,000 acres now lay idle, most of it in the hands of non residents. The amount left for the government consisted chiefly of hilly, broken, or swampy country unfit for settlement at the moment.¹³⁹

23.7 In 1874 in a supplement to the New Zealand Gazette the completed and revised schedule of awards to loyal Natives in the Bay of Plenty was finally published. This included the awards to Tangirau and others this time described as schedule number 4 and the award to Hohepa and others as schedule 5. The names of individual grantees are also listed in these schedules.¹⁴⁰ These schedules became the official documentation of the final awards in the district. They also include awards to other iwi of blocks of land in the Tuwharetoa Ki Kawerau claim area as complained of in the present Tuwharetoa Ki Kawerau claim.

24. Tuwharetoa Ki Kawerau - attempts to seek remedies.

24.1 The publication of the awards in 1874 was officially seen as the final step in the completion of the Bay of Plenty district confiscation. It is clear that there was already concern among Maori about the awards and that steps were being actively taken to seek adjustments and remedies. In his report of 1872 Wilson mentioned that Ngati Awa had made efforts to seek remedies through parliament. Surviving petitions concerning the confiscations begin as early as 1873, possibly in response to information about Wilson's revised arrangements completed in 1872.¹⁴¹

139. AJHR 1873 C-4b in Raupatu Document Bank v 26 p 10182-87

140. Supplement to NZ Gazette of 12.11.74. Supplement dated 14.11.74, notice of schedules dated 28.10.74 in Raupatu Document Bank v 120 p 46329-45

141. see for example Le 1/1873/10 petition of Wiremu Hikairo concerning Whakatane land in Raupatu Document Bank vol 1

24.2 Ngati Tuwharetoa Ki Kawerau appear to have consistently held to their concerns about the actions of the Government and the Courts. Tangirau and Hohepa both approached senior government officials as soon as they became aware of Government intentions. Letters and sketch maps explaining these concerns survive and are reproduced in the Raupatu Document Bank dating from 1866, the same year that confiscation was proclaimed. The compensation court hearings drew further letters of complaint.

However from the 1870s the Government seems to have been convinced that its 'restoration' of Te Arawa land in the western part of the district removed any problems concerning that area. This conviction and the Government refusal to acknowledge complaints of iwi and hapu as opposed to individual rights has proved to be a major obstacle for subsequent attempts by Tuwharetoa and other claimants in the area to seek remedies.

24.3 Perhaps partly for this reason and possibly also because of its small size and relative lack of visibility to Government, Tuwharetoa Ki Kawerau has also sought remedies by joining forces with other iwi concerned about similar issues in the same area. At various times it has joined with larger Te Arawa and Ngati Awa initiatives in seeking further investigations and remedies. For example in 1922 when pressure was being applied that eventually resulted in the Sim Commission of Inquiry being established in 1926, Ngati Tuwharetoa appears to have joined with Ngati Awa in petitioning parliament concerning the loss of land for the killing of Hemi Te Mautaranui (Fulloon).¹⁴² In 1924 a Ngati Pikiāo petition complained of Te Arawa land that had been mistakenly included in the confiscation. In commenting on this Judge Jones who had led the 1920 Commission mistakenly thought that Arawa lands had been excluded from the confiscation by amended Gazette notice. He decided that while some particular blocks may have remained within the boundaries, the authorities would not have overlooked the land of important allies.¹⁴³

24.4 The 1920 Native Land Claims Commission reported briefly on confiscations including a Whakatohea petition. Although very brief this found that Whakatohea had been penalised more heavily than they deserved.¹⁴⁴ The later Sim Commission of Inquiry

142. Le 1/1922/12 petition no 142/22 in Raupatu Document Bank vol 4

143. Petition 45/1924 of Reweti Manuariki and Judge Jones comment on it of 8.10.24 in MA1, 5/13/167

144. AJHR 1921-22 G-5 - report of Native Land Claim Commission 30.11.1920. See also papers of Commission in Raupatu Document Bank vol 47

seems to have also been limited in its investigation into the Bay of Plenty confiscations and accepted reassurances that the western part of the district had been restored. It spent only a few days in the area and considered only a small number of petitions in a limited way. It did not conduct a full inquiry into all the confiscation issues including Tuwharetoa's concerns.¹⁴⁵

- 24.5 Ngati Tuwharetoa Ki Kawerau also appear to have pressed the argument that if their land had been truly 'restored' as the Government insisted then it should have been removed from the operation of the confiscation acts. The 1935 Labour government had promised a full investigation of outstanding claims and by the early 1940s was promising a commission to carry this out. It seemed possible initially that this would involve a wide ranging inquiry into all outstanding claims. However the promised inquiry was eventually limited largely to the issue of surplus lands. In the late 1930s and early 1940s a large number of claim petitions were sent to Parliament in anticipation of the new full inquiry. A Tuwharetoa petition was taken by Haki Karawana and others in 1944 and amended in 1945.¹⁴⁶ This petition concerned Te Arawa confiscated lands wrongly included in the confiscation. The lands had been returned and a Compensation Court had sat but title had never been properly investigated. The petitioners' understanding was that by 1873 the land was still held tribally. They also seemed to be arguing that in 'returning' the lands the Government should have taken them out of the confiscation and allowed them to be investigated in the usual way through the Maori Land Court. They had already had a report that technically the court could not investigate and they wanted legislation passed to empower the court to be able to do so. Officials commenting on the petition however simply referred back to the previous report made by Judge Holland on the 1927 petition of W K Wi Hapi (petition 331/1927). This petition had also asked for the land court to investigate the Te Arawa confiscation. An inquiry was held at Rotorua on 17 May 1928. Judge Holland acknowledged that he was confused by the petition as he noted that the Sim Commission had found the land was already returned to Te Arawa. He found that technically the Land Court could not investigate the land because it had been confiscated and therefore the petition had failed.¹⁴⁷ The officials do not seem

145. for Sim Inquiry see Raupatu Document Bank vols 48-50

146. Le 1/1944/17 petition 57/1944 and Le 1/1954/12 petition 54/1945 in Raupatu Document Bank vol 5

147. see also MA 1, 5/13/167 Bay of Plenty confiscations including extract from Rotorua Maori Land Court minute book vol 79, folios 211-215 report of Judge Holland 17.5.1928

to have grasped that the petitioners wanted this limitation on the Court rectified, by legislation if necessary.

24.6 In 1952 the petitioners tried again but without any more success. They stated again that apart from the area awarded to Tuwharetoa, the wrongly confiscated area had been wrongly returned to other hapu of Te Arawa. They named these hapu included in the awards published in 1874 and they named the grantees the whole area should have been returned to as Hohepa and the other individuals listed as grantees on that award. Presumably they had given up on the Tangirau award as irretrievably sold by this time, although preliminary research shows that the purchases also require investigation. Again they pointed out that although the land was returned it had never been fully investigated by the Land Court. Petitioners asked for a new commission to investigate the claim. The response of officials however was to again rely on Judge Holland's report and the Sim Commission finding that apart from Whakatohea, the confiscations in the district were neither excessive nor unjust.¹⁴⁸

24.7 In addition to these attempts to gain remedies from the Crown, Tuwharetoa seems to have also been fully involved at a local level trying to retain and protect the land they still had left. It seems apparent for example that even before the final awards were published the Government had adopted a policy of placing considerable pressure on Maori owners in the area to sell or lease their land. This new drive for alienation is largely outside the scope of this report as the background to the confiscation ends with the final publication of the awards in 1874. However it is clear that by the early 1870s the Government had also begun a new drive for extensive European settlement throughout the country. In 1871 the Native Minister encouraged Wilson to complete his arrangements in the district as soon as possible 'as it is of the utmost importance that the district should be available at an early date for colonisation and settlement'.¹⁴⁹ This was in spite of reports such as that of St John that almost two thirds of the military allotments were lying idle by 1873.

24.8 The Government seems to have succeeded in having Te Arawa awardees sell their allotments in Matata (Richmond) as early as 1868.¹⁵⁰ More research is required into

148. Le 1/1952/15 petition no 1952/29 of Haki Karawana and others in Raupatu Document Bank vol 6

149. Native Minister to Wilson 13.11.1871 in Raupatu Document Bank v 123 p 47517

150. see for example v123 of Raupatu Document Bank

this but it seems they were informed this was the only way sufficient money would be available to survey their lands. Even so there does not appear to have been full agreement to the sales and they seem to have become tied up for a number of years with opposition and technical problems.

24.9 In 1873-5 there appear to have been purchases of many of the military awards to Te Arawa including Tuwharetoa's award.¹⁵¹ Tuwharetoa and other hapu and iwi were also finding that what they thought was land awarded to their iwi was in fact considered owned by the individual grantees and they could not prevent alienation by them. By 1874, the same year the final awards were published, government agents seem to have already secured leases over many of the awards, often apparently negotiating with whoever seemed strongest in the area, not necessarily with all the grantees even listed in the awards. The whole process of leasing and purchase requires considerable further investigation. Even the early documentation before the awards were published raises some serious issues about the way the process was conducted. Much of the early documentation of this is held in the records of the Maori Land Purchase department at National Archives. An especially useful file for the Tuwharetoa awards is the Maori Land Purchase file 1903/3 a partial copy of which is attached to this report.

25. Postscript.

This report covers the background to confiscation from approximately 1860-1874 and a brief history of subsequent attempts to gain remedies for the confiscation. The Tuwharetoa Ki Kawerau claim also alleges continuing government breaches of the Treaty that occurred subsequent to the period covered by this report. More details on these are required from claimants and further research on the subsequent history of the claim is likely to be required. Some issues that would appear to require further investigation have already become apparent during the course of research for this report. These include for example, possible breaches of Treaty principles in areas such as leasing and purchase of land, subsequent legislation for example drainage acts, the impact of large scale drainage on waterways, sites and food sources, the later operation of the Maori Land Court, and the operation of industries such as forestry and geothermal.

151. AJHR 1874 C-4 Land purchases and leases in the Bay of Plenty, copy attached

26. Possible Issues:

1. To what extent did Bay of Plenty Maori perceive political and economic developments by the 1860s as possible threats to Treaty guarantees, for example officials were noting Maori complaints about being shut out of economic participation through traders insisting on barter instead of cash and engineering heavy indebtedness. There were also concerns about threats of large scale land alienation.
2. What were colonial Government intentions in the Bay of Plenty area by the 1860s, for example colonial policy towards Maori land tenure, and support for European land settlement/speculation and how these were being reconciled with Treaty guarantees for Maori.
3. What were the perceptions of Bay of Plenty Maori, and Tuwharetoa Kī Kawerau in particular, towards the 1860s wars and to what extent were the wars the result of real or perceived breaches of the Treaty.
4. How much was the colonial Government influenced in its support of the wars by its desire or those of its Ministers to acquire land and to impose European political and economic domination and to what extent was this allowed to influence its view of rebellion.
5. To what extent was the Government action in going to war consistent with the Treaty and to what extent did Maori resistance to Government forces put those involved outside Treaty rights.
6. To what extent did the Government attempt to avoid warfare in terms of its Treaty, legal and constitutional obligations.
7. To what extent were the justifications for war and confiscation as explained by the colonial Government to the imperial authorities (and to their critics) realistic, for example in terms of being able to distinguish 'loyal' from 'rebel'.
8. To what extent was the 1863 scheme for confiscation in breach of the Treaty or other obligations of the Crown.
9. To what extent was the imperial Government in breach of the Treaty in allowing the

colonial Ministers to assume increasing responsibility in Native affairs.

10. To what extent was the policy of insisting on issuing Crown grants for 'returned' land a breach of the Treaty.
11. To what extent did the Governor and Ministers sufficiently meet the requirements of the imperial Government concerning war and confiscations - both in spirit and technically, eg with legislative amendments, and were assurances that Maori would still be able to prosper with remaining land, realistic.
12. To what extent were the legislation, proclamations etc associated with confiscation in breach of the Treaty.
13. To what extent was the confiscation policy allowed to become a means of enforcing the colonial policy of transferring Maori tenure to Crown grant and encouraging individualisation of land holding.
14. To what extent were the colonial Government's actions in implementing confiscation, entering contracts with military settlers etc, while the imperial government was still considering disallowing the legislation, in breach of its responsibilities.
15. To what extent did the early 1860s wars and confiscations influence later events in the eastern Bay of Plenty.
16. To what extent was the Government admission in its confidential instructions that Maori had been reduced to great poverty, an admission that its claims that Maori would not suffer hardship through confiscation unrealistic.
17. To what extent were the followers of Pai Marire expressing increased resistance and/or desperation as the imperial authorities had warned might happen as a result of the wars and confiscations.
18. What were the reasons for Government concern about Pai Marire and to what extent was the decision to suppress it a breach of Treaty rights.
19. To what extent was the decision to send military force into the Bay of Plenty district as

announced in the peace proclamation and the accompanying declaration of martial law, a breach of the Treaty.

20. To what extent was the confiscation in the Bay of Plenty and the reasons given for it a breach of the terms and conditions of the New Zealand Settlements Act, a breach of the Treaty and a breach of the terms on which confiscation was approved by the Imperial Government. For example, the decision to take all land in the district for settlement.
22. To what extent was the Government's use of someone as young as Fulloon for important duties during the wars and the underestimation of the strength of Pai Marire by Fulloon and others, a contributing factor to the deaths in the Bay of Plenty.
23. To what extent did Government promises and contracts to the military regarding land for service contribute to the extent of the confiscations in the Bay of Plenty.
24. Did the Government give reasonable recognition to the rights and interests of Tuwharetoa Ki Kawerau as claimants in the district as required by the Treaty.
25. To what extent did Government actions in the Bay of Plenty, for example sending in military force, provoke resistance.
26. To what extent was the Government choice of confiscation boundaries in the Bay of Plenty district determined by considerations such as the quality of land in the area rather than the terms of the peace proclamation.
27. To what extent was the transfer of the administration of confiscated lands to the Auckland provincial government an abdication of colonial Government responsibility.
28. To what extent were the actual responsibilities of Special Commissioner for the confiscated district weighted towards Crown interests, in breach of the Treaty and of imperial requirements.
29. To what extent was the colonial Government policy to survey the district as soon as possible and make arrangements before the Compensation Court began hearing, a breach of the Treaty and to what extent did it undermine the fairness of the Compensation Court process.

30. To what extent did the system of out of Court arrangements in general, and the circumstances under which they were made, for example in a time of continuing warfare, undermine the fairness and integrity of the Court process.
31. To what extent did the knowledge that Wilson was operating primarily in the Crown's interests influence Maori understanding of the arrangements and their options regarding them.
32. To what extent did the arrangements take account of the Government's obligations to those Maori who had supported Government forces, for example the refusal to exclude allies' land from the confiscation boundary.
33. To what extent did the arrangements and Court hearings recognise iwi and hapu interests as required by the Treaty.
34. To what extent were the appointments of officials involved in the Bay of Plenty confiscation fair and perceived to be fair and likely to produce an impartial and lenient result as required by the imperial authorities and in terms of natural justice and Treaty guarantees.
35. To what extent did the procedures of the Compensation Court meet legal requirements and natural justice - for example proper notifications of hearings, the wording of award forms and the methods of taking evidence.
36. To what extent claimants understood the Compensation Court process, the intentions of the hearings and their rights at Court.
37. To what extent the issues raised in Court revealed possible breaches of justice and the Treaty, for example the dismissal of claims of those who were unable to attend through disruption, fighting etc or who disagreed with Wilson's arrangements.
38. To what extent the treatment of the Tuwharetoa claim and awards was a breach of the Treaty, for example the complaints that claimants had not given full evidence, that iwi as entities were not able to be properly represented and that iwi interests such as access to coastal resources for Tuwharetoa were not properly protected.
39. To what extent was the fact that the Compensation award process was allowed to fall

into disarray a breach of the Treaty, imperial requirements and natural justice, for example the loss of schedules, the uncertain state of land holding on the ground between 1866 and 1874, and the requirements for revisions and new arrangements etc.

40. To what extent did the need for revisions and new settlements undermine the judicial process, for example they were never subsequently heard or authorised by the Compensation Court.
41. To what extent was the 'restoration' of what the Government admitted was wrongly taken land in a way that removed it from the Maori Land Court jurisdiction a breach of justice and of the Treaty.
42. To what extent has the Government response to attempts to seek remedies been a breach of justice and of the Treaty.
43. To what extent did the confiscations, the compensation award process by Crown grant and the subsequent disarray of the award process open the way for subsequent large scale land purchases and loss of resources for Tuwharetoa Ki Kawerau.

Bibliography

Primary sources in Waitangi Tribunal Raupatu Document Bank

Documents from official publications and government archives relevant to Bay of Plenty confiscation. The following volumes of the Document Bank are particularly useful:

- Reports on Native districts and Native affairs, confiscation and war policy - AJHRs 1862-66 - vols 15-20
- Correspondence on wars see vols 134-6 and 132-3
- Papers of Sim Commission of Inquiry - vols 48-50
- NZ Gazette notices - proclamations, orders in council, appointments of officials, etc - vols 11-12
- Legislation - vol 10
- Bay of Plenty Compensation Courts, out of court arrangements, and associated correspondence - v 119-123
- Government department files eg Army dept v 136
- Correspondence and petitions seeking remedies and associated papers - vols 1-6.
- Initial confiscation and Compensation Court correspondence see also vols 119-123
- For general departmental files on Bay of Plenty see vols 56-68, 81

Memo from Wilson to Dr Pollen 14 April 1869 - first page only in Document Bank v 123 p 47270. Copy of whole memo is attached to report.

Primary sources not in Raupatu Document Bank:

From National Archives, Wellington:

Agent for the general government-Auckland papers (AGG-A):

AGG-A 1/1 - confidential instructions Fitzgerald to Pollen 3 September 1865 and attachments - too fragile to copy because of water damage but see partial transcriptions attached.

AGG-A 67/200 - copy attached

Colonial secretary's papers (IA): IA1, 67/1321 - copy attached

Colonial office papers: microfilm - CO 209

Maori Affairs files (MA):

MA - MLP 1903/3 - Purchases of lots 31 and 39 Parish of Matata - copy attached

MA1, 5/13/167 accn 2459 - Bay of Plenty confiscations - copy attached

Maps: (from Lands and Survey department - now held by National Archives)

Maps relevant to the Bay of Plenty district are listed in the Maps List of the Raupatu Document Bank. The following were found to be useful for this report:

AAFV/997/A70 Bay of Plenty - plan of surveys on confiscated land, Opotiki 1870 - original in National Archives Wellington. Aperture card held by Waitangi Tribunal. Map number 6 in this report is based on this map.

AAFV/997/A34 Bay of Plenty - plan of Rotorua district - west of Tarawera river - lands awarded to Arawa tribe 1869. Original in National Archives Wellington. Aperture card held by Waitangi Tribunal. Map number 6 in this report is based on this map.

AAFV/997/A43 Sketch map of confiscated Bay of Plenty district west of Ohiwa by H G Wrigg c1867. Original in National Archives, Wellington. Aperture card held by Waitangi Tribunal. Map number 7 in this report is based on this map.

MA 85/7/11 Sim Commission map of Opotiki (Bay of Plenty) confiscation district. Originals held at National Archives, Wellington and Dosli Hamilton. Aperture card held by Tribunal.

Published maps:

Journal of Legislative Council 1873 p 60

Sketch map of the Opotiki confiscated blocks -1870. Copy in Document Bank v 119 p 45842 - original held by National Archives Wellington - ref AAFV/997/A101.

BPP (IUP) v15

Map of the North Island of New Zealand showing confiscated lands and

tribal boundaries opposite p 126 c1868. Map number 4 in this report is based on this map.

AJHR 1870 D-23 Map of the North Island of New Zealand showing tribal boundaries, confiscated land etc c1869
Map number 5 in this report is based on this map.

Gibbons W H, The Rangitaiki - map of the Rangitaiki swamp before drainage, showing river courses p 5, from map supplied by Bay of Plenty County Council. Copied as map number 3 in this report.

Maori Land Court - Rotorua:

- Whakatane minute book vol 70, hearing of 26-27 March 1980, copy of extract held by Waitangi Tribunal - copy attached.

Published sources:

AJHR 1874 C-4 - details of expenditure on land purchases and leases in the North Island - copy attached

British Parliamentary Papers - Colonies New Zealand (Irish University Reprint) - Volumes 14-15

NZ Debates 1863, 1868

Auckland Provincial Council Votes and Proceedings session 20 1866-67 A-1

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Parham W T, James Francis Fulloon: A man of two cultures Whakatane and District Historical Society, 1985, Whakatane

Articles etc:

Parsonson A, 'The Pursuit of Mana' in Oliver and Williams (eds) The Oxford History of New Zealand Oxford and Wellington, 1981

Ward A, 'The Origins of the Anglo-Maori Wars: a reconsideration' in New Zealand Journal of History v 1 1967

Copies of documents attached to report:

- ✓ 1. Extract from Maori Land Court hearing 26-27 March 1980, Whakatane minute book vol 70.
- ✓ 2. IA1, 67/2523 - Memo on compensation claims 3 August 1867, from National Archives Wellington.
3. Extract from confidential instructions from Native Minister Fitzgerald to Dr Pollen, 3 September 1865, and attachments. From AGG-A 1/1, National Archives, Wellington.
4. IA1, 1867/1321 - Report from Special Commissioner Wilson to Dr Pollen, 18 April 1867, from National Archives Wellington.
- ✓ 5. AJHR 1874 C-4 leases and purchases in Bay of Plenty 1874.
6. AGG-A 67/200 - Report from Special Commissioner Wilson to F Whitaker, 5 March 1867, from National Archives Wellington.
7. Wilson memo to Pollen, 14 April 1869, on Tangirau's claim - full memo.
- ✓ 8. MA-MLP 1903/3 - Purchase of Lot 39, Parish of Matata, from National Archives, Wellington.
- ✓ 9. MA1, 5/13/167 Accn 2459 - Bay of Plenty Confiscations, from National Archives, Wellington.

COURT RESUMED 2 PM

Heard by 20-21 March 1930
from H.C.C. - Waikato Dist. file
33998 - Taranaki

MR TE RIRE called to the stand and sworn in. Addresses the Court in Maori - extends greetings.

MR MOORE

Mr Te Rire is your name Arapeta Hoani Te Rire. Do you live in Onepu and are now retired? (Yes). Are you the elder of the Hahuru Marae at Onepu and the Onerau Marae at (Present day - Yes.) Are both these maraes Tuwharetoa? (Yes.) Have you spent much of your life learning and seeking for knowledge as to the history of your people? (Yes.) Have you studied the geneologies not only of your own people but of related groups? (Yes.) As part of the work done have you spent much time looking for old sites of habitation and Maori (Yes.) In according with the tradition of your people have you relied upon the spoken word as a method of passing on what you know and learning from others? (Yes.) First of all, did you hear the evidence of Professor Mead touching on the origins and relationship of the Tuwharetoa and Ngati Awa peoples. (Yes.) Can you tell the Court your view of those matters and the area in which you find that your knowledge does not agree with that the Professor has quoted from text and other sources.

COURT

Take it very slowly Mr Te Rire, some of the words we may find hard to catch.

MR TE RIRE

Sir, yesterday I heard one submission made by the Professor and of course - others. There was something that came up in this submission which really upset me, hurt me because I see it in this way that at the moment all the elders of the Ngati Tuwharetoa of Kawerau area has passed on and the responsibility of the tribe itself now rests upon my shoulders. With the submissions made yesterday I could not help wondering when the Professor had the whakapapa of Awanuiarangi from married Tuwharetoa. I wonder which Tuwharetoa he is. Because Sir there are two Tuwharetoa to my knowledge. One is Tuwharetoa Tuhoreua who died in the lake at Taupo at a place Motuare and the other Tuwharetoa Teapouri. The original ancestor of the Tuwharetoa Tribe. You have copies there Sir. You see where the Mataatua and Arawa canoes came in the Great Migration and you see there Toroa, the Captain of the Mataatua canoe and also Ngatoroirangi the High Priest of the Arawa Canoe, they were of the same generation. If you follow down on the Toroa side you find it comes down four generations and you get Awanuiarangi who married Uiraroa. Now in the submission yesterday the same Awanuiarangi died, so the story went that Uiraroa married Tuwharetoa but Sir, if you have a look there and follow down the geneology of Ngatoroirangi, to Tuwharetoa from Ngatoroirangi you find out its very disbelieving to see that Tuwharetoa about five generations away could marry a woman of four generations ahead of him. I never brought up these to use as something against the Professor but I brought it because I'm Tuwharetoa and I want to get the facts right. That's why I brought it here to the Court. I am a Tuwharetoa and also a Ngati Hikokino and also a Ngati Awa. I was brought up in the Ngati Tuwharetoa area and that's where I stayed and that's where I am today. As I said before all our elders of the Tuwharetoa Tribe at Kawerau, have passed on but before they leave, they left

something behind which I myself have today. Now, I may put down my own of the same Tuwharetoa Teapouri, you'll find that on the sheet there and you have a look there and you'll find he had four wives, he married four wives. The first one was Uira, I think this is where the confusion came in on Uiraroa, which you see had five children Rakeimarama being the eldest. Then you see further down the second wife Te Paekitawhiti which had two children. The first was Manaiawharepu, female and Rongomai-tengangana, a male. Then you go further down again to the third wife Hinemotu, which had nine children, you see there Hinewhariaua first, Rakeipoho second, Taniwha third, Te Aotahi fourth, that's the one we are talking about, Kotorepaia fifth, Turangiawa sixth, Rakeihopukia, that's the just outside of Te Teko named after him and the two last ones is Poukopa and Poutomuri. Now this Poutomuri is the of the Pokohu Block at the back of Putauaki. Poutomuri is the youngest and he is the ancestor of the people who hold the Pokohu Blocks at the back of Mt Edgecumbe, Putauaki - C Blocks and C and D. Then further down we see where he had his 4th wife - Not really wife but they met some of the times, perhaps - Rangiuuru which they had Tutanekai and this was the last - 17 to Tutanekai.

MR MOORE

You marked crosses against some of those names. What is the significance of those people.

MR TE RIRE

Those are the ones I can trace down to myself. Apart from that I must say this much, that for the first time I think that this has been brought up in the Court ever since the time of my father. It has never been brought up, it has been jealously guarded that is why it is not very well known today. Just because we talk about Putauaki and went on yesterday and this morning, I thought I'd better bring it along and let the Court hear about it.

Now Tuwharetoa lived at Kawerau, he was born at the top, further up the river at Waitahanui at Otamarakau and while still a child they moved into the Kawerau District. They have a pa there called Waitahanui II with hot springs, used to be hot springs but now its a sludge pond which is called Okakau. About a mile up in land on a hill there, is a spring at the top of a hill running out of a rock. Its still there today, it has been told that when the people after Tuwharetoa out on the warpath they left, he was only a boy then and they left him back with his grandparents Hineteariki and Waitahanuiariki Kore. At that time the young mite wanted a drink from his mother and the old kuia, too old for that. The old fellow Waitahanui Kore ran up the hill and stuck his taiaha in the rock and got water there to quench the thirst of this young mite and that spring today is still running there and is called Te Waiu o Tuwharetoa. Surrounding the place also is a hill which is today, have taken some of the elders at that time buried up there, named Tukoio. We have done through the Court here, some years back, as a Maori Reservation, Burial Reservation through the Court for the Ngati Tuwharetoa Tribe.

As time went on this boy Tuwharetoa grew to a man and you have heard here his wives, and his family grew around from Otamarakau right up there off Rotoma from the area Maungewhakarana right up there to Matahina down to Putauaki down above Te Teko and on the other side Onepu Hills, right down to Matata. Now Sir, I'm talking about 300 to 400 years ago so the farms we are

talking about are all under water and swamp and the only place they could live was on top of the ranges, in front of Putauaki, around Putauaki and around the back to Katabina and across the flats of Tarawera Forest now to Maungawhakangama and back that way towards the Marohe Ranges down to Matata, all the rest was swamp, the Rangitaiki Plains. As time went on his family grew and we often wondered, and I often wondered myself and have asked and been told that being a stronghold of Tuwharetoa at Waitahanui and Kawerau, the pa is still there, its not barricaded like any other pa, it is not a fortress. If you wonder why and I ask the question and I must answer - it was because of his children Te kete pounamu. Te kete pounamu means his children, his children as a warrior, perhaps consists of 100 warriors each but he had sixteen but this is where his pa or his stronghold, his children living around the countryside and their homes are still there and that's where they stay today. Even today, there are some remains that passed Kawerau town today that have been unearthed by Historical Society people and I'm supposed to pick them up and take them home to Heruru Marae for re-burial. I'm supposed to do that when we finish here. The Historical people just pick them up when they were building and extending the town of Kawerau and this is where the town is today, and I have collected quite a few of them that live around.

Of course, as time went on, these children grew up, they moved on, they wanted to see what was beyond the hill. Some moved down to the East Coast and some moved down to Hastings and Napier, some moved down to Whanganui, some moved down to Taupo and took over all those places right down as far as Maniapoto and you'll find them, the descendants of Tuwharetoa today, scattered all over the place. They can recite their genealogy back to Tuwharetoa. Why is that - because of the migration of his children to all parts of the country! Although they moved out they still have their roots in Kawerau where the old man Tuwharetoa lived and died, not by the hand of man but by old age and today is buried up in a cave - Te Atua Reretahi - about six miles from the town of Kawerau towards the Rotoma Hills. The cave is said to be tapu and in those days many people went up there hunting, they get lost. When they get into the boundaries of Te Atua Reretahi a fog comes on and they are lost. If that happens today I don't know but this has happened before.

We come back a bit further to our time. They still live here, of course, and the ones that went away from here they came back, some came back to die and they are all buried at Te Atua Reretahi. Waitahanui Kore died, buried there. Hineteaiki also and lastly Tuwharetoa himself. There was a reference to a book written by my relation he is a relation of mine, Sir Grace in which he talked about Tuwharetoa and I still wonder today whether he meant the Tuwharetoa Tu Rerehu or the Tuwharetoa ite Aupouri. But when we compare notes it differs a little so I take it that he was talking about Tuwharetoa Tu Rerehu who died in the lake at Taupo. Now coming back further away from there into our time, the time of the Pakeha comes this time. Of course, a lot of things happened we all know, happened right through the country, right from Waikato through up the Coast, right down here and unfortunately we were some of the ones that got into this, were dragged into this and I'm talking about the confiscation. Confiscation, the lands that were taken from us, I believe in the vicinity of about 87,000 acres. In 1930 the elders of my tribe made a petition, a man called Karawana, Jack Galvin from Owhata, Rotorua and Kata Thompson. They were learned men of that age and they took the petition down to Wellington and they kept

going at it right up to the time of Patikura Wetini in 1950 round about. He was the last elder of the Tuwharetoa Tribe and he also failed. Whether he failed or whether the Department never looked at it I don't know what. Anyhow, that's when it stopped our petitions going down to Wellington. Now in that confiscation some have been given out of the 87,000 acres, land grant came into being after, some had been given back roughly about 25,000 acres and, of course, our Arawa brothers across the hill they say that we were a sub-tribe of Te Arawa. Probably they were right. Anyhow this land grant was split up in two ways. We took half and they took the other half. Now this was given back to the people that were of the tribe of Tuwharetoa that was picked to be the elders to be the people that the advance was given to, from them to be distributed to the tribe. Somehow along the lines something happened here and we found out after that the trustees of the putea sold some of that land back to the government 6½ thousand acres and that's the Kawerau town bit and left us with 6½ thousand acres and that's the Kawerau A Blocks as Kawerau is today. Prior to that we were talking about the mountain and all the tribes that are involved in it. I'm not disputing the right of Tuwharetoa at the moment because of confiscation but once upon a time they did have the right to the mountain because when the confiscation came it didn't say any other people than Ngati Awa were what they were but it was a Ngati Tuwharetoa confiscation. So 'ahi ka' as Professor says, was still there until it was quenched out by the law of the country at that time.

Now the dispute of the mountain, I have no dispute at all of the mountain to the ownership of the mountain because of the present day. The families of the present day I can point out the boundaries of the present day are the confiscation which pushed my people almost into the Tarawera River. Where I live is not very far from where the boundaries were away from the confiscation line. I have a map of the confiscation lands, the one that my elders brought, went to Wellington, talked about it and you will see the homes where they lived as a tribe right from Otamarakau to the boundary lines of confiscation, went from Otamarakau right to Maungawhakangama up there and then cut across there to Putauaki, on this side of Putauaki, a point this side of Putauaki which is named Te Pikituorehua, this is the southern boundary, right to that trigg station, straight from there to Wahieroa cutting across now part of the plains between the Tarawera River and the Rangitaiki.

Wahieroa, not very far from the outlet of the Rangitaki River today, leading up to the sea, that's the area where the land was confiscated between the two tribes Ngati Tuwharetoa and Ngati Hikokino. Now, of course, as I say at that time, when Tuwharetoa was around all this was under water then. People lived around on hills surrounding the swamps and of course, come to Ngati Awa, this was where they lived. Started from Whakatane all along here, Kaputerangi up there, up here is their pa, and a few other pas along the ranges. As time went on, as I said, they started to grow in numbers. They spread along the hills and high country right up to the land we were talking about here which is under sub-lease for a deer farm and then of course, Omataroa, working along that way across Omataroa. When we get to Omataroa and it stretches across from there. The first place they went across was Puketapu up the Rangitaiki River. During that time whether before that or after that the Ngamahi Tribe moved into the Matahina Block. I think this was the land that

was succeeded to, part of Ngati Awa and also part of Waikaremoana District because their ancestor Mahuta te Ponui, that is where Ngamaihi people descended from, came from the area of Waikaremoana. As time went on the waters started to recede from here, the swamps - 1910 round about there when they made the cuttings of the Rangitaiki River straightened up. When the swamps started to dry up the Rangitaiki and the Whakatane joined up at Wahieroa and flowed from there and came out at Te Awa-o-te-Atua, Matata. Not very far from the post office today, they call Mihimarino, that's where it came out. At that time they couldn't get the water away from this great Rangitaiki Plains swamp. They cut the Rangitaiki cutting straight to the sea from there so that stopped, the part of the old river bed is still there today which runs alongside the road from Thornton to Matata. Gough Gough and Hamer farm on the other side of it and the Whakatane River today, at that time the Orini River is still there today. The Orini. Then they turned the River of Whakatane the other way and went through the town, that little bit of a bay they have in town, down to the sea. Now, we talk about the Tarawera, there wasn't a Tarawera River, there wasn't. Now the waters came out of Tarawera Valley, the waters came out, hung around the opposite side of the town alongside and under the cliffs of Takangai-o-apa and hung around there round to where they've got the... Pupuharau, as part of the river, waters came out that way. From there came out of Te Tahuna. From Te Tahuna it came down the valley passed some times then it came back down to Te Teko by the sand dunes at Te Teko called Titiraroa. It went past there, passed at the back of Te Teko Township and goes down as far as, not very far from Kokohinau Pa where it met up with the Rangitaiki and both rivers went from there and met up with Whakatane and Wahieroa but it was only after and during the eruption that the waters of this Kawerau Flats, where the town is now, the water started to spread over there about six inches in places, a foot in places. Today, if you look hard you will still find the sandbanks where the people tried to push the waters back to the hills where the present Tarawera River is today.

If you look hard, opposite the Railway Station at Kawerau you will see sandbanks are still there. There they were pushing the river away from the original flow from Takangai-o-apa to dry the Rangitaiki Plains so they pushed this river, once upon a time where I lived and once upon a time the river was between us and Te Teko and then they pushed that and left the Tarawera River behind me, it changed its course and that's where it is today.

Now, as a tribe I don't go along with the idea that I could go under any other tribe but Tuwharetoa. If I do say that, then I'm not related to the people who went before me. Elders that stood their ground from the beginning of the tribe to the present day. So, therefore, this is what's all behind why I brought this up. The simple reason to make the Court acknowledge that Tuwharetoa is not really just a sub-tribe by someone but is a tribe itself. Perhaps we might be a few in Kawerau but this is where off-shoot of Tuwharetoa came from. Perhaps my brothers in Taupo, Whanganui, Maniapoto, Heretaunga and Tairāwhiti might be more than us but we still are the taproot of the Tuwharetoa Tribe. At the moment I am only the one left but we have a kuia and she's the oldest of Tuwharetoa in Kawerau living today. She's about 86 or 87 and she's my mother-in-law but being a wahine they don't talk on the maraes, I have to do that. One of them died a few years back. One of them died and

one left. So that's why I bring all this up. I don't want to use it against anyone. I want to put it down. What I'm saying now is I'm just exactly what I am, a Tuwharetoa as I say it for the mountain. The mountain, I have no dispute according to the law of the country although I had at one time, taken off me, given to someone else. Well, that's that. I can't do anything about it but yesterday morning I heard the old chap - he came up with something that sounded very nice but of course after he sat down others stood up, the thing went out of the way again. I like the way he put it when he talked. I was looking at the way he was saying it. I was looking at the way that he was looking at it at the present day. Being a Tuwharetoa territory one time and being a Ngati Awa Territory now. Now I look at the way he was saying yesterday, he was trying to combine these two people together and to look at what we were searching for yesterday - Who this mountain was to be vested in and he thought of something that I thought was very very nice because as I said I have nothing to say really but at the present day, coming from him it sort of made me feel good because my argument is not with him but with the Government. As I said all along, as my father's people thought before us since 1930, even today some of them are still working at it.

The last touch up we had I had with Mr Fox when Matiu Rata was Minister of Maori Affairs we touched up on this not only on what we are talking about today but the whole confiscation. We got involved in something we never did in the first place - confiscation and when they found out after, however this happened. On the other hand while I am still talking, I like to say for the benefit of the others that as I said I joined this Investment Ltd for the simple reason of looking after the interest of 4,000 people with the forestry - Tarawera. Not the minority of about half a dozen or so. If the petition has come up, the applicant has come up with a petition for those 4,000 people I would go along with it because it is the people that I represent asking for the application but when he came up with this this way I thought - It wouldn't be fair for me to go along as I represent 4,000 owners not half a dozen.

MR MOORE

Mr Te Rire, I wonder if you - I should like him to explain the map he has put so much work into. I wonder if we could pin it by the witness box.

MRS GRAY

I have a request from my man whether or not you would permit some comment in Maori at this time on what has already been said. By that, could Dr Mead at this stage have something to add to what has been said by Mr Te Rire.

MR MOORE

I don't necessarily oppose that Sir but in fact you will notice what I have done was simply to let Mr Te Rire say in general terms what he had to say. What I propose to do now is to go back through it and illustrate specific points. If the Court is happy with Dr Mead and Mr Te Rire after him, I have no objection but I would like to finish the exercise of going over the contents of the map with him. This, you will recall

Sir, is the map shown to Mr Eruera Manuera last year, before there is a break in the evidence otherwise what's going to happen is Dr Mead will want to comment, although not by way of reply but that by way simply that he is going to be seeking further elucidation on the nature and historical importance of these various statements.

MRS GRAY

As I understand it Sir, that is not so.

COURT

Before we go into that. Mr Te Rire is part way through his evidence and this is just going to be another further explanation of what he has already said but I do like the idea that there might be some discussion after that.

MR MOORE

He is only a third way through.

COURT

I have a feeling that Mr Te Rire is not so much putting up a case but looking for a common ground reciprocation of what Mr Manuera said yesterday and I don't want it to develop out of that, and before we take a break - perhaps even if the Court wasn't here I don't know - their minds might be on the of same matters to see whether there is common ground on those matters without the necessity of having the formal evidence of the Court.

MR MOORE

If there were, in fact, on the very early genealogical matters only three questions that I wanted to ask and if that is the area which is sought to be explored, that is the question of the which Tuwharetoa we are talking and where the various lines started from then I would be happy to sit down at that stage.

COURT

Mrs Gray. I am suggesting that we take this through, then I would like to stand down for a while and I would like your advice as to what would be even better, a straight conference or discussion.

MRS GRAY

I am instructed Sir, that there are Maori protocol is involved and that's why the request was made.

MR MOORE

Mr Te Rire will be happy if once I've just elucidated those three questions I want to ask him, then we have the pause. I am looking at a gap of no more than three minutes. I am sorry, I rather exploded there a little. I thought you wanted to - you were accusing me of what I was about but I can see that problem. Mr Te Rire, you spoke about the book that Mr John Grace had written. Did he consult you and the people down here before he wrote the book.

MR TE RIRE

Not to my knowledge.

MR MCCRE

Have you spoken to him since about it. As I understand it, the questions that you differ on in relation to the genealogies as they rose for this area is not the subsequent, the Taupo area or story you find yourself at difference and in his evidence. Dr Mead referred to a comment in the book which said 'Well you folk down here are really Ngati Awa' as far as Mr Grace was concerned. Do you agree with that.

MR TE RIRE

No, I don't.

MR MOORE

You mentioned the name Uira and there was some reference yesterday to Uiaroa. (Yes) Now can you relate those two people for us in terms of where they fit in and on this question of the generation structure you told us about.

MR TE RIRE

To my knowledge Uiraroa came from the East Coast. Some how or other she had married Awanuiarangi of Mataatua but I'm not talking about Mataatua but she had to go back that far, the Mataatua area, Awanuiarangi was the great grand son of Toroa as you see on your paper. How she got here I do not know. Uiraroa was a different person all together from Uira. Uira was a descendant of, as I mentioned before, Ngamaihi also came from Waikaremoana so Sir, here with these two persons are different from one another. As I said before, perhaps the Tuwharetoa I know who married Uiraroa after Awanuiarangi died was another Tuwharetoa or was it the one I know. If it is the one I know it cannot be because Tuwharetoa of Taupo married who was the descendant of

MR MOORE

So are we in the situation, because of that you find yourself in disagreement with Dr Mead as to the ultimate relationship between Tuwharetoa and Ngati Awa.

MR TE RIRE

At that time, because we all know today family is different and what we are referring to on the piece of paper.

MR MOORE

That was what I wanted to cover Sir. As I understand that's the area you would like to explore further.

COURT

At this point should this Court adjourn and Counsel and Court move out of it or should we proceed but without recording the evidence in 'korero Maori'.

87/252
W. J. G. Compensation Claims

Memorandum

The first claim for compensation of which I can find any record, and account of losses sustained by whists at the hands of Natives in New Zealand arose in 1843. It was prepared by Mr J. J. Forsythe who then resided at Kaipara, and it was recognised by the Government of the Colony and by the Home Government as payable in land. It is also a curious feature in this case, which arose not out of hostile aggression on the part of Rebel Natives, but from some private dispute, that the great Chief "Tirarau" who was responsible for the attack on Mr Forsythe's property, ceded to the Government a block of land in expiation of his fault. - The principle of this kind of compensation in such cases was also approved by the King of the Isles. The next in order of time, claims which arose are those incurred in the War at Horekeka in 1845, and these are still outstanding.

Another claim of this kind, recorded in this office, is that of Mr Thomas Hill (papers 67/227B) for compensation for an outrage committed

(see back)

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8/67

The princ. receiving land from the Natives in such cases was also approved by the King of the Isles.

committed by Nations of Matakoma in
1844, in which case the Nations
gave to the Govt a block of land - This
claim has, however, never been admitted
by the Govt - The principal reason ^{that} seems
to be that in 1852 the claimant was
convicted of felony (coming) and having had
a fine for coming half crown in his possession
when the robbery was committed.

Copy

Auckland,

April 18th 1867

Sir,

I have the honor to state that in obedience to your instructions I left Auckland for Orotiki on the 3rd of January last in the "Hurt" which sailed via Tauranga, and arrived at Orotiki on Saturday the 5th of that month.

On the following Monday I was occupied at Orotiki winding up the matter of rations that had been issued regularly to the Wakatohea tribe; and inquiring into the circumstances of a late visit made by some Hawkaes to Maiaima for the purpose of seducing the surrendered Wakatoheas from their allegiance.

On Tuesday the 8th I went to Wakatane and remained there until the 13th investigating Wakatane claims.

On the 14th I travelled to Koko Hinu, Rangitakehi pa in the

the Mount Edgecombe district, and the following day held a meeting of the Natives of that part of the country.

I was informed, as indeed I had expected, that the country there belonged to the loyal chief Rangitukehu then absent with Mr. Mair & Co. in the Urewera country at Te Tapiri where Arama Karaka's Arawas had been killed and slain two years before. After many speeches the question I mooted was left in abeyance until I should have an opportunity to arrange it with Tukehu himself, I having first expressed the intention of which the meeting approved to require a portion of land in consideration of the expense incurred by Government through the late disloyalty of some Natives of that district.

On the 16th, though alone, I ascended Mount Edgecombe with a view to obtain a better knowledge of the country. Arrived at the summit, I was particularly struck with the level character of the country extending from Te Teko to the Rangitikei river to Lake Taupo, whose blue waters were distinctly

distinctly visible perhaps forty miles away from where I stood; and I determined to obtain from Tukehu the Teke plain, which appears to be the natural site for a town that must some day command the traffic of the interior. In this I ultimately succeeded, as the agreement with Tukehu which I forwarded to you on the 20th ultimo shews.

From Kokohinau I proceeded on the 17th to the Tawera's country all the Natives of which tribe numbering 86 men, women, and children, have been in rebellion. Before the war they were extensive land owners, their possessions being chiefly to the westward of Tarawera river; but now these lands are the property of the Arawas, having been given to them by the Government in consideration of past services. Mess^{rs} Clarke and Mackay, however, have promised the Taweras a piece of land at Te Umuhika, where their mill is, on the west bank of the Tarawera. I think it would be well to set these Natives' minds at rest

next by giving, without unnecessary delay, a certain amount of land in that place, and if the quantity be sufficient for their support it will not be requisite to supplement it by other Government lands.

I returned to Orotiki via Matata and Wakatane by the 21st; and in conjunction with Major St. John sent three Natives, Te Rauapua, Witiia, and Rewiri Moka, into the Waioteka mountains to endeavour to induce the expatriated Wakatoheas to surrender. Many fair promises to join their tribe in a short time at Orape were made by the rebels, but none were ever fulfilled. We obtained the following information. These Hau hau Wakatoheas do not live with the Uruweras, but hold their own lands at the sources of the Waioteka river about three days journey in the mountains away from Orotiki. They live on potatoes, honey, birds, and small fish they find in the river; they have no pigs or horses, and they are much infested with vermin, as their present creed requires that the parasites should not

not be disturbed. The Hauhaus said that war would soon ensue at Tauranga.

On the two following days I unsuccessfully tried to obtain from the District Surveyor at Orotiki tracings of the Ohina Surveys which extend in the Waimana direction.

Hearing on the 24th that Col. Haultain was at Tauranga I immediately started for that place, and arrived there on the night of the 25th. On the 26th I laid before the Defence Minister the state of Native affairs in the Bay of Plenty District, who, having considered their varied aspect directed me not to press on the Natives then for land at Mount Edgecombe should the subject seem unwelcome; but, at the same time, not to appear to suffer the matter to lapse. I may mention that the Defence Minister gave me a written order to the District Surveyor at Orotiki to furnish me with such tracings as I required, and that the plans were delivered to me on the 26th February, one month afterwards.

S

I also conferred with Mr. Commissioner Clarke in reference to the settlement of the Tawera tribe at Te Umuhika. Mr. Clarke had however important duties to attend to, and was unable to act in the matter then.

On the same day, 26th Jan^y, I left Tauranga for Orotiki, but such was the state of the weather that I did not reach the end of my journey before the night of the 29th, when for want of a ferry I was compelled to swim the waiōka on a heavy flood at 10 p. m. My horse sunk under me, but I struck out and reached the opposite shore. A ferry should be established at this place, as more than six Europeans have been drowned there during the last eighteen months. I should not have risked it, had I not been afraid to remain in wet clothes during a cold night in the bush.

When I reached Orotiki the Militia had been removed to Tauranga, only 16 men formed the garrison of the place; while
letters

11
Letters came to me from Wisemee Kingi of Ngaitai, from the Uruera Chief Rakuraku, from Hohaia Matatehokia Native Assessor at Wakatane, from the Chief Haperere of the same place. Also from the Ngatiawa Chiefs Apanui Tepeka and Te Tapa - all warning me that the Urueras were assembling at Ruatāhuna, and that more or less danger was to be apprehended.

At this time the Wakatohea Chief Wiritia went on a journey to seek information for us, and Captain Pennefather, Commanding the post, urgently requested me not to leave Opoitiki at that juncture. I complied with his wish, and by special Messenger informed the Defence Minister at Tauranga of the condition of affairs on the 3rd Feb^y. On the 7th the "Sturt" arrived at Opoitiki with Colonel Haultain, who fixed the garrison at 75 men, and directed me not to leave that place while fear of an Uruera invasion should last.

On the 14th Feb^y, the cloud having passed over, I was able to leave Opoitiki and again pursue my land investigations at Wakatane Rangitaeke,

Rangitaeaki, Mount Edgecombe,
and Matata; these lasted until
the 4th of March on which day I
returned to Orotiki to be ready
for the Compensation Court on the
7th. On the 5th I informed the
District Surveyor that 53 lots at
Ohina were available for military
settlement; and on the 29th March
when Major St John with the
Militia returned from Rotorua,
I informed him in writing that
this land had been passed by me.

On the 2nd April, as proceedings
in the Court advanced, I informed
the District Surveyor that 41 lots
near the Waimana were available
for military settlement. I also
informed Major St John of the same.

On the 4th April I wrote the
District Surveyor the following letter:-

"I have the honor to inform
you that seventeen country lots
are available for military settlement.
These lots are included in the
plans designated 'Plan of portion
of Waimana block east' and
'Waimana block east' and are
numbered from 15 to 24 and 26 to
33 inclusive."

I have, &c.,

(Signed) J. A. Wilson
M^g Com^r

J

I may mention that 25 was not a 50 acre lot. This letter was worded in the same terms as my two previous letters of the 5th March and 2nd of April. But the District Surveyor had now discovered a difficulty, and would not act unless furnished with reserves, to place in his schedule. It was my object however to avoid, if possible, the loss incurred by making reserves; and therefore on the 6th instant I again addressed a letter to the District Surveyor, which was supplementary to my letter of the 4th. It was the following:-

"I have the honor to inform you that all the remaining lots situated in the plans designated "Plan of portion of Waimana block east" and "Waimana block east" being fifty-two fifty acre lots, are available for military settlement."

I have, &c.,
 (Signed) J. A. Wilson
 Sp. Commr.

The District Surveyor's reply to this is enclosed herewith.

On the same day I saw Col. Haultain, who was at Opoitiki,
 on

on the subject. The District Surveyor
also saw him. Major St. John
too, asked Col. Haultain what
under the circumstances he should
do? Col. Haultain referred him
to me; upon which I immediately
borrowed from the Judges of the
Court a plan I had lodged in
evidence some days before. This,
with three other plans in my
possession as Crown Agent, I
handed to Major St. John; and,
as I could then see my way
to making over the Wakatane
land, I wrote him a letter
of which the enclosed is a copy.

Major St. John was perfectly
satisfied with the arrangement I
had made, and in reply informed
me, that the last men, as military
settlers under his command, would
be struck off pay on the 15th inst.
and thus this business is so far
complete.

I will now return to the 7th
March, when my duties as Crown
Agent began. The Compensation
Court sat until the 6th April,
Sundays only excepted. During
that time its proceedings were
not delayed an hour by the
Government

Government for any cause whatever.

Out of 235 cases 133 were disposed of involving compensation to the amount of 1000 acres, and no money has yet been awarded.

These lands are all however of good quality and generally well situated. It was only by conceding such lands that the difficulty could be escaped in which I found the Government placed, by what the Court affirmed to be the illegal settlement of the Orotiki district. Hence, on several occasions I have been compelled to invade the Government reserves; for the 2000 acres reserved for compensation at Waiawa, though good average land, found but little favor with the claimants.

I have also to state that at the very last moment, as I stepped on board the vessel to come away, Tiwai and his wife Te Aira consented to my terms, which are better for the Government than taking their 10 claims into Court. The terms are 250 acres of

of country land, 5 in the Military township, and $1\frac{3}{4}$ in the civil township, together with £50. to be paid soon. 25 acres of this land will be taken at Ohiva and 25 at Iriama.

The Court has been adjourned in consequence of the absence of many claimants, who are engaged on our side in the war at Rotorua; and, because the other Natives are at this time of the year too occupied gathering in their crops to attend either as claimants or witnesses. Notice of the time and place of next sitting of the Court will be duly given.

I would here observe that the reserves made by me at Opoliki in November last to satisfy compensation claims when the Court should sit, would have been sufficient for that purpose; had not many claims been received after the 1st December the day on which it became optional with the Government to accept them.

I must not omit to report that during my previous trip, on the 24th December, I settled the rebellious

rebellious Upokorohe hapu at
Hokianga, and Hiwarau, in
Ohiva. The Defence Minister
was at Ohiva at the time
and approved of the location.
The boundaries of this Native
reserve are on the East by
the main road from Punawai
towards Waimana, i.e. the
surveyed road to the point
where it first strikes the
Nukuhou stream, as one goes
from Punawai, on the south
and west by the Nukuhou,
and on the North by Ohiva
harbour from the mouth of
the Nukuhou to Punawai.
These limits enclose an area
of about 1500 acres. Hokianga
is a small island of, say,
30 acres near Hiwarau.

Again on the 18th February
I provided for the Ngatiawa
p.r. per of Wakatane; that is
to say the Ngatihokopu and
Ngatiwharepaia hapus; by giving
them permission to retain the
lands that had been theirs on
the Orini, between Owhataite
and its mouth; and also to
retain their lands at Ohope,
from Te Ara Kuri to Te Hono
near

near Taumohare. I told them that the inland boundary of this reserve would be defined by a survey line.

At Orotiki I have made the following reserves for the Wakatoheas; - 6 acres between the river Otara, the creek Parahamuli, and the sand hills. This was given at their earnest request as a place where they may stop when they visit Orotiki. To the chiefs Witeria, Rangimatenuka, Awanui, Te Rauapua, and Makarini 50 acres each have been allotted, in Pitcairns' survey East of Orotiki, on condition that the Crown Grants shall be issued to them when they shall have proved themselves loyal for three years from the 1st December last. The lots are, for Rauapua N^o 1: For Makarini N^o 3: For Rangimatenuka N^o 4: For Witeria at Waiaua river N^o : (to be selected by him.) For Awanui at Waiaua river N^o : (to be selected by him.)

I will conclude by stating that, to protect the interests of the Government in the Compensation Court, I made a census of all the tribes in the

the confiscated Bay of Plenty district; that line between Orape on the East, the Tarawera river on the West, and Mount Edgecombe on the South. The Census shews the number of men, women, and children, surrendered and unsurrendered in each hapu and tribe; together with relationships, that is to say, husbands, their present wives, and the children of those parents. This census has been a great assistance in Court, and when it is collated I will forward to you a schedule of its contents.

I have, &c.
(signed) J. A. Wilson
Special Commissioner
and Crown Agent
at Opotiki

The Hon^{ble}
S^r Pollen,
Agent for the
General Government,
Auckland

AGG-A 1/1 Instructions from Native Minister Fitzgerald to Dr Pollen, General Government Agent, Auckland, 3 September 1865 and attachments.

These instructions were not copied because they were considered too fragile due to water damage. However they read in part,

1. Instructions 3 September 1865.

Sir,

The Government has taken into its most anxious consideration the present state of the Waikato. It appears that the Natives are gradually returning to that district and settling down upon the lands, and that in a great state of poverty requiring both food and seed. This unauthorised and irregular reoccupation of the country which has been conquered is a matter of great anxiety and is incompatible with the settlement of the country in the manner proposed by the policy of the last two years. The Government feel that a rapid and final settlement of the Waikato country ought to be made. They have therefore advised His Excellency to issue proclamations confiscating the whole of the territory previously brought under the operation of the New Zealand Settlements Act. They have taken this step because in the conflict of claims and titles to land in that district, a speedy and satisfactory settlement of the country is impossible. Having taken this step, their first object is to settle down on the land all the former proprietors who will come in, accept grants of land under the Crown, and consent to live in peace under the protection of the Law.

For this purpose the Government desires to appoint you to be a special and sole Commissioner for the purpose of making this settlement. We wish as far as possible to leave the Natives who have come back and are quietly settled down on the land at peace, only insisting that they shall take Crown grants for the land they consent to occupy, and shall clearly understand that they are living under the laws of the Queen.

In making out blocks of land for the Natives, it is of course desirable not to abandon to them more than is necessary for their wants, not only because to have them in possession of large tracts of country which they cannot use is no kindness, but because by the speedy sale and settlement of the remainder their own lands will become more valuable, and the settlement and occupation of the country will be effected. But the Government feel that the matter of first importance in the permanent pacification of the country is to induce the Natives to finally accept the fact that the land is confiscated and to consent to hold what is now returned to them under Crown Grant. To attain this end the Government would sanction a far more liberal disposition of land to the Natives than would on other considerations be desirable. The one

great thing which they desire to see done is to induce the Natives to accept their position as final and irrecoverable, and if by liberal concessions to them of blocks of land under Crown Grant you can bring about this result, the main object of the confiscations will have been attained. It appears from letters before the Government that the Whangape block has been set apart for the returned Natives, but that for some reason they do not like to occupy it. It seems that considerable numbers are settled down about Taupari. My feeling is that in such a case as this if you can get them to finally accept the position which they have fixed on, it is most undesirable to move them at all. What is wanted is peace and speedy settlement. You will receive by the next mail a Proclamation of peace which the Governor has issued; a document which it is hoped will strengthen your hands in the work entrusted to you.

The next point ...is that the Government has determined to set aside considerable blocks of land...[in confiscated districts in trust, to pay for rural police]...The remainder of lands after the settlement of the Natives and the reservation of these Police endowment blocks [will be sold unless the Provincial government wants to take them over from the central government].

It is most desirable that communications should be at once made to all the Waikato Natives, explaining to them the object and policy of the Government in making these confiscations. The Government is not under the apprehension that fresh irritation will be occasioned because they are informed that the Natives already regard the lands included in the first proclamation as confiscated. They do not distinguish between bringing the land under the operation of the Act and taking it for settlement. But should there be any such feelings you will take every possible means to inform them that the object of the Government is to get rid of all difficulty and dispute about claims and titles and to settle them down on land which they will hold on Crown grants for ever. The Government rely on you to take every precaution to have this thoroughly explained...

...You should consider this as a confidential communication...

2. Circular, 8 September 1865, Fitzgerald to Pollen enclosing copy of proclamation (only partially legible)

Sir,

... every opportunity should be taken to explain to the Natives the true meaning and intent of these [enclosed] documents. The confiscation of land in the Waikato and on the West Coast north and south of Taranaki have become absolutely necessary in order to settle the country not only as regards Europeans, but Natives. It is intended, and steps are already taken to place these Natives who have claims to the confiscated land and who are willing to live peaceably

under the Law, in possession of tracts of country to be held under Crown grants. The Government is exceedingly anxious that the interests of the Native owners shall be fully consulted and that they shall be brought to see that it is not aggrandisement of territory which is desired but a final settlement of the country which has been the scene of the war, in such a permanent manner as alone can be consistent with a lasting peace.

I wish every opportunity to be taken to impress on the Natives that it is their interest which is mainly consulted by such an arrangement and that their prosperity and wealth will be best promoted by aiding the Government in speedily completing this settlement.

With regard to the Peace proclamation you will point out that Governor does not ask the Natives to come in and give up arms, to take the oath of allegiance, or to take any step whatever. Peace is declared. On the part of Government all military operations will cease except in the district of Opotiki where force will be used until the murderers in this district are arrested.

If therefore the Natives commence acts of hostility again they must understand that it will be their own fault and they cannot complain of the consequences, and should renewed hostilities [necessitate?] the loss of further territory they will only have themselves to blame.

Other attachments with these papers include letters from Te Whero and others re the Waikato - some parts illegible.

G. A. 67/200

Mar 18

J. A. Wilson

ACGA 67
NA - Wgt

Duck Lake

Spotis i

Reports having set for the Mount
Edgcombe district where he has
secured a block of land (say 10,000
acres) for the Government in considera-
tion of the disloyalty of the natives
5th March 1867.

Mr Hunter has been instructed to
Sir, Survey the boundaries of this land.

I have the honor to state that
I yesterday returned from Mount
Edgcombe district; having arranged
with the natives living there to take
for the Government a block of land;
in consideration of the recent dis-
loyalty of some of their number -

This block is estimated by
Mr Hunter, the surveyor, and myself
to contain about 10,000 acres, and
is a large one in a district where
the great area of swamps and
barren hills leaves comparatively
little available land. Half of the
block is sandy, but capable, I think,
of bearing certain kinds of grass,
as clover and lucerne. The other
half is excellent soil, and even on
the indifferent side the tea tree grows
fifteen feet high - It extends from
the Rangitakea river on the east, to
the Parawera on the west. In the
former it has a frontage of about
two miles, along the right bank of
the latter

Asksunbury swamp
for the
19/3/67

No 83
J. A. Wilson

[MAG-A BX 2]

it probably reaches about seven-

But perhaps the chief value of this land is, that it contains the only site for a township that can unite the advantage of good steam communication by the Rangitikei to the sea, fifteen miles off - with that of land carriage over a level country to Paupo, some forty five miles distant.

Mr Hutton is instructed to survey the boundaries of this land.

I have the honor to be,

Sir,

your obedient servant.

Jacobson

Special Commissioner

The Honble

J. Whitaker

Agent for the Genl Govt }
Auckland }

Memorandum on Tangirau's claim
for the Houle & Potlen

Tangirau or Rakau or Korotahi as he calls himself for the first time in connection with this business - is the principal man of a small party of natives, who live above Parawai on the west bank of the Tarawera -

They are not a tribe, but form connecting links between several tribes, and the individuals of the party sometimes call themselves by the name of one tribe and sometimes by the name another.

In the same way their lands are situated between these tribes' lands, and are a kind of neutral ground, the boundaries of which have always been determinable according to the strength of the tribe of the day -

Some of these natives joined the rebellion and some remained loyal. - And when the Bay of Plenty block was complicated Tangirau, the writer who is a worthy native, appeared for himself and the rest of the loyal party.

He presented 2 claims for land at Tarawera river, one on behalf of Tachetora's tribe - and one for "certain persons" at the same place.

The claims were included in one hearing by my consent. Tangirau stated his case and the extremely indefinite nature of the claims before the Court enabled him to claim for "certain persons" at "Tarawera" all the land he liked for all the people he thought proper to name.

As from what I did not call a single witness against Tangirau. The loyal and able natives were invited in the business, and I could not find one. Nor did I see any ground on which to oppose a moderate claim.

The matter resulted in a judgment in favor of Tangirau, and all the loyal persons he enumerated - being 6,380 acres to 13 persons.

I would remark that the extraordinary latitude with which his claims were worded gave Tangirau a very great advantage in court.

I might certainly have objected to them under the 5th clause of the Act of 1865, on the ground of their looseness but did not do so, as I wished the case settled on its merits.

Tangirau had every opportunity, his case was patiently investigated. The proceedings in Mr. Feitau's office will show this. He was not opposed by the government, but on his own and his witnesses evidence and cross-examination his sword was made.

I do not think Tangirau has any valid cause of complaint in this matter.

J. Wilson

14-4-69

Memorandum on the claims of Tangirau & his followers

Copy
H

Opatiki, April 6th 1867

Sir,

I have the honor to forward to you herewith the tracings of four surveys now ready for military settlement, viz.

1. Waimana block east
2. Portion of Waimana block ea
3. Wakatane - Maguire's Survey
4. Wakatane - Pitcairn's Survey

In the first two tracings I have no reserves to make; but the District Surveyor has, I observe, made several.

In Maguire's Survey at Wakatane the following 50 acre lots are reserved, 1, 8, 11, 13, 14, 15, 17, and 19. All the remaining 50 acre lots in this block are available for military settlement.

In Pitcairn's Survey at Wakatane the following 50 acre lots are reserved, 9, 10, 11, 12, and 13, and all the remaining 50 acre lots in this block are available for military settlement.

Major H. John
1st Waikato Regt.
Commanding,
Opatiki District

I have, &c.,
(Signed) J. A. Wilson
Special Commissioner

Copy
1/10

c. Memo. for Mr. Wilson

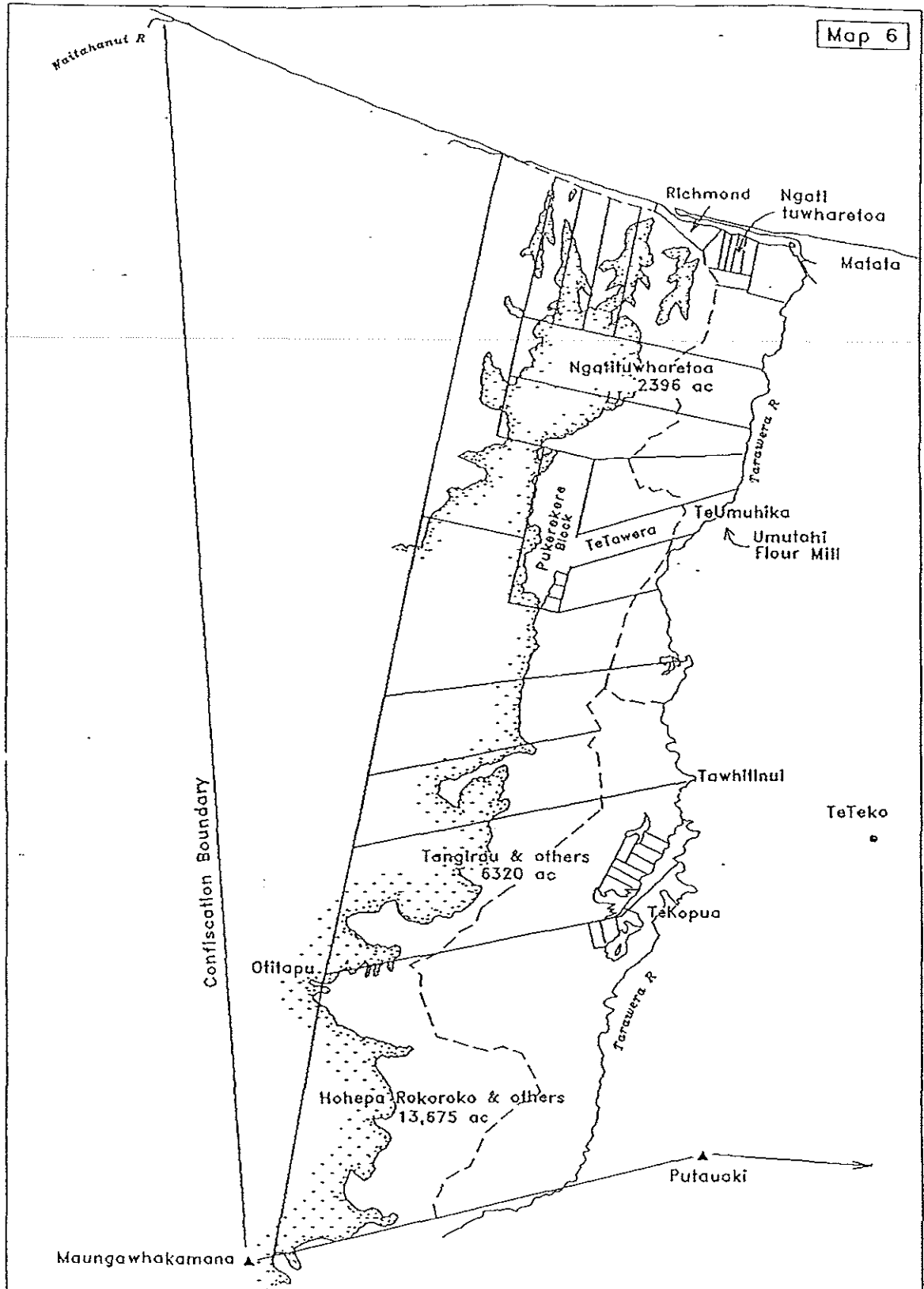
As I must insert the numbers of the lots Reserved for Native purposes in the Schedule, and you have not furnished me with them, I have to request that you will be good enough to do so as I am now waiting for those numbers to hand the plans over to the Officer Command.

I do not understand what is meant by all the remaining lots, &c.

(Signed) John Gwynneth,
District Surveyor

6/14/67

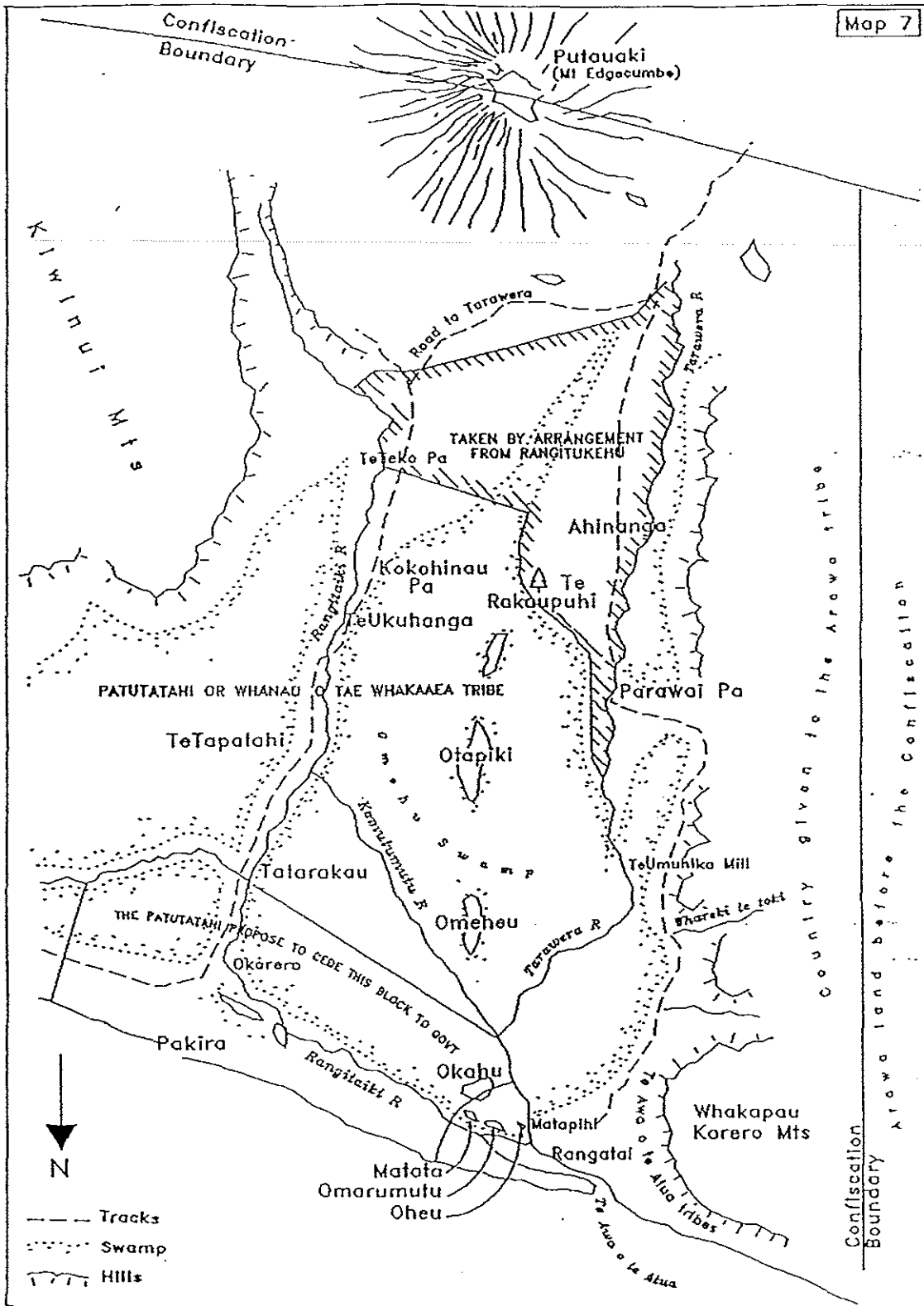
MAP OF CONFISCATION AWARDS



Map 6

Ref: based on map of awards - Nat.Archives Wgtn AAFV/997/A70

WESTERN BAY OF PLENTY CONFISCATION ABOUT 1866



Based on part of sketch map by H.G. Wrigg 1867
 Ref: Nat. Archives Wgtn AAFV/997/A43